

TRIBAL PROGRAM NEWS

Criminal Code and ICRA

by Diane Henkels

This month's article has two parts. The first is a summary of comments we have received at community meetings regarding a draft of the revised Criminal Code. The second is about the Indian Civil Rights Act and includes a brief background of this federal law and the full text of the law itself.

Community Comments

We have presented a first draft of a revised Criminal Code to area offices, the elders, and those who work directly with issues covered in the code. We received very helpful input from tribal members and staff at all of the area offices and from the elders.

Head Start kids trick-or-treat at the administration building in Siletz



Some issues where community input is especially helpful include deciding how to order the criminal offenses, how the judge should decide a sentence, whether and how to include juries, how many jurors to decide a case, and whether to include major crimes, like murder, rape, and first-degree assault, in the code if the maximum punishment is only one year imprisonment and a \$5,000 fine.

The following comments address these issues and others:

From Eugene:

Where do the reporting laws apply? What about confidentiality?

Federal laws require tribal agencies to report child abuse to the appropriate officials. The state of Oregon can suspend the professional license of a person who fails to report child abuse. The CTSI personnel manual requires all tribal employees who reasonably suspect abuse or neglect of a minor to report this to CTSI Indian Child Welfare.

Does law enforcement treat Indian youth fairly in Siletz?

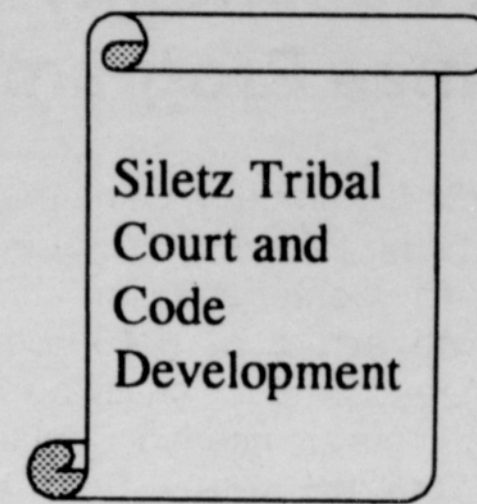
Who are the Tribal Court judges? Cal Gantenbein is the chief judge. Other judges are Robert Dickinson, Arthur (Art) Fisher, and Edmund Goodman. Biographies of the judges are available through the Tribal Court or the ANA Tribal Court and Code Development project.

From Siletz:

The project should have copies of the CTSI Criminal Code drafts for the community to review and include a table of contents. Each area office and the project office has a copy of the drafts for each code in a clearly marked binder. ANA Court and Code staff will bring at least three copies of the draft Criminal Code to the meetings. We have included a table of contents.

Should we make the Peacemaker part of the code? The draft Criminal Code refers to "other courts" and the next draft will make this more specific. The project also will work on the Peacemaker/traditional court.

What about prohibiting peyote on the Siletz Reservation? Some people



stated that peyote is not a traditional way of the Siletz Indians. They also stated that they do not want peyote available to people here, especially our Native youth.

A big issue is how to deal with major crimes. People are wondering if major crimes, such as rape, murder, kidnapping, etc., will be dealt with in Tribal Court. They asked, "Why even bother with big offenses when you can send them off to state court for bigger sentencing?" The Indian Civil Rights Act limits punishment to one year imprisonment and a \$5,000 fine. (See page 17 for more information on this law.)

Someone mentioned banishment for major crime offenders, not allowing Native felons to attend ceremonies such as pow-wows, sweats, pipe ceremonies, etc. But going to all these ceremonies is a way to heal yourself and cleanse your body. When Native Americans go to sweats and ceremonies to pray and heal themselves, it's the same as white people going to church to pray. These Native ways should be open to any Native.

Also, a major issue is the age-old problem of loose dogs and cats.

We discussed putting the draft code on the Web. Project staff are exploring this option.

What two parts of the U.S. Constitution apply to Indian tribes?

These are the "Indian Commerce Clause" and a provision about counting Indians for the purpose of taxation. The Indian Commerce Clause says that Congress shall regulate commerce with Indian tribes. This has been used as a primary source to establish congressional authority to deal with Indian tribes.

There was concern that we address drugs and alcohol. This Code covers alcohol and drugs, including tobacco.

(See Criminal Code on page 16)