

## Current Issues Regarding Alaska Tribal Court Jurisdiction

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**Alaska Exception to Violence Against Women Act.** In 2013, Congress reauthorized the Violence Against Women Act (VAWA). As part of this reauthorization, Congress expanded the jurisdiction of tribal courts over criminal domestic violence prosecutions to include cases in which the perpetrator is non-Native. A previous U.S. Supreme Court case held that tribal courts cannot bring criminal charges against non-Natives unless Congress specifically authorized it. The 2013 VAWA reauthorization accomplished this for crimes of domestic violence. However, the 2013 VAWA reauthorization bill also contained a provision (introduced by Sen. Lisa Murkowski) that explicitly excluded Alaska from this expanded jurisdiction.

Later in 2013, Sen. Mark Begich (co-sponsored by Sen. Murkowski) introduced the Alaska Safe Families and Villages Act of 2013 that, among other things, removes the Alaska exception to VAWA. The proposed Act additionally encourages and provides grants for intergovernmental agreements between the State of Alaska and tribal governments for the enforcement of certain state laws. The Act is currently pending before Congress.

**Indian Law and Order Commission Report.** In November 2013, the Indian Law and Order Commission, pursuant to the Tribal Law and Order Act of 2010, issued a report (*A Roadmap for Making Native America Safer*) to the President and Congress. The report analyzed law enforcement and criminal justice issues on reservations and other areas governed by tribal courts. An entire chapter of the report was devoted to Alaska (“Reforming Justice for Alaska Natives: The Time is Now”), the only state singled out for its own chapter. The report justified this attention based on the endemic sexual assault, domestic violence, and other public safety issues experienced by Alaska Natives and tribes, many of which are in areas inaccessible by roads with no local law enforcement. Also noted was the very limited role that tribes and tribal courts in Alaska are allowed to play in resolving criminal offenses resulting in punishment.

The report placed much of the blame for the lack of tribal criminal jurisdiction on the Alaska Native Claims Settlement Act (ANCSA), which is described as “the last gasp of Federal ‘Termination Policy’” (referring to the occasional policy of the federal government to terminate Indian tribes) and which eliminated much of the Indian country in Alaska. The concept of Indian country serves as a foundation for land-based jurisdiction for tribes in the Lower 48. To address this issue, the report recommended a variety of potential remedies, including: amending ANCSA to allow the creation of Indian country; clarifying

that land transferred from the federal government to individuals or tribes constitutes Indian country; allowing ANCSA lands to be transferred to tribal governments or otherwise be put into trust by the federal government for the purpose of creation of Indian country (to some extent, this is already happening—see below); repealing the Alaska exception to VAWA (see above); and affirming the inherent criminal jurisdiction of tribes over their members.

**State of Alaska v. Central Council of Tlingit and Haida Indian Tribes of Alaska (CCTHITA).** This case, which is currently pending before the Alaska Supreme Court, addresses whether tribal courts can issue child support orders that the State could then be required to enforce. The State interprets the phrase “internal domestic relations” in *John v. Baker*, which established member-based jurisdiction for Alaska tribes, to preclude tribal courts from hearing child support cases because tribal support orders may require state enforcement and may involve a parent who is not a tribal citizen. The tribe responds that because it has jurisdiction to make child custody decisions, the tribe should also be allowed to set the corresponding amount of child support so long as the child is a member of the tribe. The tribe further notes that under the applicable federal program for Alaska, the State is required to follow the same administrative procedures to enforce orders for children subject to tribal orders as for children subject to child support orders from other states. The tribe prevailed on its arguments before the Alaska Superior Court, and the State of Alaska has appealed this decision.

**Land into Trust Regulations.** Prior to a court decision in 2013, a federal regulation prevented the Secretary of the Interior from accepting Alaska land into trust status, meaning that title to the land would be held by the federal government for the benefit of the Native Americans or Alaska Natives living on the land. That changed with the 2013 U.S. District Court for the District of Columbia decision in *Akiachak Native Community v. Salazar*, which found the regulation in question to be illegal. In May 2014 the Department of the Interior issued a proposed rule change that would permit the Secretary to take land into trust in Alaska. This land would likely be land owned by the tribes, though potentially other land, including individually owned land and ANCSA land, could be taken into trust if title to the land was given to the Department of the Interior. Taking land into trust could potentially lead to the expansion of Indian country in Alaska, which might resolve some of the issues raised above. The exact status of what would happen to land taken into trust in Alaska is at this point unclear.

**Civil Diversion Agreement between the State of Alaska and [Indian Tribe].** The State of Alaska has proposed a “Civil Diversion Agreement” with Alaska tribes to divert certain misdemeanor criminal cases to tribal courts (as opposed to retaining jurisdiction in state courts but using tribal court sentencing processes). The proposed Civil Diversion Agreement recognizes the remoteness of many villages, the high rates of alcohol abuse and domestic violence in rural Alaska, the frequent difficulties in obtaining a quick response by law enforcement personnel to these areas, and the benefits of tribal and community involvement in the judicial process. Under the agreement, if an individual in a village with a tribal court that has entered into a referral agreement is charged by the State with one of a number of specified misdemeanor criminal offenses, the case could with the consent of the offender be diverted to the tribal court for the imposition of a civil remedy using tribal cultural standards. The offenses covered by the proposed agreement include most Class B misdemeanor offenses, fourth degree assault (including domestic violence assault), as well as many alcohol infractions, including minor consuming alcohol offenses. There are restrictions, however, on an offender’s eligibility for referral if the offense involves domestic violence. For all offenses, tribes are not allowed to sentence the offender to incarceration or issue a fine exceeding \$250. If the offender fails to abide by the terms of the tribal court sentence, he or she would then be subject to prosecution by the State. The agreement is subject to negotiation between the State of Alaska and individual tribes. As of this writing (October 11, 2014), no civil diversion agreements have been finalized. (For questions regarding the agreement or to obtain a copy, email attorney.general@alaska.gov.)

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## Erratum

A disclosure statement was erroneously omitted from the original version of the article, “Shifting Marijuana Laws and Policies: Implications for Alaska,” *Alaska Justice Forum* 31(1-2), Spring/Summer 2014, page 20:

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