

KENAITZE TRIBAL COURT

Kenaitze Indian Tribe

Recognizing that creating and maintaining a justice system is vital to a strong society, the Kenaitze Indian Tribe of Alaska developed its own tribal court in 1986 – despite the fact that in Alaska, few if any tribes had taken this step before. Since then, the Kenaitze Tribal Court has worked diligently to expand its jurisdiction over a range of issues. Its leadership in child advocacy has been especially pioneering – in Alaska and beyond. By collaborating with state, tribal, local, and nonprofit agencies, the Court helps ensure that Native children are protected and kept safe – and reinforces the tribe’s assertion of jurisdiction over young tribal citizens. Today, nearly 100% of children in the tribal court system are placed with family or other tribal members. The Kenaitze Tribal Court gives tribes everywhere compelling proof that quality Native justice systems are foundational to effective governance and to the defense of sovereignty.

A Hard Problem to Solve

The Kenaitze Indian Tribe’s traditional homelands encompass most of the Kenai Peninsula, an area approximately 100 miles southwest of Anchorage, Alaska. As a result of its prime location, the tribe has a long tradition of welcoming outsiders and encouraging their participation in the community. While the tribe’s 1,600 citizens are of Dena’ina Athabascan heritage, upwards of 5,000 people of various backgrounds now live within its service area. The City of Kenai, in particular, is a popular destination for Alaska Natives who want to live in a city that is smaller than Anchorage.

Across Alaska colonial policies and the disruption of traditional lifeways have had a devastating effect on Alaska Native communities and families. Deep-seated social and health problems such as alcohol and substance abuse, domestic violence, and child neglect are especially prevalent. Alaska Natives account for only 19% of the state population, but more than half of reported female rape victims are Native. In fact, Alaska Native women are seven times more likely to be victims of sexual violence than other women in the state. More than 60% of the children in Alaska that are removed from their homes are Native. In the Kenai Peninsula alone, there were 148 Native children with abuse and neglect cases in the courts in 2015. Of additional concern, when the state is in charge, Native children are less likely to receive culturally appropriate placements and culturally sensitive care.

These are grim statistics, and unfortunately, most Alaska Native tribes have quite limited judicial tools with which to address them. Because only a small amount of land in Alaska is recognized as Indian Country, tribal courts generally lack territorial jurisdiction. Through the application of Public Law 83-280 (PL 280), the state of Alaska enforces all criminal law, even in Alaska Native

villages. There are nearly 100 tribal courts in Alaska, but funding constraints limit their capacities. On top of these issues, state government officials have been reluctant to acknowledge tribal sovereignty.

A Tribal Court for All Residents

Undaunted by these difficulties, the Kenaitze Indian Tribe established a tribal court in 1986. A tribal statute recognizes the court's jurisdiction over "all lands and waters customarily and traditionally used by the Dena'ina people" and over all people or entities whose activities have an impact on the tribe or its members. Based on this broad mandate, the Kenaitze Tribal Court seeks to deliver justice to all residents of its service area in the Kenai Peninsula and to play a central role in fulfilling the tribe's mission "to assure Kahthuht'ana Dena'ina thrive forever."

The court is staffed by six judges elected by the tribal council. The judges are not required to have formal legal training. Instead, they rely on experience, lay training in topics such as child protection and family law, and their knowledge of tribal code, history, and traditions. The majority of cases before the court concern intimate family issues, including child custody, adoption, juvenile delinquency, and protection orders. Anyone in the service area, Native or non-Native, can petition the tribal court. The judges determine whether the court will accept a case and whether it will be heard by a western-style panel or in the Traditional Conflict Resolution Program. The latter is essentially a justice circle, involving community members in the deliberations and outcome.

In 2005, the tribe launched Alaska's first Court Appointed Special Advocates (CASA) program to better meet the needs of the children in the tribal court system. A national program, CASA volunteers are assigned to a child during neglect and abuse cases. The volunteers serve one child at a time, and in so doing, provide a supportive and consistent adult presence during case proceedings. In 2011, through a groundbreaking agreement with the state of Alaska, the tribe's CASA program expanded to operate throughout the entire Kenai Peninsula. CASA volunteers in this region are trained in both tribal and state court proceedings and can assist in a case in either venue. It is the only CASA program in the United States that operates as a direct tribal-state partnership.

The tribal court has gained wide respect for its decisions and authority through its professionalism and extraordinary leadership. In fact, many of the cases the court hears involve a non-Native party who agrees to be subject to the court's jurisdiction. The circle justice program has a low recidivism rate and has led to lasting changes in relationships. Since the inception of the CASA program, child placement outcomes have also improved. Nearly 100% of children in tribal custody are successfully placed in tribal homes and many are reunited with family.

Reclaiming Tribal Justice

The expansion of the tribal court is a key part of the tribe's efforts to increase its ability to deal with social problems within the community. Before its role was supplanted by the state of Alaska, the tribe had always maintained peace within its traditional territory. Until it was able to develop its own court, village elders expressed frustration at the tribe's lack of authority and resources to deal with the challenges facing its families, observing that "we have become lost in our own country." By passing a tribal ordinance with a broad view of jurisdiction, the tribe signaled its interest in regaining judicial authority within its traditional territory. Although its jurisdiction is restricted by the US legal system, the Kenaitze Tribal Court is pushing the existing boundaries by relentlessly pursuing the goal of better outcomes for everyone involved in the court process. Observing the tribal court's growing authority and success in dealing with some of the underlying causes of the social problems facing tribal citizens, one elder notes, "the tide is coming back in."

To effectively expand its ability to serve tribal citizens and the surrounding community, the Kenaitze Tribal Court has pursued far-reaching partnerships with state, tribal, local, and non-profit agencies. The tribe has signed agreements with an impressive list of organizations including local law enforcement agencies, the Kenai District Court, the Kenai Peninsula Youth Courts, and the Alaska Division of Juvenile Justice. The joint tribal-state CASA program is an outstanding example of how the tribal court led a cooperative effort around a shared goal. Initially limited to tribal members, the CASA program now serves all children in need of advocacy throughout the Kenai Peninsula. The result is that CASA volunteers stay with children even if the case is transferred from tribal to state court, providing consistency at a stressful time. Building on this model, the tribal court's latest initiative is an agreement with the state of Alaska to create a joint-jurisdiction court to deal with substance abuse cases. Tribal and state judges will sit side-by-side and the docket will include criminal matters, another groundbreaking development in Alaska.

Kenaitze Tribal Court is also reclaiming the tribe's authority to apply cultural understanding and experience to the delivery of justice. The court's approach upholds traditional Athabascan laws, and customs for the benefit of all of the region's residents in keeping with the tribe's inclusive culture. Proceedings focus on solutions to restore community harmony and healing rather than punishment. In panel hearings, participants are allowed to communicate directly with the judiciary and are encouraged to "speak from the heart with honesty and respect." Under the Traditional Conflict Resolution Program, the circle process helps build relationships between the offender and the community to address the source of the harmful behavior. Through its actions, the court is reaffirming that the tribe's longstanding practices are still central to successfully maintaining peace within its territory.

Bringing the Lessons Home

The lack of tribal court jurisdiction in Alaska severely limits tribes' ability to deal with the underlying causes of disruptive civil and criminal behavior. Through its innovative partnerships and its use of cultural knowledge to inform the judicial process, the Kenaitze Tribal Court is helping reassert the tribe's ability to deliver justice to everyone living within its territory. The court's dedication to making progress on the root causes of social distress has improved the administration of justice for the entire community, giving tribal citizens and their neighbors a new sense of possibility—and giving the world a powerful demonstration of the effects of tribal sovereignty.