



Domestic Violence

Protective Orders issued by Alaska Tribal Courts

Violence Against Women Act

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Introduction

Domestic violence is tragically all too common in Alaska, and in some way, it affects every Alaskan either directly or indirectly. Domestic violence happens in communities throughout Alaska, and although it is difficult to measure, it occurs at a rate that is likely the highest per capita in the United States. Domestic violence is present in both urban and rural communities, and among Native and non-Native populations alike. Although this is a problem throughout Alaska, statistics show that Alaska Native women are killed in domestic violence at a rate greater than 4 times higher than the national average. Statistics also show that

the great majority of domestic violence victims are women, but that some males are also victims. Children from homes where domestic violence occurs are physically or sexually abused at a tremendously high rate. Even in situations where children are not physically harmed, they suffer far reaching emotional and psychological effects from being exposed to any form of family violence.

Stopping the violence and healing the damage it causes is a tremendous challenge that requires approaches from many angles. Alaska tribal courts may use court ordered protection as one tool in this challenge. The Violence Against Women Act (VAWA) passed by Congress in 1994 requires that states and tribes recognize and honor each others' protective orders. Being required to recognize and honor each others' orders is referred to as giving 'full faith and credit.'

Essentially full faith and credit means that if a tribal court issues a protective order for someone in their village and that person travels to Fairbanks, the Fairbanks police department is required to enforce that protective order in the same way it would enforce an order issued by an Alaska state court. State law enforcement has also been of assistance in keeping people out of villages where victims are being protected by tribal protective orders. Recognizing and honoring each others protective orders not only puts responsibility on the State of Alaska to respect tribal orders, but also puts responsibility on tribes to respond when they can to State protective orders and to orders from other tribes.

Although there was initial resistance by Alaska state officials to recognize the application of the Violence Against Women Act to Alaska tribes, the State is now operating in a much more cooperative framework. When a tribal court issues a protective order, a certified copy may be sent to a state magistrate or court clerk to be filed in the Alaska Central Registry System for protective orders, and recognized by state law enforcement just as if it was issued by an Alaska state court.

State and Tribal Jurisdiction

In the area of domestic violence, tribal and state jurisdictions overlap. A victim may seek a protective order under either state or tribal law. Alaska state law defines what domestic violence is, limits the amount of time protective orders may be in effect, specifies who may request a protective order, and describes a lot of procedural details. Alaska law has a mandatory arrest requirement (AS 18.65.530) that requires a state law enforcement officer to arrest a person if the officer has probable cause to believe that the person has, either in or outside the presence of the officer, committed domestic violence, violated a protective order, or violated a condition of release (in a criminal case) within the previous 12 hours. When domestic violence occurs in villages off the road system that have no local law enforcement officer, State Troopers from regional centers may or may not respond depending on weather conditions, the urgency of other matters they are dealing with in other villages, the apparent severity of the situation, and so forth. If they do respond, it is commonly after the 12 hour time period for mandatory arrest, in which case an arrest is up to the discretion of the officer.

Tribal law may also define what domestic violence is, who may petition the tribal court to seek a protective order, how long protective orders are in effect, and many other procedural details. These things may be described in tribal ordinances, which are typically adopted by tribal councils. Tribal definitions, provisions, and procedures will likely differ somewhat from Alaska state law. For example, tribes might have a longer period for which a protective order may be in effect than does the state, or, allow more people besides victims to petition the court for a protective order. For a wide variety of reasons, no tribes in Alaska have a mandatory arrest law at this time.

Alaska state court clerks and magistrates are instructed to accept tribal court protective orders and give them to appropriate local law enforcement for entry into the Alaska Central Registry System for protective orders without questioning tribal jurisdiction over a particular case. Even though a tribal protective order is filed in the Central Registry System, it is possible that tribal jurisdiction over

persons in a particular case could later be challenged by a party to a case. Additionally, just as in any type of tribal court case, tribal jurisdiction could be challenged if due process is not provided to the parties.

Although Alaska tribes have made significant strides in gaining state recognition of and cooperation with tribal jurisdiction, there are still considerable questions about the extent of tribal jurisdiction. Tribes have the strongest jurisdictional arguments for issuing protective orders when tribal members are involved.

Alaska's Central Registry System for Protective Orders

The State Department of Public Safety completed the development of a central registry system for protective orders in June of 1998. State law enforcement officers throughout the State call into the central registry to verify protective orders. The central registry system is a part of APSIN (Alaska Public Safety Information Network). However, current state law only allows protective orders issued by *or filed with* a court of this state to be placed into the state's central registry of protective orders (AS 18.65.540). Each protective order must include the names of the petitioner and respondent, their dates of birth, conditions of the protection, and duration of the order (AS 18.65.540).

In order for a protective order issued by any tribe or state other than Alaska to be filed in the central registry system, a certified copy must be given to a state court clerk or magistrate who in turn gives them to local law enforcement officers to file in the Department of Public Safety's central registry system. Tribal court staff need to identify the nearest magistrate or state court clerk to send their protective orders to in order to get them into the central registry system.

On January 10, 2000 the Alaska State Court System issued a letter to Ron Otte, Commissioner of Public Safety, stating how it will handle 'foreign' protective

orders they receive. 'Foreign' orders are any orders issued by a state other than Alaska or by any federally recognized tribe. The procedure is:

"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 that it is a certified copy and that it appears on its 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 case number. The clerk next will distribute the order to the appropriate local law enforcement agency for entry into the central registry (the same distribution used for Alaska protection orders)."

This means that if a tribal court in Alaska issues a protective order, the tribal court may give a certified copy of the order to the nearest state court clerk or magistrate to file in the state's central registry system. If the victim travels to another part of Alaska, the order can be verified by any law enforcement officer by a call into the central system and enforced in the exact manner in which a state issued protective order would be. State law enforcement has also been of assistance in keeping people out of villages where a victim is being protected by a tribal protective order.

Practical Issues

As a practical matter, protective orders themselves are only pieces of paper. It takes actions of people to keep people safe. Keeping people safe in remote bush communities has unique challenges. For example, recognition of tribal protective orders by bush air carriers is a front line defense for victim safety. A mandate that perpetrators stay a minimum of 1,000 feet (or some such figure), away from victims is not practical for victim safety in remote villages. If a perpetrator is temporarily or permanently banished from a village to protect a victim's safety, cooperation from local air carriers becomes essential. Air carrier recognition of tribal protective orders and cooperation has been occurring in the Interior.

Although most Alaska tribes handle issues that are judicial in nature, there is a wide range in their stages of tribal court development. Much training and technical service on tribal court development has been delivered in Alaska, but a great deal more is needed. A few tribes have lengthy tribal codes establishing structures and procedures for their tribal courts, while others have only a few ordinances or function solely on unwritten tribal law. The Indian Civil Rights Act and the VAWA both require a standard of due process, and informal tribal courts may face more difficulties when challenged by the state and federal governments than those that are more formally organized. Support of tribal court development is a key issue for successful issuance and recognition of tribal protective orders in Alaska.

Domestic violence has not been extensively discussed in public Native forums in Alaska until relatively recently. The VAWA and the dollars provided through the STOP grant program have been largely responsible for the domestic violence movement that has begun among the Alaska Native people. Due in part to the large number of tribes in Alaska and their remote locations, many tribes in Alaska are not aware that they can issue protective orders and of the full faith and credit provisions of VAWA. Communication and education are hindered in Alaska because of the remoteness of the villages and because internet connections are not available to all tribes in Alaska. However, many plans are in the works for much greater Internet access for rural Alaska. Education is one of the keys to assist the villages in developing the political will to tackle domestic violence and to utilize the full range of legal tools that are available to them.

All urban communities in Alaska have law enforcement systems responding to 911 calls 24 hours a day, seven days a week. A very small number of Alaska villages have similar protection, others have part-time, limited protection, but many rural villages in Alaska have no peace officers locally available to provide public safety and enforcement of state or tribal court protective orders. Among the 37 federally recognized tribes served by the Tanana Chiefs Conference, only

about one third of the villages have law enforcement officers in them, and most of those are not available at all times. The 37 tribes are spread out in a geographic area roughly the size of Texas. Between the distances involved, climatic extremes, and limited state and tribal law enforcement resources, victim safety and criminal justice is compromised. State or federal funding is desperately needed to hire and train law enforcement officers for each rural village.

Given the prevalence of domestic violence in Alaska Native villages, it is essential for the State of Alaska, the federal government, and Alaska tribes to cooperate in enforcement efforts to stop the violence. The State of Alaska does not have the fiscal or human resources to adequately address domestic violence situations in rural Alaska, and there is a practical need to recognize and support local tribal authority and tribal courts for dealing with this grave problem. Recognition of tribal court orders, fiscal support for tribal court development, sharing resources, and education are fundamental elements to fully implement the full faith and credit provision of the Violence Against Women Act for Alaska tribes.