

Understanding Recent Changes To Alaska's Unique Legal Landscape and How Alaska Tribes Are Pursuing Justice and Public Safety In Our Communities



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Presentation Roadmap

- Alaska's Documented Danger for Alaska Native Women
- Tribal Justice Systems and Changes in How the State of Alaska Recognizes Alaska Tribal Authority and Jurisdiction
- Enforcement of Tribal Court Orders - Law, Challenges, and Updates in Federal Law
- The Violence Against Women Act 2022 Reauthorization



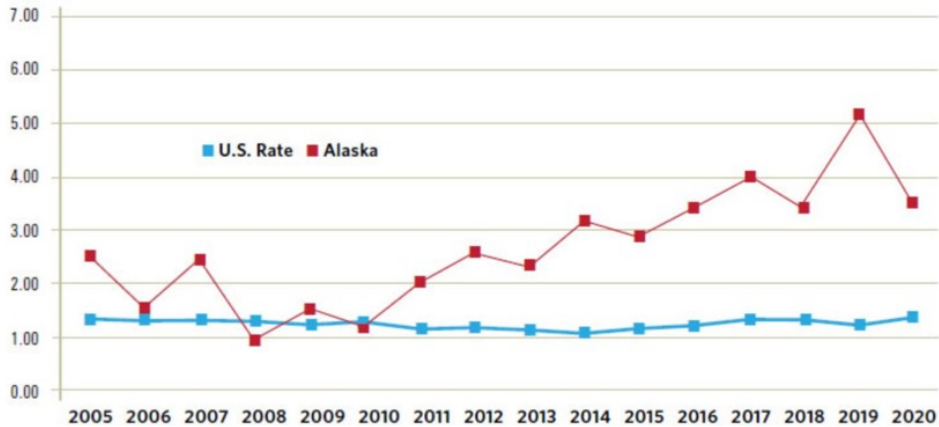
Homicide of Alaska Native and American Indian Women - The PROBLEM



Homicide of Alaska Women

In 2020, Alaska had the highest homicide rate in the United States for female victims killed by male offenders in single victim/single offender incidents for the seventh year in a row. Alaska was ranked either first or second in the nation in the rate of women killed by men for 10 years in a row.

Rate of Females Murdered by Males in Single Victim/Single Offender Incidents, in Alaska and the U.S. 2005 - 2020



Alaska's rate of women killed by men of 3.43 per 100,000 women in 2020 was two and a half times the 2020 U.S. overall rate of 1.34 per 100,000 women.



Rate of
Native
Women
Killed: 10
times that of
white women

- American Indian/Alaska Native women are disproportionately impacted by deadly violence against women in Alaska. In 2020 the rate of American Indian/Alaska Native women killed by men in Alaska was 12.63 per 100,000 women, which is **more than three and a half times** the rate for all women in Alaska and **10 times** the rate for white women in Alaska.
- The crisis of deadly violence against women in Alaska, particularly against American Indian/Alaska Native women, should be a top priority for lawmakers in the state.

Source: When Men Murder Women
An Analysis of 2020 Homicide Data
Spotlight on Alaska

- <https://vpc.org/when-men-murder-women-spotlight/>



NIJ Study Results...the shocking statistics

Violence Against American Indian and Alaska Native Women and Men...

- More than 4 in 5 AI/AN women (84.3 percent) have experienced violence in their lifetimes
- Of that 84.3 percent:
 - **56.1 percent** have experienced **sexual violence**
 - **55.5 percent** have experienced **physical violence** by an intimate partner
 - **48.8 percent** have experienced **stalking**
 - **66.4 percent** have experienced **psychological aggression** by an intimate partner

Overall, more than **1.5 million** American Indian and Alaska Native women have experienced violence in their lifetime

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The *Oliphant* Decision

1978 Supreme Court decision that found Indian Tribes do not have criminal adjudicatory jurisdiction over non-natives

– *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978)

After *Oliphant*:

- Infrequent prosecutions by federal and state authorities with jurisdiction
- High rates of violent crimes committed by non-Indian offenders with no accountability

- In Alaska, the State has not been able to provide

History of Alaska's Tribal

Tribal Governance



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Traditional Justice Systems (prior to Russian/American contact)

"The men talked to that person, and the object was to retrain the man how to treat his wife, to show respect. If they were repeat abusers, if they didn't learn their lesson, then they'd be told to pack up like, extra clothing, hunting gear, and food and told to go out into the wilderness, the tundra, and survive the experience of living alone. When the men checked him, he was allowed to come back into the village and allowed to go back to his wife, instead of being punished like they are taken into jail today, fined, and all that. They were not actual council members, but everybody, all the men, were involved in this problem."

- Rose Borkowski, late Yup'ik Elder
from Alaska Native Women: Ending the Violence, Reclaiming a Sacred Status by AKNWRC



Traditional Justice Systems (prior to Russian/American contact)

Prior to foreign interference and colonization, traditional justice systems:

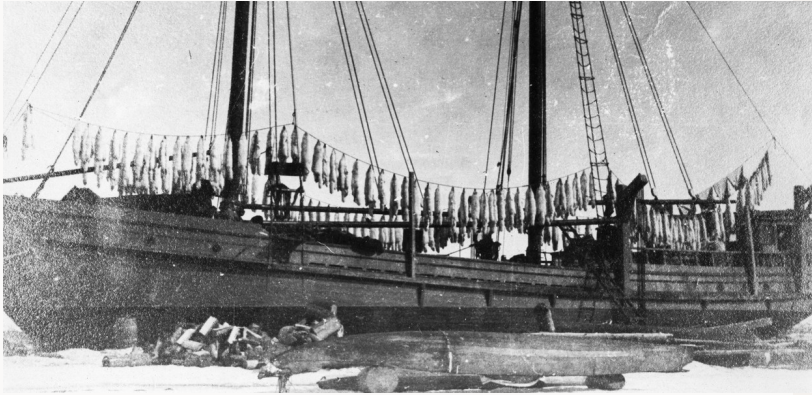
- Were governed by family and clan relationships
- Varied by culture and region
- Women were uplifted and held sacred
- Matrilineal society - matriliney
- Focused on accepting responsibility, correcting wrongdoing, and restoring balance in the community



from McCord Museum, Montreal, Canada, 2007

Influence of Russian Contact (1784 –

1 Eight Decades of Colonization



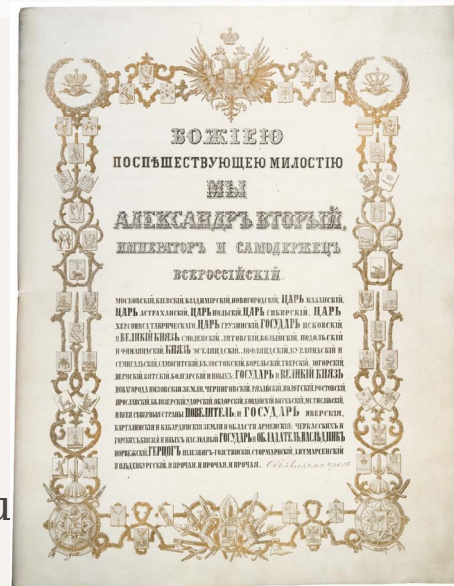
from Yale University Press

- Russian dominated indigenous lands and peoples of Alaska for more than eight decades (or just under three generations)
- Russians came in search of sea otters – initially impacting mostly coastal villages
- Russian impact grew and established fur-trade centers in many areas

Influence of Russian Contact (1784 –

1867 purchase of Alaska and the Treaty of Cession

- On March 30, 1867, the United States purchased Alaska from Russia
- \$7.2M – about 2 cents per acre
- Alaska native villages were not consulted, and lands were not exchanged through treaties
- The purchase included Alaska Native peoples, without their consent



from the National Archives

Influence of US Contact (1867 to present)

After the United States purchased Alaska from Russian, it began imposing American systems and policies on Alaska tribes

- Established US federal courts in the territory
- Represented a loss of land for tribes
- Created a separate education system for Alaska Native children - leading to missionary and boarding schools
- Shifted land ownership from the collective towards the individual

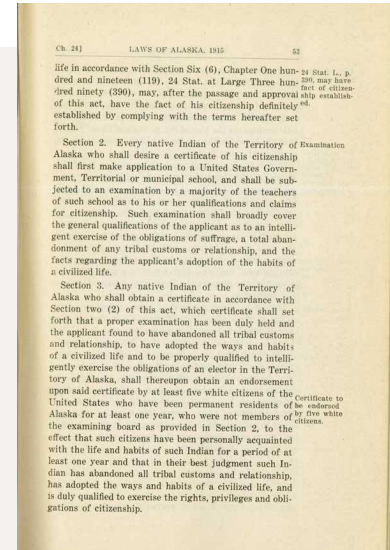


Influence of US Contact (1867 to present)

The 1915 Alaska Territory Law

*“Any native Indian of the Territory of Alaska who shall obtain a certificate...that a proper examination has been duly held **and the applicant found to have abandoned all tribal customs and relationship, to have adopted the ways and habits of a civilized life** and to be properly qualified to intelligently exercise the obligations of an elector in the Territory of Alaska, shall thereupon obtain an endorsement upon said certificate **by at least five white citizens of the United States** who have been permanent residents of Alaska for at least one year.”*

- Legislature of the Territory of Alaska, SB 21 (1915)



from Alaska State Library – Historical Collection

Post-Statehood

Post-Statehood:

- State Magistrates were put forward to assume judicial role
- City councils formed in many villages
- Many State resources went to support municipal forms of government



The Attempted Destruction of Indigenous Justice Systems

“Colonization severed Haida people’s ties with ourselves, each other, our nation, the land and sea reflected in the disrespect for and rates of domestic and sexual violence against our women and children. Our potlatches are our ways of upholding our societal laws, and these were outlawed in Alaska in the early 1900s and in Canada during the late 1800s.”

- Lisa “Ka’illjuus” Lang, Xaadas Kil Kuyaas Foundation
from Alaska Native Women: Ending the Violence, Reclaiming a Sacred Status by AKNWRC



Inherent Tribal Sovereignty

“Perhaps the most basic principles of all Indian law supported by a host of decisions.....is the principle that those powers which are lawfully vested in an Indian tribe are not in general delegated powers granted by express acts of Congress, but rather inherent powers of a limited sovereign which has never been extinguished.”

– Cohen's Handbook of Federal Indian Law



Inherent Tribal Sovereignty

229 Tribes within what is now the State of Alaska

- Federal recognition means that the U.S. government via the Bureau of Indian Affairs recognizes a government-to-government relationship with the tribes.
- A government-to-government relationship recognizes that tribal governments, as sovereign nations with the right of self-governance, are administratively equivalent to the U.S. federal government.



Inherent Tribal Sovereignty

Right to make laws and be governed by them

- Establish government
- Determine citizenship
- Make laws
- Administer (do) justice
- Govern; protect; and enhance the health, safety, and welfare of its citizens within jurisdiction



The State of Alaska's Refusal to Recognize Alaska Tribes

- ✓ **“P.L. 280 Divested Tribes of jurisdiction under ICWA”**

Native Village of Nenana v. Alaska DHSS, 722 P.2d 219

(Alaska 1986)

- ✓ **“There are not now and never have been tribes of Indians in Alaska as that term is used in federal Indian law”**

Native Village of Stevens v. Alaska Mgmt. Planning, 757 P.2d 32

(Alaska 1988)

- ✓ **“The State of Alaska opposes expansion of tribal governmental powers and the creation of ‘Indian Country’ in**

Alaska.”

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Alaska Admin. Order No. 125 (1991)

The State Begins to Recognize Alaska Tribes

- ✓ **John v. Baker, 982 P.2d 738 (Alaska 1999)** (respects federal recognition, Alaska Tribes retain inherent sovereignty over core tribal matters; sovereignty tied to citizenship, not land)
- ✓ **Alaska Attorney General Opinion on the legal status of Alaska Tribes (2017)** (tribes do exist in Alaska and Alaska Tribes are governments with inherent sovereignty)
- ✓ **Alaska Tribal Child Welfare Compact (2017)** (tribes and tribal organizations assume certain responsibilities that have been under the purview of OCS)



- ✓ **HB 123 (2022)** State recognizes federally recognized tribes

Public Law 280

What it did

- Permitted some States to exercise State jurisdiction in Indian country = concurrent
- Impacts federal Public Safety and Justice funding

What it did not do

- Did not terminate Tribes
- Did not extinguish Tribal sovereignty
- Did not take away Tribal jurisdiction

Alaska Native Claims Settlement Act (ANCSA)

What it did

- Settled Aboriginal title claims in Alaska
- Impacted Alaska Tribes' territorial jurisdiction

What it did not do

- Did not terminate Tribes
- Did not extinguish Tribal sovereignty



Jurisdiction: Concurrent vs. Exclusive

- **The Federal Government, State of Alaska, and Tribes all have some amount of jurisdiction in Alaska villages**
- **Concurrent Jurisdiction - More than one government** may exercise jurisdiction
 - This is where most of Tribal jurisdiction falls. The Tribe and state, or two or more Tribes could assume jurisdiction (ex. child custody and protection cases)
- **Exclusive Jurisdiction - When just one government has jurisdiction** over a case
 - Internal government affairs (Tribes have exclusive jurisdiction over determining Tribal membership)



Tribal Justice Systems Today

Despite hundreds of years of colonization and the attempted destruction of tribal justice systems in Alaska, today, Tribes are establishing or reestablishing Tribal courts and justice systems!!

- Exercise inherent sovereignty and authority
- Implement traditional and culturally appropriate justice systems that address the needs of the community
- Restore public safety to the Tribe and community



from Smarthistory.org

Tribal Justice Systems Today

Adoptions

Domestic Violence

Child Protection

Trespass

Child Custody

Assault / Disorderly Conduct

ICWA Intervention

Drug & alcohol regulation

Probate / Inheritance

Juvenile Delinquency

Marriages / Divorces

Vandalism



Holistic and Robust Tribal Justice Systems

In addition to robust Tribal Justice Systems, Alaska Tribes have developed/are developing holistic survivor and victim-centered programming to address the victimization of Alaska Native and American Indian women and children within their communities and Tribes. **Why?**

- More than 1 in 3 Alaska Villages have no local law enforcement presence
- Alaska Native Women...
 - are overrepresented in the domestic violence victim population by 250 percent;
 - in the State of Alaska, comprise 19 percent of the population of the State; but 47 percent of reported rape victims in the State;
 - as compared to the populations of other Indian Tribes, suffer the highest rates of domestic and sexual violence;

Violence Against American Indian and Alaska Native Women and Men...

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Supporting Victim/Survivors Promotes Healing and Justice





Enforcement of Tribal Court Orders

FULL FAITH AND CREDIT

COMITY



Enforcement of Tribal Court Orders

- Enforcement within the Tribe
- Enforcement outside of the Tribe
 - Full faith and credit – Tribal court order is presumptively adopted by state court unless a party objects and proves that the order was issued without proper authority, without giving the parties notice, or without allowing the parties a chance to be heard.
 - Comity – Tribal court order will be treated as a state court order unless there was some kind of fundamental unfairness with the court process.



Tribal Court Orders Are Recognized Under State Law

State court recognition assists state agencies and other organizations that are otherwise unsure about how to treat tribal court orders.

As a practical consequence of concurrent jurisdiction, the state court system must provide a mechanism for recognizing tribal court name change orders.



Full Faith and Credit - ICWA

- The Indian Child Welfare Act (ICWA) (Section 1911(d)) requires state courts to give full faith and credit to Tribal court orders for child protection, adoption, guardianship, and some juvenile cases.
 - Adoption - Tribal court order does not have to be registered with the state court system. A Tribal court adoption order may be sent directly to the State of Alaska Bureau of Vital Statistics.
 - Child protection - Alaska Child In Need of Aid (CINA) Rules 24 and 25 outlines process for Tribes to send child protection orders to the state court for recognition and enforcement.
 - State court system has forms to register Tribal court child protection orders in state court



Full Faith and Credit - VAWA

- The Violence Against Women Act (VAWA) requires **state courts** to give **full faith and credit** to **Tribal domestic violence protection orders**.
 - The tribe is authorized to issue and enforce personal protection orders involving any person within the authority of the Tribe.
 - Whether a person is within the authority of the Tribe depends upon Tribal law.
 - Not required to register protection orders with the state for state law enforcement to serve and enforce them. The orders may be sent to the local state court clerk, stamped with a state number, and then forwarded to the state law enforcement.



Comity Recognition

Alaska Supreme Court cases direct that state courts give “comity

parent vs. parent
custody cases,

divorces,

name changes,
and

other types of
civil cases.



Seeking comity recognition means filing a Petition to Register a Tribal Court Order

The Violence Against Women Act (2022) and Alaska Tribes

1. Defines **for the first time** the territory where Alaska Tribes' jurisdiction is recognized. Does not create "Indian country" - Alaska-specific definition of Village
2. Clarifies Alaska Tribes' authority over Native people within the Village
3. Pilot project available to Alaska Tribes - criminal jurisdiction over non-Native people that commit certain crimes within the Village



Where to start?

Indian Tribe



occupying

a

Village



25 U.S.C Sec. 1305

Pilot Project Overview

Alaska Tribes, that meet certain standards to **protect defendant's rights**, can exercise special tribal criminal jurisdiction (STCJ) over **certain crimes** committed in their villages by **non-Indian** perpetrators

- 25 U.S.C. Section 1305(d)





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Recommendations...

- SOA public position on the 2022 VAWA Reauthorization and Alaska Pilot Program
 - § Meaningful collaboration to ensure public safety for all Alaska
 - § Current infrastructure challenges – how do we collaborate with the State
- Enhancements to Public Safety
 - Infrastructure improvements, including statewide access to 911 emergency systems and related infrastructure
 - Broadband connectivity
 - Alaska Native Tribal Cultural Training for State Agencies and Staff – conducted by Alaska Natives or Alaska Native Organizations
 - Annual State government-to-government Tribal Consultations with Alaska Tribal Governments and Leaders



Questions?



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Quyana - Gunalchéesh - Háw'aa - Mahsi'Choo - Baasee' - Maasee' - Doodinik

Alaska Native Women's Resource Center

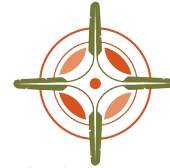


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