

# Tribal Responses to Community and Domestic Violence



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# What is Jurisdiction?

Authority:

jurisdiction literally means  
the “authority to speak the  
law”

Responsibility



# Tribal Authority



All tribal governments have authority from two separate sources:

## Inherent Authority:

a recognition by the federal government that tribal authority existed prior to the formation of the US government. This is also referred to as Inherent Sovereignty.

## Delegated Authority:

additional authority granted to tribal governments by the US government.

# Inherent Authority



“Do Alaska Native villages **have inherent, non-territorial sovereignty** allowing them to resolve domestic disputes between their own members?... we hold that **Alaska Native tribes, by virtue of their inherent powers as sovereign nations, do possess that authority.**”

-Alaska Supreme Court in John v. Baker

- Alaska Tribes have inherent authority over domestic violence involving tribal members.

# Delegated Authority



US Congress can “delegate” additional authority to make and enforce laws.

- The Violence Against Woman Act (VAWA) is an express delegation of authority to Alaska Tribal Governments to issue tribal protective orders that are enforceable throughout the United States.

# Tribal Authority

Many tribes in Alaska are unaware  
that they can issue protective orders  
and that the State must enforce that  
order under the full faith and credit  
provisions of VAWA.





# Domestic Violence

The Violence Against Women Act requires that states and tribes recognize and enforce each others protective orders, under 'Full Faith and Credit'



- All law enforcement officers are required to enforce a Tribal Protective Order in the same way they would enforce an order issued by a Alaska state court.

# Alaska Court procedure for filing a protective order under VAWA



“Clerks of court (and magistrates in locations lacking a clerk) accept foreign orders for filing. When presented with a foreign order, the clerk reviews it to determine it is a certified copy and that it appears on it’s face to be unexpired. As a matter of policy the clerk will not contact the issuing jurisdiction for more information. The clerk will file stamp the order and assign it an Alaska Court System civil order number. The clerk next will distribute the order to the appropriate local law agency for entry into the Central Registry (the same distribution used for Alaska protective orders.”



# Why Register a Tribal Protective Order?



1. Ensures all Protective Orders are treated equally
2. Once a Protective Order is registered it is given a State civil case number at which point State penalties for violation of a Protective Order can attach.



# Tribal Protective Orders: Enforcement



**Tribes do have the authority to employ law enforcement officers.**

- **Several Alaska Tribes have active Tribal Police**
- **Many city and tribal government have come together to jointly fund a Village Police department (VPO)**



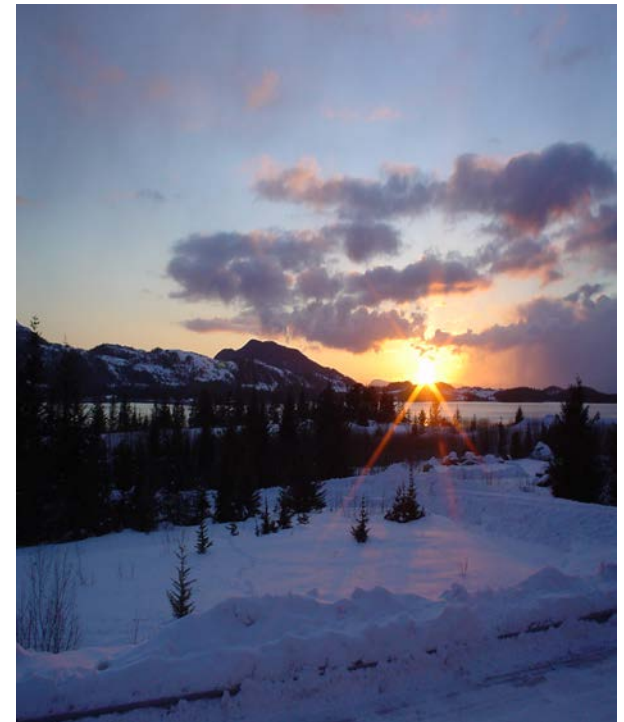
# Only apx.1/3 of villages in Alaska have local law enforcement.



- A Protective Order is only a piece of paper. It takes actions of people to keep people safe.

- Recognition of tribal protective orders by local air carriers is a front line of defense for victim safety.

If your Tribe has no Law Enforcement or Public Safety available, it is vital the Tribal Council, health providers, and behavioral health come together to form a Domestic Violence Strategic Response or Safety Plan.





# Steps in Issuing a Tribal Protective Order



- Except in the case of a real emergency, the Tribe must:
  1. Hold a full Hearing, Notifying both parties and providing Due Process. This usually begins with a Petition to use the court.
  2. The Judges must make a decision that a Tribal Protective Order is necessary
  3. An Order must be made and the Tribal Protective Order issued by the Court.
    - If you want help from the State with enforcement the TPO must be registered too.

# Steps in Issuing a Tribal Protective Order



- In the case of an emergency, the tribe can hold an emergency hearing right away, make an emergency decision, and issue an Emergency Protective Order-good for a very short time.
- A full Hearing, providing Due Process must be given before a temporary or permanent protective order can be issued.



# What does a Tribal Protective Order look like?



- There is not a standardized format or form, every tribe can create their own form
- To be accepted by the State of Alaska for Registry into APSIN and for enforcement, the TPO must have:
  1. Name of petitioner and respondent on order
  2. Must be unexpired order
    - to be enforced, conditions of order must be clearly stated
- TCC, AVCP have sample Tribal Protective Order form
  - Contact Lisa Jaeger @TCC
  - Or April January @AVCP



\_\_\_\_\_ TRIBAL COURT  
\_\_\_\_\_, ALASKA

\_\_\_\_\_, )  
Plaintiff )  
v. )  
\_\_\_\_\_, )  
Respondent )

Case No. \_\_\_\_\_

### TEMPORARY PROTECTIVE ORDER

A hearing was held in this matter on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. The Plaintiff, \_\_\_\_\_ received notice of the hearing and (check one) ( ) participated ( ) did not participate. The Respondent, \_\_\_\_\_ received notice of the hearing and (check one) ( ) participated ( ) did not participate.

Plaintiff is a \_\_\_\_\_ Tribal member.

**This Tribal Court has jurisdiction over this matter due to:**

- ☐ regulation of conduct of a Tribal member(s) *and/or*
- ☐ protection of Tribal member(s) *and/or*
- ☐ matter arose in Indian Country.

### FINDINGS

The relationship between the Plaintiff and Respondent is:

- ☐ spouse or former spouse
- ☐ parents of a child(ren)
- ☐ live together or have lived together
- ☐ parent/child
- ☐ other relative (state relationship) \_\_\_\_\_
- ☐ other \_\_\_\_\_

The Tribal Court finds probable cause to believe that the Respondent has committed or n commit an act of domestic violence against the Plaintiff and presents a threat to the phys safety of the Plaintiff and/or minor child(ren).

Other findings: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**THE TRIBAL COURT ORDERS:**



- ☐ Respondent shall not contact Plaintiff: ( ) in person, ( ) by phone, ( ) by texting or posting messages on any social networking sites on the internet, ( ) by writing or any other means except with permission of the Tribal Court.
- ☐ Respondent shall not threaten, intimidate, endanger, assault, harass, stalk, damage the property of or commit acts of domestic violence against the Plaintiff or against:
- 
- ☐ Respondent shall stay away from and shall not enter a vehicle or boat in the possession or occupied by the Plaintiff, nor shall follow such vehicle or boat.
- ☐ Respondent shall stay away from Plaintiff who is boarding a boat, aircraft or other motor vehicle.
- ☐ Respondent shall not go on or near where Plaintiff  
and/or \_\_\_\_\_
- ☐ resides: \_\_\_\_\_
- ☐ place of employment: \_\_\_\_\_
- ☐ school: \_\_\_\_\_
- ☐ other locations: \_\_\_\_\_
- ☐ Plaintiff is granted exclusive use and possession of the residence at \_\_\_\_\_
- ☐ \_\_\_\_\_ shall have temporary custody of the child(ren) listed here: \_\_\_\_\_  
and the children may not be removed from the State of Alaska except \_\_\_\_\_
- 
- ☐ Respondent shall pay \$\_\_\_\_\_ per month for the support of the Plaintiff and the minor child(ren) whom Defendant has a legal obligation to support:  
\_\_\_\_\_  
\_\_\_\_\_
- 
- ☐ Respondent is denied custodial access to the minor child(ren) for the duration of this \_\_\_\_\_
- ☐ Respondent is granted supervised visitation in a secure facility to be supervised by \_\_\_\_\_  
according to the following schedule and times: \_\_\_\_\_
- ☐ Respondent is granted visitation according to the following schedule and times: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- ☐ Respondent is banished from the village for (specify length of time): \_\_\_\_\_



- ☐ Respondent shall pay \$\_\_\_\_\_ for the ( ) medical or ( ) other expenses of Plaintiff which resulted from the domestic violence inflicted upon the Plaintiff..
- ☐ Respondent shall engage in ( ) personal or family counseling:\_\_\_\_\_ by\_\_\_\_\_
- ☐ Respondent shall obtain a current substance abuse assessment by a state certified substance abuse counselor and follow the recommended treatment : \_\_\_\_\_ by \_\_\_\_\_
- ☐ Other:\_\_\_\_\_

### **WRIT OF ASSISTANCE**

TO: Any Peace Officer, State of Alaska

You are commanded to use every lawful means to enforce the above order. You shall:

- ☐ escort and assist petitioner to obtain possession of the residence at \_\_\_\_\_ and remove respondent if necessary.
- ☐ escort and assist petitioner to safely obtain possession of the items listed in this order.
- ☐ assist respondent to recover undisputed personal items, clothing or other property listed in this order. You shall notify the petitioner of the time and date you will accompany the respondent to the residence. The petitioner may be present. Any item the petitioner objects to respondent removing, you shall restrain the respondent from removing that item from the residence.
- ☐ assist \_\_\_\_\_ to obtain physical custody of the minor child(ren) named in this order from any other person. You may enter any location where you have probable cause to believe the child(ren) may be found.

You shall also: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

THIS ORDER EXPIRES AT: \_\_\_\_\_.

**DONE BY ACTION OF THE TRIBAL COURT THIS \_\_\_\_\_ DAY OF**

\_\_\_\_\_, \_\_\_\_\_.  
(continued next page)





\_\_\_\_\_  
(Tribal Court Judge)

\_\_\_\_\_  
(Phone number/Tribal Court Judge)

\_\_\_\_\_  
(Phone number/Traditional Council office)

**STATEMENT OF SERVICE**

I ☐ mailed return receipt requested restricted delivery or ☐ personally gave  
(check one) a copy of this petition to the other people involved on the \_\_\_\_\_  
day of \_\_\_\_\_,

\_\_\_\_\_  
(Tribal Court Judge or Clerk)

**NOTICE TO THE RESPONDANT**

IF YOU VIOLATE THIS COURT ORDER, YOU WILL BE SUBJECT TO A  
BROAD RANGE OF SANCTIONS UNDER TRIBAL LAW, UP TO AND  
INCLUDING PERMANENT BANISHMENT FROM THE COMMUNITY.

PURSUANT TO THE VIOLENCE AGAINST WOMEN ACT OF 1994, 18 U.S.C §  
2265, THIS ORDER IS ENFORCEABLE IN ALL FIFTY (50) STATES, THE  
DISTRICT OF COLUMBIA, TRIBAL LANDS AND U.S. TERRITORIES.

IF A FINAL ORDER SHOULD BE ENTERED AGAINST YOU AFTER THE  
HEARING, WHETHER OR NOT YOU ATTENDED, YOU MAY BE PROHIBITED  
FROM POSSESSING, TRANSPORTING, OR ACCEPTING A FIREARM  
UNDER THE 1994 AMENDMENT TO THE GUN CONTROL ACT, 18 U.S.C. §  
922(g)(8).

VIOLATION OF THIS ORDER MAY SUBJECT YOU TO THE FOLLOWING  
FEDERAL CHARGES AND PUNISHMENT: IF YOU TRAVEL ACROSS STATE  
OR TRIBAL LAND LINES WITH THE INTENT TO INJURE THE PLAINTIFF AND  
THEN INTENTIONALLY COMMIT A CRIME OF VIOLENCE CAUSING BODILY  
INJURY TO THE PLAINTIFF, YOU MAY BE CONVICTED OF COMMITTING A  
FEDERAL OFFENSE UNDER THE VAWA, 18 U.S.C. § 2261(a)(1). YOU MAY  
ALSO BE CONVICTED OF COMMITTING A FEDERAL OFFENSE IF YOU  
CAUSE THE PLAINTIFF TO CROSS STATE OR TRIBAL LAND LINES FOR  
THIS PURPOSE. 18 U.S.C. § 2262(a)(2).



\_\_\_\_\_  
\_\_\_\_\_, ALASKA

\_\_\_\_\_, )  
Plaintiff )  
v. )  
\_\_\_\_\_, )  
Respondent )

Case No. \_\_\_\_\_

**CERTIFICATION OF PROTECTIVE ORDER**

It is hereby certified that the attached is a true and correct copy of the order entered in the above-captioned action on \_\_\_\_\_(date) and that the original of the attached order was duly executed by the judicial authority whose signature appears thereon. The order expires on \_\_\_\_\_(date).

The order is a civil protection order, requiring restraint of conduct.

It is further certified that:

(a) the issuing court determined that it had jurisdiction over the parties and the subject matter under the laws of \_\_\_\_\_ (Tribe).

(b) the respondent was given reasonable notice and opportunity to be heard sufficient to protect the respondent's right to due process before this order was issued; or if the order was issued ex-parte, the court ordered that the respondent be given reasonable notice and opportunity to be heard within the time required by the law of this jurisdiction, and in any event within a reasonable time after the order was issued, sufficient to protect the respondent's due process rights.

(c) the order was otherwise issued in accord with the requirements of the Full Faith and Credit Provisions of the Violence Against Women Act; Title IV, Subtitle B, Chapter 2 of the Violent Crime Control and Law Enforcement Act of 1994. 18 U.S.C. § 2265.

(d) the order was issued in accord with the requirements of the Uniform Child Custody Jurisdiction Act of this state/territory and consistent with the strictures of the federal Parental Kidnapping Prevention Act. Parental Kidnapping Prevention Act, Pub. L. No. 96-611, 94 Stat. 3566 (1980).

The attached order shall be presumed to be valid and enforceable in this and other jurisdictions.



Continued on the next page.

Signature of Clerk of Court or other authorized official:

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_ Tribal Court:

Address \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

SEAL:



### **Request to Change Order**

If one of the parties in a case has new evidence that might change the decision of the tribal court, or simply wants the court to reconsider its decision, that party can fill out a "Request to Change Order" form, and deliver it to the tribal court clerk. It is up to the tribal court whether or not it wishes to reconsider its decision. If the court is willing to reconsider its decision, it should set up a new hearing date, and instruct the clerk to deliver copies of that Request to Change Order form and the Notice of Hearing to each of the parties. The originals of these forms should be placed in the case file, and the clerk should prepare Statement of Personal Service or Statement of Mailing for the case file.

If the Tribal Court decides not to hear the case again, it should prepare a written denial of the Request to Change Order. The originals of the written denial and the Request to Change to Order should be placed in the case file, and copies of those should be delivered to each party. Once again, the clerk should prepare either a Statement of Personal Service or Statement of Mailing form.