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## Survey of Tribal Court Effectiveness Studies

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Alaska Native tribes have used sentencing circles and other cultural traditions to address problems involving tribal members for centuries. This way of dealing with disputes in a restorative and reparative manner eventually gave way to an adversarial process when Alaska was purchased by the United States. Alaska Natives have always had a unique relationship with the federal government; there is currently only one reservation in Alaska and limited other forms of Indian country in the state. In 1971 the Alaska Native Claims Settlement Act (ANCSA) was signed into law, extinguishing all unsettled Alaska Native claims to land by placing title to land in the control of Alaska Native corporations. Subsequent cases have determined that land transferred to Alaska Native corporations via ANCSA cannot be considered Indian country for the purpose of establishing tribal court jurisdiction. (See “Key Acts and Cases for Alaska Tribal Court Jurisdiction,” p. 12.)

However, in its landmark 1999 ruling in *John v. Baker* (982 P.2d 783), the Alaska Supreme Court determined that despite the lack of Indian country jurisdiction over ANCSA lands, Alaska Native tribes possess jurisdiction over *members* of the tribe through their rights of inherent sovereignty.

Alaska tribal courts today primarily hear cases involving family law and child custody and protection matters, including cases related to adoptions, child protection, Indian Child Welfare Act (ICWA) intervention, marriages/divorces, and domestic violence. Some tribes also hear cases involving contract disputes, employment disputes, probate/inheritance, animal control, environmental regulation, and natural resource management. A few tribes initiate civil proceedings in cases that are commonly criminal matters, including driving under the influence, assault/disorderly conduct, juvenile delinquency, vandalism, misuse of firearms, trespassing, and drug and alcohol regulation. The state and various tribes are working towards an agreement to refer additional case types to tribal courts for resolution. (See “Current Issues Regarding Alaska Tribal Court Jurisdiction,” p. 14.)

The need for increased court and law enforcement presence in rural Alaska was recently highlighted by a 2013 report by the Indian Law & Order Commission on crime and safety issues in Native American and Alaska Native communities, *A Roadmap for Making Native America Safer: Report to the President and Congress of the United States*. The report authors devoted an entire chapter to problems in Alaska, the only

state to be singled out for such attention. Among the difficulties for Alaska Natives identified by the report are that: (1) Alaska Native women are overrepresented in the statewide domestic violence statistics by 250 percent—they comprise 19 percent of the statewide population, but 47 percent of reported rape victims; in Alaska villages, domestic violence rates are up to 10 times higher than the national average, and physical assault rates up to 12 times higher; (2) at least 75 communities lacked any law enforcement presence; and (3) although alcohol was involved in more than 95 percent of all crimes in rural Alaska, there were few available treatment facilities in these areas. (All statistics are taken from the report and have not been independently verified.) Tribal courts could potentially help address many of these issues.

This, though, raises the question of the effectiveness of tribal courts in addressing and resolving disputes involving its members. Although there is limited data related to tribal courts, some studies support the hypothesis that tribal courts are more effective than traditional Western courts within American Indian and Alaska Native communities.

Please see *Tribal court studies*, page 15

## Tribal Courts in Alaska

This issue of the *Alaska Justice Forum* is devoted primarily to issues related to tribal courts in Alaska, including how they function, measures of their effectiveness, and past and future issues regarding tribal court jurisdiction.

“Survey of Tribal Court Effectiveness Studies” (p. 1) examines empirical studies that have been conducted on the effectiveness of tribal courts, both in terms of reductions in recidivism and participant attitudes. The article also looks at some of the challenges to implementing a tribal court effectiveness study in Alaska.

Professor Jeff D. May of the University of Alaska Fairbanks offers two articles on the theory and implementation of the restorative justice principles frequently used in tribal courts. The first, “Restorative Justice: Theory, Processes, and Application in Rural Alaska” (p. 2), explores the principles behind using

restorative justice as an alternate form of sentencing in criminal cases. The article focuses particularly on how restorative justice might be of benefit in rural Alaska. The second article, “Community Justice Initiatives in the Galena District Court” (p. 6) examines a community outreach program in rural Alaska whereby an Alaska Court System judge uses restorative justice principles in village sentencing hearings.

This issue also includes two surveys of tribal court jurisdiction—“Key Acts and Cases for Alaska Tribal Court Jurisdiction” (p. 12) and “Current Issues Regarding Alaska Tribal Court Jurisdiction” (p. 14). These surveys trace the development of tribal court jurisdiction in Alaska and federal case law and statutes, and examine some of the unresolved issues that will shape this jurisdiction in the years to come.