

Enforcement of Civil Tribal Ordinances and Tribal court Orders in Alaska

Summary

Tribes have governed their communities and people from time immemorial. Today, Tribes throughout Alaska continue to have Tribal courts to serve their communities in areas of family matters, public safety, and protective orders. In working with Tribes, we have seen many Tribes struggle with questions around enforcement of Tribal court orders.¹ This information sheet is intended to help Tribal courts address community and citizen legal disputes by enforcing their orders while navigating a complex landscape of federal and state authorities and applying Tribal law to non-native community members. Here are some examples of situations of what the need for enforcement of Tribal court orders might look like:

- 1) A teenager broke the windows of a neighbor's house. After a court hearing, the court ordered that the parents of the child help pay for repairs to the window, but the parents refuse to do so.
- 2) Someone has repeatedly violated a curfew ordinance and now owes hundreds of dollars in fines or many hours of community service but refuses to participate or pay the fine.

This information sheet attempts to present a mixture of the practical and legal options that Tribes have available to enforce fines or Tribal court orders if needed. Many of these suggestions are pulled from western law and some of them even rely on state courts. There may be other options including traditional or cultural paths for enforcement that we have not thought of. If you have other methods for enforcement of your Tribal orders that you think we should include here, please reach out to us.

While Alaska Tribes do not have all the options the State of Alaska has to enforce laws and court orders, there are many effective tools still available to Tribes and Tribal courts. This document aims to set out a variety of options and ideas that we hope will help Tribal court select the enforcement tools that are best suited to their community and culture.

¹ One Caveat: This document does not address issues with a tribe is trying to enforce a family law matter such as a child protection, child custody, domestic violence protective order, or other domestic relation matters. As a rule, these types of orders receive recognition from the state through either "full faith and credit" or what is called comity recognition. Which basically means that a state court or agency will respect a tribe's orders on these topics if the Tribe has jurisdiction (authority) and due process is provided. If you are looking for assistance on enforcement of a Tribal court order in these areas, we'd recommend looking at alaskatribes.org or contacting your Tribal Consortium or ALSC for further information or assistance.

Ultimately:

- **Civil Fines can help enforce a law without the need for criminal law process.**
- **Due process (fairness, publicly known laws and fines, and the opportunity to allow the person to object in Tribal court to a fine) is vital for enforcement of fines**
- **Community service may be an alternative to fines if people are unable to pay**
- **Debt Collection: A tribe may be able to explore debt collection either locally or through the state, if needed, to collect money.**
 - **This is complicated and discussed in detail below**
- **A tribe has other options including publication of names of people without standing fines to see if that would encourage payment or could even seize property to hold to encourage the payment of a fine.**
 - **There are pros and cons of both options as discussed below.**
- **Tribal law can be enforced against non-native people if their “conduct threatens or directly affects the Tribe's political integrity, economic security, or health and welfare.”**

How does the Tribe want to enforce your Tribal/community laws?

In western law, punishments are often intended to deter people from breaking the law, provide payment for damage created by the person who broke the law, and sometimes simply as a punishment for breaking a law. Just because this is how western courts are run; it may not always be the best option for your community or a specific case. This document is designed to try to lay out options that a Tribal court may explore for enforcing Tribal law within your community. For example, if someone violates the curfew or brings alcohol to a dry community, what could your Tribal court do to address that issue.

These answers have been prepared by people trained in western legal systems, that might limit our perspective. There may absolutely be other traditional methods of healing or restitution that are better suited to your community.

Criminal Law Practice Tips:

Many tribes in Alaska are in rural areas with limited capacity to address violations of criminal law. This document does not address criminal violations (criminal violations means where the Tribal court may order someone to serve jail time) because to hold a criminal prosecution the Tribe must provide the defendant with additional procedural protections under the Indian Civil Rights Act. Many tribes may choose to try to work with the state troopers on criminal prosecutions at this time. If your Tribe wants to explore criminal prosecution, it would be best to reach out to a tribal attorney

Outside of criminal prosecution, many tribes use civil fines or community service to address violations of Tribal law.

This could include violations of court rules – for example someone who violates a family court order may be held in contempt of court (a fine). But then it becomes an enforcement issue if the person refuses to pay the fine.

Can Tribal laws be enforced against anyone?

This is complicated. It is clear that a tribe has the power to enforce laws within their community against tribal citizens (of the Tribe or other tribes). Whether the Tribal court has jurisdiction over a non-native person who breaks Tribal law (like curfew or drinking) within the community is less clear legally. Like any court, the Tribe would have to give the person notice and the opportunity to be heard before leveling a fine (unless the person simply wanted to pay the fine) but if the person objected, the Tribe may have to consider the person's impacts on the Tribal Community. In that situation, it may help to reach out to a tribal attorney to explore the best options.

For more information on this, see the entry below titled "What options does a Tribal court have if the person who owes the fine or fee is not a tribal member?"

If non-tribal members are causing enforcement problems for your Tribe, we recommend consulting with tribal counsel or, if necessary, state or federal law enforcement.

What exactly are civil fines?

A **civil fine** is a penalty given to someone for breaking a non-criminal law, rule, or code. These laws are usually made to keep the community safe and organized. For example, a local government may make a curfew in order to keep the community safe and if a person is out without an acceptable excuse after that time, they may get a fine. Civil fines can also be given for things like:

- Curfew violations
- Importing alcohol
- Polluting the environment

Civil fines are mostly meant to make sure people follow the law, but people who break civil laws still have rights. The rules/laws must be made available to the community so that, for example, if people stay out past 11 pm, they know that they are violating the curfew and may face a fine up to a certain amount of money. This allows people to know what the rules are so that they can follow them.

Also, people who get a fine have the right to “due process.” This means they should be told about the fine and have a right to a hearing² where they can (if they want) explain to the Tribal court why they shouldn’t be fined. This could be the person saying that it was not them that broke the law, that they didn’t break the law for some reason, or that they did break the law but the fine should be reduced or forgiven for some reason.

What are civil fees?

A **civil fee** is a charge for a service to help cover the cost of that service. For example, if a car is parked illegally and needs to be towed, the city might charge a fee to the car owner to offset the cost of towing. If a person is taken to a community facility to sober up after being drunk in public, they could be charged a fee for staying there. The amount of the fee is usually written in the law. Fees usually don’t have due process requirements, but sometimes a person can appeal if they think the fee was charged unfairly.

² Practice tip – a person has a right to a hearing, but that does not mean there must always be a hearing. The person must get notice of their right to a hearing, but it is totally OK to only hold a hearing if the person requests it. The ticket or citation itself can tell them that and have a place where they could request a hearing. The person may not want one and that is ok. If someone agrees that they broke Tribal law and they are in agreement to pay the fee or do community service, then there is no need for a hearing. Examples of this in western court could be a speeding ticket. While someone has the right to go to court and ask the police officer to prove that they were speeding, or ask for the fine to be reduced, alternatively, they can simply pay the ticket and not have a hearing

Some common reasons for fees are:

- Covering the cost of services like towing or housing a person for a night to help them sober up
- Some western courts add small fees to civil fines or criminal convictions to help offset the cost of enforcement.

Civil Fines	Civil Fees
A penalty for doing a particular thing	Reimbursing the Tribe for the cost of a service provided by the Tribe.
Tribal laws state what those things are and what the penalty is for doing them	Tribal laws state the fee amount for a particular service.
The Tribe needs to claim that a person or business did the thing and demand the fine be paid.	When the tribe provides a service listed in the law, the person benefiting from the service can be charged the listed fee.
A person or business being fined has some right to due process, most importantly notice and often a right to a hearing.	A person or business being billed for a fee may have a right to due process, usually notice of the fee.
Indian Civil Rights Act limits the maximum fine for a single offence to \$5000*	

What are some potential problems with civil fines and fees?

While fines and fees can help hold people accountable, they can also cause harm to individuals and the community. Fines and fees are meant to encourage people to follow the law, not to put them into poverty or ruin their finances. But the cost of fines can make it hard for people and families to pay the rent and keep food on the table. In the worst cases, people who can't pay fines or fees simply start ignoring them, leading to worse problems.³ This could ultimately cause more problems for the community than the original finable offense.

To avoid this, experts say that fines and fees shouldn't always be the same for everyone. Instead, there should be a maximum fine or fee amount set in the law and the actual amount

³ See the National Center for Access to Justice's (NJAC) report on "Fines and Fees in American Courts" to learn more about the potential harms that fines and fees can cause. <https://ncj.org/fines-and-fees-american-courts>

should depend on how much someone can afford to pay. Before charging a fee or fine, a Tribal court should take the time to figure out what a person can afford to pay.⁴

Many tribes also allow judges to decide if giving someone a fine is really the best way to help the community or whether it would better serve the community for the person to complete community service instead of paying the fine.

Are there community-service alternatives to fines and fees?

Yes, there are many ways to help the community that don't just involve paying money but instead focus on building and supporting the community. Sometimes, personal development might also be a form of community service. A judge could require a person to complete a certain number of hours of service or to complete certain activities or tasks. Here are some examples:

- **Traditional and Cultural Activities:** Learning skills like hunting, fishing, beading, or participating in a dance group.
- **Spending time with Elders:** Learning about the community's history and stories or spending time with a mentor.
- **Community work:** Helping with events, cleaning tribal buildings, or repairing community spaces. This could help people build skills and self-esteem while serving the community
- **Skills development:** Gaining job experience working with professionals like carpenters, social workers, or community health aids. Some courts have even considered time spent studying for the GED as community service.
- **Restitution:** Helping fix damage done or organizing fundraisers to cover repair costs.
- **Apologies:** Writing or saying sorry to people affected by their actions.

These alternatives help rebuild relationships, teach valuable skills, and connect people to the community.

Whatever the Tribe thinks is appropriate can be considered community service. For example, someone going to treatment could be community service because the person taking that step to help themselves, also improves the community since they are a member of the community.

What happens if someone refuses to pay a fine or participate in community service?

⁴ See NJAC's 2024 report "[The Ability to Pay, our National Report on Policy Models for Determining Ability to Pay \(2024\)](#)"

If someone refuses to pay a fine, fee, or do community service, the Tribal court can take actions to encourage them to follow the rules before the Court begins a debt collection process. Some actions the court might take include:

- **Public Statements:** The tribe could tell the community what the person did and how much they owe. The name of the debtor and their debt could be posted in a public place in the community. Note that different communities and cultures may interpret a “public shaming” like this in different ways. Also, while it might convince some people to pay, it could make other people more determined *not* to pay.
- **Restrictions on Services:** Limiting access to tribal services, like community events or certain benefits programs. However not all services can be suspended:

Cannot be suspended	Can be suspended (if written into law or policy)
Indian health services	Benefits programs run exclusively by the Tribe
Native Corp. Dividends	Eligibility for tribal employment
Federal benefits programs administered by the Tribe	Eligibility for tribal licenses or permits?
Many programs the Tribe administers through a contract or memorandum of understanding with another party	Eligibility for tribal grants or loans?
Obligations of the Indian Civil Rights Act or a tribal constitution	Eligibility for tribal purchase of goods or services

It’s possible certain services or funds that the Tribe is providing may have restrictions that prevent the Tribe from suspending them. If you are suspending a service and unclear if it is allowable, you should speak to an attorney to make sure the Tribe would not be violating any terms for that service.

- **Alternative collection:** The court could allow the debtor to give food, goods, or access to special equipment instead of money. The Tribe could distribute these goods to needy families or consider it community service.

These actions could also apply to someone found in civil contempt of court.

What is “contempt of court?”

Courts have the power to encourage compliance with court orders. If someone (who has been given due process and where the Tribe has jurisdiction) ignores a court order, that can undermine the court’s authority. This is a problem faced by courts around the world. Civil contempt of court is a tool western courts use to encourage compliance by imposing additional consequences for non-compliance.

Fines are the most commonly used tool to encourage compliance although in serious cases, the court may even order detention until an order is complied with.

Civil contempt works differently in different courts. But generally, the party harmed by the non-compliance requests a contempt finding from the court, or the court itself begins the process. The U.S. Supreme Court has found that civil contempt requires some basic due process, notice of the contempt hearing, and an opportunity to be heard at the hearing. In western courts, we call this a “show cause” hearing where the party who isn’t complying has an opportunity to prove to the court that their behavior was not willful or intentional. If the court finds that the party has willfully or intentionally not complied, then it can impose additional sanctions to force compliance.

In Alaska state courts, for example, disobedience of a lawful judgment or order can result in a fine of up to \$100 or \$300 (depending on the conduct) and imprisonment for up to 6 months. Alaska State Courts also have the power to suspend state driver’s licenses or hunting and fishing licenses.

A tribe can establish an ordinance on what contempt of court is in their Tribal court. Specifically. The Tribe can order that violations of court orders may result in a fine if the person does not have a good reason for why they did not comply with a court order. Examples of good cause may include being unable to show up for court (for example in the hospital during the hearing) or another good reason as determined by the Tribal court.

Contempt of Court is, of course, only helpful if the Tribe can enforce a Tribal order (i.e. get someone who may not want to do so to pay a fine or otherwise comply with a court order).

Can a Tribal court judgment be used to collect money without outside help?

Yes, a Tribal court judgment that someone owes money can be used to collect that debt within the tribal community. The difficulty is finding and accessing the money. But certain situations are possible, for example, if the person is supposed to get money from a tribally run bingo game, that money could be taken to enforce the tribal judgment.

However, there are limitations:

- Funds from federal benefit programs managed by the Tribe usually can't be taken.
- There need to be Tribal laws that give the court the power to collect such money and set the rules for doing so.
- It's a good idea to give the debtor notice before any collection happens. For example, on the order issuing the fine, the Tribe could note that it may collect unpaid money from bingo winnings in the above example.

Another option is the Tribe could seek out a debt collector that would honor the Tribe's order and proof of outstanding debt to seek the funds from the individual. At this time, we do not know if any of the debt collection companies in Alaska would be willing to do that but the Tribe could request it. This would force the person to either pay the debt or have the consequences of unpaid debt including impacts to their credit scores.

If the Tribe is considering collecting a debt locally for the first time, it would be a good idea to consult with counsel.

Other creative options

The Tribe could consider other creative options to encourage people to comply with a Tribal court order. Several ideas are:

- Posting the names of people (adults only) who have violated Tribal law with the outstanding money owed in a public place.
 - It may be that this is something that would encourage people to pay outstanding fines to the Tribal court in order to avoid this sort of community attention.
- Writing a letter to a person's employer requesting that a portion of a person's wages are sent to the Tribal court from each paycheck may be an option
 - The Tribe can't require that an employer would do so although can request of an employer. Depending on what the employee makes, it is unclear whether or not a garnishment like this could mean that if the employer complied with a letter from the Tribal court could be violating state law.
 - It may help if a person was to sign a document agreeing that a portion of their paycheck would go to the Tribal court instead of to them. However, even then the employer may not want to get involved in sorting out payment like this.
- Providing notice to people that if they do not comply with the court's fines and owe more than a certain amount, the Tribe may seize their ATV, Snowmachine, or boat until the fine has been paid (or another arrangement has been met by the Tribal court).
 - If the Tribe was to do this, the Tribe would want to ensure that the property could be kept safe until the fine was paid
 - It is more complicated if the person does not own the property (i.e. there is still a lien on the boat from purchase).

- If the person uses the property in order to go to work and not having it prevents them from earning money, it can make it harder for them to make money to pay a fine (just something to consider from a policy perspective).
- One creative idea a Tribe used was to ask the store to restrict certain purchases for someone who has been convicted of making homebrew. Specifically, they would ask the store to limit the purchase of things like grapefruit juice or other specific things that people were using to make alcoholic beverages.

What if the Tribe needs outside assistance to enforce a Tribal court order?

A Tribal court judgment can be recognized by an Alaska state court, that would make all the state court collections options available to collect the debt, including liens and garnishment of earnings or PFDs.

However, it's not clear if this has ever been done before. Here's what we know:

Alaska courts have rules in place to recognize only certain types of Tribal court orders, like child protection or child support orders. A Tribal court judgment for money would not follow those rules. Instead, the state court would likely apply the “comity” rule. Comity is simply a fancy legal word for “respect” of the other sovereign’s orders. A Tribal court order may be given comity by the state court if the Tribal order meets three standards:

1. **Jurisdiction:** The Tribal court must have had the right to hear the case.
2. **Due Process:** The person must have had a fair hearing.
3. **Public Policy:** The judgment must not go against U.S. or Alaska state laws.

There is a practical consideration to consider before any attempt at debt collection—does the person have the money or income to pay the debt? For example, if the person the Tribe is attempting to collect money from does not have a job and is supposed to pay for child support, it is very likely all the money from their PFDs will be gone prior to reaching a debt from the Tribe (child support is always taken first from the PFD prior to other debt under state law). There is no way for the Tribe to know how much money a person may have prior to entering into these processes.

If a tribe wants to try this, it's a very good idea to talk to tribal legal counsel first. In the legal world, when something is done for the first time, it is important to do it well.

Note that native corporation dividends cannot be garnished through this process. The Alaska Supreme Court determined in 1977 that Federal Law limits collection of native corporation dividends to only child support payments.⁵

⁵ The legal citation for the court case is [Calista Corp. v. DeYoung, Calista Corp. v. DeYoung, 562 P.2d 338 \(1977\)](#)

What options does a Tribal court have if the person who owes the fine or fee is not native?

Federal courts have found three main ways that a Tribal court can have jurisdiction over a non-native:

1. The person agrees to follow Tribal law.
2. The person has a long-term relationship with the Tribe or its citizens.
3. The person is doing something that threatens the Tribe's existence.

While that isn't a very long list, it is important to remember that if a Tribe takes legal action against a non-native person, that generally a person *must challenge* the Tribe's jurisdiction over them if they want to later claim that the Tribe didn't have jurisdiction. The person must also appeal in Tribal court.

Civil fines for breaking Tribal laws might only apply to a non-native if they meet one of the three rules above. However, businesses or people who have a contract with the tribe or live in the community might still be subject to tribal laws:

Consent can be a powerful tool for jurisdiction. Many tribal interactions with outside businesses or people are done through contracts. But a contract with a business or employee that does work for the Tribe could include a clause about following Tribal laws. So could a lease agreement for a non-tribal tenant in tribally run housing.

Long-lasting relationships are also important to consider. The tribe likely has jurisdiction over non-natives who are living in the community and married to tribal members or adopting children who are tribal members. Similarly, businesses that operate with the Tribe and its members for years might fall under the Tribe's jurisdiction, particularly if the business has a physical presence in the community.

Civil fees are useful here because a fee is essentially a charge for a service. If a non-native illegally parks a car that gets towed, a tribe would have a strong argument that it has jurisdiction to enforce a towing fee because the person *chose* ("consented") to, for example, ignore the no parking sign which explained Tribal regulations.

Civil fines for violating a Tribal non-criminal law, regulation, or code might only be enforceable against a non-native if the person or business meets one of the three jurisdiction reasons above. But a contract with a business or employee that does work for the Tribe could include a clause about following Tribal law. So could a lease agreement for a non-tribal tenant in tribally run housing