



Tribal Courts

Alaska Child Welfare and Tribal Justice Conference

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TRIBES | SURVIVOR SUPPORT | ADVOCACY | EMPOWERMENT

Tribal Court Authority, Laws, & Structures

WHY HAVE A TRIBAL COURT?

TRIBAL COURT AUTHORITY

TRIBAL LAWS AND CODES

TRIBAL COURT STRUCTURES

WHY HAVE A TRIBAL COURT?

- Protect and enhance health, safety, and welfare of citizens
- Address the rural public safety crisis in Alaska
- Incorporate cultural values and activities as part of the solution
 - Utilize restorative justice to encourage healing
 - Opportunities to move away from the western-punitive justice model
- Get citizens connected with treatment, counseling, and needed services



TRIBAL COURT AUTHORITY

Tribal Sovereignty

- Tribes have inherent sovereignty to enact laws and structure their Tribal Courts in the manner in which they choose.
- “These powers are not granted from the U.S. to Tribes but are inherent powers that Tribes have retained.”

– *United States v. Wheeler* (1978)



TRIBAL COURT AUTHORITY

Tribal Authority to Protect and Provide these Services for Citizens:

- Divorce
- Custody and child support
- Child protection
- Adoption
- Paternity
- Domestic violence protection orders
- Cases that impact a citizen of the Tribe, even if the citizen lives in a different community

TRIBAL COURT AUTHORITY

Tribal Authority within the Village

Tribes' Authority over Native People:

- “Congress recognizes and affirms the inherent authority of any Indian tribe occupying a Village to exercise **criminal and civil jurisdiction over all Native people in the Village.**”

25 U.S.C. Section 1305(a)

Tribes' Authority over all People:

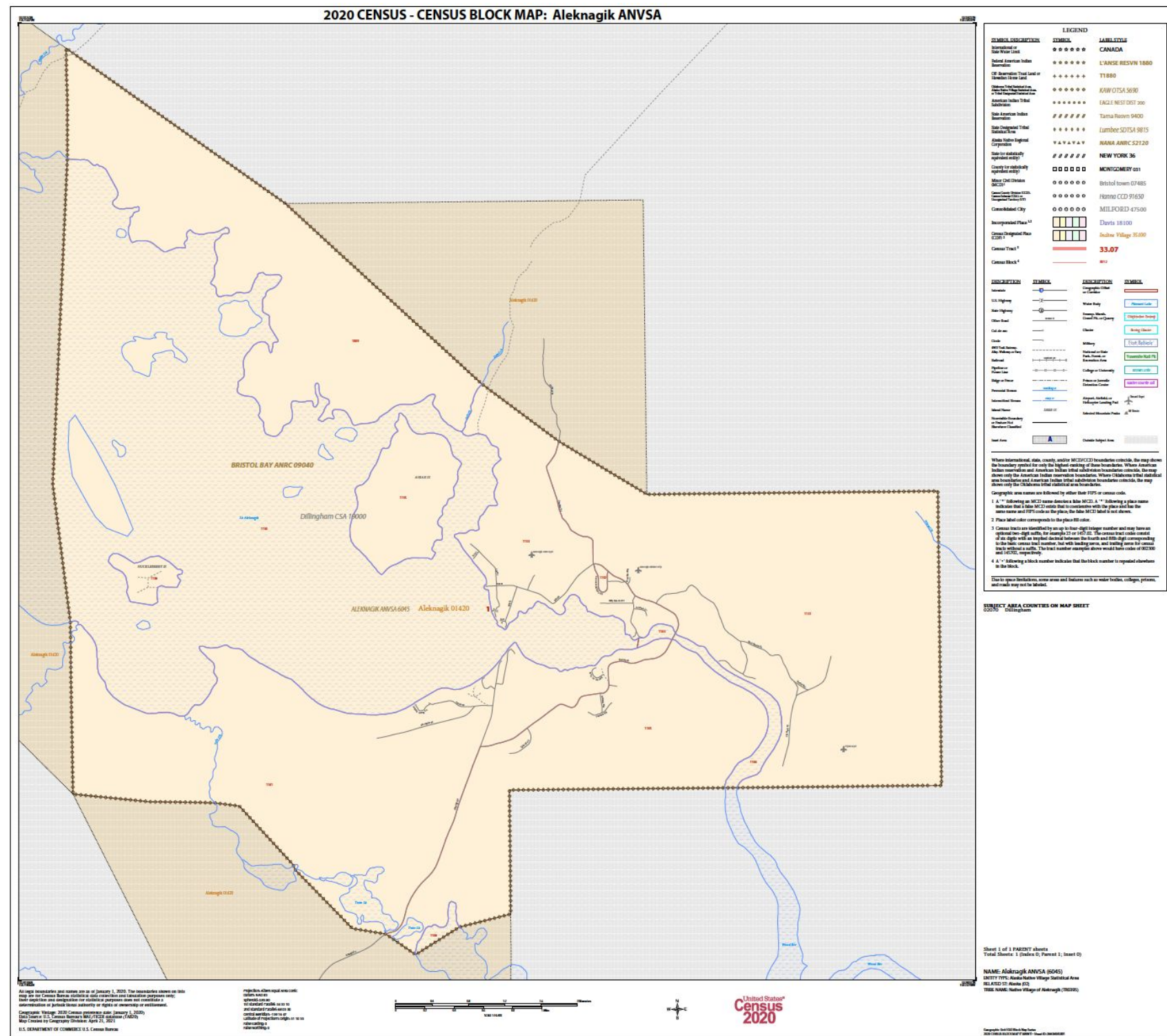
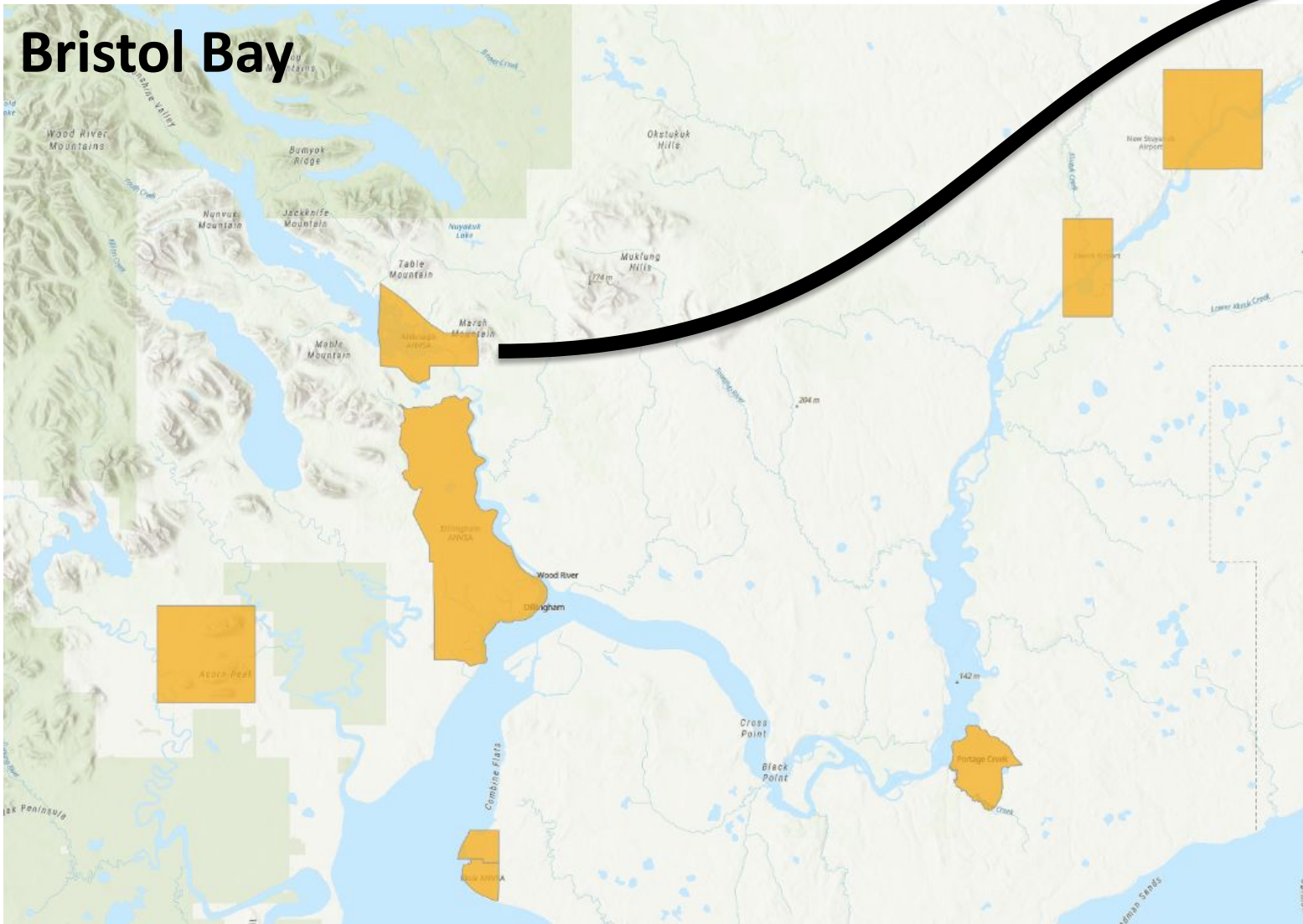
- Tribes can issue and enforce **civil protection orders** involving any person for matters arising within the Village.

25 U.S.C. Section 1305(b)

TRIBAL COURT AUTHORITY

Census map of Aleknagik's Village Boundaries

How to find a Tribe's Village Boundaries



<https://www.arcgis.com/apps/mapviewer/index.html?layers=d8d235a1bfa6444584f40a52bfc01190>

https://www2.census.gov/geo/maps/DC2020/DC20BLK/st99_aiannh/anvsa/

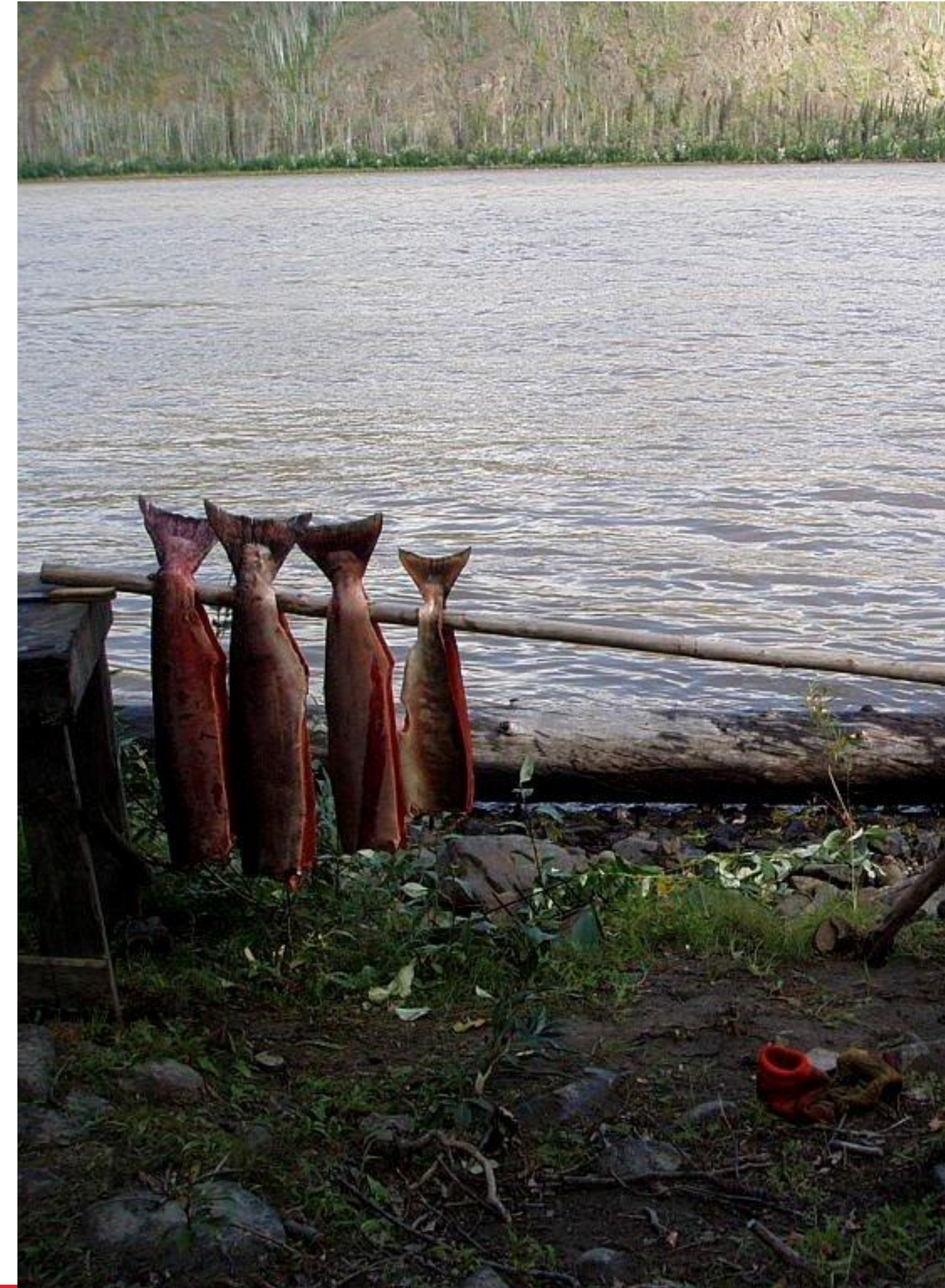


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TRIBAL COURT AUTHORITY

Shared Authority

- The State maintains concurrent jurisdiction within Villages, and over tribal citizens in Alaska.
- Concurrent jurisdiction means that State, Federal, and Tribal justice systems must cooperate to provide law enforcement and determine the appropriate court to hear a case.



TRIBAL LAWS AND CODES

Foundation

- Enacting Tribal laws is an exercise of Tribal sovereignty
 - Written codes provide guidance to the Tribal government as they provide for the health, safety, and wellbeing of its Tribal Citizens
 - Protects and preserves Tribal culture and customs
- Tribes can apply written or unwritten law



TRIBAL LAWS AND CODES

Considerations before Adopting New Laws

- How does a Tribal Court gain and keep the respect of its community?
 - The effectiveness of any court system depends upon the respect given to it by the members of its Tribal and non-Tribal community
- What is the focus?
 - Healing
 - Rehabilitation
 - Deterrence
- Enforcement
 - Does your Tribe have law enforcement?
 - Collaboration with State law enforcement or courts
- What are the best and most practical ways to provide safety?
- Tribal Court capacity, resources, and partnerships

TRIBAL LAWS AND CODES

Codes by Section

- Written Tribal codes can be adopted as a separate section for each subject area, depending on what type of cases your court wants to handle
- Examples of code sections to consider adopting:

Tribal
Court
Code

Domestic
Violence

Elder
Protection

Child
Protection

Controlled
Substance
s

TRIBAL LAWS AND CODES

Initial Steps for Adopting New Codes

1. Review Tribe's constitution
2. Review any existing written laws
 - Is the Tribe amending existing code or adopting a new code?
3. Determine the process for adopting and amending the code
 - Is the process already written down in an existing code?
 - How has the Tribe enacted laws in the past?
4. Consider community involvement
 - Will the community provide feedback on the proposed code?
 - How will awareness of the new law be promoted in the community?
5. How will the code be made available?
 - Online? In the clerk's office? By request of parties?

Revising and adopting new Tribal laws is a big commitment.

ANJC can assist with the process.

TRIBAL LAWS AND COURTS

Developing a Tribal Court Code

Next Slides:

Key court structures and processes
to include in a Tribal Court Code



TRIBAL COURT STRUCTURES

Court Structures to Consider

- Tribal council as the Tribal court
- Tribal court separate from the council
 - Judges: How many, qualifications, selection process
 - Elders panel and peacemaking circles
- Types of cases handled by the Tribal court
- Intertribal courts
- Court of Appeals

TRIBAL COURT STRUCTURES

Tribal Council as the Tribal Court

Options:

- The entire council serves as the court
- A certain number of council members serve as judges of the court, which is different than the quorum needed for regular council business
- A mix of council members and non council members serve as judges, or make up a pool of judges

Note:

Background checks are necessary for judges who hear cases involving children. This includes council members if the council serves as the court (Indian Child Protection and Family Violence Prevention Act of 1990).

TRIBAL COURT STRUCTURES

Separate Tribal Courts

- Tribal judges do not sit on the Tribal Council
- May be used to provide a check and balance on the Tribal Council
 - Example: the Tribal Court resolves a Council election dispute



TRIBAL COURT STRUCTURES

Elders or Community as Decision Makers

- Some Tribes use Elders or the community as the decision makers
- Most commonly seen as peacemaking or justice circles, or in Tribes that have dedicated Elders circles
 - Peacemaking Circle: Traditional, restorative practice that mediates conflict while promoting individual and collective healing
- Can be designed as diversionary or deferred-prosecution models



TRIBAL COURT STRUCTURES

How Many Judges?

Options:

- Single Judge model
 - Less common, but used by some communities
- Panel of Judges model
 - Three-judge panel is most common
 - Decision making is often done by consensus



TRIBAL COURT STRUCTURES

Qualifications for Judges

Not Optional:

Options:

- Age
 - Example: Elders only
- Residency/Citizenship
 - Does a judge need to live in the community?
 - Are visiting judges allowed? Useful if a local judge has a conflict of interest for a particular case
- Education

- Background checks for judges who hear cases involving children. A judge cannot have a history of violent or sex crimes (Indian Child Protection and Family Violence Prevention Act of 1990).

TRIBAL COURT STRUCTURES

How are Judges Selected?

Options:

- Selected and appointed by Tribal Council
- Elected by Tribal Citizens
- Both
 - Example: judges are elected by Tribal Citizens for a certain number of years. If there is an unexpected vacancy, the Tribal Council can appoint a judge for the remainder of the term



TRIBAL COURT STRUCTURES

Types of Cases Handled by the Tribal Court

What kind of cases will your court handle?

Options:

- The court can hear all types of cases (a court of general jurisdiction)
- Specialty court (a court of limited jurisdiction)
 - Examples: a youth court, or court that hears only child welfare cases



TRIBAL COURT STRUCTURES

Inter-Tribal Courts



Options:

- The only court used by two or more Tribes
- Shared resources: single office with court clerk, filing system, office resources, but each Tribe has its own judges
- Used as an appellate court by member Tribes
- A pool of judges that member Tribes can draw from

Recommendation:

- Written agreement among member Tribes outlining responsibilities, resources, and communication

TRIBAL COURT STRUCTURES

Court of Appeals

Appellate courts enable parties to ask for their case to be reviewed. This review ensures that the Tribal Court system has an opportunity to address contentious areas of law.

Recommendation:

- Include an appellate court in the Tribal Court system
- May be convened when needed



TRIBAL COURTS

- Tribes have inherent sovereignty to design their courts and enact laws in ways that best serve their communities.
- Tribal courts can provide services and protections to their citizens.
- Tribes have authority over all Native people within their Village.
- ANJC can provide training and assistance related to Tribal Courts and Tribal Codes.

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Questions & Comments

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