

Protecting Villages from Dangerous People

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Although it was likely seldom done, Alaska tribes have banished or excluded dangerous people from their camps and villages since time immemorial. Today, Alaska tribes are removing violent people, or those selling alcohol and drugs, to protect the health and safety of the village residents. With methamphetamines, narcotics, and opioids coming into the villages, the need to remove dangerous people has escalated.

Nearly 2/3 of Alaska's villages have no type of law enforcement. Because there is no immediate '911' trooper response available to violent or dangerous situations, removal of dangerous people may be considered in order to protect village residents. However, State law enforcement will only help tribes in removing people under limited circumstances, primarily when a tribe issues a domestic violence protective order. In 2017 Alaska Attorney General Jahna Lindemuth announced that the State will not interfere with tribal banishments. However, if a person who is tribally banished challenges it in the State court system, the State would then evaluate its position to take in the case.

There are different ways of looking at banishing people from the villages. Some people in both villages and urban areas believe that villages shouldn't remove people. They think the village should 'take care of their own' or that villages shouldn't send their problems elsewhere. Others think that dangerous persons should be removed from the village to protect the health and safety of village residents, and that they will hopefully end up in larger communities that have immediate 911 response and treatment and medical services available. Each village, and each situation, is unique. Tribal leaders ultimately must decide what is in the best interest of their tribe and community.

TERMONOLOGY: Removing people from villages is called many things including 'banishment', 'exclusion', 'removal', and 'blue ticket'. They all mean the same thing which is sending a person of the village for a period of time or even permanently. Tribes may add conditions for the person to meet in order for them to return to the village such as to complete a comprehensive substance abuse or mental health assessment and to follow the recommendations. These conditions are to ensure the health and safety of the tribal members.

TRIBAL JURISDICTION: Alaska Tribes are sovereigns with inherent governmental authority. The extent of their jurisdictional authority may be analyzed by the people, territorial area, and subjects over which they have jurisdiction. In Alaska, tribal jurisdiction over tribal citizens is clear. However, tribal jurisdiction over territories is not clear because the extent of Indian country in Alaska is unknown. All but one reservation was extinguished by the Alaska Native Claims Settlement Act, but many individual Native allotments and Alaska Native townsites remain, and those areas may be Indian country. While state and federal court cases have confirmed tribal jurisdiction for Alaska tribes generally in the area of domestic relations, other subjects have limited, if any, such confirmation. In terms of excluding people, Alaska tribes have clear jurisdiction to issue tribal protective orders under the Violence against Women Act, which the State must recognize and assist in enforcing.

For a tribal court order to be recognized by the State government, tribes must provide due process and have jurisdiction over the case. Alaska tribal courts are competent in providing due process, but tribal jurisdiction to exclude people is somewhat confusing. Consulting with tribal attorneys regarding excluding dangerous people is always advisable.

OPTIONS: Tribes have a variety of options for removing dangerous persons from villages. It is always recommended to check with tribal attorneys for legal advice. It is

essential at all times to proceed with caution and to put safety for all involved at the top of whatever approach the tribe wishes to take. Options for Alaska tribes to remove a person from the village include:

- 1. Warrant:** Check with the Alaska State Troopers to see if there is a warrant for arrest for the person the tribe seeks to remove. If so, the state should come and remove the person at no expense to the tribe.
- 2. Ask the person to leave:** The tribal council may write a letter, for example, to an individual describing their concerns and asking the person to leave the village. This approach sometimes works. In some cases, council members and/or large groups of village residents have gone up to a person and asked them to leave, escorting them to a plane. Tribes usually purchase a one-way ticket for the person in these situations.
- 3. Report a crime to state law enforcement:** In order for the state to arrest and prosecute criminals, there must be sufficient evidence of the crime. Witnesses must be available to testify and so forth. People in the villages know who the bootleggers and drug dealers are, but it is tough to gain sufficient evidence to bring a case into state court. Recently, the Alaska Department of Law stated that they will accept evidence collected through tribally issued search warrants for state criminal cases. The tribes, however, must meet certain state standards in the procedures used in issuing tribal search warrants.
- 4. Issue a domestic violence protective order:** The Violence Against Women Act requires states to recognize and enforce tribal domestic violence protective orders. The state must do this whether or not the tribal order has been registered into the state's central registry system. However, registering an order through the nearest magistrate or state court office is a best practice for protecting victims. Tribes should have a domestic violence code defining domestic violence and generally outlining the procedures the tribal court will follow when issuing protective orders.

Protective orders should clearly state how the tribe has jurisdiction over the parties, how due process was provided, a description of the act of domestic violence committed, the restrictions imposed on the accused perpetrator, the period of time the order will be enforced, the area and specific people covered by the order, conditions for returning to the village and the tribal court contact information. It is a state criminal offense for a person to violate a domestic violence protective order no matter what government issues the protective order.

- 5. Issue a tribal court order of banishment:** The tribal court may hold a hearing and issue an order banishing a person from the village. The court should go through its regular procedures for providing due process in terms of notifying the parties of the hearing, giving parties an opportunity to be heard in person or telephonically, and assuring that the tribal judges are fair and impartial. It is helpful to have general procedures for banishment written in tribal codes.

It is always recommended to obtain legal advice from tribal attorneys because each case presents different facts and attorneys can analyze them in order to help the tribe make orders that are meaningful, enforceable, and that will survive a court challenge. However, it is generally up to the tribe to enforce banishment orders because the state most likely will not.

- 6. Include exclusion in state court orders:** Tribes have had some success in including provisions that prohibit a person from returning to a village upon release from jail. Such provisions are included in the conditions of parole/probation. The best way to use this approach is to work with the appropriate district attorney's office. If the tribe has an agreement with the state under Criminal Rule 11(i) and the dangerous individual is a tribal member, the tribe can formally ask the state judge to include a request to prohibit the person from returning to the village within a sentencing recommendation.

FOLLOW-UP:

1. When a dangerous person is removed from a village, surrounding villages and appropriate air carriers should be notified.
2. The length of time a person is removed from the village should be monitored as well as conditions for returning to the village.
3. Tribal Governments should develop good communications with the State Court System, Department of Law, and with surrounding tribes.
4. Safety is the number one top priority for dealing with dangerous people in the villages. Tribes should have well developed community response plans.