



# Sample Tribal Justice Circle Ordinance

[lisa.jaeger@tananachiefs.org](mailto:lisa.jaeger@tananachiefs.org)

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## \_\_\_\_\_ TRIBAL JUSTICE CIRCLE STRUCTURE AND PROCEDURES

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### **Section 1. Purpose of the \_\_\_\_\_ Tribal Justice Circle**

The purpose of the \_\_\_\_\_ Tribal Justice Circle is to promote accountability for wrongdoings and encourage responsible behavior and choices among our tribal members and residents of \_\_\_\_\_. Justice Circles empower our people to participate in decision-making and problem-solving when problems arise and preserve and promote the cultural values and practices of the \_\_\_\_\_ Tribe. The sentences designed by the \_\_\_\_\_ Tribal Justice Circle shall be designed as restorative, to help and heal victims, offenders, the \_\_\_\_\_ Tribe and Village of \_\_\_\_\_. This Chapter outlines the basic structure and procedures of the \_\_\_\_\_ Tribal Justice Circle, and is intended to provide a fair and equitable process that is consistent with the \_\_\_\_\_ Tribal Constitution, Tribal Codes, the requirements of the Indian Civil Rights Act, and compatible with the unwritten laws and values of the \_\_\_\_\_ Tribe.

### **Section 2. Authority to Establish and Operate the \_\_\_\_\_ Tribal Justice Circle**

The \_\_\_\_\_ Tribal Council has the authority to establish and operate a tribal court system under its inherent sovereignty as a federally recognized tribe and under Article \_\_\_\_ of the \_\_\_\_\_ Tribal Constitution. The \_\_\_\_\_ Tribal Council hereby establishes the \_\_\_\_\_ Tribal Justice Circle as part of the \_\_\_\_\_ Tribal Court system.

### **Section 3. Jurisdiction of the \_\_\_\_\_ Tribal Justice Circle**

The \_\_\_\_\_ Tribal Justice Circle shall hear cases referred to it for sentencing involving juvenile delinquency, status offenses, civil violations, misdemeanors by persons of any age as so listed in the \_\_\_\_\_ Tribal Code or referred from the governments of a state, the federal government, or another from another tribe. The \_\_\_\_\_ Tribal Court shall receive the referrals and determine whether or not they will be accepted, and whether or not they shall be sent to a \_\_\_\_\_ Justice Circle.

## **Section 4. Beginning a Case by Petitioning or Referral**

**A. Beginning Cases by Petitions:** A case may begin by anyone, as recognized by the \_\_\_\_\_ Tribal Council, filling out a Petition describing in detail an incident, problem, or situation and giving it to the \_\_\_\_\_ Tribal Court Clerk. Petition forms shall be made available at the Tribal Office. The person filing a Petition shall be called the Petitioner and may be asked to sit in the Circle on the case. The Clerk, plus any three of the \_\_\_\_\_ Tribal Court Judges shall meet in a Preliminary Conference to review the Petition and decide whether or not the \_\_\_\_\_ Tribal Court should hold a Justice Circle on the case. If they decide they should, the Clerk shall give Notice to the offender.

**B. Beginning cases through referrals:** A case may begin by a referral from a state judicial official, agency, law enforcement officer, or by referral from another tribe. The \_\_\_\_\_ Tribal Court Clerk shall set up a Preliminary Conference with the \_\_\_\_\_ Judges to review the referral and decide whether or not a \_\_\_\_\_ Tribal Justice Circle should be held. If they decide that a Justice Circle should be held, the Clerk shall work with the State if the case is a State case in scheduling a date, time and place for the Circle, and notify the parties and other Circle participants.

## **Section 5. Tribal Justice Circle Clerk**

The Court Clerk for the \_\_\_\_\_ Tribal Court shall also serve as the Clerk of the \_\_\_\_\_ Tribal Justice Circle, unless the Tribal Council specifically designates another person. Duties of the Clerk may include:

- Receiving petitions or referrals filed with the \_\_\_\_\_ Justice Circle and bringing them to the Judges for review
- Answering phone calls and receiving mail for the Justice Circle
- Maintaining files for the Circle and a Justice Circle calendar

- Helping to review petitions or referrals and to select Circle participants when asked to do so
- Notifying parties and Circle participants of Circle hearings
- Drafting the tribal court order based on the consensus of the Circle for the \_\_\_\_\_ Tribal Court
- Receiving Proof of Compliance with Sentencing from the Justice Circles
- Maintaining records of Justice Circle finances

## **Section 6. Notification of Justice Circles**

The Tribal Court Clerk shall notify the Parties about the date, time, and place of Justice Circles. The Notice to the Parties shall include a copy of the petition or reason they are being brought to the Justice Circle, and shall state that if the parties believe they are being wrongly accused that they may immediately notify the Tribal Court Clerk who will schedule a hearing before the regular \_\_\_\_\_ Tribal Court or forward the case for prosecution under the State of Alaska or Federal Court System. Notice for Tribal Justice Circles shall be given at least 7 days in advance.

## **Section 7. General Procedures of the \_\_\_\_\_ Justice Circle**

- A. Circle Facilitator:** The Facilitator of each \_\_\_\_\_ Justice Circle shall be chosen by the \_\_\_\_\_ Tribal Court Clerk in consultation with at least three \_\_\_\_\_ Tribal Court Judges.
- B. Circle Participants:** In general, participants of Justice Circles may include family, friends, neighbors, teachers, council members, tribal court judges, VPSOs, residents and youth who are in the Village at the time the Circle is being held. Victims may decide if they wish to participate in the Circle or not. The Tribal Court Clerk, or another specifically designated person, shall be present at Justice Circles in order to write the decision of the Circle on an Order form. The \_\_\_\_\_ Tribal Court may also decide if a small, specifically selected group of individuals will make up a Circle.

**C. Notification of Circle Participants:** The Court Clerk shall be responsible for notifying village participants about the Justice Circle and encouraging their attendance. Notice may be made in writing or in person, and may include posting notices around the Village, announcements on the CB Radios, or any other effective method of letting people know there is going to be a Justice Circle and encouraging them to attend.

**D. Facilitator's Role for Opening and Conducting the Circle:**

- The Facilitator of the Circle shall begin the Circle process by opening the Circle.
- The Facilitator may assign other persons to assist in the Facilitation of the Circle by emphasizing various aspects such as the severity of the situation, impact on the community, importance of maintain confidentiality, or any other issue that would be helpful to emphasize in that situation.
- Opening the Circle may include a prayer or special comments from an Elder, the Facilitator, or someone in the Circle.
- The Facilitator shall ask the participants to agree to the Oath of Confidentiality and Fairness written in Section 8 of this Chapter.
- The Facilitator shall outline the rules of the Circle and ask participants if there are any additional rules they would like to see the Circle go by.
- The Facilitator shall explain the general process of the Circle, introductions, talking about the situation, then talking about the solution/sentencing
- The Facilitator shall emphasize the severity of the situation and what the consensus might be if the case was tried in the State of Alaska Court System.
- The Facilitator shall state what the situation is that the Circle will be hearing.
- The Facilitator shall begin the Circle by passing the talking stick or other special object.
- The Facilitator shall be responsible for keeping order in the Circle should that become necessary.
- The Facilitator shall summarize the highlights of what has been said after each round of discussion.
- The Facilitator shall state the final consensus of the Circle, and make sure that it is an accurate summary of the Circle's recommendations

- The Facilitator shall give the recommendations from the Circle to the Tribal Court Clerk to draft in Order form for the Tribal Court to certify.
- The Tribal Court may modify and/or refine the recommendations of the Circle.

**E. Basic Rules of the Circle:** The most basic rule of the Circle is that persons shall have respect for one another. Only one person shall speak at a time, which shall be the person with the talking stick, or as directed by the Facilitator of the Circle. Personal matters shared in the Circle shall stay in the Circle, and shall not be discussed outside of the Circle, except that mandatory reporters shall report matters that may be revealed which they are required to report.

**F. Order of Speaking:** Once the Facilitator has opened the Circle, he or she shall pass the talking stick around the Circle and participants shall speak only when they hold the stick. If a person chooses not to speak, they may pass the stick on to the next person in the Circle. The discussion of the Circle shall continue in this manner unless the Facilitator directs otherwise.

**G. Process of the Circle:** The first round of the Circle shall be simple introductions, each person stating their name and relationship to the situation. Following that, the next rounds of the Circle discussion shall be for participants to voice their feelings, opinions, share information, and generally talk about the situation. After these things are thoroughly aired, the Facilitator shall begin new rounds of discussion focusing on appropriate solutions and sentencing recommendations. Someone may keep a list of Circle Participant's sentencing ideas on a paper chart for all to see.

**H. Recommendations of the Circle:** The sentencing recommendations of the Circle shall be made by consensus. The discussion in the Circle shall proceed until everyone can stand behind the recommendations being made. The recommendations of the Circle shall be written on paper for all to see. The recommendations may include who shall do specific tasks that may be decided by the Circle, who shall mentor the Offender, and specify guidelines for the sentences decided.

- I. Mentors:** Specific adult mentors shall be assigned to oversee the progress of offenders in completing their sentences. Mentors shall sign off on proof of compliance forms when offenders complete tasks assigned in orders. Mentors shall report to the Tribal Court Clerk if an Offender fails to complete assignments made in Orders within the allowed timeframe.
- J. Tribal Probation:** The Circle may recommend that a person be placed on tribal probation and check in with the tribal probation officer who may also be the tribal social worker or tribal court clerk. The recommendation may include things such as checking in with the probation officer on a regular basis for counseling; abstain from alcohol and illegal drugs, or mandatory attendance at school if the person is of school age.
- K. Follow-up on Circle Recommendations:** Before a Circle adjourns, it shall make recommendations for appropriate sentencing to be given to the \_\_\_\_\_ Tribal Court Clerk. The Clerk shall draft an Order with specific sentencing with a plan containing specific activities, timeframe guidelines, who shall monitor each of the assigned activities, and proof of compliance with the Order. The \_\_\_\_\_ Tribal Court Judges shall approve and sign off on the Order, provided that they may make changes to the Order before signing. If an Offender is not complying with an Order of the Circle, the person may be brought before the Circle again, ordered to appear before the \_\_\_\_\_ Tribal Court., or the case may be referred to the State of Alaska or Federal Court System for prosecution.

## **Section 8. Oath of Confidentiality and Fairness**

Participants of Circles shall agree to the following oath:

“I promise to not discuss what is said in this Circle outside this Circle. I will work towards a fair agreement on the consequences for the situation before us. “

## **Section 9. Failure to Appear for a Justice Circle**

If an offender was served with a Notice about a Circle hearing but fails to show up for a hearing, the \_\_\_\_\_ Tribal Justice Circle may discuss the case and make sentencing recommendations in the absence of the person, or set another Circle date.

## **Section 10. Restorative Sentencing – Consequences for Wrongful Behavior**

The Circle participants shall design sentences intended to help and heal victims, offenders, and the Village of \_\_\_\_\_. Sentences shall include specific activities and timeframes for compliance and shall not just leave the choice of activities up to an offender. Sentencing shall include restitution for any damages that may have incurred.

## **Section 11. Proof of Compliance with Circle Orders and Failure to Comply**

If an offender is ordered to do something, the offender shall sign a Proof of Compliance form for the Tribal Court Clerk or assigned Tribal Probation Officer within the timeframes specified in the Order. Assigned Mentors shall notify the Clerk in the event the person they are mentoring does not complete the requirements of an Order. The Clerk may schedule another Circle or report any failures to comply with orders to the regular \_\_\_\_\_ Tribal Court, schedule a hearing, and provide notice to the party of the hearing. Failure to comply with a \_\_\_\_\_ Justice Circle Order may result in the charges being filed in the State of Alaska or Federal Court System for prosecution.

## **Section 12. Appeals**

The \_\_\_\_\_ Tribal Court shall serve as the Appellate Court for the \_\_\_\_\_ Justice Circle. A person who wishes to appeal a case may file a Notice of Appeal with the Tribal Court Clerk within 10 days after receiving an Order from the \_\_\_\_\_ Justice Circle.