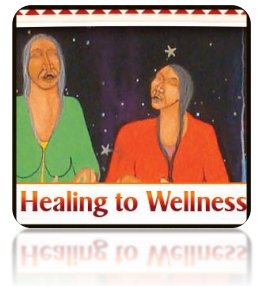




Diverting Cases to Wellness Court Handouts



Sample Court Transfer Agreement – State and Tribal Courts, National Judicial Opioid Task Force and Tribal Law and Policy Institute	1
Sample Civil Diversion Agreement Between the State of Alaska and [Tribe]	6
Memorandum of Understanding between the (Alaska) Department of Health and Social Services, Division of Juvenile Justice and [Tribe/Village].....	25
Alaska Court Rule 11(i): Restorative Justice Programs and Sample Agreement	31
Memorandum from State of Alaska Department of Law and Criminal Division to All Alaska Law Enforcement, Regarding the Enforcement of Tribal Court Protective Orders (July 31, 2017).....	36
Alaska Attorney General Opinion Regarding Legal Status of Tribal Governments in Alaska (October 19, 2017).....	37
Tribal-State Court Forums: Addressing the Opioid Crisis, National Judicial Opioid Task Force and Tribal Law and Policy Institute	53
Tribal Cultural Competency Information for Judges, National Judicial Opioid Tas Force and Tribal Law and Policy Institute	55



National Judicial Opioid Task Force

Sample Court Transfer Agreement - State and Tribal Courts

The following document is designed and recommended for use in jurisdictions where state court judges – especially those who preside over adult drug court programs – operate in proximity to the location of a Tribal Healing to Wellness Court. Acknowledging that treatment and program outcomes are often more successful for American Indian/Alaskan Native offenders when they are provided interventions, accountability, and services that are culturally appropriate, some state court programs have entered into agreements with their tribal court colleagues who preside over Healing to Wellness Courts to allow for the transfer of adult tribal members who are arrested and/or criminally charged in state courts.

This document was initially created by Judge Gregory G. Pinski, a District Judge in Great Falls, Montana and Lauren van Schilfgaarde of the Tribal Law and Policy Institute. It has now been adopted and recommended by the National Judicial Opioid Task Force.

Note: The references in the document to “County Name” are designed to allow for the insertion of the appropriate state court entity or entities responsible for the adjudication, supervision, and treatment of adult offenders who have the authority to enter into such agreements on behalf of the jurisdiction. Because the structure of state courts, adult probation, and drug treatment and other service providers differ from state to state, the necessary parties must be identified and inserted as appropriate for each jurisdiction.

**Sample Memorandum of Understanding for
Tribal Healing to Wellness Court Case Transfer between**

[County Name]

and

[Tribe Name]

Section 1:

[Tribe Name] and [County Name] (“parties”) to this Agreement endorse the mission and goals of the [Name of Tribal Healing to Wellness Court] (“Wellness Court”) so that [Vision Statement] (e.g. Native participants may eliminate future criminal behavior, meaningfully engage with their community, and improve the quality of their lives). The parties recognize that for the Wellness Court mission to be successful, cooperation and collaboration must occur within a network of agencies and jurisdictions.

Section 2:

The parties to this Agreement support the following mission statement:

[Tribal Healing to Wellness Court Mission Statement]

Section 3:

The parties agree that there are ten tribal key components under which the respective agencies will work cooperatively. They are:

1. Wellness Court brings together alcohol and drug treatment, community healing resources, and the justice process by using a team approach to achieve the physical and spiritual healing of the individual participant, and to promote Native nation building and the well-being of the community.
2. Participants enter Wellness Court through various referral points and legal processes that promote tribal sovereignty and the participant’s due (fair) process rights.
3. Eligible court-involved substance-abusing parents, guardians, juveniles, and adults are identified early through legal and clinical screening for eligibility and are promptly placed into the Wellness Court.
4. Wellness Court provides access to holistic, structured, and phased alcohol and drug abuse treatment and rehabilitation services that incorporate culture and tradition.
5. Wellness Court participants are monitored through intensive supervision that includes frequent and random testing for alcohol and drug use, while participants and their families benefit from effective team-based case management.
6. Progressive rewards (or incentives) and consequences (or sanctions) are used to encourage participant compliance with the Wellness Court requirements.

7. Ongoing involvement of a Wellness Court judge with the team and staffing, and ongoing judge interaction with each participant are essential.
8. Process measurement, performance measurement, and evaluation are tools used to monitor and evaluate the achievement of program goals, identify needed improvements to the Wellness Court and to the court process, determine participant progress, and provide information to governing bodies, interested community groups, and funding sources.
9. Continuing interdisciplinary and community education promote effective Wellness Court planning, implementation, and operation.
10. The development and maintenance of ongoing commitments, communication, coordination, and cooperation among Wellness Court team members, service providers and payers, the community and relevant organizations, including the use of formal written procedures and agreements, are critical for Wellness Court success.

Section 4: Agreement

The [**Tribal Court**] and the [**County Department**] AGREE to the following:

1. **Notification:** The **County Department** agrees to screen for American Indian/Alaska Native (“AI/AN”) adult offenders and to notify the **Tribal Court** in the event an offender that is enrolled with the **Tribe** is cited or arrested by the **County Department or State Law Enforcement**. The **District Attorney** (“DA”) agrees to screen for AI/AN adult offenders who might be diverted and notify the **Tribal Court**. The **Tribal Court** agrees to establish with the **DA** a confidential screening process using the offices of the Tribe’s enrollment, and to work with the **County Department** to review current files, including probationers for possible referral.
2. **Eligibility:** If an adult, tribal member offender is criminally charged with an offense, has a criminogenic assessment of high-risk to reoffend, and is flagged for potentially having a substance use disorder, the two jurisdictions may seek to coordinate disposition of the case in **Tribal Court** as set forth in this Agreement.
3. **Referral:** Cases to be considered include those cases that may come within any of the following:
 - a. Diversion by request of the **DA**
 - b. Pre-sentencing referral
 - c. Condition of probation
 - d. Probation violation
 - e. Referral by the **Superior Court**
4. **Information Sharing:** The **County Department** and **Tribal Court** will obtain written releases of information for general verbal communication regarding candidates and participants. The **County Department** will, as feasible, provide the **Tribal Court** with direct access to demographic and case information for adult referrals under **Tribal Court** jurisdiction subject to county confidentiality obligations.

5. Confidentiality: All parties shall maintain strict confidentiality over all physical and electronic case files and candidate/participant information pursuant to applicable Federal, Tribal, and State laws.
6. Assessments: The **County Department** and **Tribal Court** shall conduct a timely assessment and will make a joint determination regarding which jurisdiction will handle primary disposition of the participant cases.
7. Conditional Postponements: In circumstances where a participant has admitted to a type of offense meeting the **Tribal Court's** criteria, and/or subject to a probation violation the **County Department** may postpone filing a probation report on the condition that the matter be filed in **Tribal Court** and that the participant timely complete the participant contract agreement and any other conditions ordered by the **Tribal Court**, and agreed by the **County Department, participant, and victim**. The **Tribal Court** shall acknowledge in writing to the **County Department** that it is including the matter in its docket.
8. Jurisdiction: As a condition of entry into Wellness Court the participant must voluntarily agree to all conditions of the Wellness Court.
9. Case File: Upon the participant's entry into the Wellness Court, the **County Department** will timely forward to the **Tribal Court** a copy of the police report, releases of information, any applicable assessments, accountability agreements, contact information of involved parties and any other relevant documentation.
10. Sanctions: The Wellness Court will have the authority to sanction the participant for any violation of Wellness Court requirements. Possible sanctions may include community service or incarceration. The Tribe will absorb any costs of sanctions for all participants, including those transferred pursuant to this agreement, including any incarceration costs.

[Or]

The Wellness Court will have the authority to sanction the participant for any violation of Wellness Court requirements. Possible sanctions may include community service or incarceration. If incarceration is recommended by the Wellness Court, a formal violation will be filed in **Superior Court**, which will thereby hold a hearing, determine an appropriate jail sanction if any, and absorb any jail costs therefrom.

11. Dismissal or Referral back to County Department: The **Tribal Court** will report to the **County Department** within the timeline agreed by the parties regarding the success of the participant's compliance with his or her contract and orders. If the participant successfully graduates from the Wellness Court, as determined by the **Tribal Court**, the **Tribal Court** will join the **Department/DA** in seeking dismissal of the matter in **Superior Court** and dismiss the matter in the **Tribal Court**. If the participant does not successfully graduate within the ordered timeline the **Tribal Court** may extend the timeline to allow for successful graduation. At any point, the **Tribal Court** may terminate the participant from the Wellness Court and refer the participant back to the

County Department/DA for filing with the **DA's** office and sentencing, which may include incarceration.

12. Cultural Component: **Tribal Court** may order culturally appropriate services and case plan activities including a restorative justice component for all participants.
13. Tribal Court Appearance: **County Department** personnel are not required to appear in **Tribal Court** but may do so to assist with setting the appropriate sanctions if requested by the **Tribal Court**, or the **Department** desires.
14. Legal Advocate: While the **Tribal Court** is not bound to provide defense counsel, the **Tribal Court** may appoint a Legal Advocate to assist participants in those cases the **Tribal Court** deems that such an appointment would be appropriate.
15. Contact Information:
Insert Tribal Court contact information and address.
Insert County Department contact information and address.
16. Policies and Procedures: The **Tribal Court** will operate the Wellness Court pursuant to its internal Wellness Court policies and procedures. The **Tribal Court**, the **County Department**, and the **DA**, may develop protocols, procedures and/or forms to assist with implementation of this agreement between them.
17. The **Tribal Court**, the **County Department**, and the **DA** agree that the Tribal Court Programs Administrator, the **DA**, and the **Department Chief**, or the parties' specific designees, shall meet and attempt to resolve any issues that arise on any topics which are the subject of this Agreement, prior to termination of this Agreement. This Agreement may be modified with the written agreement of both sides.
18. Nothing in this agreement shall be deemed a waiver of either party's sovereign immunity, rights, powers or privileges.
19. This MOU is meant to outline policies for voluntary cooperation among the parties. It does not confer any rights in third person, and specifically not in defendants. Any party may withdraw from the MOU at any time and any case previously referred by a nontribal party will be transferred back to the withdrawing party at the party's request.

Signatures

CIVIL DIVERSION AGREEMENT BETWEEN THE STATE OF ALASKA AND [TRIBE]

This Civil Diversion Agreement (“Agreement”) is entered into this ___ day of ___, 2018, between the State of Alaska (“State”) and _____ (“Tribe”), a federally recognized tribe located in _____ (collectively referred to as the “Parties”).

1. Statement of Purpose

WHEREAS, the State and the Tribe recognize that:

- In Alaska, 229 federally recognized tribes exist as sovereign governments.
- Remoteness, lack of connection to a road system, and extreme weather conditions often prevent or delay travel by law enforcement personnel into some communities, resulting in challenging law enforcement conditions.
- Tribal governments can provide local, culturally relevant remedies and are not impeded by location or harsh weather conditions.
- In addition, the use of local culturally relevant remedies may assist in lowering crime, alcohol abuse, drug abuse, domestic violence, and rates of suicide, while fostering educational achievement and economic development.
- Increasing tribal involvement in judicial services and law enforcement will encourage community involvement, create greater local accountability with respect to public safety, and promote a stronger link between the Tribe, the State, and all Alaskans.

In recognition of the above statements, the State and the Tribe enter this Agreement to cooperate on issues of mutual concern, and to improve the delivery of justice in Alaska.

GENERAL PROVISIONS

2. Definitions

- a. “Civil Diversion Agreement” or “Agreement” means the agreement entered into by the Tribe and the State of Alaska, including Exhibits A-D;
- b. “Law enforcement officer” means Alaska State Troopers, Village Public Safety Officers (VPSOs), Village Police Officers (VPOs), Tribal Police

Officers (TPOs), and/or cooperating municipal or borough law enforcement officers.

3. Eligibility

The Tribe represents and warrants that it meets the following eligibility criteria:

- a. The Tribe has passed a resolution or other official action from its governing body authorizing the Tribe to enter this Agreement (attached as Exhibit A).
- b. The Tribe has for the preceding three fiscal years no uncorrected significant and material audit exceptions regarding any federal or state contract or grant. However, the Tribe is not required to have had an audit to be eligible for this Agreement.
- c. The Tribe has sufficient governance capacity to conduct the program contemplated by this Agreement in a conscientious and effective fashion.
- d. The Tribe has written and oral rules setting out the structure and procedures of the tribal court and any tribal law enforcement to be utilized in connection with this Agreement.
- e. If the Tribe has a liability insurance policy that may cover its activities under this Agreement (attached as Exhibit B), the liability insurance policy shall include the State of Alaska as an additional insured. The Tribe shall ensure that a copy of its insurance policy is provided to the State annually, by February 1. If the Tribe does not have a liability insurance policy, the Tribe is not required to obtain liability insurance as a prerequisite to this Agreement.

4. Offenses Eligible for Civil Diversion

By this Agreement, the State and the Tribe agree that, in lieu of state criminal prosecution, the Tribe will offer civil tribal remedies for the following offenses and crimes (as listed in Exhibit C):

- a. Certain Class B misdemeanors under Title 11 of the Alaska Statutes (including those involving domestic violence as defined by AS 18.66.990).
- b. Minor consuming or in possession offenses, including non-misdemeanor violations and misdemeanors (AS 04.16.050; AS 28.35.280).

- c. Local option alcohol possession offenses in communities that have voted to ban the possession of alcohol, making it a violation of state law to possess alcohol in that community (AS 04.11.501).
- d. Assault in the fourth degree (AS 11.41.230) (including those involving domestic violence as defined by AS 18.66.990) and reckless endangerment (AS 11.41.250) (including those involving domestic violence as defined by AS 18.66.990) if
 - i. the offender has
 - no assault conviction in the past ten years;
 - no prior felony convictions for crimes against a person; and
 - had no prior referrals to a tribal court for any assault in the fourth degree; or
 - ii. the District Attorney—in consultation with the Tribe—has determined that the offender should be referred to tribal court in the interests of justice.
- e. A matter will not be referred to tribal court if the offender commits an accompanying crime, in addition to those enumerated in this Section 4, and the accompanying crime is not covered by this Agreement.
- f. The Tribe has authority to decline any case referred to its tribal court.

5. Tribal Civil Proceedings and Remedies as Alternatives to State Prosecution

- a. Within the community associated with the Tribe, except as limited in Section 6 below for crimes involving domestic violence, law enforcement officers shall or Assistant District Attorneys may offer eligible offenders (whether members or nonmembers of the Tribe) the option to have the Tribe impose tribal remedies in tribal civil proceedings in lieu of state prosecution.

- b. The offender's consent to the tribal remedies
 - i. must be voluntary and in writing;
 - ii. must include a statement agreeing to comply with tribally imposed remedies or face the possibility of prosecution in state court;
 - iii. must include an acknowledgment that the tribal civil remedies will be given without a trial and the tribal proceedings and remedies imposed are at the Tribe's sole and absolute discretion;
 - iv. must include an acknowledgment that the offender will not be entitled to a public defender in tribal court; and
 - v. must include a separately signed waiver and release of liability for all tribal and state conduct related to this Agreement and the remedies imposed. The offender shall agree to hold the Tribe and State harmless in the civil diversion proceedings.
- c. If an offender consents to the tribal civil diversion process, the law enforcement officer shall still thoroughly investigate the offense or crime, and retain all evidence in accordance with normal operating procedures. If the Tribe later requests referral of the case back to the State, the case will be processed through normal state procedures and be screened for potential prosecution.
- d. Tribal remedies may incorporate, but are not limited to, culturally derived procedures, such as restorative justice hearings and circle sentencing. The Tribe may coordinate with another participating tribal court on setting tribal proceedings and remedies.
- e. Tribal remedies may also include:
 - i. tribal court fines of \$1,500 total or less (not stackable for multiple offenses or crimes);
 - ii. forfeiture of the offender's property valued at \$1,500 or less; and
 - iii. restitution for the victim up to the amount necessary to make the victim whole for physical damage or property loss from the offense or crime.

- f. Temporarily depriving an offender of the use of a possession is not considered forfeiture.
- g. The Tribe shall direct the use of any fine collected by the tribal court from an offender, including for the sole benefit of the Tribe.
- h. The Tribe shall direct the use of any property forfeited by an offender in the tribal court, including for the sole benefit of the Tribe.
- i. If, during the course of tribal court proceedings, the tribal court becomes aware of potential criminal conduct involving crimes not covered by this Agreement, the Tribe shall notify the law enforcement officer who referred the matter to the Tribe.
- j. The State is not responsible for enforcement of tribal court remedies.
- k. The Tribe agrees to monitor the participant in the civil diversion program.
- l. The Tribe shall not incarcerate an offender pursuant to this Agreement.
- m. By consenting to tribal proceedings, the offender does not waive any state, federal, or tribal constitutional rights.

6. Domestic Violence Crimes

For all crimes in Section 4 involving domestic violence as defined by AS 18.66.990, and even if the offender consents to submitting to the tribal process for implementation of tribal civil remedies, law enforcement officers shall comply with AS 18.65, including:

- a. The law enforcement officers shall comply with the mandatory arrest provisions of AS 18.65.530 unless (1) the officer has received authorization to forego arrest from a prosecuting attorney in the jurisdiction in which the crime occurred, or (2) the crime was committed over 12 hours prior to the law enforcement officer's involvement. If a mandatory arrest has occurred, an eligible offender shall be offered at the state court arraignment the option to go through tribal court civil diversion proceedings in lieu of state prosecution.

- b. Under AS 18.65.515(a), if necessary to protect the victim and/or the victim's family members, and to prevent any further violence, law enforcement officers shall transport the victim and victim's family members to a safe location; assist the victim in removing belongings from a residence; and assist the victim and victim's family members in obtaining medical treatment.
- c. Under AS 18.65.515(b), if necessary to protect the victim and/or family members, the law enforcement officer may seize deadly weapons that are in plain view or, if the crime involved a deadly weapon, seize all deadly weapons owned, used, possessed, or controlled by the offender. The owner of the weapons may retrieve them 24 hours after a determination is made that they are not needed as evidence in a state criminal case.
- d. Under AS 18.65.515 and AS 18.65.520, law enforcement officers shall notify victims orally and in writing of the right to seek a protective order.
- e. Under AS 18.65.515 and AS 18.65.520, law enforcement officers shall notify victims orally and in writing of the resources available in the community and region for victims of domestic violence including, without limitation, contact information for the Office of Victims' Rights and the Violent Crimes Compensation Board.
- f. The State and law enforcement officers shall take into consideration the desires of the victim in deciding whether to offer civil tribal remedies in lieu of state criminal prosecution for crimes involving domestic violence.

7. Victims' Rights

To the extent practicable, the Tribe shall provide any victim of an offense or crime covered by this Agreement with the following rights:

- a. to be notified of, to be present during, and to participate in tribal proceedings; and
- b. to be protected from harm and threats of harm, such as through issuance of a tribal domestic violence protection order where appropriate.

8. Information Collection and Notice to the State

- a. The responding law enforcement officer shall immediately notify the Tribe and District Attorney's Office of the referral, the offender's name, and the charge that would have otherwise been made, and send the police report and consent form. The Tribe will notify the District Attorney's Office if it has denied the referral no later than five business days after receipt. If the Tribe does not decline the referral it shall be deemed accepted. The District Attorney's Office contact information:
- b. The Tribe agrees that it will fill out a case form for every offender appearing before the tribal court pursuant to this Agreement. The case form will include the offender's name, the circumstances of the offense or crime, and the remedies ordered by the tribal court. If the offender subsequently commits another eligible offense or crime that is referred to the Tribe, the Tribe shall fill out a new case form. The Tribe may create its own case form or use the template form, attached as Exhibit D.
- c. The Tribe shall attach to the case form the offender's signed written consent voluntarily agreeing to participate in the tribal civil proceedings as outlined in Section 5(b)(i) – (iv) and signed written waiver and release of liability as outlined in Section 5(b)(v).
- d. The Tribe will update the case form within 120 days after the tribal remedies have been imposed to indicate whether the offender completed the assigned remedies. If the offender does not complete the assigned remedies, the Tribe shall promptly notify the District Attorney's Office and provide any information in its possession that would assist the State in potential prosecution of the offender.

The Tribe agrees to provide the case forms on a quarterly basis to the State Attorney General's Office contact identified in Section 22 of this Agreement. The Tribe shall also include any recommendations related to the timely and effective performance of the Tribe's responsibilities under the Agreement.

9. Cooperation in Litigation

- a. If the State is sued by a third party related to the Agreement, the Tribe shall cooperate with the State in litigation. Cooperation includes, but is not limited to, making documents and other evidence held by the Tribe

(including its officials, officers, employees, and tribal council) available to the State, and making the Tribe's officials, officers, and employees available for deposition or testimony as necessary for the State to defend against the action brought by the third party. The State shall not pay for tribal attorney time or for lost wages, but the requesting party shall pay the Tribe's cooperation costs—as is customary—as follows:

- i. the cost of taking and transcribing a deposition, including the court reporter's fee and travel expenses to communities where a local court reporter is not available;
- ii. the fee of an interpreter or translator for a tribal witness;
- iii. long distance telephone charges for telephonic participation by a tribal official, officer, or employee at court proceedings, depositions, meetings called by the State or state attorneys, and witness interviews;
- iv. copying costs for paper copies, photographs, and microfilm;
- v. the cost of scanning, imaging, coding, and creating electronic media files, such as computer diskettes or tapes, and the cost of duplicating text files or otherwise copying documents or data in an electronic medium;
- vi. exhibit preparation costs;
- vii. travel costs for tribal witnesses to the extent permitted by Administrative Rule 7(b), and at the coach class fare or the actual fare, whichever is less; ground transportation, outside of the traveler's home city; and food and lodging at the same per diem rate allowed for state employees.

10. Mutual Agreement Not to Sue

The Parties agree not to sue each other under this Agreement. All disputes will be resolved under the terms of the Dispute Resolution Section of this Agreement. The Parties represent that, at the time of signing this Agreement, no assignment of claims for damages related to this Agreement has been made or executed to any other individual, firm or corporation, or other entity.

11. State Powers Retained

Nothing in this Agreement creates, alters, or diminishes the civil or criminal jurisdiction of the State, including any political subdivision of the State. Even where an offender has consented to tribal remedies in lieu of prosecution under state law, the State retains its authority to move forward with prosecution of the offense or crime. In making its determination to move forward with prosecution, the State shall consult with the Tribe on whether the case is a good candidate for the tribal civil diversion program because of the particular facts and circumstances of the offense or crime including, but not limited to, the offender's history with the tribal court.

12. Tribal Powers Retained

The Tribe is a sovereign government. Nothing in this Agreement creates, alters, or diminishes the jurisdiction of the Tribe, including the inherent and statutory authority of the Tribe over the health and welfare of the Tribe, for instance child protection and child custody matters, or the status of Indian country. Nothing in the Agreement shall prevent the Tribe from assuming protective custody of an individual under emergency circumstances to prevent imminent harm to self or others.

13. Relationship of the Parties

This Agreement is by and between two governments and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever.

14. Dispute Resolution

In the event of a dispute under this Agreement, the Parties shall first attempt to resolve the dispute informally and in good faith. If those efforts do not work, the Parties may engage in optional mediation of any dispute. The Parties shall choose a mediator by each submitting a list of three candidates in preferred order. The candidate who aligns in each Party's list would be the mediator for purposes of this Agreement. If no candidates

align, then the Parties will attempt to agree on a candidate. If attempts at selection of a mediator or at mediation fail, then the termination option in this Agreement will control.

15. Term

This Agreement shall be effective when signed by both Parties. The term of this Agreement shall be one year from the effective date and shall renew automatically each year. The Parties may assess the Agreement each year and propose modifications at least thirty days prior to the renewal date.

16. Termination

This Agreement may be terminated by either Party upon sixty days written notice; however, the Agreement will remain in effect, if the Tribe so chooses, until the last case initiated prior to termination has been completed by the tribal court and the tribal remedies have been carried out by the offender, but in no case more than ninety days after termination of the Agreement.

17. Entire Agreement

This Agreement is the entire agreement between the State and the Tribe.

18. Survival of Agreement Terms

Notwithstanding anything herein to the contrary, the Parties understand and agree that all terms and conditions of this Agreement (including the exhibits) that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive the termination date and shall remain enforceable by the Parties.

19. Interpretation

Both Parties have had a full and fair opportunity to consult with legal counsel, to ask questions, and to consider this Agreement's specific provisions. This Agreement will not be interpreted in favor of or against either Party.

20. No Waiver for Failure to Demand Strict Performance

The failure by either Party to insist upon the strict performance of any part of this Agreement shall not be considered a waiver or relinquishment of any rights or obligations under this Agreement.

21. Modifications or Amendments

No modification to the Agreement shall take effect unless made in writing and signed by authorized representatives of the State and the Tribe. If the Tribe has any questions relating to the interpretation of this Agreement or associated laws, ordinances, regulations, or permits, state officials may request that the Tribe submit them in writing. The Tribe may rely only on written responses from state officials.

22. Contact Information for Notices Required under this Agreement

The official tribal representative responsible for ensuring compliance with this Agreement and for receiving notifications from the State is:

Forms required to be submitted to the State under this Agreement, insurance information related to this agreement, and questions regarding the interpretation, enforcement, or renewal of this Agreement shall be directed to:

State

Date

Date

LIST OF EXHIBITS

EXHIBIT A: A RESOLUTION AUTHORIZING THE CIVIL DIVERSION AGREEMENT

EXHIBIT B: TRIBAL LIABILITY INSURANCE POLICY

EXHIBIT C: ELIGIBLE OFFENSES AND CRIMES

EXHIBIT D: TEMPLATE CASE FORM

EXHIBIT A
TRIBE OF

RESOLUTION _____

A RESOLUTION AUTHORIZING THE CIVIL DIVERSION AGREEMENT

WHEREAS: TRIBE NAME (the “Tribe”) is a federally recognized tribe; and

WHEREAS: The Tribal Council is the governing body for the Tribe; and

WHEREAS: The Tribal Council has the authority under its Constitution, bylaws, and ordinances to sign for and bind the Tribe, the Tribe’s governing body, and all tribal officials, employees, and successors to the commitments and conditions of the Civil Diversion Agreement; and

WHEREAS: The Tribe wishes to enter into a Civil Diversion Agreement with the State of Alaska; and

NOW THEREFORE BE IT RESOLVED THAT the Tribal Council hereby approves the provisions of the Civil Diversion Agreement and hereby authorizes the execution and delivery of the Civil Diversion Agreement by _____[position], _____[name] (or successor).

CERTIFICATION

The foregoing resolution was passed and approved by a duly convened meeting of the Tribal Council, dated this ___ day of _____, 20__.

[name], [position]

Date

[name], Council Secretary

Date

Draft Agreement: to be negotiated with individual tribes

Draft Agreement: to be negotiated with individual tribes

EXHIBIT B

TRIBAL LIABILITY INSURANCE POLICY

**EXHIBIT C
ELIGIBLE OFFENSES**

ALCOHOL OFFENSES		
State Statute	Description	
AS 04.11.501	Possession of alcohol after election where the majority of voters have voted to prohibit the possession of alcoholic beverages	
AS 04.16.050	Possession, control, or consumption of alcohol by persons under age	
AS 28.35.280	Minor operating a vehicle after consuming alcohol	
CLASS A MISDEMEANORS		
State Statute	Description	
AS 11.41.230	Assault in the fourth degree, but only if the offender has no assault conviction in the past ten years, no prior felony conviction for crimes against a person, and no prior referrals to a tribal court for assault in the fourth degree; OR the district attorney has determined that an offender should be referred to tribal court in the interests of justice.	†
AS 11.41.250	Reckless endangerment, but only if the offender has no assault conviction in the past ten years, no prior felony conviction for crimes against a person, and no prior referrals to a tribal court for assault in the fourth degree; OR the district attorney has determined that an offender should be referred to tribal court in the interests of justice.	†
CLASS B MISDEMEANORS		
State Statute	Description	
AS 11.31.100	Attempt to commit a crime if the crime attempted is a class A or class B misdemeanor	
AS 11.31.110	Solicitation of another to engage in a crime where the crime solicited is a class A or class B misdemeanor	
AS 11.41.460	Indecent exposure in the second degree (victim 16 years or older)	†
AS 11.46.150	Theft in the fourth degree (value less than \$250*)	
AS 11.46.220(c)(3)	Concealment of merchandise (value less than \$250*)	
AS 11.46.260(b)(3)	Removal of ID marks on property (value less than \$250*)	
AS 11.46.270(b)(3)	Unlawful possession (defaced, erased, or altered serial number or identification mark on property less than \$250*)	
AS 11.46.280(d)(4)	Issuing a bad check (value less than \$250*)	
AS 11.46.330	Criminal trespass in the second degree	†
AS 11.46.486	Criminal mischief in the fifth degree	†

Draft Agreement: to be negotiated with individual tribes

CLASS B MISDEMEANORS (continued)		
State Statute	Description	
AS 11.46.530(b)(3)	Criminal simulation (a person either makes or alters an object so that it appears to have a rarity, age, source, or authorship that it does not in fact possess, with intent to defraud; <i>or</i> with knowledge of its true character and with intent to defraud, the person possesses or utters such an object. Real object value must be less than \$250*).	
AS 11.56.755(b)(1)	Unlawful contact in the second degree (arrest was for a felony or class A misdemeanor)	
AS 11.56.758(b)(2)	Violation of custodian's duty to report a violation of condition of release of a person released on a misdemeanor charge)	
AS 11.56.780	Hindering prosecution in the second degree	
AS 11.56.830	Impersonating a public servant in the second degree	
AS 11.61.110	Disorderly conduct	
AS 11.61.116(c)(1)	Sending an explicit image of a minor (image sent to another person)	
AS 11.61.120(a)(1)	Harassment 2-likely to provoke violence	
AS 11.61.120(a)(2)	Harassment 2-tie up phone line	†
AS 11.61.120(a)(3)	Harassment 2-repeated phone calls	†
AS 11.61.120(a)(4)	Harassment 2-anonymous, obscene, threatening communication	†
AS 11.61.120(a)(5)	Harassment 2-offensive physical contact	
AS 11.61.120(a)(6)	Harassment 2-publish/distribute pictures/films of genitals, anus, female breast, sexual acts	
AS 11.61.120(a)(7)	Harassment 2-repeatedly taunt minor through electronic communication, placing them in reasonable fear of physical injury	
AS 11.61.220	Misconduct involving weapons in the fifth degree	
AS 11.61.240(b)(5)	Criminal possession of explosives (intended to commit misdemeanor)	
AS 11.71.060	Misconduct involving a controlled substance in the fifth degree	
AS 11.76.115	Misconduct involving confidential information in the second degree	
AS 11.76.130	Interference with rights of physically or mentally challenged person	
AS 11.76.140(a)(2)	Avoidance of ignition interlock device (rent motor vehicle to	
AS 11.76.140(a)(3)	Avoidance of ignition interlock device (loan motor vehicle to	

* Adjusted for inflation.

† The highlighted crimes are crimes involving domestic violence when committed by a household member against a household member. See AS 18.66.990(3). Crimes involving domestic violence are subject to the special conditions of Section 6 under this Agreement.

“Household member” is defined as:

- (A) adults or minors who are current or former spouses;
- (B) adults or minors who live together or who have lived together;
- (C) adults or minors who are dating or who have dated;
- (D) adults or minors who are engaged in or who have engaged in a sexual relationship;

Draft Agreement: to be negotiated with individual tribes

- (E) adults or minors who are related to each other up to the fourth degree of consanguinity, whether of the whole or half blood or by adoption, computed under the rules of civil law;
- (F) adults or minors who are related or formerly related by marriage;
- (G) persons who have a child of the relationship; and
- (H) minor children of a person in a relationship that is described in (A)-(G).

See AS 18.66.990(5).

**EXHIBIT D:
TEMPLATE CASE FORM**

[Space for Tribal Court Seal]

Name of tribal court: _____

Location: _____

Date of offense or crime: _____

Offender's name: _____

Circumstances of offense or crime: _____

Remedy ordered by tribal court: _____

Name and position of person filling out form: _____

Signature and date: _____

**Memorandum of Understanding between the Department of Health and Social Services, Division of
Juvenile Justice and _____ (tribe / village)**

The Alaska Department of Health and Social Services, Division of Juvenile Justice (DJJ) and the (tribe / village) _____ have agreed to collaborate in the development and implementation of a diversion program for juveniles with offenses committed in or near (village / location) _____. It is the intent of this collaboration to more effectively respond to and rehabilitate juvenile offenders at a local, village level.

DJJ agrees to:

- Review all cases for juveniles who have been charged with minor offenses;
- Divert appropriate referrals to the _____ (tribe / village) _____ Diversion Program;
- Provide training and consultation on confidentiality for juvenile cases;
- Staff questionable cases with _____ (tribe / village) _____ Diversion Program prior to referral;
- Provide information and guidance as needed for each referral;
- Upon notification that the juvenile has successfully completed the diversion program, DJJ staff will input the information into JOMIS and close the case;
- Upon notification that the juvenile is non-compliant and/or has not completed the diversion program, DJJ staff will staff the case with the diversion program staff.

Upon review DJJ staff may:

- Work with the diversion program staff to extend the completion date;
- Close the referral noting the juvenile's non-compliance; or
- Take further action, which may include petitioning the case to Superior Court.

The _____ (tribe / village) _____ Diversion Program agrees to:

- Provide a local, community-based diversion program for the purpose of providing restorative justice diversion activities for juveniles charged with minor juvenile offenses;
- Ensure that the identified victim(s) of the juvenile is provided notice of the diversion process and of their right to participate;
- All Diversion Program staff will attend the DJJ training on confidentiality;
- Maintain the confidentiality of cases referred to the Diversion Program according to DJJ training and requirements;
- Review cases diverted to the Diversion Program to ensure appropriateness for referral;
- Staff questionable cases with DJJ staff prior to referral;
- Process referrals within the following timelines:
 - Provide DJJ notice of the acceptance or rejection of diverted referrals within 15 days of receipt;
 - Hold a diversion panel/circle on the matter within 30 days of acceptance and provide DJJ staff a copy of the Diversion Agreement within 10 days of the panel/circle;

- Notify DJJ staff of juvenile's non-compliance or completion of the diversion program within 60 days;
- Upon notification that the juvenile is non-compliant and has not completed the diversion program, the diversion program staff will staff the case with DJJ staff.
Upon review, the Diversion Program staff may:
 - Work with the DJJ staff to extend the completion date;
 - Close the referral noting the juvenile's non-compliance;
- All case files will be returned to DJJ upon case closure.

This MOU will be in effect _____ and renewable upon annual review and approval of each agency. Any party may withdraw from this agreement by providing thirty days written notice to all parties.

 (village / tribe representative) Date

 DJJ JPO III Date

 DJJ Probation IV Date

_____ COMMUNITY DIVERSION PROGRAM

In the matter of: _____)
_____) Report Number _____
A minor under 18 years of age)
and a resident of: _____)

DIVERSION AGREEMENT

1. We (*juvenile and parent/guardian/custodian*) enter into the following agreement for informal diversion through the _____ Community Diversion Program.
2. We have been advised of our rights and understand that we waive any rights to a trial during this diversion process.
3. We have been advised of the _____ Community Diversion Program Policies and Procedures.
4. We do not contest the charges against the juvenile and agree to have the alleged offense(s) of _____, which occurred on _____ handled by the _____ Community Diversion Program.
5. The juvenile agrees to:
 - o Follow all laws
 - o Attend school and follow school rules
 - o Obey parents/guardian/custodian
 - o Ask for permission before leaving or staying away from home.
 - o Participate in this diversion program and do what the Diversion Program requires of me.
6. We understand that the Diversion Program may not require the juvenile's removal from the home, formal state probation, or a formal state juvenile delinquency record.
7. If the juvenile successfully completes the Diversion Program, the case will be adjusted and closed.
8. If the juvenile does not complete the Diversion Program or violates this agreement, the case will be returned to the Division of Juvenile Justice to determine whether further action is needed. This could include taking the juvenile's case to Superior Court.
9. We understand that the Division of Juvenile Justice and the _____ Community Diversion Program may exchange information as needed to coordinate and support this diversion.
10. We understand that the Program Manager may communicate information with community members who play a role in and support the juvenile's successful completion of Program requirements.

APPEARANCE DATE / TIME: _____

_____	_____	_____	_____
Juvenile	Date	Parent / Guardian / Custodian	Date

_____	_____	_____	_____
_____ Community Diversion Panel	Date	Juvenile Probation Officer	Date

_____ COMMUNITY DIVERSION PROGRAM

In the matter of: _____)

_____)

Report Number _____

A minor under 18 years of age)

and a resident of: _____)

Diversion Program Requirements

The _____ Community Diversion Program hearing was held on _____ to determine the appropriate response to the juvenile’s offense(s) listed in the Program Agreement signed by the juvenile and parent/guardian. The hearing was held in accordance with the Diversion Agreement and the _____ Community Diversion Program Policies and Procedures. The juvenile and his/her parents or guardians were present at the hearing.

After hearing from all interested parties and having reviewed all relevant documents or items, the _____ Community Diversion Program finds that the juvenile shall be held accountable for the offense.

With the focus on both holding young members of our Village accountable and giving them an opportunity to make amends, the juvenile is required to complete the following activities by _____:

1. _____
2. _____
3. _____
4. _____

Upon successful completion of these requirements, the case will be closed. If the juvenile does not complete these requirements by the required date, the _____ Community Diversion Program gives notice that:

1. It will call the juvenile back to the _____ Community Diversion Panel to explain his/her actions;
2. It may assign additional requirements to be completed by a specific date; and
3. It will advise the Division of Juvenile Justice of the juvenile’s failure to meet these requirements so that the state, by its own decision, may proceed with further action.

_____ Community Diversion Program _____ Date

NOTICE OF COMPLETION

The juvenile:

___ Completed all requirements of the _____ Community Diversion Program on _____

___ Did not complete the following requirements:

- 1. _____
- 2. _____
- 3. _____
- 4. _____

___ Did not complete any requirements of the Sentence:

_____ Date
_____ Community Diversion Program

CRIMINAL

If the tribe has a sentencing or prosecution agreement in any pending court case, then the court will record the agreement and provide court procedure to accommodate the tribe

ALASKA COURT RULE 11(i)

(i) Restorative Justice Programs.

(1) With the consent of the victim(s), the prosecutor, and the defendant(s), the judge may refer a case to a restorative justice program. The parties must inform the restorative justice program about any applicable mandatory sentencing provisions at the time the matter is submitted to the program. The parties may propose to the court the sentence recommended by the participants in proceedings convened by that program.

(2) The parties may include the recommendations of the restorative justice program in a sentencing agreement subject to the provisions of subsection (e).

(3) The term “restorative justice program” means a program using a process in which persons having an interest in a specific offense collectively resolve how to respond to the offense, its aftermath, and its implications for the future. Restorative justice programs include, but are not limited to, circle sentencing, family group conferencing, reparative boards, and victim/offender mediation. For purposes of this rule, the term “restorative justice program” does not include the Alaska Court System’s therapeutic courts.

(4) Except as provided below, the sentencing judge shall not participate directly in any restorative justice program to which a case is referred for sentencing recommendations.

(A) The judge may be present during the proceedings of the program provided that:

(i) the proceedings are conducted on the record; or

(ii) minutes of the proceedings are kept in a manner that the parties agree will fairly and accurately represent what is said at those proceedings.

(B) The judge may speak at these proceedings provided that the judge’s comments do not detract or appear to detract from the judge’s neutrality.

GENERIC PLAN FOR SENTENCING REFERRALS

Village and The Alaska Court System (Court) For Restorative Justice Referrals Under Criminal Rule 11(i)

**PLAN ADOPTED BY _____ VILLAGE (Tribe)
AND
THE ALASKA COURT SYSTEM (Court)
FOR RESTORATIVE JUSTICE REFERRALS
UNDER
ALASKA CRIMINAL RULE 11(i)**

This PLAN adopted by _____ Village and the Alaska Court System sets out the procedures for the referral of matters relating to criminal cases involving tribal members and descendants.

PARTIES: This PLAN is made and entered into by the Tribe and the Court on behalf of the Fairbanks and Galena Trial Courts.

PURPOSE: The purpose of this PLAN is to involve the Tribe in Court cases and to utilize culturally appropriate restorative justice approaches in Court cases involving tribal members, recognizing that outcomes in these cases improve when the delivery of justice involves collaborative and community-based efforts.

The Court's efforts to impose meaningful and relevant consequences for defendants, the community, and the victim shall be aided by tribal restorative justice program sentencing recommendations. These recommendations reflect the community's assessment of the impacts of the criminal behavior and integrate local wisdom and cultural norms.

BOTH PARTIES AGREE TO THE FOLLOWING PROCEDURES:

1. The Tribe will monitor the Court calendar for cases involving tribal members or member descendants. The Tribe may submit a request for a copy of the relevant case documents from the case file, such as complaints and indictments, which the Court shall provide to the Tribe within 10 days upon receipt of the request. The Court will not charge the Tribe for these documents.
2. Within 10 days of the receipt of these documents, the Tribe shall notify the Court whether it wishes to be involved in the case.
3. If the Tribe notifies the Court that it wishes to be involved in the case, the Court shall notify the parties of this request. If the defendant subsequently is convicted of the crime, the Court shall, within 10 days of the conviction, notify the Tribe of the date that the defendant will be sentenced and whether the prosecution, defendant, and victim (if any) have consented to a referral. Provided that the necessary consents have been obtained, the Court shall also formally refer the case to the Tribe at that time to conduct a tribal sentencing proceeding.

The notice and referral to the Tribe, if any, shall identify the charge of which the defendant was convicted, any mandatory sentencing requirements (such as the presumptive or minimum term that the defendant must serve in jail), and any agreement the defendant and the State may have made regarding the conviction. When a case has been referred to the Tribe under the PLAN, the Court shall set sentencing for a date at least 60 days after the date of conviction, unless the Tribe and the Court agree to a different time period.

4. After a case is referred to the Tribe, the Tribe shall take the necessary steps to conduct the tribal sentencing proceeding. The Tribe shall promptly notify the Court if it needs the Court to change the Court's sentencing date in order to provide for additional time for the tribal sentencing proceeding to occur.
5. The Tribe shall complete the proceeding no later than 15 days prior to the Court sentencing date. The Tribe will inform the Court, the prosecution, defendant, defendant's attorney (if any) and victim (if any) of the date of the tribal sentencing proceeding at least 10 days prior.
6. Through these collaborative and community-based efforts, the tribal sentencing proceeding shall identify proposed sentencing recommendations, which may include culturally relevant activities, drug and alcohol assessments and treatment, restitution (such as money or services for the victim), or other remedies.
7. At the end of the tribal sentencing proceeding, the Tribe shall prepare a written report stating its sentencing recommendations and the time period for completion of each component. This report shall be provided to the Court, the prosecution, defendant, defendant's attorney (if any) and victim (if any) at least 10 days before the State Court sentencing.
8. The Court shall carefully consider the recommendations of the tribal sentencing proceeding. The Parties understand, however, that the Court is not bound by those recommendations.
9. The Parties agree to meet from time to time to review the implementation of this PLAN and to make any appropriate revisions to it.
10. Nothing in this PLAN prevents the Tribe from conducting a tribal sentencing proceeding on its own after notification of defendant's conviction. Moreover, the Tribe may make sentencing recommendations to the Court, even if a formal referral has not been made.

SIGNATORIES TO THE PLAN

SIGNED: _____

_____ Village

SIGNED THIS _____ DAY OF _____, 2016

SIGNED: _____

(Magistrate) Judge or Judge _____
Alaska Court System

SIGNED THIS _____ DAY OF _____, 2016

SIGNED: _____

Presiding Judge Michael A. MacDonald
Fourth Judicial District
Rabinowitz Courthouse
101 Lacey Street
Fairbanks, Alaska 99701

SIGNED THIS _____ DAY OF _____, 2016

SIGNED: _____

Christine Johnson
Administrative Director
Alaska Court System
303 K Street
Anchorage, Alaska 99501


SIGNED THIS _____ DAY OF _____, 2016

MEMORANDUM

STATE OF ALASKA

*Department of Law
Criminal Division*

TO: All Alaska Law Enforcement

FROM: Robert E. Henderson 
Deputy Attorney General, Criminal Division

DATE: July 31, 2017

SUBJECT: Enforcement of Tribal Court Protective Orders

All protective orders issued by an Alaska court, a court of another state or territory, a U.S. military tribunal, or tribal court *shall* be enforced as if it was issued by an Alaska court. AS 18.66.140; 18 U.S.C. § 2265.

- The filing of an order with an Alaska court is not necessary.
- An order need not be entered into APSIN or NCIC.
- Required Order Elements:
 - An order must identify the petitioner and respondent.
 - An order must contain provisions intending to prevent violent or threatening acts, harassment, sexual violence, contact, communication, proximity to a person, or stalking.
 - An order must appear authentic. Law enforcement officers are not to investigate beyond looking at the order itself. Any jurisdictional or due process issues will be addressed by the prosecutor and/or an Alaska court.
- Charging Crime of Violating Protective Order: In order to charge the Alaska crime of violating a protective order contrary to AS 11.56.740, the order must contain provisions that are *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).
- Child Custody Orders. When violations of child custody orders are not criminal offenses, order provisions nevertheless are to be enforced provided the provisions relate to protecting a victim of domestic violence, sexual assault, dating violence, or stalking.
- Stand by Orders. Stand by orders are to be followed provided the order provisions relate to protecting a victim of domestic violence, sexual assault, dating violence, or stalking.
- Mandatory and Warrantless Arrests. Alaska mandatory and warrantless arrest law provisions are to be followed in connection with enforcement of all protective orders.

October 19, 2017

The Honorable Bill Walker
Governor
State of Alaska
P.O. Box 110001
Juneau, AK 99811-0001

Re: Legal status of tribal governments in Alaska

Dear Governor Walker:

You have asked for a legal opinion about the sovereign status of Alaska Native tribes (Alaska Tribes) and their relationship with the State of Alaska (the State). This opinion covers the following: (1) tribes do exist in Alaska; (2) Alaska Tribes are governments with inherent sovereignty; and (3) the areas where the scope of that sovereignty is clear.

I. There are 229 federally recognized tribes in Alaska.¹

The existence of a tribe or tribal government does not require a federal determination and tribal sovereignty does not originate with the federal government.² That said, the United States Constitution gives Congress the authority to legislate with respect to Indian tribes.³ Thus, the sovereign status of tribal governments, for the purpose

¹ *Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 82 Fed. Reg. 4,915, 4,919-20 (Jan. 17, 2017).

² *John v. Baker*, 982 P.2d 738, 751 (Alaska 1999) (quoting *U.S. v. Wheeler*, 435 U.S. 313, 322-33 (1978) (“Before the coming of the Europeans, the tribes were self-governing sovereign political communities.”); F. Cohen, *Handbook of Federal Indian Law* 132-34, 206-11 (2012 ed.) [hereinafter *Cohen’s Handbook*]).

³ U.S. Const. art I, § 8, cl. 3; *U.S. v. Lara*, 541 U.S. 193, 200-02 (2004); *Cohen’s Handbook* 383-86.

of determining tribes' relationships with states, is a question of federal law and federal recognition of a tribe is dispositive.⁴

While Alaska Native people and Alaska Tribes have existed in what is now the State of Alaska for thousands of years, Alaska Tribes have undoubtedly been recognized by the federal government since 1994. Alaska Tribes' inherent sovereignty has been recognized by all three branches of federal government and the Alaska Supreme Court. This inherent sovereignty exists regardless of whether the land that Alaska Tribes possess or inhabit is considered "Indian country."

A. The legal status of Alaska Tribes.

Tribes are legal entities separate from either the federal government or states.⁵ However, the status of Alaska Tribes was unclear for many years. The State initially took the legal position that tribes did not exist in Alaska.⁶ And the Alaska Supreme Court, in a 1988 dispute between an Alaska Native village and a contractor, held that "[t]here are not now and never have been tribes of Indians in Alaska as that term is used in federal Indian law."⁷

An early 1993 Department of the Interior solicitor opinion, however, concluded that the federal government's "course of dealings" with Alaska Native villages conferred

⁴ See *Atkinson v. Haldane*, 569 P.2d 151, 162 (Alaska 1977) ("Once the [federal] executive branch has determined that the Metlakatla Indian Community is an Indian tribe . . . the Community is entitled to all of the benefits of tribal status."); *John*, 982 P.2d at 750; *Cohen's Handbook* 134 (explaining that federal recognition confirms a tribe's existence as a distinct political society).

⁵ *Worcester v. Georgia*, 31 U.S. 515, 561-62 (1832); see, e.g., *Cotton Petrol. Corp. v. New Mexico*, 490 U.S. 163, 191-92 (1989) (noting that tribes are not "states" within the scope of the Interstate Commerce Clause); *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143 (1980) (tribal reservations are not states); *U.S. v. Kagama*, 118 U.S. 375, 381-82 (1886) ("[Indians] were, and always have been, regarded as having a semi-independent position.").

⁶ See Alaska Admin. Order No. 125 (1991) (stating the State was opposed to the existence of tribes in Alaska); see also U.S. Dep't Interior, Solic. Op. M-36,975 at 48-60 (Jan. 11, 1993) (summarizing arguments against finding that Alaska Tribes existed).

⁷ *Native Vill. of Stevens v. Alaska Mgmt. & Planning*, 757 P.2d 32, 36 (Alaska 1988).

upon the villages the same status as Indian tribes in the contiguous 48 states.⁸ Later that year, citing the solicitor opinion, the Department of the Interior, Bureau of Indian Affairs (BIA) issued a list of federally recognized Alaska Tribes.⁹ That publication was intended to “eliminate any doubt” as to the status and rights of Alaska Tribes; it recognized that Alaska Tribes have “the same status as tribes in the contiguous 48 states” and “the same inherent and delegated authorities available to other tribes.”¹⁰

Through the Federally Recognized Tribe List Act of 1994 (1994 List Act), Congress effectively affirmed the BIA’s recognition of Alaska Tribes. That legislation directed the BIA to publish lists of recognized tribes and, rather than reversing the 1993 List, overrode the omission of one Alaska Tribe.¹¹ Subsequent lists published pursuant to the 1994 List Act have continued to include Alaska Tribes.¹²

Initially, the State litigated the federal determination.¹³ But in 1996, the State discontinued this legal challenge and the state Attorney General issued an opinion outlining the status of federally recognized tribes in Alaska.¹⁴

⁸ *Governmental Jurisdiction of Alaska Native Villages Over Land and Nonmembers*, U.S. Dep’t Interior, Solic. Op. M–36,975 at 47 (observing that for over fifty years Congress and the Department of the Interior treated Alaska Native people as members of sovereign tribes).

⁹ *Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 538 Fed. Reg. 54,364, 54,364, 1993 WL 420646 (Oct. 21, 1993) [hereinafter 1993 List]; see H.R. REP. No. 103-781, at 2-3, reprinted in 1994 U.S.C.C.A.N. 3768 (explaining “recognition” means the federal government acknowledging, as a matter of law, that a particular Native American group is a tribe and permanently establishes a government-to-government relationship between U.S. and tribe).

¹⁰ 1993 List, at 54,365-66.

¹¹ Federal Recognized Indian Tribe List Act of 1994, Pub. L. 103-454, §103, 108 Stat 4791 (1994), discussed in *John v. Baker*, 982 P.2d 738, 750 (Alaska 1999).

¹² See, e.g., *Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 60 Fed. Reg. 9,250, 9,255 (February 16, 1995); *Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs*, 82 Fed. Reg. 4,915, 4,919-20 (Jan. 17, 2017).

¹³ See, e.g., *Native Vill. of Venetie I.R.A. Council v. State*, 1994 WL 730893, at *7 (D. Alaska, Dec. 23, 1994), supplemented sub nom. *State ex rel. Yukon Flats Sch. Dist. v.*

The Alaska Supreme Court resolved any remaining questions about the legal status of Alaska Tribes in its 1999 decision, *John v. Baker*.¹⁵ The court acknowledged that in *Native Village of Stevens v. Alaska Management & Planning* it had concluded the federal government never recognized Alaska Tribes, but that the Department of Interior's definitive 1993 List and the 1994 List Act demanded a different conclusion. The court stated “[i]f Congress or the Executive Branch recognizes a group of Native Americans as a sovereign Tribe, we ‘must do the same.’”¹⁶ The court explained that tribal status is a non-justiciable political question, requiring courts to defer to the express recognition of tribal status by the political branches of the federal government.¹⁷ Federal courts likewise defer to the executive or legislative branches’ tribal recognition determinations.¹⁸

Since *John v. Baker*, the Alaska Supreme Court has consistently recognized the sovereign status of Alaska Tribes.¹⁹

Native Vill. of Venetie Tribal Gov't, F87-0051 CV (HRH), 1995 WL 462232 (D. Alaska Aug. 2, 1995), *rev'd sub nom. State of Alaska ex rel. Yukon Flats Sch. Dist. v. Native Vill. of Venetie Tribal Gov't*, 101 F.3d 1286 (9th Cir. 1996), *rev'd sub nom. Alaska v. Native Vill. of Venetie Tribal Gov't*, 522 U.S. 520 (1998).

¹⁴ 1996 Op. Att’y Gen. No. 1 (Jan. 11).

¹⁵ 982 P.2d 738 (Alaska 1999).

¹⁶ *John*, 982 P.2d at 749 (quoting *United States v. Holliday*, 70 U.S. 407, 419 (1865)) (citing *Native Vill. of Stevens v. Alaska Mgmt. & Planning*, 757 P.2d 32 (Alaska 1988)); *In re C.R.H.*, 29 P.3d 849, 851 n.5 (2001) (stating that the court follows Congress’s determination that Alaska Tribes are sovereign under federal law).

¹⁷ *John*, 982 P.2d at 749.

¹⁸ *Holliday*, 70 U.S. at 419 (deferring to actions of political departments regarding tribal determination); *see Samish Indian Nation v. United States*, 419 F.3d 1355, 1370 (Fed. Cir. 2005) (“[T]ribal recognition is not justiciable.”); *Cherokee Nation v. Babbitt*, 114 F.3d 1489, 1496 (D.C. Cir. 1997) (deferring to Congress and executive branch regarding tribal determination); *Atkinson v. Haldane*, 569 P.2d 151, 162 (Alaska 1977) (holding tribal determination “is a non-justiciable political question”).

¹⁹ *See, e.g., McCrary v. Ivanof Bay Vill.*, 265 P.3d 337, 342 (Alaska 2011) (Alaska Native village was federally recognized Indian tribe); *Healy Lake Vill. v. Mt. McKinley Bank*, 322 P.3d 866, 867 (Alaska 2014); *State v. Cent. Council of Tlingit & Haida Indian Tribes of Alaska*, 371 P.3d 255, 259 (Alaska 2016); *Simmonds v. Parks*, 329 P.3d 995, 999 (Alaska 2014).

The current state of the law is clear—there *are* 229 sovereign tribes within Alaska. Yet there continue to be misunderstandings about the existence of tribes in Alaska and their inherent sovereignty. A common misunderstanding is that ANCSA²⁰ extinguished or terminated Alaska Tribes. But ANCSA settled, and extinguished, tribal claims to aboriginal title; it did not extinguish tribal governments.²¹ Because ANCSA did not explicitly terminate Alaska Tribes, it does not affect Alaska Tribes’ status as sovereign governments.

Misunderstandings may have been furthered by unsuccessful, but well-publicized, arguments in litigation asserting that Alaska Tribes did not exist and lacked inherent sovereignty.²² Nevertheless, the Alaska Supreme Court has rejected several direct requests to overturn *John v. Baker*, and has consistently held that Alaska Tribes exist and

²⁰ Pub. L. No. 92-203, 85 Stat. 688 (1971) (current version at 43 U.S.C. §§ 1601-1629h (2012)).

²¹ 43 U.S.C. § 1603(b) (2012); see *Inupiat Cmty. of the Arctic Slope v. United States*, 680 F.2d 122, 129 (1982) (right to sue for trespass damages extinguished); *Governmental Jurisdiction of Alaska Native Villages Over Land and Nonmembers*, U.S. Dep’t Interior, Solic. Op. M–36,975 at 132 (concluding ANCSA was a land settlement and did not terminate Alaska Tribes); Pub. L. 103-454, §103, 108 Stat 4791 (1994) (terminating federal recognition requires explicit Act of Congress).

²² See, e.g., Mot. to Intervene at 10, *Alaska v. Native Vill. of Tanana*, No. S-13332 (Alaska Feb. 3, 2009) (post-oral argument) (“[T]his appeal presents an appropriate procedural occasion for this court to revisit—because—with all due respect, it was error—its holding in *John v. Baker I.*”); see also Brief of Edward Parks & Donielle Taylor as *Amici Curiae* in Supporting Petitioners at 18 n.9, *Hogan v. Kaltag Tribal Council*, 562 U.S. 827 (2010) (No. 09-960), 2010 WL 1049413 (“*John v. Baker I* illustrates the continued confusion regarding Alaska Native tribal status”); Brief for the Legislative Council of the Alaska Legislature as *Amicus Curiae* Supporting Appellants at 8, *Runyon ex rel. B.R. v. Ass’n of Vill. Council Presidents*, 84 P.3d 437 (2004) (Nos. S-10772, S-10838), 2003 WL 24048558 (“[T]he conclusion regarding Alaska Native tribal status that the Court announced in *John v. Baker I* was erroneous.”); Complaint at 14-24, *S.P. v. Native Vill. of Minto*, No. 3:09-CV-0092 HRH, 2009 WL 9124375, at *1 (D. Alaska, Dec. 2, 2009), *aff’d*, 443 F. App’x 264 (9th Cir. 2011) (arguing federal recognition was wrongfully obtained as a product of the “native sovereignty movement” whose goal was becoming “federally recognized tribes”).

are sovereign governments.²³ Thus, there are no unresolved legal questions regarding the legal status of Alaska Tribes as federally recognized tribal governments.

B. The legal status of Indian country in Alaska.

Past confusion about the status of Alaska Tribes may also stem from misunderstandings about the relationship between Alaska Tribes and land status. Tribes and tribal governments exist regardless of the status of tribal lands.²⁴ Land status does not determine the existence of tribes and tribal governments.

There is, however, a “significant territorial component” to tribal authority.²⁵ For that reason in discussing Alaska Tribes, it is also important to discuss the status of Indian country in Alaska.

The term “Indian country” means: (a) all land within the limits of any Indian reservation, (b) “dependent Indian communities,” and (c) Indian allotments.²⁶ ANCSA extinguished all reservations in Alaska except for the Annette Islands Reserve of the Metlakatla Indian Community.²⁷ There was a question for many years regarding whether

²³ See e.g., *Runyon*, 84 P.3d 437, 439 n.3 (Alaska 2004) (declining “the invitations of the Runyons and amicus Legislative Council to revisit *John v. Baker*”); *McCrary*, 265 P.3d 337, 340 (Alaska 2011) (“McCrary argues that *John v. Baker* should not be considered binding precedent because no party in that appeal argued against recognition of the sovereign status of Alaska Native tribes. He contends this legal issue was not tested by the adversarial process. But our conclusion regarding the Executive Branch’s tribal recognition and Congress’s approval through the Tribe List Act was carefully considered and adopted by the entire court. Our conclusion in *John v. Baker* was not dictum—it was decisional”); *Simmonds v. Parks*, 329 P.3d at 1005 (citing with approval the superior court’s conclusion that *John v. Baker* “definitively rejected” the argument “that the Native Village of Minto is not a federally recognized tribe”).

²⁴ *John*, 982 P.2d at 754; *Kaltag Tribal Council v. Jackson*, 344 F. App’x 324, 325 (9th Cir. 2011) (stating that “[r]eservation status is not a requirement of jurisdiction because [a] Tribe’s authority over its reservation or Indian country is incidental to its authority over its members” (quoting *Native Vill. of Venetie I.R.A. Council v. Alaska*, 944 F.2d 548, 559 n.12 (9th Cir. 1991))).

²⁵ *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 142 (1982).

²⁶ 18 U.S.C. § 1151.

²⁷ 43 U.S.C. § 1618(a).

lands patented under ANCSA constituted “dependent Indian communities” and was therefore, Indian country. This question was answered in *Alaska v. Native Village of Venetie*. In that decision the U.S. Supreme Court concluded that former reservation land transferred to an ANCSA village corporation and then subsequently transferred in fee to the Tribe did not qualify as a “dependent Indian community” and the land was therefore not Indian country.²⁸

However, there remain open questions about Indian country in Alaska. Throughout Alaska, there are currently scattered non-ANCSA Alaska Native lands with federal interests: it is estimated that there are close to one million acres of restricted fee land granted under the Alaska Native Allotment Act of 1906 and the Alaska Native Townsite Act of 1926.²⁹ The *Venetie* decision solely addressed dependent Indian communities; it did not address the status of Alaska Native allotments or townsites.³⁰ No case has determined whether Alaska Native allotments are Indian country.³¹ There is also an open question about the territorial jurisdiction, if any, of Alaska Tribes over Alaska Native allotments and restricted Alaska Native townsite lots even if they are determined to be Indian country.³²

²⁸ *Alaska v. Native Vill. of Venetie Tribal Gov’t*, 522 U.S. 520, 534 n.2 (1998).

²⁹ Act of May 17, 1906, Pub. L. No. 59-171, ch. 2469, 34 Stat. 197 (repealed 1971); Act of May 25, 1926, Pub. L. No. 69-280, ch. 379, 44 Stat. 629 (repealed 1976)).

³⁰ *Native Vill. of Venetie Tribal Gov’t*, 522 U.S. at 534 n.2 (observing that because there was only one Indian reservation in Alaska, “[o]ther Indian country exists in Alaska post-ANCSA only if the land in question meets the requirements of a ‘dependent Indian communit[y] under our interpretation of § 1151(b), or if it constitutes ‘allotments’ under § 1151(c)’”).

³¹ *But see U.S. v. Ramsey*, 271 U.S. 467, 471-72 (1926) (holding that both trust allotments and restricted fee Osage allotments qualify as Indian country); *Oklahoma Tax Comm’n v. Sac & Fox Nation*, 508 US 114, 123-26 (1993) (Indian country includes allotments held in trust and in restricted fee); *In re Carmen*, 165 F. Supp. 942, 946 (N.D. Cal. 1958), *aff’d sub nom. Dickson v. Carmen*, 270 F.2d 809 (9th Cir. 1959) (holding that an Indian allotment made from the public domain, not from an allotted reservation, was Indian country).

³² U.S. Dep’t Interior, Solic. Op. M-36,975 at 48-60, 129 (Jan. 11, 1993) (finding that Alaska Native restricted allotments are Indian country for federal government protection and jurisdiction, but questioning whether such would be subject to an Alaska Tribe’s claim of territorial jurisdiction).

In addition, the Department of Interior recently altered the land-into-trust regulations and removed the exception that prevented Alaska Tribes from petitioning for land to be placed in federal trust.³³ This means that there will be more Indian country within Alaska. However, because Public Law 280 granted the State of Alaska concurrent jurisdiction over certain matters in Indian country within the State, the Indian country status of land does not change the State’s ability to enforce its criminal or prohibitory laws.³⁴

II. Alaska Tribes are sovereign governments.

Tribal governments are separate sovereigns. As a starting point, tribal sovereignty can perhaps be understood as self-rule—the right to make one’s own laws and be governed by them.³⁵ Tribes possess inherent powers of self-government and exercise these powers to the extent they have not been extinguished.³⁶ It is presumed that a tribe’s

³³ See *Land Acquisitions in the State of Alaska*, 79 Fed. Reg. 76,888, 76,889 (Dec. 23, 2014) (altering the land-into-trust regulations); see also *Akiachak Native Cmty. v. Salazar*, 935 F. Supp. 2d 195 (D.D.C. 2013).

³⁴ Public Law 280 granted prohibitory jurisdiction to the State, however, tribes retain concurrent jurisdiction in Indian Country. See *TTEA v. Ysleta del Sur Pueblo*, 181 F.3d 676, 685 (5th Cir. 1999); *Walker v. Rushing*, 898 F.2d 672, 675 (8th Cir. 1990); 18 U.S.C. § 1162; A state’s laws that are “prohibitory” are included in Public Law 280’s authorization of state jurisdiction in Indian country. See *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 210-11 (1987) (explaining “if the intent of a state law is generally to prohibit certain conduct” it falls within Public Law 280’s grant of state jurisdiction).

³⁵ See, e.g., *Williams v. Lee*, 358 U.S. 217, 220 (1959); *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 327 (2008) (explaining tribes are “distinct, independent political communities”); *U.S. v. Lara*, 541 U.S. 193, 205 (2004) (noting tribes are capable of governing themselves).

³⁶ The fundamental principle of Indian law is “that those powers 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 sovereignty which has never been extinguished.” *Cohen’s Handbook* 207; see also *John v. Baker*, 982 P.2d 738, 751 (“[S]overeign powers exist unless divested.”).

inherent sovereignty remains intact unless it has been divested or limited by Congress “or by implication as a necessary result of their dependent status.”³⁷

Numerous federal laws have limited tribal sovereignty. For example, the Major Crimes Act extended federal criminal law into Indian country, an area where tribal jurisdiction had originally been exclusive.³⁸ Public Law 280 then allowed limited state authority in Indian country in some states, including Alaska.³⁹ And the U.S. Supreme Court held in *Oliphant v. Suquamish Indian Tribes* that tribes were divested of criminal jurisdiction to prosecute non-Indians, finding that such jurisdiction was “inconsistent with their status” as sovereigns subordinate to the federal government.⁴⁰

Tribes’ inherent powers of self-governance over tribal citizens⁴¹ have long been recognized, and there is no evidence that Congress intended to extinguish Alaska Tribes’ powers in enacting ANCSA.⁴² Federal courts have likewise concluded that tribes in Alaska retain inherent sovereign authority.⁴³ As a general matter, sovereign governments have authority, or jurisdiction, over citizens, over land, and over people who enter their

³⁷ *United States v. Wheeler*, 435 U.S. 313, 323 (1978); *John*, 982 P.2d at 751 (explaining tribes retain sovereign powers to regulate internal affairs unless Congress specifically limits authority to act).

³⁸ 18 U.S.C. § 1153; *Ex Parte Crow Dog*, 109 U.S. 556, 568 (1883).

³⁹ Act of Aug. 15, 1953, Pub. L. No. 83-280, 67 Stat. 588 (1953), codified at 18 U.S.C. § 1162.

⁴⁰ *Oliphant v. Suquamish Indian Tribes*, 435 U.S. 191 (1978) (holding tribes do not have inherent criminal jurisdiction to try and punish non-Indians, and may not assume such jurisdiction unless specifically authorized by Congress), *superseded in part by statute as stated in U.S. v. Lara*, 541 U.S. 193 (2004).

⁴¹ The term “tribal citizen” (the modern trend and more accurate term) is synonymous with “tribal member” (the term used in caselaw).

⁴² *John*, 982 P.2d at 753 (“Congress intended ANCSA to free Alaska Natives from the dictates of ‘lengthy wardship or trusteeship,’ not to handicap tribes by divesting them of their sovereign powers.”).

⁴³ *Native Vill. of Venetie I.R.A. Council v. Alaska*, 944 F.2d 548, 556-59 (9th Cir. 1991); *Native Vill. of Venetie I.R.A. Council v. Alaska*, 1994 WL 730893, at *12-21 (D. Alaska, Dec. 23, 1994); *Kaltag Tribal Council v. Jackson*, 344 F. App’x 324 (9th Cir. 2011).

land. Similarly, this “dual nature of Indian sovereignty” derives from two intertwined sources: tribal citizenship and tribal land. These two aspects of jurisdiction, or authority, while intertwined, have been “teased apart” in Alaska.⁴⁴

A. Sovereignty includes the power to establish a form of government.

Forming a government is a basic element of sovereignty. Tribes possess the inherent authority to establish their form of government, including justice systems, that best suits their own practical or cultural needs.⁴⁵ Constitutions adopted by tribes following the passage of the Indian Reorganization Act (IRA) were based on sample documents developed by the BIA. However, tribes exercising powers under IRA constitutions are still acting under their inherent sovereign authority.⁴⁶ Tribal governments can also be formed or organized outside of the IRA framework, whether or not a written constitution has been adopted.⁴⁷

Alaska Tribes have several types of governments including traditional councils and IRA governing councils. Additionally, tribes may choose to form a governmental entity, such as the Central Council of Tlingit and Haida Indian Tribes of Alaska, which receive federal recognition, in addition to the constituent Tribes, which are also recognized.⁴⁸ All of these entities, however, are governments of Alaska Tribes. Federal law prohibits the federal executive branch from classifying tribes as having different

⁴⁴ *John*, 982 P.2d at 754; *Kaltag Tribal Council v. Jackson*, 344 F. App'x 324, 325 (9th Cir. 2011) (“Reservation status is not a requirement of jurisdiction because ‘[a] Tribe’s authority over its reservation or Indian country is incidental to its authority over its members.’”(quoting *Venetie*, 944 F.2d at 559 n.12)).

⁴⁵ *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 62-63 (1978) (recognizing tribes’ “power to make their own substantive law in internal matters and to enforce that law in their own forums”); *see also Talton v. Mayes*, 163 U.S. 376, 384 (1896) (stating that “the powers of local self-government enjoyed by [tribes] existed prior to the constitution”); *Indian Tribal Justice Act*, 25 U.S.C. § 3601(4) (2000) (“Indian tribes possess the inherent authority to establish their own form of government, including tribal justice systems.”).

⁴⁶ *See Washington v. Confederated Tribes*, 447 U.S. 134, 152-54 (1980).

⁴⁷ *Kerr-McGee Corp. v. Navajo Tribe of Indians*, 471 U.S. 195 (1985) (holding IRA requirement that a tribal constitution be approved by the Secretary does not apply to Tribes that decline to accept the IRA); *see also* 25 U.S.C. § 5123.

⁴⁸ *Cohen’s Handbook* 133.

powers or status based on when or how the tribe was recognized.⁴⁹ Therefore, there is no basis for treating these different types of tribal governments differently from each other.

B. Sovereignty includes the power to determine tribal citizenship.

Determining tribal citizenship is also a fundamental attribute of sovereignty.⁵⁰ Tribal citizenship can determine, among other things, the right to vote in tribal elections, to hold tribal office, and to receive tribal resources. Eligibility for federal benefits and assistance provided to Alaska Native people because of their status as Alaska Native may be based upon tribal citizenship. And while denial of tribal citizenship may result in the denial of federal health and education benefits, tribal citizenship decisions are decisions solely made by tribes.⁵¹

C. Sovereignty includes the ability to assert sovereign immunity.

As sovereign governments tribes are generally immune from lawsuits unless Congress has authorized the suit or the tribe has waived its immunity.⁵² The State and the federal government likewise have sovereign immunity from suit, but by statute, have provided limited waivers of sovereign immunity for certain types of suits.⁵³ When entering into agreements with tribes it is important for state agencies to consult with the Department of Law to determine whether a tribe has waived its sovereign immunity by

⁴⁹ 25 U.S.C. § 5123; H.R. REP. No. 103-781, at 2-3, *reprinted in* 1994 U.S.C.C.A.N. 3768.

⁵⁰ *Santa Clara*, 436 U.S. 49 (1978); *John v. Baker*, 982 P.2d 738, 751 (Alaska 1999) (holding core sovereign powers remain; in particular, those internal functions involving tribal citizenship and domestic (*i.e.*, not foreign) affairs); *Healy Lake Vill. v. Mt. McKinley Bank*, 322 P.3d 866, 874 (Alaska 2014); *Kimball v. Callahan*, 590 F.2d 768, 777-78 (9th Cir. 1979) (holding terminated tribe without land base retained power to determine citizenship).

⁵¹ *Santa Clara Pueblo*, 436 U.S. at 54 (holding equal protection guarantee of the Indian Civil Rights Act does not authorize the Court to determine which traditional values should be preserved, that determination was best made by the people of Santa Clara); *Healy Lake Vill.*, 322 P.3d at 877 (explaining tribe's right to define its own citizenship standards is central to its existence as an independent political community).

⁵² *McCrary v. Ivanof Bay Vill.*, 265 P.3d 337 (Alaska 2011); *Douglas Indian Ass'n v. Cent. Council of Tlingit & Haida Indian Tribes of Alaska*, No.7198, 2017 WL 3928701, at *2 (Alaska Sept. 8, 2017).

⁵³ AS 09.50.250; 28 U.S.C. § 1346.

tribal law, whether a waiver is necessary, and, if so, the scope of the waiver that is necessary to protect the State.

D. Sovereignty includes the ability to enter agreements under the ISDEEA.

Numerous Alaska Native organizations provide services to, or otherwise represent the interests of, tribal citizens in Alaska. In particular, through the Indian Self Determination Education Assistance Act (ISDEEA),⁵⁴ Alaska Tribes may enter into agreements with the federal government to take over federally-administered programs and services as a matter of self-governance. The ISDEEA broadly defines “Indian tribe” to include ANCSA village and regional corporations as entities that are eligible to enter into ISDEEA agreements.⁵⁵ Alaska Tribes may also authorize “tribal organizations” or “inter-tribal consortiums” to provide services to tribal communities.⁵⁶ Some of these programs and services may be those that would be provided by a government, such as child welfare, law enforcement, and lands or realty management. While these organizations provide important, needed programs and services, they are not themselves federally recognized tribes possessing inherent sovereignty under federal law.⁵⁷

E. Tribes possess non-territorial sovereignty outside of Indian country.

A tribe’s authority to adopt laws flows from its status as a sovereign political entity. This authority includes the power to enforce laws and administer justice systems

⁵⁴ 25 U.S.C. §§ 5301–5423.

⁵⁵ 25 U.S.C. § 5304(e).

⁵⁶ 25 U.S.C. § 5321(a)(1)-(2) (setting out that ISDEEA contracts with the BIA or Indian Health Service are initiated by an “Indian tribe” although the contract may be with a “tribal organization”); 25 U.S.C. § 5362(b)(2) (recognizing that two or more tribes to agree to participate in ISDEEA as an “inter-tribal consortium”); 25 U.S.C. § 5381(b) (defining “Indian tribe” to include “tribal organization” or “inter-tribal consortium”).

⁵⁷ See, e.g., *Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 58 Fed. Reg. 54,364, 54,364 (Oct. 21, 1993) (distinguishing federally recognized tribal governments and ANCSA corporations); *Runyon v. Ass’n of Vill. Council Presidents*, 84 P.3d 437 (Alaska 2004) (non-profit Alaska corporation, whose members are tribes, does not share sovereign immunity of member tribes where non-profit corporation is legally and financially insulated from the tribes).

such as courts.⁵⁸ Several Alaska Supreme Court decisions have established the contours of tribes' inherent powers "to conduct internal self-governance functions" outside of Indian country.⁵⁹ A summary of each type of matter the Alaska Supreme Court has addressed follows.

Alaska Tribes' subject matter jurisdiction outside of Indian country is derived from their "inherent, non-territorial sovereignty"—and the "ability to retain fundamental powers of self-governance."⁶⁰ In determining the scope of Alaska Tribes' subject matter jurisdiction, the Alaska Supreme Court has evaluated "two dimensions" of non-territorial subject matter jurisdiction.

The first dimension involves the character of the legal questions that can properly be decided by the Alaska Tribe's court. These are matters that involve the regulation of "internal affairs" of tribal citizens and those that go to the "core of sovereignty."⁶¹ The second dimension involves the categories of individuals and families who might properly be brought before the tribal court and whose disputes the tribal court can properly resolve.

Tribes' inherent sovereignty includes the subject matter jurisdiction to grant legally binding adoptions of tribal citizen children. The State must give full faith and credit to adoptions issued by tribes.⁶²

⁵⁸ See *Indian Tribal Justice Act*, 25 U.S.C. § 3601(4) (2000) ("Indian tribes possess the inherent authority to establish their own form of government, including tribal justice systems.").

⁵⁹ See *John v. Baker*, 982 P.2d 738, 758 (Alaska 1999); *State v. Cent. Council of Tlingit & Haida Indian Tribes of Alaska*, 371 P.3d 255, 265 (Alaska 2016).

⁶⁰ *Cent. Council*, 371 P.3d at 262 (quoting *John*, 982 P.2d at 758).

⁶¹ *Id.* at 262; *John*, 982 P.2d at 759.

⁶² 25 U.S.C. § 1911(d); *Native Vill. of Venetie I.R.A. Council v. Alaska*, 944 F.2d 548, 562 (9th Cir. 1991) (holding Public Law 280 does not prevent tribes from exercising jurisdiction and Congress affirmed such jurisdiction in ICWA, therefore state must recognize tribe's adoption); *Kaltag Tribal Council v. Jackson*, 2008 WL 9434481, at *7 (D. Alaska, 2008) (holding that tribal adoption order involving tribal citizen child was entitled to full faith and credit), *aff'd Kaltag Tribal Council v. Jackson*, 344 F. App'x 324 (9th Cir. 2009); *Alaska v. Native Vill. of Tanana*, 249 P.3d 734, 736 (Alaska 2011).

Tribes' inherent sovereignty includes the subject matter jurisdiction to decide the custody, outside of the ICWA context, of tribal citizen children or children eligible for tribal citizenship.⁶³ Tribes' custody orders are entitled to comity recognition by Alaska courts. This means the state court will conduct an analysis to ensure that the court participant's due process rights were protected. As part of its due process analysis, the state court looks at: (1) whether the parties received notice of the tribal court proceedings; (2) whether the parties were granted "a full and fair opportunity to be heard"; and (3) whether the tribal court judges were impartial and the proceedings were conducted in a regular fashion.⁶⁴

Tribes' inherent sovereignty includes the subject matter jurisdiction to accept transfer of ICWA cases from state courts regardless of whether the tribe petitioned the federal government to reassume jurisdiction under ICWA.⁶⁵ Tribes' inherent sovereignty also includes the jurisdiction to initiate ICWA child custody proceedings, and the tribal court orders in these proceedings are entitled to full faith and credit by the state courts and agencies.⁶⁶

Tribes' inherent sovereignty includes a "colorable and plausible claim to jurisdiction" to terminate parental rights to tribal citizen children, even when the parent is not a citizen of that tribe.⁶⁷ Further, tribal court remedies must be exhausted before a tribal court decision can be collaterally attacked in state court.⁶⁸ As a result, in *Simmonds v. Parks*, where a non-tribal-citizen parent failed to appeal in tribal court the tribe's

⁶³ *John*, 982 P.2d at 759 (holding that Alaska Tribes have jurisdiction over domestic (*i.e.*, internal) disputes involving tribal citizen children even in the absence of territory).

⁶⁴ *See id.* at 763 (noting that due process does not require tribes to use procedures identical to state courts and that comity analysis is "not an invitation for [state] courts to deny recognition to tribal judgments based on paternalistic notions of proper procedure").

⁶⁵ *See In re C.R.H.*, 29 P.3d 849, 852 (Alaska 2001).

⁶⁶ *See Native Vill. of Tanana*, 249 P.3d at 736, 750–51; *Kaltag Tribal Council*, 2008 WL 9434481, at *7.

⁶⁷ *Simmonds v. Parks*, 329 P.3d 995, 1017-19 (Alaska 2014); *S.P. v. Native Vill. of Minto, No. 3:09-CV-0092 HRH*, 2009 WL 9124375, at *6 (D. Alaska, Dec. 2, 2009), *aff'd*, 443 F. App'x 264 (9th Cir. 2011) (unpublished).

⁶⁸ *Simmonds*, 329 P.3d at 1011-14.

termination of his parental rights, the Alaska Supreme Court held he could not attack that holding in state court and gave the termination full faith and credit.⁶⁹

Adjudicating a parent’s obligation to pay child support for tribal citizen children, or children eligible for tribal citizenship, is within Alaska Tribes’ inherent subject matter jurisdiction.⁷⁰ Tribal court child support orders must be processed by the Alaska Child Support Services Division (CSSD) under the Alaska Uniform Interstate Family Support Act just as child support orders entered by courts in other states.⁷¹

In conclusion, it is important to note three things. First, in each of the above types of cases, an Alaska Tribe’s jurisdiction is concurrent with the State’s. This means that cases can be started in either a tribal or state court. Second, in each of the cases that established the scope of tribes’ non-territorial jurisdiction, due process was given to the court participants. Courts will refuse to grant either full faith and credit or comity when due process was not provided to the court participants.⁷²

Finally, the matters identified above are not a definitive list of those matters included within Alaska Tribes’ inherent powers “to conduct internal self-governance functions” outside of Indian country.⁷³ The matters listed above are those that have been identified through litigation. The Alaska Supreme Court has stated that the “key inquiry” in determining the scope of a Tribe’s non-territorial sovereignty is whether the tribe “needs jurisdiction over a given context to secure tribal self-governance.”⁷⁴ This means that some matters that are clearly internal self-governance functions, such as marriages,

⁶⁹ *Id.* at 1022.

⁷⁰ *State v. Cent. Council of Tlingit & Haida Indian Tribes of Alaska*, 371 P.3d 255, 267 (Alaska 2016) (explaining that “[s]etting, modifying, and enforcing” child support obligations plays a vital role in tribal self-government).

⁷¹ AS 25.25.101(26).

⁷² *Starr v. George*, 175 P.3d 50, 59 (Alaska 2008).

⁷³ *See John v. Baker*, 982 P.2d 738, 758 (Alaska 1999); *Cent. Council*, 371 P.3d 255, 265 (Alaska 2016).

⁷⁴ *See John*, 982 P.2d at 756 (Alaska 1999) (“The key inquiry. . . is not whether the tribe is located in Indian country, but rather whether the tribe needs jurisdiction over a given context to secure tribal self-governance.” (internal quotations and citations omitted)).

divorces, or paternity determinations involving tribal citizens, may also be recognized as within the inherent sovereignty of Alaska Tribes.

III. Conclusion

The law is clear. There are 229 Alaska Tribes and they are separate sovereigns with inherent sovereignty and subject matter jurisdiction over certain matters. Indian country is not a prerequisite for Alaska Tribe's inherent sovereignty or subject matter jurisdiction, but it may impact the extent of that jurisdiction.

Sincerely,

Jahna Lindemuth
Attorney General



National Judicial Opioid Task Force and Tribal Law & Policy Institute

Tribal-State Court Forums: Addressing the Opioid Crisis

Tribal and state courts interact across many issues, including child welfare, enforcement of court orders, and civil commitments, to name just a few. One key topic with great potential for collaboration is the justice system's response to the nation's opioid crisis, which has brought devastating impacts upon both state and tribal communities.

Long histories of mistrust compound the likelihood that tribal and state courts will misunderstand, misinterpret, or disagree about issues of great importance. A lack of coordination can create dire consequences to safety and justice.

Beginning in the mid-1980s, through the efforts of the Conference of Chief Justices, tribal-state court forums began to bridge some of these gaps by bringing judges and court personnel together to foster relationships, discuss areas of mutual concern, develop legislative initiatives and to find a common ground (see www.WalkingOnCommonGround.org for detailed background). Since then, several tribal-state court forums have emerged. These forums vary somewhat in their make-up and focus, but most primarily involve tribal and state court judges, focus on issues of common concern, and meet regularly in the spirit of collaboration and mutual respect. Some recent examples of collaboration and focus include:

- The Indian Child Welfare Act (ICWA): Several forums have worked together to create trainings or materials to assist state courts with ICWA's implementation. The Michigan forum played a key role in the development of its own state legislation on ICWA.
- Recognition of Tribal Court Orders by State Courts: Many forums have developed rules or protocols for recognition of orders coming out of tribal courts.
- Jurisdictional Uncertainties: Members of tribal-state court forums are more apt to simply pick up the phone and call their colleagues in other jurisdictions for quick and easy resolution of jurisdiction questions that would otherwise persist through lengthy motions and expense going through more formal mechanisms.

Over two million Americans have an opioid use disorder. The misuse of opioids has caused 40,000 deaths and has an economic impact of over \$500 billion reported in 2016. The demands placed upon state and tribal courts far exceed their capacity to respond. In addition to the impacts on criminal justice, family court dockets are seeing increases in children placed in foster care and infants born with neo-natal abstinence syndrome. Both tribal and state courts have developed effective programs and interventions, yet many state and tribal communities remain underserved. Like destructive forces before it, opioid misuse crosses jurisdictional boundaries yet requires culturally responsive remedies. Tribal-state court forums should be utilized to share resources and expertise, expand access to programs, and develop and support best practices and the most effective interventions in response to the crisis.

Forums also provide an opportunity for crucial cross-cultural education. Many state court judges lack basic knowledge of the caseload and day-to-day functions in tribal court. Conversely, tribal court judges may not understand the full range of state court cases and dockets. Forums such as those in New Mexico and California place a special emphasis on the importance of cross-cultural education. The national opioid crisis is a unique opportunity to provide judicial education and training for tribal and state judges about the nature and impacts of opioid use and abuse, effective intervention strategies, and a broad range of related issues.

Forums take many different forms, but there are some common themes to success. Successful forums typically:

- Have co-chairs, with one tribal court judge and one state court judge taking co-leadership in the forum.

- Seek to maintain an equal balance between state and tribal participants.
- Ensure that meetings are located in tribal locations whenever possible.
- Are institutionalized through rules of the court or other state Supreme Court action, which provides some level of sustainability.
- Hold regular and consistent meetings, even if it is only one in-person meeting a year, to ensure the work of the forum moves forward.

In addition to the opioid crisis, recent law changes impacting tribal criminal jurisdiction make collaboration all the more crucial. The Tribal Law and Order Act included important provisions for “Enhanced Sentencing Authority” for tribes and the Violence Against Women Reauthorization of 2013 authorized tribes to exercise “Special Domestic Violence Criminal Jurisdiction” over non-Indians. Tribal courts that exercise this authority will need open communication and good relationships with state courts to ensure success, and state judicial personnel will require education on these laws and ongoing information on tribal implementation.

As more tribal and state judges come together to take action, it is apparent that collaboration is a key strategy to leverage limited resources, build relationships and bridge jurisdictional gaps to improve safety and justice in Indian country.

Additional Resources on Tribal-State Court Forums

Tribal-State Court Forums: An Annotated Directory. Tribal Law and Policy Institute, January 2016.

National Convening of Tribal State Court Forums Report. Tribal Law and Policy Institute, 2017.

Promising Strategies: Tribal State Court Relations. Tribal Law and Policy Institute, March 2013.

Michigan's Judiciary Success Stories: How Tribal, State and Federal Courts are Collaborating to Benefit Michigan Families. Michigan Tribal State Federal Judicial Forum, 2017.

Joint Jurisdiction Courts: A Manual for Developing Tribal, Local, State & Federal Justice Collaborations. Jennifer Fahey, JD, MPH, Hon. Korey Wahwassuck, Alison Leof, PhD, Hon. John Smith, Project T.E.A.M., Center for Evidence-Based Policy, Oregon Health & Science University, May 2016.

State and Tribal Courts: Strategies for Bridging the Divide. Center for Court Innovation, 2011.

Walking on Common Ground: Pathways to Equal Justice. Fox Valley Technical College, July 2005.

Tribal Court-State Court Forums: A How-To-Do-It-Guide to Prevent and Resolve Jurisdictional Disputes and Improve Cooperation Between Tribal and State Courts. William Thorne, Spring/Summer 1996. The Tribal Court Record.

Walking On Common Ground Website.
www.WalkingOnCommonGround.org





National Judicial Opioid Task Force

Tribal Cultural Competency Information for Judges

The purpose of this publication is to provide basic information to state judges and court employees who interact with members of American Indian/Alaska Native (AI/AN) communities in their courts. It is intended to serve as a general briefing to enhance AI/AN cultural competence. Most of the content was originally developed and published by the U.S. Substance Abuse and Health Services Administration in the form of a “Culture Card” for use by federal contractors (See DHHS Publication No. SMA 08-4354) and is used with permission. The original language was drafted and reviewed by many AI/AN professionals and community members across the U.S. Additions and revisions were adopted by the National Judicial Opioid Task Force in an effort to support collaboration between state and tribal courts in support of best practices and successful outcomes for members of AI/AN communities suffering from opioid use disorders.

Tribal Sovereignty

There are more than 570 federally recognized AI/AN tribes in the U.S. Over half of these are Alaska Native villages. Additionally, there are more than 240 non-federally recognized tribes; many are recognized by their states and are seeking federal recognition. There is a unique legal and political relationship between the federal government and Indian tribes and a special legal relationship with Alaska Native Corporations. As sovereign nations, tribal governments have the right to hold elections, determine their own citizenship (enrollment), and to consult directly with the U.S.

government on policy, regulations, legislation, and funding. Tribal governments can create and enforce laws that are stricter or more lenient than state laws, but they are not subservient to state law. State laws cannot be applied where they interfere with the right of a tribe to make its own laws or where it would interfere with any federal interest. Criminal legal jurisdiction issues are very complex, depend on a variety of factors, and must be assessed based on the specific law as applied to a specific tribe. In general, the federal law applies.

Regional and Cultural Differences

Prior to European contact, AI/AN communities lived throughout North America. Federal policies led to voluntary and forced relocation from familiar territory to the current-day reservation system for many tribes. When the reservation system was formed in the late 1800s, some bands and tribes were forced to live together. In some instances, these groups were related linguistically and culturally; in others, they were not closely related and may even have been historic enemies. While there is great diversity across and within tribes, there are within-region similarities based on adaptation to ecology, climate, and geography, including traditional foods and linguistic and

cultural affiliations. Differences in cultural groups are closely related to regional differences and may be distinguished by their language or spiritual belief systems. They are also a result of the diversity of historic homelands across the nation and migration patterns of tribal groups. Cultures developed in adaptation to their natural environment and the influence of trade and interaction with non-Indians and other AI/AN groups. Urban Indian communities can be found in most major metropolitan areas. These populations are represented by members of a large number of different tribes and cultures that have different degrees of traditional culture

and adaptation to Western culture norms. They form a sense of community through social interaction and

activities, but are often “invisible,” geographically disbursed, and multi-racial.

Communication Styles

Nonverbal Messages

AI/AN people communicate a great deal through non-verbal gestures. Careful observation is necessary to avoid misinterpretation of non-verbal behavior. AI/AN people may look down to show respect or deference to elders or ignore an individual to show disagreement or displeasure. A gentle handshake is often seen as a sign of respect, not weakness. Pointing with one’s finger is interpreted as rude behavior in many tribes.

Humor

AI/AN people may convey truths or difficult messages through humor and might cover great pain with smiles or jokes. It is important to listen closely to humor, as it may be seen as invasive to ask for too much direct clarification about sensitive topics. It is a common conception that “laughter is good medicine” and is a way to cope. The use of humor and teasing to show affection or offer corrective advice is also common.

Indirect Communication

It is often considered unacceptable for an AI/AN person to criticize another directly. This is important to understand, especially when children and youth are asked to speak out against or testify against another person. It may be considered disloyal or disrespectful to speak negatively about the other person. There is a common belief that people who have acted wrongly will pay for their acts in one way or another, although the method may not be through the legal system.

Storytelling

Getting messages across through telling a story (traditional teachings and personal stories) is very common and sometimes in contrast with the “get to the point” frame of mind in non-AI/AN society.

Cultural Customs

Specific cultural customs among AI/AN groups may vary significantly, even within a single community. Customs are influenced by ethnicity, origin, language, religious/spiritual beliefs, socioeconomic status, sexual orientation, age, marital status, ancestry, history, gender identity, and geography. Cultural customs are often seen explicitly such as food, dress, dance, ceremony, drumming, song, stories, symbols, and other visible manifestations. Such outward cultural customs are a reflection of a much more ingrained and implicit culture that is not easily seen or verbalized. AI/AN worldviews tend to be relationship- and place-based, as opposed to the Western focus on individuality and time. Deeply held values, general world view, patterns of communication, and interaction are

often the differences that affect relationships. A common practice of a group or individual that represents thoughts, core values, and beliefs may be described by community members as “the way we do things” in a particular tribe, community, clan, or family. This includes decision-making processes. Respectful questions about cultural customs are generally welcomed, yet not always answered directly. Many AI/AN people have learned to “walk in two worlds” and will observe the cultural practices of their AI/AN traditions when in those settings, and will observe other cultural practices when in dominant culture settings. Sharing food is a way of welcoming visitors, similar to offering a handshake. Food is usually offered at community meetings and other gatherings as a way to build relationships.

Spirituality

A strong respect for spirituality, whether traditional (prior to European contact), Christian (resulting from European contact), or a combination of both, is common among all AI/AN communities and often forms a sense of group unity. Many AI/AN communities have a strong church community and organized religion that is integrated within their culture. Traditional spirituality and practices are integrated into AI/AN cultures and day-to-day living. Traditional spirituality and/or organized religions are usually community-oriented, rather than individual-oriented. Spirituality, world view, and the meaning of life are very diverse concepts among regions, tribes, and/or

individuals. Specific practices such as ceremonies, prayers, and religious protocols will vary among AI/AN communities. A blend of traditions, traditional spiritual practices, and/or mainstream faiths may coexist. Many AI/AN spiritual beliefs and practices are considered sacred and are not to be shared publicly or with outsiders. Until passage of the Indian Religious Freedom Act in 1978, many traditional AI/AN practices were illegal and kept secret. Social/health problems and their solutions are often seen as spiritually based and as part of a holistic world view of balance between mind, body, spirit, and the environment.

Cultural Identity

When interacting with individuals who identify themselves as AI/AN, it is important to understand that each person has experienced their cultural connection in a unique way. An individual's own personal and family history will determine their cultural identity and practices, which may change throughout their lifespan as they are exposed to different experiences. The variation of cultural identity in AI/AN people can be viewed as a continuum that ranges between one who views himself or herself as "traditional" and lives their traditional culture daily, to one who views himself or herself as "Indian" or "Native," but has little knowledge or interest in their traditional cultural practices. Many AI/AN families are multicultural and adapt to their surrounding culture. From the 1950s to the 1970s, the federal government, adoption agencies, state child welfare programs, and churches adopted out thousands of AI/AN children to non-AI/AN families. The Indian Child Welfare Act was passed in 1978 to end this practice. There are many AI/AN children and adults who were raised with little awareness or knowledge of their

traditional culture; they may now be seeking a connection with their homelands, traditional culture, and unknown relatives. When asked "Where are you from?" most AI/AN people will identify the name of their tribe/village and/or the location of their traditional or family homeland. This is often a key to self-identity. It is important to remember that most Alaska Natives do not refer to themselves as "Indians." Age is another cultural identity consideration. Elders can be very traditional while younger people can either be multicultural or non-traditional. In many communities, leaders and elders are worried about the loss of the use of the traditional language among children and young adults. Still, in other communities, young people are eagerly practicing the language and other cultural traditions and inspiring older generations who may have felt shame in their identity growing up as AI/AN. Historical trauma and grief events, such as boarding schools or adoption outside of the tribe, may play a dramatic role in shaping attitudes, sense of identity, and levels of trust.

Role of Veterans and Elders

Elders play a significant role in tribal communities. The experience and wisdom they have gained throughout their lifetime, along with their historical knowledge of the community, are considered valuable in decision-making processes. It is customary in many tribal communities to show respect by allowing elders to speak first, not interrupting, and allowing time for opinions and thoughts

to be expressed: Long pauses are common. In group settings, people will often ask the elder's permission to speak publicly or will first defer to an elder to offer an answer. Elders often offer their teaching or advice in ways that are indirect, such as through storytelling. It is disrespectful to openly argue or disagree with an elder. AI/AN communities historically have high rates of

enlistment in the military service. Often, both the community and the veteran display pride for military service. Veterans are also given special respect similar to that of elders for having accepted the role of protector and experienced personal sacrifice. AI/AN community members recognize publicly the service of the veteran in

formal and informal settings. AI/AN community members who are veterans are honored at ceremonies and pow wows, and by special songs and dances. They have a special role in the community, so veterans and their families are shown respect by public acknowledgment and inclusion in public events.

Health and Wellness

Concepts of health and wellness are broad. The foundations of these concepts are living in a harmonious balance with all elements, as well as balance and harmony of spirit, mind, body, and the environment. AI/ANs define what health and wellness is to them, which may be very different from how Western medicine defines health and wellness. Many health and wellness issues are not unique to AI/AN communities but are statistically higher than in the general population. Among most AI/AN communities, 50 percent or more of the population is under 21 years of age. Health disparities exist with limited access to culturally appropriate health care in most AI/AN communities. Opioid overdose rates in AI/AN communities are higher than other racial and ethnic populations. Treatment barriers include limited resources, access to rural populations, stigma and fear.

Suicide is the second leading cause of death among AI/AN people age 10-34. The highest rates are among males between the ages of 24 and 34 and 15 and 24, respectively. While many AI/AN communities experience alcohol abuse, AI/ANs also have the highest rate of complete abstinence. Prevention and intervention efforts must include supporting/enhancing strengths of the community resources as well as individual and family clinical interventions. Care should be taken in the assessment process to consider cultural differences in symptoms and health concepts when making a specific diagnosis or drawing conclusions about the presenting problem or bio-psychological history. Every effort should be made to consult with local cultural advisors for questions about symptomology and treatment options.

Historic Distrust

Establishing trust with members of an AI/AN community may be difficult. Many tribal communities were devastated due to the introduction of European infectious illnesses and many treaties made by the U.S. government with tribal nations were broken. From the 1800s through the 1960s, government and church boarding schools were used to assimilate AI/AN people. Children were removed from their families to attend schools far from home where they were punished for speaking their language and practicing spiritual ways in a stated effort to “kill the Indian, save the child.” Many children died from infectious diseases and suffered physical and sexual abuse. The U.S. “Termination Policy” in the 1950s and 1960s ended the government-to-government relationship with more than 100 tribes. The result was disastrous for those tribes due to discontinued federal support, loss of land held in trust, and loss of tribal identity. Many tribes were able to re-

establish federal recognition in the 1980s and 1990s but not all rights have been fully restored. The U.S. “Relocation Policy” in the 1950s and 1960s sought to move AI/AN families to urban areas, promising jobs, housing, and a “new life.” Those that struggled and stayed formed the core of the growing Urban Indian populations. Ultimately, many families returned home to their reservation or home community. Today, many families and individuals travel between their home community and urban communities for periods of time to pursue education and job opportunities. Churches and missionaries have a long history of converting AI/AN people to their religions, and in the process often labeled traditional cultural practices such as songs, dances, dress, and artwork as “evil.” Today there is a diverse mix of Christian beliefs and traditional spirituality within many AI/AN communities.

September 2018

