

Technical Assistance and Training for Tribal Courts

Alex Cleghorn

Legal and Policy Director

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ANJC Services

- Direct services to people
- Direct services to Alaska Tribes



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Services to People

- Advocacy and legal representation for victims and survivors of crime
- Legal education
- Restorative Justice – Adult Reentry



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Services to Alaska Tribes

- Indian Child Welfare Act cases
- Tribal Domestic Violence Protection Orders
 - registering with state court
- Tribal Model Code Drafting and Enhancing Victim Centered Tribal Courts



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Tribal ICWA Representation Program

The percentage of Alaska Native and American Indian (Native) children in Alaska is 19%

- over 50% of the children in out of home care are Native.

The percentage of Native children in Anchorage is 9%

- over 60% of the children in out of home care are Native.
- many Native families in Anchorage are from other regions and ICWA workers often appear telephonically in Anchorage.

Tribes are the only party in CINA cases not appointed an attorney.



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Tribal ICWA Representation Program

ANJC Represents Tribes:

- In Child In Need of Aid (CINA) cases involving the Indian Child Welfare Act;
- In the Anchorage Court system;
- **No** cost to the Tribe.



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Tribal ICWA Representation Program

ANJC also Provides:

- Advice and counsel to Alaska Tribes regarding ICWA; and
- Training and support to ICWA workers.



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Tribal Protection Orders

- Federal and state law recognize Tribes' ability to issue domestic violence protection orders:
 - Involving any person within authority of Tribe; and
 - Full faith and credit is required if Tribe had jurisdiction over parties and matter under the Tribe's law.
- This is true in Alaska, regardless of land status.
- The 'Alaska exception' to VAWA was removed several years ago.



Tribal Protection Orders

- In Section 905 of the Violence Against Women Reauthorization Act of 2013, Congress authorized Indian tribes to issue and enforce personal protection orders ***“involving any person . . . within the authority of [an] Indian tribe.”*** 18 U.S.C. § 2265(e), Pub. L. 113-4, Title IX, § 905, Mar. 7, 2013, 127 Stat. 124.
- ***“A protection order issued by a . . . tribal . . . court is consistent with this subsection if . . . (1) such court has jurisdiction over the parties and matter under the law of such . . . Indian tribe”*** 18 U.S.C. § 2265(a). See also 25 U.S.C. 1304 for tribal jurisdiction over crimes of domestic violence.



Tribal Protection Orders Terminology

An Order of Protection is any order issued by a court to prevent:

- violence;
- threats;
- harassment;
- sexual violence;
- contact or communication with or physical proximity to another person.

Includes temporary or final orders issued by a court in response to a petition filed by or on behalf of a person seeking protection. 18 U.S.C. § 2266.



Tribal Protection Orders Terminology

Parties in a DV Case

- **Petitioner:** the person seeking a protection order either for themselves or on behalf of a victim.
- **Respondent:** the person accused of domestic violence.



Tribal Protection Orders Terminology

Hearings

– Emergency Hearings

- Ex Parte Order
- Limited to 20 days

– Long Term Protection Hearings

- Long Term Protective Order
- 6 months or longer
- Order excluding offender from village should include time limit and conditions for returning



Tribal Protection Orders

Full Faith and Credit

- What law applies for Full Faith and Credit?
 - The law of the Court issuing the order is the law that applies.
 - In Tribal Court, tribal law defines ‘domestic violence.’
 - Written law is not required, but is best practice.



Tribal Protection Orders

Tribal Law example

“Domestic Violence” means

- Attempting to cause or causing physical harm to another *family or household member*;
- Placing a *family or household member* in fear of physical harm;
- Causing a *family or household member* to engage involuntarily in sexual activity by force, threat of force, or duress.



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Tribal Protection Orders

Tribal Law example

“Family or household member” includes:

- persons who live or have lived together;
- persons who are dating or have dated;
- persons who are having or have had a sexual relationship;
- persons related by blood or adoption;
- extended family members;
- persons who have a child in common;
- minor children of a person in a relationship described above



Tribal Protection Orders Jurisdiction

Does the Tribal Court have jurisdiction?

Look at Tribe's laws:

- Does what happened meet Tribe's laws about what domestic violence is?
- Is one of the parties a tribal citizen?



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Tribal Protection Orders Jurisdiction

	Respondent is tribal citizen	Respondent is non-tribal citizen
Petitioner is tribal citizen	Tribe generally has jurisdiction	Tribe has jurisdiction if: <ul style="list-style-type: none"> • Respondent consents • Respondent has consensual relationship with the Tribe; or • Violence threatens Tribe's health, welfare, integrity or economic security.
Petitioner is non-tribal citizen	Tribe generally has jurisdiction (filing in tribal court is consent)	Tribe has jurisdiction only where the dispute has a strong tribal connection (i.e., violence involving a tribal child)



Tribal Protection Orders

Full Faith and Credit

Do other courts have to recognize Tribal Protection Orders (Full Faith and Credit)?

– **YES**, *if*

- Tribe had jurisdiction; and
- Due process was given
 - Notice;
 - opportunity to be heard;
 - fair and impartial tribunal



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Tribal Protection Orders Registration

- Must Tribal Protection Order be registered with Alaska State Court for State law enforcement to recognize Protection Order?
 - **NO**, *but*
 - Helps protect tribal members when traveling;
 - If state law enforcement help is needed, they know it's a valid order and can locate it with a state assigned case number;
 - May help with enforcing violations of an order.



Tribal Protection Orders Registration

How to register:

1. Fill out DV-215 form
2. Fax DV-215 and copy of Tribal Protection Order to the local state court clerk
 - *(Send the fax from Tribal Court)*
3. State Court clerk will stamp the Tribal Protection Order and assign state court case number
4. State Court will fax a copy back to Tribal Court

The Tribal Protection Order is in the State's central registry of protective orders and visible to all Alaska State Troopers and most city Police Departments.



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Tribal Protection Orders Enforcement

- Violation of protection order – Tribal Court may enforce order and include contempt of court
- Additional tribal law remedies or penalties
- Report violations to law enforcement
- Violation of Tribal Court order may also result in a charge of violating a protective order contrary to AS 11.56.740, if the order contains provisions *similar* to provisions found in AS 18.66.100(c)(1)-(7) or AS 18.65.850(c)(1)-(3) (**the language need not be identical**).

Focus on safety – make a safety plan and connect survivor to services.



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Tribal Model Code Drafting

Training and technical assistance regarding development and implementation of:

- Tribal civil law and order codes;
- Tribal elder codes;
- Child-protection codes.



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Enhancing Victim Centered Tribal Courts

Training and technical assistance related to

- establishing,
- enhancing and
- building capacity

of victim-centered tribal courts



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Contact information

907-793-3550

icwa@anjc.net

Alex Cleghorn
Legal and Policy Director
Alaska Native Justice Center
amcleghorn@anjc.net



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