



# **Tribal Enforcement of Civil Law and Order Codes**

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***“We gotta have that tribal court. It’s not there to throw anybody in jail or anything like that, but to make each other understand that there’s a good way out if we look at it.”***

**Traditional Chief Peter John, Minto  
1900 - 2003**



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***“By living the white man way I don’t rule that out. I think that we should adopt the two of them together and make it work, so that we can live by it.”***

**Traditional Chief Peter John, Minto  
1900 - 2003**



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## Sovereignty

***“Sovereignty is an idea, people made it up.  
The idea is that it is the power to govern.  
Originally it was thought to reside in the King.  
Now it is thought to reside in the people  
themselves.”***

**Dave Case: Author Alaska Natives and American Laws**

## Jurisdiction

**The authority and responsibility to create and enforce  
laws**

**‘To Speak the Law’**



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**In the early 1980s tribal councils organized tribal courts and protected children. Conflicts with the State of Alaska created court cases and decisions that eventually confirmed tribal jurisdiction over domestic relations, concurrent with the State.**

**What remains unclear is tribal authority over ‘civil law and order’ - ‘criminal’ subjects.**

**infractions, status offenses, misdemeanors**



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# **Subjects for Civil Law and Order Codes**

## **Public Safety Codes**

- **Status offenses: minor consuming alcohol, pot, cigarettes, curfew, underage driving, truancy**
- **Alcohol, marijuana, illegal drugs, tobacco regulation**
- **Vandalism**
- **Trespass**
- **Firearms**
- **Disorderly conduct**
- **Harassment**
- **Assault**
- **Theft**
- **Traffic, land and water**
- **Littering, dumping**
- **Burning regulation**
- **Hazardous properties**
- **Animal control**



# Decrimilize Tribal Law and Order Codes

*Decriminalization is removing or reducing the criminal classification or status of a code. Penalties don't include jail time.*

## ➤ Criminal jurisdiction

- Tribal criminal law doesn't apply to non-Natives except under expanded authority VAWA TLOA
- Criminal jurisdiction where incarceration is potentially a sentence requires jury trials under the Indian Civil Rights Act

## ➤ Civil jurisdiction

- Applies to everyone under tribal jurisdiction:
  - Tribal members
  - To protect the health and safety of tribal members
  - Internal affairs
  - To those who consent to tribal jurisdiction



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# **Tribes can enforce their laws through their own justice systems.**

**The only requirement is that the Tribe have  
Jurisdiction and that the Tribal Justice System  
provide “Due Process”**

- 1. Notice**
- 2. Opportunity to be heard**
- 3. Fair and impartial hearing**





***Tribal civil law and order codes are just words on paper, how do you enforce them?***



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# Enforcement of Civil Law and Order Codes

- ✓ **Community ‘by-in’**
- ✓ **Establish a tribal police department:  
Officers could be TPOs, VPOs,  
VPSOs, and/or other persons  
deputized by the tribe**



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- ✓ Are the codes/ordinances posted, and/or educational signs put up?



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# ***When can tribes get assistance from state law enforcement for enforcement of tribal codes?***

## **VPSO Enforcement of Tribal Laws**

***In 2018, the Alaska Attorney General stated that VPSOs can enforce tribal laws...(as long as they don't conflict with state law).***

- 1. Letter to the VPSO coordinator stating that the tribe would like the VPSO to enforce tribal law***
- 2. Copy of written tribal law that the tribe wishes to be enforced...(tribal attorney has reviewed and verifies that they don't conflict with state law)***



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# Tribal Council

**Adopts:**

**Civil Law and Order Codes**



**Cases are sent to the Tribal Court by VPO, TPO, VPSO, Tribal Officer by Citation, or, someone Petitions the Court.**



**Tribal Court holds hearing to hear the case, and/or sentencing.**

**Signs:**

**Civil Diversion Agreement (CDA)**



**Offenders breaking certain state laws may be diverted to Tribal Court for sentencing.**

**Division of Juvenile Justice Agreement (DJJ)**



**DJJ diverts certain juveniles to the Tribal Court for sentencing.**

**Criminal rule 11 (i)**



**Tribe intervenes on state court criminal cases involving tribal members to give sentencing recommendations.**



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**Andy Harrington**  
**Fairbanks, Alaska**

## **Fundamental Guidance for Tribal Courts**

**Three core elements of 'Due Process,' and four 'Best Practices' for Tribal Courts.**



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