



# TANAM AWAA

*Our Community's Work*

Trauma-Informed Benchbook for  
Tribal Justice Systems





Founding Forefathers by Azat Minnekaev

*‘Please Forgive If Anything Said Accidentally Offends  
It Is Truly Not Our Intention’*

בס"ד

~Traditional Apology Before Speaking

To the Tribal Elders, Healers, and Peacemakers from the past, in our present, and to the future. May this Tribal Benchbook spread your wisdom, and help bring strength and justice to the People.

This Tribal Court Benchbook could not have been completed without the support of the Aleut Community of St. Paul Island Tribal Government and the Central Bering Sea Fishermen’s Association. Special thanks to Amos Philemonoff Sr., Marissa Merculieff, Charlene Naulty, Aquilina Lestenkof, Patrick Baker, and the entire Txin Kaanguû Family Resilience Team for their assistance. Additional thanks to Sitka Tribal Attorney Diana Bob for her helpful review. Lastly, deep appreciation goes to Ken and Rachel Fate of Fate Accompli consultant services for their artful assistance with research, layout, and copy work. Gratitude for these contributions does not imply that those acknowledged are responsible for the content; any errors or omissions rest with the author.

With Esteem and Blessing,  
Judge David Avraham Voluck

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*Aláxxaḡ*  
A · L · A · S · K · A

*The object  
toward which  
the action of the sea  
is directed*



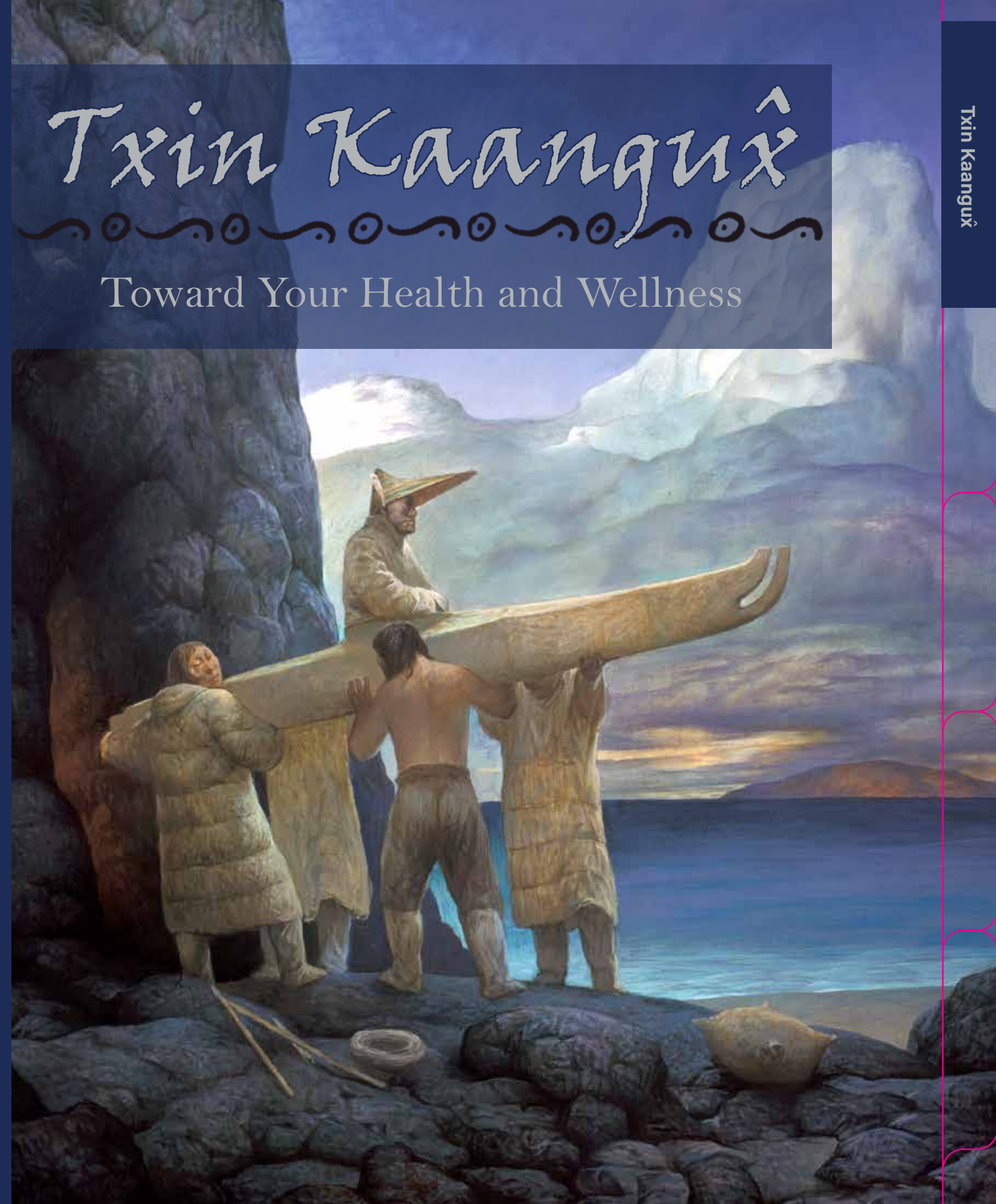
# Txin Kaangux̂

Toward Your Health and Wellness

There was no need to enforce law  
and order in the Aleut society  
because of the high ethical standard  
the Aleuts had for their own  
behavior.

~ Barbara Boyle Torrey, *Slaves of the Harvest*

*Leader Funeral* by Azat Minnekaev

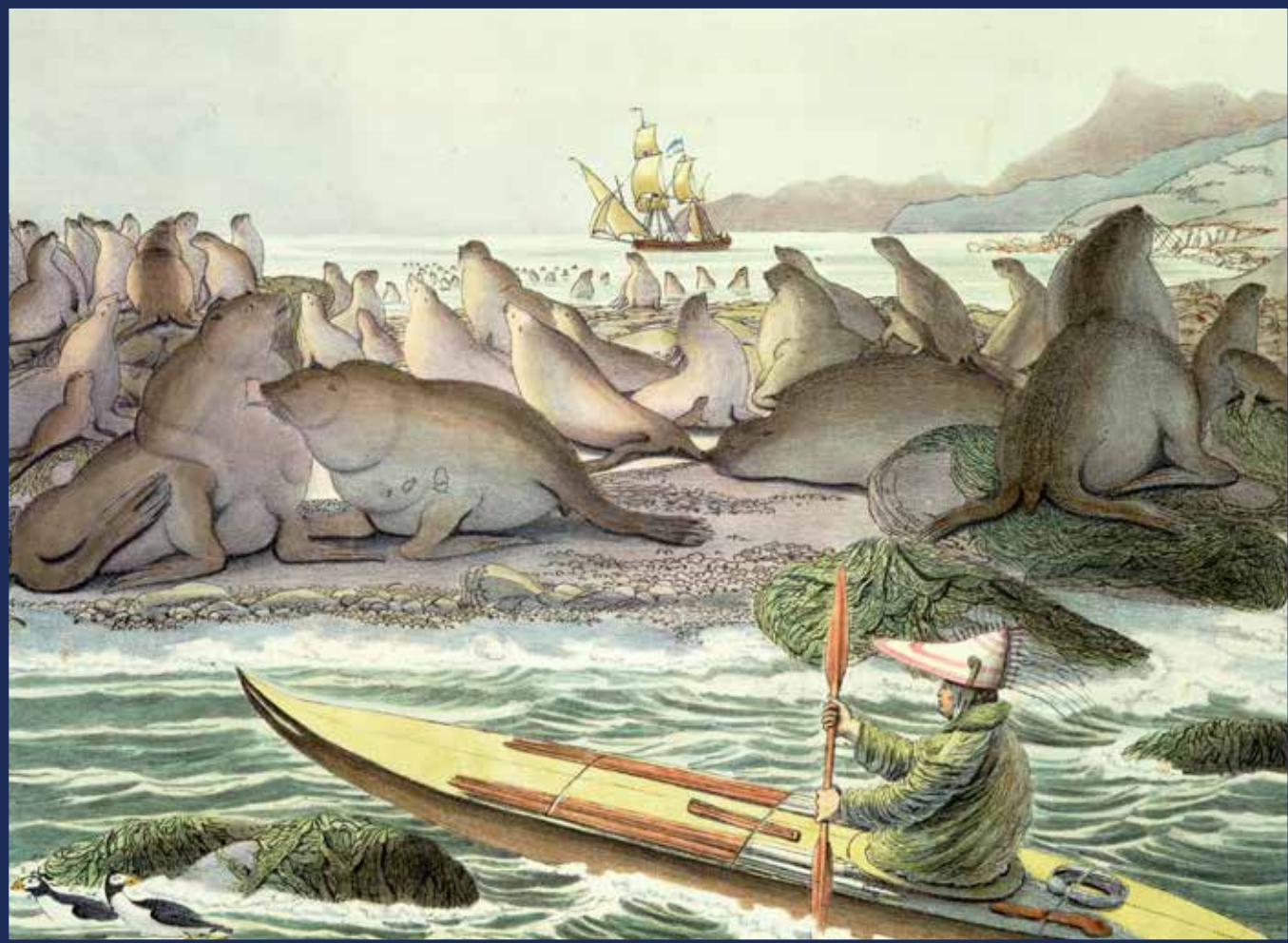




# Txin Kaangux̂

## *Toward Your Health and Wellness*

Our peoples suffered a physical, social, spiritual, and even genetic cultural shock to the system. Understanding the roots and symptoms of this historical trauma may assist us in finding the best medicine to diagnose and treat the symptom behaviors hurting our families. As Tribal Courts become the preferred forum to resolve local concerns, improving upon the trauma-informed delivery of tribal justice is our community's work: Healing generational pain and moving forward – in a good way.



Clockwise from above: *Aleut in Qajaq (Kayak)* courtesy AK State Archives; photo by Ken Fate

## *S*ince Time Immemorial

Alaska Native people exercise inherent sovereignty as they have since time immemorial: The root-source of tribal governmental authority, and responsibility, pre-exists contact with Russian America.<sup>1</sup>

The Aleutian Islands and Unangan people were first greeters to naval explorers and furtraders sailing across the Bering Sea from the Czarist Russian Empire. The clash of differing world views is evidenced by the very word “Alaska”: colonizers and cartographers preoccupied with the mainland – Native roots for the word overwhelmingly oriented from the water.

Early Russian accounts find a network of stable communities dotted along a vast universe of islands. All the people from elder to child worked hard and had importance in the efficient practice of an amphibious lifestyle developed over generations. The people's hard work was blessed with more than enough to meet their family needs, always to share – with surplus left for trade.

<sup>1</sup> See *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831); *Native Village of Venetie I.R.A. Council v. Alaska*, 944 F.2d 548 (9th Cir. 1991); *John v. Baker*, 982 P.2d 738 (Alaska 1999); see generally Case & Voluck, ALASKA NATIVES AND AMERICAN LAWS Chapt. 1 [Federal Relationship to Alaska Natives]; Chapt. 10 [Sovereignty].







There is no account of jails, or a police authority needed to enforce law and order in Aleut society. Witnesses recount how each person exercised disciplined personal sovereignty: Holding an extremely high ethical standard for one's own behavior, and the people's word could be counted on with certainty.<sup>2</sup>

These people detest lying and never spread false rumors; they never boast their exploits and despise hypocrisy in every respect ... Fighting and murder among them is unheard of; there is neither flattery or empty promises. There are no swear words in Aleut.

~ Father Ioann Veniaminov St. Innocentius  
NOTES FROM THE UNALASHKA DISTRICT (1840)

The natural and supra-natural worlds coexisted on the same plane, and the people strived daily to live in harmony with the spiritual nature of their environment. Behaving badly was universally recognized as a false path; and the people carefully avoided bringing shame or unnecessary suffering upon themselves or their families.

<sup>2</sup> Barbara Boyle Torrey, SLAVES OF THE HARVEST (St. Paul Island, Alaska 1983) at 15.



## Trauma Events

The story arc is recognizable for indigenous people throughout the world: An influx of foreign colonizing forces seeking enrichment from precious natural resources. With this influx comes: new language, new religion, new war, new food, new disease, and new law. The speed and force of each new foreign challenge visits a trauma of historical proportion upon indigenous people the world over; this trauma continues today among each unique and distinct Alaska Native community.

The pages of the Unangan story include some especially difficult passages: Russian colonizers first kidnapped the children to black-mail Aleut men into using their superior hunting skills to line the Czar's treasury. Kidnapping evolved into brutal slavery to the Russian increasing appetite for furs and profits. What followed was deprivation of freedom and property, directly leading to malnutrition and starvation of the people. Without food, freedom, and their way of life – the people grew vulnerable to foreign disease, not known to the healers or the land's medicine. Any resistance to the Russian demands for more furs was met with violence, including cruel and indiscriminate massacres of villages to stamp out remaining embers of independence.

True to script – the Russian Empire followed the ill fated pattern of overharvesting the coveted resource; the collapsing wildlife populations combined with the influx of disease and violence to bring a devastating loss of life to the entire region, and an immeasurable amount of grief among those numbered as survivors.<sup>3</sup>

With the 1867 Treaty of Session between Russia and the United States, the American promises of life, liberty, and the pursuit of happiness were not delivered to the Bering Sea: The Unangan of the Pribilof Islands were officially declared 'wards of the federal government' continuing their indentured servitude to government profits

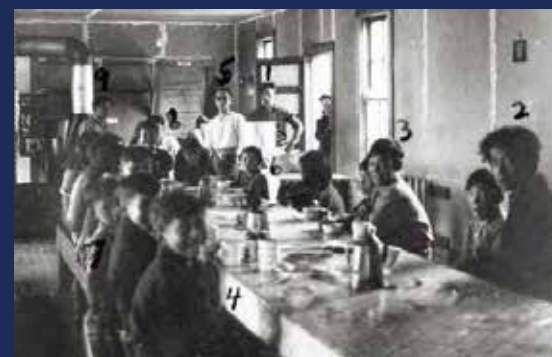
<sup>3</sup> Id.



as ‘slaves to the fur harvest’. The United States Government regulated the people’s freedom, and ability to move from the islands; regulated who they could marry; regulated curfew for when to rise, and when to lie down; regulated employment in the United States’ fur industry as well as the rate of sub-legal wages. The U.S. Government regulated the food available to the islands, and what meager provisions were available in the company store. The U.S. Treasury was charged with establishing law and administering justice; and strictly regulated the form and content of education for the young – seeking at least in part to train an indentured workforce for the coming generations.<sup>4</sup> The Unangan language was forbidden, with agents of the U.S. Treasury using tape to shut the mouths of children caught speaking their Native tongue.<sup>5</sup>

4 Dorothy Miriam Jones, *A CENTURY OF SERVITUDE : PRIBILOF ALEUTS UNDER U.S. RULE* (1980), at 76–78. “It is important to underline that in a period of steamrolling exploitation of workers by private industry, it was the government, not the private company, that established the serf-like features of labor relations in the Pribilofs – restrictions on travel and forced labor; it was the government ... that promoted political domination of the Aleuts; it was the government not the private company, that supported and encouraged agent totalitarianism in the Pribilofs.”

5 Torrey, *SLAVES OF THE HARVEST*, *supra* note 2 at 121.



The pages of history actually worsen with the outbreak of World War II and Japanese incursions into the Aleutian chain of islands. Beginning June 12, 1942, the Unangan residents of nine (9) communities were hastily boarded onto ships and evacuated from their homes. With only a few possessions in hand, the people were relocated by the U.S. Government to live in abandoned fish canneries and abandoned mine camps in Southeast Alaska. The people were forced into inhumane living conditions: insufficient housing, lack of heat, sanitation, nutrition, and medical care. The people had to sleep in relay shifts due to the overcrowding; epidemics of influenza, measles, pneumonia, and tuberculosis spread through the internment camps, and eventually eighty-two (82) Unangan (10% of the captive population) perished during the three-year U.S. Government internment in Southeast Alaska.

1. The Aleut civilian residents who were relocated during World War II remained relocated long after any potential danger had passed;
2. The United States failed to provide reasonable care for the Aleuts, resulting in illness, disease, and death, and failed to protect Aleut personal and community property;
3. The United States has not compensated the Aleuts adequately;
4. There is no remedy for injustices suffered by the Aleuts except an Act of Congress.<sup>6</sup>

The pages of history are painful and clear: The Alaska Native people survive today, after weathering repeated episodes of extraordinary historical trauma.

6 Civil Liberties Act of 1988, Pub. L. 100-383 § 2; 50 U.S.C. § 4202(b); see also “Aleut Story,” [americanarchive.org](https://americanarchive.org/catalog/cpb-aacip_508-0z70v8b39n), [https://americanarchive.org/catalog/cpb-aacip\\_508-0z70v8b39n](https://americanarchive.org/catalog/cpb-aacip_508-0z70v8b39n).

Clockwise from far left: *Pribilof Island Residents Evacuated on U.S. Army Transport Delarof, June 15-16, 1942* courtesy of National Archives photo no. NARA 80-G-12163; *Evacuees of Alaska* courtesy of National Archives photo no. 80-6-12161; *Funter Bay Mess Hall* courtesy of Fredericka Martin Collection, APRCA, UAF photo no. 91.223.281; *Funter Bay-24* Alaska State Library Photo Collection



# Healing Historical Trauma

Historical Trauma is not  
about dredging up and  
staying stuck in the past.

It's about starting a  
healing process to let go of  
that past collective trauma,  
and moving forward.

~ Dr. Maria Yellow Horse Brave Heart

*Old Story* by Azat Minnekaev





# Healing Historical Trauma

History can teach us how to do better. Understanding more about historical trauma<sup>7</sup> can directly inform Tribal Court remedies and interventions toward better health for each person, family, and ultimately, community. This matter is of import for governmental systems throughout the world: Indian law scholars liken the welfare of indigenous people to the song of a Miner's Canary – So long as the song reverberates with life, we are walking down a good path with fresh air. However, should their songs ever grow muted, it is a warning to all of us to turn back from a poisonous atmosphere.<sup>8</sup>

Historical trauma is cumulative physical, emotional, and psychological wounding over the lifespan, and across generations, emanating from massive group trauma experiences.

~ Dr. Maria Yellow Horse Brave Heart

<sup>7</sup> The term historical trauma can be recognized as related to other terms such as soul wound, collective unresolved grief, collective trauma, intergenerational trauma, intergenerational post-traumatic stress disorder, and multigenerational trauma.

<sup>8</sup> Felix S Cohen, HANDBOOK OF FEDERAL INDIAN LAW. (1982 ed.).

Like children of Jewish Holocaust survivors, generations of Native people carry a pervasive sense of pain from their history, and an incomplete mourning of these losses.

~ Dr. Maria Yellow Horse Brave Heart  
& Dr. Lemyra M. DeBruyn

Historical Trauma Responses include a constellation of reactions including:

- Depression
- Self-Destructive and Anti-Social Behaviors
- Severe Anxiety
- Low Self-Worth
- Suicidal Ideation
- Emotional Dysregulation
- Hostility
- Chronic Bereavement
- Substance Abuse / Self-Medication to Avoid the Pain Associated with these Reactions<sup>9</sup>

Alaska Native children register Post Traumatic Stress Disorder rates mirroring those of returning combat veterans from Iraq and Afghanistan. Unhealthy and antisocial behaviors are not traditional to the Alaska Native people; they mute the songs of every tribe, a Miner's Canary warning to all – it is necessary to dramatically change course.

Fortunately, the very areas of Native culture targeted for destruction (tribal identity, ceremony, language, food, and traditional practices) reappear now as effective medicinal options for healing historical trauma.<sup>10</sup>

<sup>9</sup> Historical Trauma Responses can be aggravated further by pervasive poverty, discrimination, and disproportionate injustice hindering the recovery of Native communities. See also Maria Yellow Horse Brave Heart, "The Historical Trauma Response Among Natives and Its Relationship with Substance Abuse: A Lakota Illustration" 35 JOURNAL OF PSYCHOACTIVE DRUGS 7-13 (2003); also Michelle Sotero, "A Conceptual Model of Historical Trauma: Implications for Public Health Practice and Research" JOURNAL OF HEALTH DISPARITIES RESEARCH AND PRACTICE, Vol. 1, No. 1, pp. 93-108 (Fall 2006).

<sup>10</sup> Karina L. Walters et al., "Bodies Don't Just Tell Stories, They Tell Histories," Du Bois Review: Social Science Research on Race 8, no. 1 (2011): 179-89.; also Center for Native Child & Family Resilience: "Environmental Scan", Admin. for Children & Families, U.S. Dept. of Health & Human Services (Oct 2019).



Photos by Ken Fate





# Toward a Healing Model

Present healing models provide the following themes:

1. **Stay Focused on the Positive** ~ Both traditional spiritual truths and modern quantum physics support the impact of positive consciousness on physical results
2. **Confronting Personal and Family Trauma** ~ Engage healthy allies and kinship networks which support identity, belonging, and shared history of survival
3. **Take Time to Understand Trauma's Pathways to Dysfunctional Behaviors** ~ Guided counseling to uproot unhealthy patterns
4. **Learning Healthy Techniques to Release the Pain of Trauma** ~ Traditional healing ceremonies, arts, physical activity, mindfulness, and therapeutic offerings
5. **Embark on a Lifelong Journey of Introspection, Self-Improvement, and Spiritual Strengthening** ~ Reclaim personal sovereignty and service to community
6. **Redeem Historical Trauma** ~ Healed trauma becomes source of strength<sup>11</sup>

The process is not quick, nor is it easy. However, without such a commitment to healing the past, we will not be able to address the resultant trauma, and the continuation of such atrocities in the present. Nor will we be able to provide the positive and healthy community activism needed to stop and prevent social pathologies of suicide, homicide, domestic violence, child abuse, and alcoholism so prevalent in American Indian communities – as in society at large – today.<sup>12</sup>

11 Maria Yellow Horse Brave Heart, "Historical Trauma" Diversity Foundation <https://diversityfoundation.org/HistoricalTrauma.html>; see also Joseph P. Gone, "A Community-Based Treatment for Native American Historical Trauma: Prospects for Evidence-Based Practice," *JOURNAL OF CONSULTING AND CLINICAL PSYCHOLOGY* 77, no. 4 at 751–62 (2009).

12 Maria Yellow Horse Brave Heart & Lemyra M. DeBruyn, "The American Indian Holocaust: Healing Historical Unresolved Grief," *American Indian and Alaska Native Mental Health Research* 8, no. 2 (1998): 60–82, <https://doi.org/10.5820/aian.0802.1998.60>.

It is well understood that Native culture has built-in medicinal properties, carefully gathered over the generations.<sup>13</sup> While each case presents its own unique set of factors, tribal judges are gifted a tool-box of Native heritage, kinship, language, and ceremonies as part of a healing resolution to community and family disruption. Tribal Courts can collaborate with Indian Health Service and Social Service providers who are steadily adding offerings of traditional healing practices, traditional plant medicines, traditional foods, and family wellness initiatives rooted in Native values and practices.



Photo by David AvrahamVoluck

13 See e.g. "Qanruyteput Iinruugut: Our Teachings Are Medicine", Association of Village Council Presidents (Univ. Alaska, Fairbanks 2009). also Center for Native Child & Family Resilience: "Environmental Scan", Admin. for Children & Families, U.S. Dept. of Health & Human Services (Oct 2019).



Western medicine is in its beginning stages of understanding and treating historical trauma; research mostly focused on Post Traumatic Stress Disorder (PTSD) experienced in industrialized, non-Native populations.<sup>14</sup> With that said, Alaska Native people have been refashioning and adapting tools for millennia, and tribes are well-positioned to advocate that ‘most promising practices’ around healing trauma be realized by their local Indian Health Service and Social Service providers.

To date, Western approaches to trauma are focused primarily on Cognitive Behavioral Therapies (CBT); Eye-Movement Desensitization and Re-Processing (EMDR); Pharmacology/Medication; and the borrowing of Traditional Chinese Medicine (Acupuncture).

Trauma focused CBT seeks to restructure the workings of the mind through revealing unconscious or developed beliefs in relation to the trauma. Trauma focused CBT can provide professionally guided understanding of thoughts, feelings, and behaviors related to the trauma; while uprooting thinking errors, CBT’s effectiveness can be increased with adjunct remedies including: relaxation techniques, mindfulness practice, anxiety management skills, and hypnotherapy. EMDR involves therapist directed bi-lateral brain stimulation (light, sound, or impulse) simulating the processes of rapid-eye-movement sleep. The healing model suggests this bi-lateral brain stimulation aids in reprocessing trauma while overlaying new learning and insight.<sup>15</sup>

<sup>14</sup> Jessica R. Goodkind, Marianna D. LaNoue, & Jaime Milford, “Adaptation and Implementation of Cognitive Behavioral Intervention for Trauma in Schools with American Indian Youth,” *JOURNAL OF CLINICAL CHILD & ADOLESCENT PSYCHOLOGY* 39, no. 6 at 858–72 (Nov. 2010).

<sup>15</sup> Sean A Bear I, Melissa Fox, Anne Helene Skinstad, “Native American/Alaskan Native Vets Project Round-Table Keys to Understanding Unique Challenges and Strengths of American Indian Clients Whom suffer from PTSD”, National American Indian and Alaska Native Addiction Technology Transfer Center from a presentation available on the National Indian Health Board website: <https://www.nihb.org/docs/06162016/Native%20American%20and%20Alaska%20Native%20Vets%20Roundtable.pdf>; also <https://www.emdr.com/what-is-emdr/>.



Photo by Patrick J Endres AlaskaPhotoGraphics.com

EMDR therapy uses a three-pronged approach:

1. The trauma events that lay the groundwork for dysfunction are reprocessed, creating new associations and adaptations;
2. Current circumstances of distress are identified, and both internal and external triggers are de-sensitized;
3. Guided visualization to assist in building the adaptation and coping skills for healthy functioning.

In addition to EMDR, there is promising research showing Traditional Chinese Medicine (Acupuncture) as an increasingly helpful intervention for the effects of trauma. Acupuncture involves the insertion of very thin needles through the skin at strategic points of the body. Acupuncture is commonly used for the treatment of pain, however it is increasingly being used for overall wellness, including stress management. Traditional Chinese Medicine explains this technique helps balance the flow of energy by accessing particular pathways in the body. Western research believes acupuncture can positively impact the autonomic nervous system of the brain, making it more able to relieve the symptoms of PTSD.<sup>16</sup>

Western pharmaceutical treatments include an array of anti-anxiety drugs and antidepressants. These medications do not address the root-causes of trauma, but can have effectiveness in alleviating symptoms. To date, results are mixed; clients should be carefully managed by medical professionals to monitor side effects, and guard against potential prescription abuse.

A literature review makes clear: Understanding and treating historical trauma is in its infancy, with much of the research on effectiveness missing Native people. Tribal communities are in the position to advocate strongly that health funding and resources be dedicated to developing culturally relevant interventions, with recruitment and training of culturally appropriate service providers – helpful to the Native people.

<sup>16</sup> Helané Wahbeh, Angela Senders, Rachel Neuendorf, Julien Cayton, “Complementary and alternative medicine for posttraumatic stress disorder symptoms: a systematic review” *J. EVID. BASED COMPLEMENTARY ALTERN MED* 2014;19:161–75.



Alaska Native  
Over Representation Rates

Incarceration 200%  
Domestic Violence 200%  
Child Removal 350%  
Sexual Assault 360%  
Alcohol Related Death 514%  
Suicide 600%

~ U.S. Indian Law & Order Commission

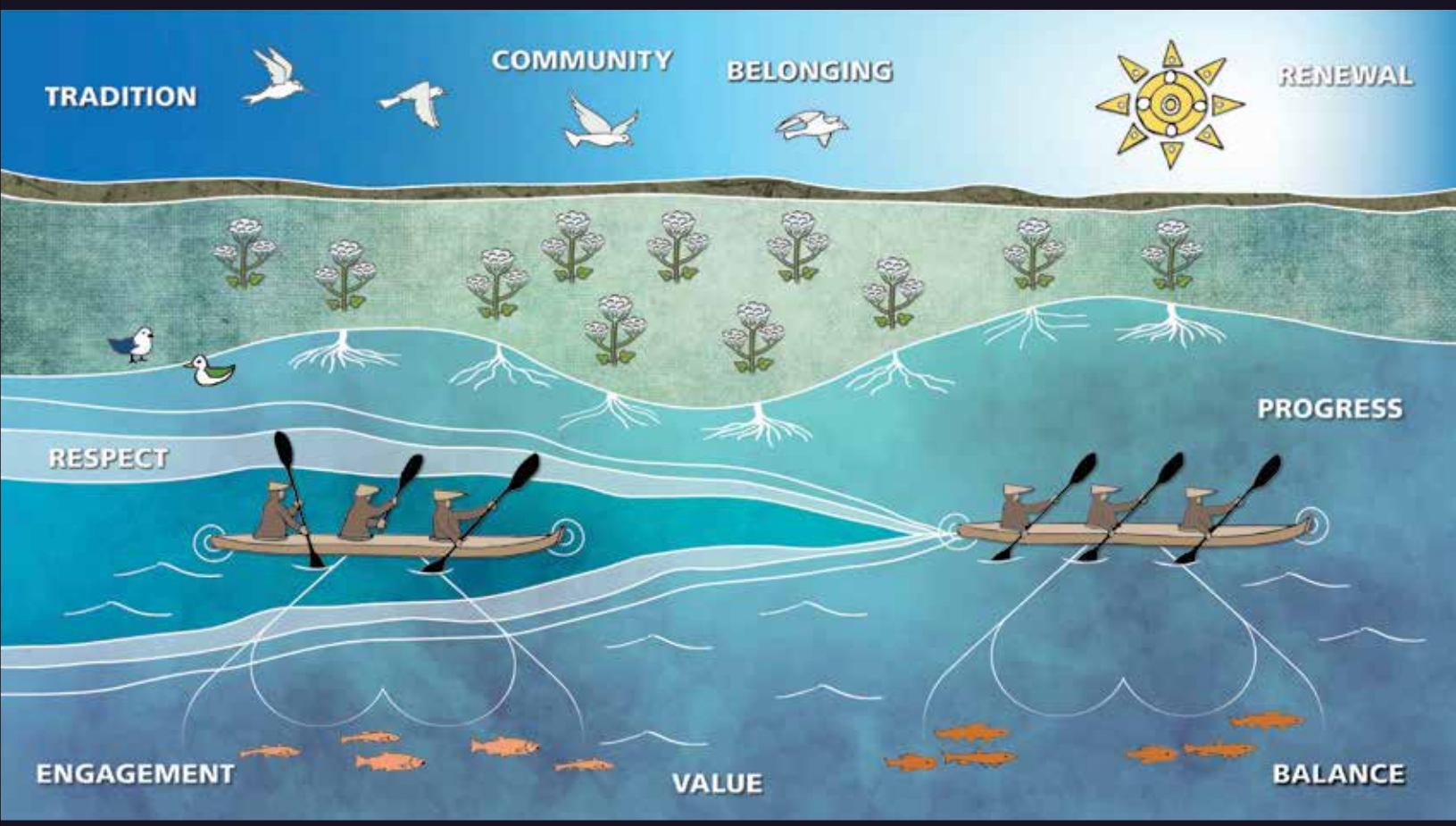
*Into the Light* by Ethan Candyfire



We Can Do  
Better



<b>Differences</b>	<b>in Approach</b>
<b>American Justice Systems</b>	<b>Tribal Justice Systems</b>
<b>Top-down Power Dynamic</b>	<b>Holistic Participation and Importance</b>
<b>Communication is Rehearsed and Argumentative</b>	<b>Communication is Fluid and Essential: 'Words from the Heart, Enter the Heart'</b>
<b>Attorneys and Non-Resident Voices are Primary</b>	<b>Local Community Voices are Primary</b>
<b>Adversarial and Conflict Oriented; 'Winners and Losers'</b>	<b>Oriented Toward Resolution and Healing of Broken Relationships</b>
<b>Separation of Religion and Spirituality</b>	<b>Spiritual Realm is Invoked in Ceremonies and Prayer</b>
<b>Freeze-Frame Isolation on Addressing Particular Incidents</b>	<b>Review of Problems and Contributing Factors in Entirety, Seeking Comprehensive Resolution</b>
<b>Strict Time Constraints</b>	<b>Taking Time is Necessary; Long Silences and Patience are Valued</b>
<b>Focus on Individual Rights</b>	<b>Focus on Community</b>
<b>Punitive / Removal of Offenders</b>	<b>Corrective / Offenders are Held Accountable, Responsible for Change, and Reintegrated</b>
<b>Penalties Issued By and For the State with Vindication to Society</b>	<b>Customary Sanctions Used to Repair Victim, Offender, and Community Relationship – Forgiveness</b>
Ada Pecos Melton, Indigenous Justice Systems and Tribal Society 79 JUDICATURE 126 (1995).; Ka.oosh - Mike A. Jackson, Magistrate Judge for Kake District Court - A Timeless Practice Becomes Trendy, presentation to the National Association for Court Management (NACM) 2014 Annual Conference Scottsdale, AZ, 2014.	



Paddling in the uluxta̓x demonstrates the importance of working together. A paddler out of unison makes the journey more difficult for all. The struggling paddler has someone modeling with leadership from the front, and someone guiding from behind – to find the flow. The wake of the leading uluxta̓x helps clear the way forward. The journey of the Sun leads toward light, warmth, energy, love, and life. The growing *paochkis* show us that nothing can grow as intended without strong roots holding fast to what lies beneath the surface; blooming forth with bounty and health for the island. Reflections in the water remind us that love and spirit guide us always – even when not so visible – they are always there.

Clockwise from left: Photo by Ken Fate; graphic courtesy of St. Paul Island Txin Kaangu̓x Family Resilience Initiative



## Gifts of the Third Sovereign

Tribal Courts may use great flexibility to fashion remedies for each unique situation. Efforts like St. Paul Island's Txin Kaangux̂ Family Resilience Initiative build an integrated medicine model focused on prevention and the reclamation of traditional cultural values as root sources of resilience, strength, and healing.

### TXIN KAANGUX̂ VALUES

**RELATIONSHIPS** ~ Know your family tree, relations, and people's history.

**TRADITION** ~ Subsistence is sustenance for life; live with and respect the land, sea, and all nature.

**SPIRITUALITY** ~ Respect and be aware of the Creator in all living things.

**RESILIENCY** ~ Be resilient and adaptive to new opportunities.

**IDENTITY** ~ Our Unangan language defines who we are and lets us communicate with one another.

**ACCOUNTABILITY** ~ Ownership of individual and community health and wellness.

**HOLISTIC** ~ Integrated, comprehensive approach to health and wellness: treating the whole person and family.

**CONTRIBUTION** ~ Life is gifted to you. What you make of it is your gift in return.

**BALANCE** ~ Always learn and maintain a balance for the coming generations that we don't see yet, for their time here.



Cultural resilience is not just another protective factor, but a domain unto itself. It is fundamental to remediating risks to children and the healing of intergenerational impacts of trauma.

~ *Center for Native Child  
and Family Resilience*

Building a trauma-informed tribal justice system begins with creating a safe, welcoming, and culturally warm court environment. Tribal judges can assist in developing practices that provide families ease with navigating the court system without unnecessary stressors. Judges and court personnel should build their own mind, body, and spirit wellness regimen to stay healthy amidst the exposure to secondary trauma stress during proceedings. The Tribal Court can initiate the healing process by providing positive interactions with parties and the community; forming alliances with community healing initiatives; giving restorative remedies; and team building similar to healing-to-wellness models in the realms of substance abuse, child protection, juvenile and adult criminal diversion, and domestic relations.<sup>17</sup>

<sup>17</sup> See Victoria Sweet, "Trauma-Informed Court Systems" National American Indian Court Judges Association / NCJFCJ (2017); For the Key Components of the Healing-to-Wellness Court model, see [wellnesscourts.org](http://wellnesscourts.org). Please note, Tribal Courts should always screen for the presence of domestic violence which requires important adjustments to properly provide safety and security for the parties and court personnel. See Family Safety Protection Orders in Bench Cards & Bibliography Section.

Photo by Ethan Candyfire





## Blessed are the Peacemakers

In Southeast Alaska there are the Ghúwakáan (Deer People); in Hawaii the Haku (Braidiers); the Navajo call them Naat'aanii – these are people with a blessing to bring peace. Identifying and cultivating the natural talents within the community will provide skilled guides for local forms of peacemaking. Founding principles include:

- » The Wound is Shared by the Community
- » Each Person is Given Opportunity to Speak, or Pass the Talking Piece
- » Build Toward Consensus Problem-Solving, Listening and Respecting All
- » Apologies Can Be Made, Balance and Relationships Restored
- » First Steps of Healing Plan Developed with Follow Ups<sup>18</sup>



## Opportunities for Collaboration

At present, there are multiple opportunities for Tribal Courts to offer their gifts in collaboration with sister sovereign, the State of Alaska:

1. Juvenile Justice Diversion Agreements to Re-Route Tribal Youth to Tribal Court Remedies;
2. Civil Diversion Agreements to Re-Route Tribal Misdemeanants to Tribal Court Remedies;
3. Criminal Rule 11 Sentencing Agreements to Provide Tribal Court Remedies to Criminal Sentencing of Adults;
4. Cross-Deputization Agreements and Full Faith and Credit Agreements for Recognition of Tribal Law and Order;
5. Adult Probation Diversion Agreements to Re-Route Probationers Returning Home to Tribal Court Supervision;
6. Child Protection Partnerships

## Proposed Structure for Circle Peacemaking

- \* Txin qağaasakuqing/Gunalchéesh/Quyanaa/Chin'an/Háw'aa/Quyanaq/Tsin'aen/Mahsi'/Quyana/Baasee'/Maasee'/Way dankoo ~ (Thank you) all for being here
- \* Circle begins in a good way (prayer or silence) ~ stand & hold hands
- \* Everyone is equal, when we sit in a Circle for Peacemaking
- \* One person talks at a time (talk from the heart – life experiences)
- \* We respect each other
- \* We are careful with our words (stay kind, true, and necessary)
- \* We do not point the blame (we look forward)
- \* Take timely breaks
- \* Everyone is inclusive (respect one's right to not comment)
- \* Everyone in the room is part of the Circle
- \* Everything said in the Circle is CONFIDENTIAL and remains in the Circle
- \* We make a plan with responsibilities for follow-up
- \* Circle ends in a good way (prayer or silence) ~ stand & hold hands<sup>19</sup>



<sup>18</sup> See Mike Jackson, Justice Table attribution, *supra* page 24; also Robert Yazzie, "Life Comes from It: Navajo Justice Concepts", 24 N.M.L.REV. 175 (1994).

<sup>19</sup> *Id.*



The past will  
remain horrible for  
exactly as long as  
we refuse to assess  
it honestly.

And it will poison  
the present as well.

~ James Baldwin,  
*Notes of a Native Son*

Larry Mercurieff by Azat Minnekaev

Restoring the  
Community





## Restorative Remedies

Each Tribal Court can draw upon the unique culture, strengths, and teachings of their community. Starting first from a place that preserves safety and dignity, the following provide basic restorative remedies for use or modification:

**Apology:** The two most important phrases in any language are “Thank You” and “I Am Sorry”. An apology can be a necessary part of any healing process; it can be written or presented orally to the concerned parties (which at times can include the entire community). In some cases, an injured party may not want to hear from the offender. The court should be sensitive and guard an apology from resulting in further injury.

**Restitution:** Fundamental to any repair is to ‘pay off’ financial damage caused by misbehavior. When personal resources are limited, an offender can organize a fundraiser to cover damage and repair costs.



**Behavioral Health:** Assessment of need can help create a wellness-plan of ongoing counseling, substance abuse treatment, and mentoring for lifelong healing of injurious behaviors.

**Service:** Native people are crafted from a place of usefulness and importance to the community. Our grandparents taught ‘idle hands are the devil’s handiwork’; providing constructive, educational, and helpful service projects provides a pathway toward repair and selflessness. Fashioning service projects around a person’s strengths and interests can provide opportunity to practice and improve skills. For youth, service projects can be designed to include parental involvement and responsibility. The Tribal Court has the flexibility to value community volunteerism hours as an alternative way to pay off civil fines ~

Snow Shoveling  
Chopping / Transporting Firewood  
Garbage Pick-Up  
Small Construction Projects  
Actual Repairs to Any Property Damaged  
Gathering Food for Elders or Community Events  
Clean Up After Ceremony  
Repair and Upkeep of Cemeteries / Burial Grounds  
Share Talent with Others by Teaching a Class



Clockwise from top left: *Sunset Hunt* by Barbara Lestenkof; remaining photos by Patrick J Endres AlaskaPhotoGraphics.com







Photo by David Avraham Voluck

**Participation in Healing Ceremony:** With the care and guidance of sincere culture-bearers, parties can find benefits in traditional local purification practices including but not limited to ceremonial immersion in ‘living waters’; sweat and prayer; the sharing of language, songs, stories, and drumming. Participation in and assistance with Peace-making Circles.

**Civil Fines:** Sometimes all that is needed to provide an educational adjustment is to touch a person’s pocketbook with a reasonable civil fine. Financial sting can prompt many persons to more careful thought, speech, and action.

**Personal Statement or Presentation:** Offender can describe the mistake, the negative effects on the Parties and Community; lessons learned; and the positive effects going forward.

**Withholding of Privilege:** Tribal governments can restrain an offender from participating in tribal/community events or ceremony for a time certain. Tribal governments can also withhold non-essential services and benefits for a time certain to restore the balance between giving and taking.

**Posting a Peace Bond:** Offender can invest in posting a monetary bond with the Tribal Court as a security deposit for compliance with a Tribal Court order.

Tribal Courts are well positioned to conduct a village survey to learn additional ideas regarding relevant and trauma-informed remedies for behaviors plaguing the health and welfare of the tribal community.





# TRADITIONAL LAW

Anġaġiisix matanaan imin iġamnakux. Anaġix ukunachin imchin ugutaasaamchim  
aġnaġtxichin. / Anġaġiisiin sigaġ imis akuġ mal sigaġ inixsiisada.

**Life is gifted to you. What you make of it  
is your gift in return.**

Anġaġiisanatxin anġaġim agitaasingin agachan liidalix anġaġiisada.

Matal anġaġiikaan agacha anġaġisada.

**Live like you want people to see you live.**

Tanaġnangin lġayuusalix anġaġiimchin aġnaġtxichin.

Tanaġ, Alaġuġ ama slum imuunuu huzuu anaġim anaġinġis sahngaġtada.

**Live with and respect the land, sea, and  
all creation.**

Maamin iġtanatxin madada. / Anaġis maamis hiġtaqaan aguun mada.

**Don't make promises quickly,  
but keep those you make.**

Manachin ilam axtalakan aġliisachin. / Anaġis mal agumis ilam axtalagada.

**Do not do anything to excess.**

lġayuuġtxin, anaġim atxaġingin agachan madada. / Txin sakaġatal anaġis mada.

**Behave yourself:  
Do the things you know are right.**

Aniqdun ngiin aqaġan aġnangin qulingiin akuġ gumalgakuġ.

Kinguuġingin wan slum kugan haqaġan aġnangin qulaan akuġ gumalgakuġ.

**For the coming generations  
that we don't see yet, for their time here.**





# Bench Cards & Bibliography



FAMILY SAFETY PROTECTION ORDERS

Alaska Native Village Court and Council Bench Card – Full Faith & Credit

‘A strange and dark shadow has swept across the land. People drink alcohol and shape shift into monsters, who do unspeakable things to those they love. Both children and adults learn to run and hide when the transformations take place. But there is not always time, and it is hard to see when someone you love is shape shifting. People can get hurt no matter how careful they are.’<sup>1</sup>

Leadership

Tribal Council and Tribal Court Judges hold a trust obligation to provide leadership, protect the vulnerable, and communicate clearly so as to promote the protection and peace of the People

Tribal Protection Orders Receive Full Faith & Credit Recognition-Enforcement in all 50 States  
Violence Against Women Act (VAWA) 18 U.S.C. Sec. 2265

Qualifying Family Safety Protection Orders include:

- Any tribal, state, or local court order halting threatening or harmful behavior and preventing contact between the Petitioner and Respondent;
- Can be a Temporary ‘Ex Parte’ Order (only the Petitioner at the 1<sup>st</sup> hearing), so long as Respondent will be given Notice and Opportunity to be Heard through evidence;
- Child custody, visitation, and support provisions in protective orders for the non-abusing parent;
- Elder abuse protection orders;
- VAWA’s Full Faith and Credit provision is a door that swings both ways, and tribes may be asked to recognize and enforce valid protection orders from other tribes, states, or local courts throughout the United States of America.

Best Practices

- Work to create a justice system that is safe and user-friendly; striving with full effort to avoid re-traumatizing families struggling with violence
- Avoid charging Petitioners any fees or costs associated with the filing, registration, or service of a protective order.
- Allow for telephonic or video conference attendance at hearings for Petitioners when physical presence at the tribal court room or offices could compromise safety
- Explore traditional remedies and wellness based in the needs of your community
- Parties and Law Enforcement rely on the exact details of your protective order; seek to avoid vague terms [e.g. ‘reasonable distance away’], or leaving important matters “upon the agreement of the Parties” [e.g. be precise about times and locations for child visitation, upcoming holidays etc.].
- Make a written finding the Tribe has personal and subject matter jurisdiction to issue the protection order when harmful or abusive behavior has a negative impact on the Tribe.
- Make specific written findings of the kind of harmful behavior or abuse giving rise to the protection order.
- Make clear the expiration date of the protective order.
- Indicate on the face of the protective order that the Respondent had, or will have, notice and an opportunity to be heard. When present for a hearing, have the Respondent sign an acknowledgment of service.

<sup>1</sup> Adapted from FRIEDLAND, THE *WETIKO* LEGAL PRINCIPLES (2018) (Indigenous law embedded in ‘Cannibal Giant’ oral traditions; *Wetiko*-the cannibal as a traditional teaching regarding people who are harmful or destructive to themselves and others, succumbing to appetites in socially taboo ways. *Wetikos* have many tactics to satisfy their hunger and avoid being stopped. *Wetiko* stories remind us that their prey is not to blame for being overpowered, tricked, or lured into terrible harm).

- Avoid issuing mutual protective orders on both Parties.
- Provide your court’s contact information on the face of the protection order and be willing to talk with other jurisdictions when necessary to coordinate conflicting orders, or when any issues or questions arise. Build bridges and good working relationships with law enforcement and other jurisdictions.
- Consider creating a smaller Protection Order Face Card that the Petitioner can keep in their wallet when they travel (as opposed to carrying paperwork around).<sup>2</sup>
- Take the necessary steps to keep the Petitioner’s address/location confidential
- Take care to understand child support enforcement may raise safety concerns; consult with Petitioners regarding their wishes. Safety must always come first.
- Provide the protected party with National Domestic Violence Hotline number (800) 799-SAFE and information on local family services for further support, interventions, and available legal services for more permanent child custody arrangements.
- Tribal Judges/Council should assure the Parties that each time they come for help, the court will listen with fresh ears. Understand that getting back together with loved ones is common in tribal communities; just as relapse is part of recovery, it can take numerous efforts to heal a sick relationship before safety is restored. Petitioners may not come back again for help they desperately need if they are made to feel embarrassed or ashamed about getting back together with previously dangerous partners and loved ones.

FIREARMS & SUBSISTENCE

The presence of a firearm in a home struggling with domestic violence greatly increases the risk of serious injury or death. Tribal governments have a paramount interest in family safety as the foundation stone for firearms use in the customary and traditional subsistence way of life. There are times when leadership requires taking a hunting rifle to preserve the future.

Persons subject to a Long-Term Protection Order, issued after actual notice and an opportunity to participate in a hearing, may be prohibited from possessing a firearm or ammunition, when the order restrains the Respondent from threatening an intimate partner (or their child) and finds the Respondent a credible threat to the physical safety to an intimate partner (or their child).

Suggested Notice on Alaska Native Tribal Protection Orders:

Pursuant to the Violence Against Women Act, 18 U.S.C. Sec. 2265, This Order is Enforceable in all Fifty (50) States, the District of Columbia, Tribal Lands, and U.S. Territories.

Under Alaska Law, Violation of this Order May Trigger Arrest without a Warrant and Charge of Criminal Misdemeanor, Domestic Violence. The Petitioner Should Dial 911 in the Event of Violation.

If You are Ordered to have No Contact with the Petitioner, an invitation by the Petitioner to Have Contact (at residence, vehicle, or other place) Does Not in Any Way Invalidate or Nullify this Order.

As a result of this Civil Protection Order, it may be unlawful for the Respondent to possess or purchase firearms or ammunition under federal law, 18 U.S.C. Sec. 922(g)(8) or state, tribal, and local law. If you have questions whether these laws make it illegal for you to possess or purchase firearms for subsistence or otherwise, you should consult an attorney for legal advice.

<sup>2</sup> See project Passport at (800) 616-6160; [www.ncsc.org](http://www.ncsc.org) (for Order face-page template)



TRIBAL BENCH CARD

Preliminary / Emergency Child Protection Hearing Checklist

Who Should Be Present at Hearing?

- Parents whose rights have not been terminated, including possible fathers and Indian Custodians (including but not limited to Aunties, Uncles, Grandparents and Parent Partners with a significant role in the youth’s life);
- Tribal Family Caseworker;
- Parents’ Attorneys if they have one;
- Legal Advocate for Youth if there is one (e.g. GAL, CASA);
- Service Providers to Parents and/or Youth (e.g. Counselors, Probation Officers, Educators);
- Pre-Identified Key Witnesses
- Tribal Court Clerk and Recording Technology
- Bailiff or Court Security when Appropriate
- Cultural and/or Religious Leaders
- Age Appropriate Youth

Guaranteeing Due Process

- Court Staff shall adhere to a culture of quick and diligent notification of all ‘interested parties’ of the purpose of the hearing in understandable language (best practice is to provide written and telephonic notification);
- If a Parent, Interested Party, or Indian Custodian is not present at the hearing, the Court shall make a record of what diligent search and notification efforts were made by Court Staff and/or the Family Caseworker;
- Family Caseworker shall adhere to a culture of encouraging and even facilitating attendance of hearings by Parents, Interested Parties, and Witnesses;
- Facilitating telephonic or video conference appearance for out of town Parties or when otherwise warranted in the discretion of the Court;
- Asking Youth/Family/Witnesses if there is someone else who should be present;
- The Judge is ultimately responsible for determining who is allowed to be in the courtroom;
- Advise all Parties that youth have a right to the strictest privacy; administer an oath of confidentiality.

Review of Petition

- Sworn Petition or Complaint should be filed with the Court prior to the hearing and served upon the Parents;
- The Petition should be complete, accurate, and specific about tribal affiliations of the Youth/Interested Parties and the facts that bring the Youth before the Court with particular emphasis on the current safety threat to the Youth;
- Petition should make Recommendations to the Court regarding the Youth’s Best Interests, discuss any relevant Consents, and the Preference of the Youth where appropriate. When

feasible, the Petition should include the Criminal Background Checks for the proposed Placement, and any other residents of the home to be shared by the Youth.

Key Questions and Decisions

- Is Tribal Court Jurisdiction over this Youth proper under the law?
- What is the current and immediate safety threat to the youth?
- Can a safety plan be developed and implemented in order for the youth to return home today?
- Have there been efforts to prevent the removal of the youth, or is the situation too emergent to allow for efforts to be applied to the situation?
- Has the Youth expressed age-appropriate requests?
- What services are necessary to the Family to facilitate Reunification and how can we engage the Parents, Extended Family, and Youth in the development and implementation of the services and supports?
- Have the conditions for return been clearly communicated to the parents, family, and youth, and is the Court satisfied they understand these conditions?
- Is the proposed placement and care the least disruptive, culturally appropriate, or otherwise in accord with tribal placement preferences in a way that meets the specific and unique needs of the youth?
- Who is responsible for implementation of the service plans’ efforts toward reunification and monitoring the continued well-being of the Youth?
- What are the terms and conditions for Parental Visitation and Meaningful Family Time with Siblings and Extended Family?
- What are the terms and conditions for the Financial Support of the Youth?

- 
- Court’s decision should make Findings regarding Tribal Jurisdiction and Due Process;
  - Court’s decision should specify whether continuation of youth in home placement and care would be contrary to the youth’s health, safety, and welfare;
  - Court’s decision should specify whether efforts were able to be made prevent out-of-home placement, or whether they were not required due to the situation;
  - Court’s decision should describe who has legal custody and who has physical custody; if the case involves a Title IVE Social Security Act eligible placement, the Court or Voluntary Placement Agreement should designate the Tribal Department of Health and Human Services as Legal Custodian with full authority to determine Placement and Care
  - Court’s decision should discuss the length of the Placement/Guardianship
  - Court’s decision should describe terms and conditions for visitation and financial support
  - Court’s decision should provide further directions to the Parties such as those governing future parental conduct and agency efforts and services to the Family to promote reunification;
  - Court’s decision should specify why the course of action is in the Youth’s best interests, how age-appropriate requests were considered, and whether the placement has the resources necessary to meet the Youth’s unique needs;
  - Set Date and Time for next Hearing

Closing Questions to Ask Parents, Youth, Family Members

- Do You Understand What Happened Here Today?
- Do You Understand the Next Steps?
- Do You Have Any Questions for the Court?



TRIBAL BENCH CARD

Child Protection Review Hearing Checklist

Who Should Be Present at Hearing?

- Parents whose rights have not been terminated, including possible fathers and Indian Custodians (e.g. Aunties, Uncles, Grandparents and Parent Partners with a significant role in the youth’s life);
- Tribal Family Caseworker;
- Parents’ Attorneys if they have one;
- Legal Advocate for Youth if there is one (e.g. GAL, CASA);
- Service Providers to Parents and/or Youth (e.g. Counselors, Probation Officers, Educators);
- Pre-Identified Key Witnesses
- Tribal Court Clerk and Recording Technology
- Bailiff or Court Security when Appropriate
- Cultural and/or Religious Leaders
- Age Appropriate Youth

Guaranteeing Due Process

- Court Staff shall adhere to a culture of quick and diligent notification of all ‘interested parties’ of the purpose of the hearing in understandable language (best practice is to provide written and telephonic notification);
- If a Parent, Interested Party, or Indian Custodian is not present at the hearing, the Court shall make a record of what diligent search and notification efforts were made by Court Staff and/or the Family Caseworker;
- Family Caseworker shall adhere to a culture of encouraging and even facilitating attendance of hearings by Parents, Interested Parties, and Witnesses;
- Facilitating telephonic or video conference appearance for out of town Parties or when otherwise warranted in the discretion of the Court;
- Asking Youth/Family/Witnesses if there is someone else who should be present;
- The Judge is ultimately responsible for determining who is allowed to be in the courtroom;
- Advise all Parties that youth have a right to the strictest privacy; administer an oath of confidentiality.

Submission of Reports to the Court

- Pre-Hearing Report by Family Caseworker should be filed with the Court prior to the hearing and served upon the Parents;
- The Pre-Hearing Report should be complete, accurate, and specific about the description of services, reasonable and active efforts provided to assist the Family toward Reunification, and description of actions taken by Parents/Family to correct identified Health, Safety, and Welfare problems;

- In situations where the Youth should not be returned to the home, the Pre-Hearing Report should specifically explain why services and efforts to Reunify were not successful, and how it remains Contrary to the Youth’s Welfare to return to Home Placement and Care;
- Pre-Hearing Report should identify how the Youth’s Physical Health has been assessed and protected while in placement;
- Pre-Hearing Report should identify how the Youth’s Developmental Health has been assessed and protected while in placement (e.g. speech therapy, occupational therapy, educational interventions, family support);
- Pre-Hearing Report should identify how the Youth’s Mental Health been assessed and protected while in placement;
- Pre-Hearing Report should identify the Youth’s Educational/Youth Care Setting and whether or not the Youth’s unique needs are being met;
- Pre-Hearing Report should include updated Criminal Background checks for Parents, Placement, and other Residents that share the Youth’s home.
- Pre-Hearing Report should include a statement that **continued out-of-home placement** (whether by Voluntary Placement Agreement or Judicial Order) **remains in the best interests of the Tribal Youth.**

Key Findings of Fact and Conclusions of Law

- Findings as to whether the Youth is still in need of Court supervision, whether the Youth is still in need of placement outside the Parents’ home, including any continued specific risks to the health, safety, and welfare to the Youth that make it Contrary to the Welfare of the Tribal Youth to return to Home Placement and Care;
- Finding as to Long-Term case goals;
- Findings as to Social Services’ reasonable and active efforts to reunify and compliance with previous Court Orders;
- Findings as to whether the Parents and Indian Custodian are in compliance with previous Court Orders, the case plan, and identify specifically what further actions the Parents may need to complete;
- Set forth orders for Tribal Social Services / Family to make additional efforts necessary to meet the needs of the family and move the case toward completion (including any modifications to the pre-existing case plan);
- Finding as to why the Court’s decision continues to be in the Youth’s unique best interests;
- Finding as to how the Youth’s age-appropriate voice has been heard and considered;
- Confirmation or Modification of the terms of Parental Visitation, Meaningful Family Time, and Financial Support;
- Confirm responsibility for implementation of the service plans and monitoring the continued well-being of the Youth;
- Set Date and Time for next Hearing

Closing Questions to Ask Parents, Youth, Family Members

- Do You Understand What Happened Here Today?
- Do You Understand the Next Steps?
- Do You Have Any Questions for the Court?



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*Founding Forefathers* by Azat Minnekaev

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