

**HB**

**372**

Amendment #1  
AS 12.55.005 is amended to read:

HB372 - Amend to H.a

New \*Section 1. AS 12.55.005 is amended to read:

**Sec. 12.55.005. Declaration of purpose.** The purpose of this chapter is to provide the means for determining the appropriate sentence to be imposed upon conviction of an offense. The legislature finds that the elimination of unjustified disparity in sentences and the attainment of reasonable uniformity in sentences can best be achieved through a sentencing framework fixed by statute as provided in this chapter. In imposing sentence, the court shall consider

- (1) the seriousness of the defendant's present offense in relation to other offenses;
- (2) the prior criminal history of the defendant and the likelihood of rehabilitation;
- (3) the need to confine the defendant to prevent further harm to the public;
- (4) the circumstances of the offense and the extent to which the offense harmed the victim or endangered the public safety;
- (5) the effect of the sentence to be imposed in deterring the defendant or other members of society from future criminal conduct; [AND]
- (6) the effect of the sentence to be imposed as a community condemnation of the criminal act and as a reaffirmation of societal norms ; and
- (7) the restoration of the victim and the community.

Add to  
Section #2

\*Sec. 2. AS 12.55.045(f) is amended to read:

(f) If a court proposes to order a defendant to pay restitution under this section of more [LESS] than \$5,000, and the defendant's sentence includes [DOES NOT INCLUDE] a period of unsuspended incarceration exceeding 90 days, the court may take into account at the time of sentencing the defendant's present and future ability to pay the restitution proposed. The court shall presume that the defendant has the ability to pay the amount proposed unless the defendant at the sentencing hearing establishes by clear and convincing [A PREPONDERANCE OF THE] evidence the inability to pay the amount proposed.

\*Sec. 3. AS 12.55.045 is amended by adding new subsections to read:

~~(h) In imposing restitution under this section, the court may require the defendant to make restitution by means other than the payment of money.~~

Add:  
to section #2

(i) An order of restitution made under this section is a condition of the defendant's sentence and, in cases in which the court suspends all or a portion of the defendant's sentence, the order of restitution is a condition of the suspended sentence. If the court suspends imposition of sentence under AS 12.55.085, the order of restitution is a condition of the suspended imposition of sentence.

# FISCAL NOTE

**STATE OF ALASKA  
2000 LEGISLATIVE SESSION**

**BILL NO. HB 372**

Revision Date/Time (Note if correction) _____	Dept. Affected <u>Department of Corrections</u>
Title <u>An Act relating to criminal sentencing and</u>	BRU <u>Administration and Operations</u>
<u>restitution.</u>	Component <u>All</u>
Sponsor <u>Rep. Dyson</u>	
Requester <u>House Judiciary Committee</u>	Component No. <u>#0694</u>

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	***	***	***	***	***	***

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	***	***	***	***	***	***

Estimate of any current year (FY2000) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

If passed, this legislation would allow victims and offenders or communities and offenders to negotiate an agreed sentence for an offense and allow for restitution to be made by means other than money. This bill would not include offenses against a person. An agreed sentence could be less than the presumptive sentence for a felony because reaching such an agreement will be a mitigating factor under AS 12.55.155(d).

It is difficult to predict what kind of a fiscal impact this would have on the Department of Corrections. We have no way of knowing how often this would occur and what the outcome would be. Therefore, the Department of Corrections is submitting an indeterminate fiscal note.

Prepared by: <u>Candy Brower, Legislative Liaison</u>	Phone <u>465-3307</u>
Division <u>Commissioner's Office</u>	Date/Time <u>3/2/00 5:02 PM</u>
Approved by <u>Commissioner Margaret M. Pugh</u>	Date <u>3-2-00</u>
Agency <u>Dept. of Corrections</u>	

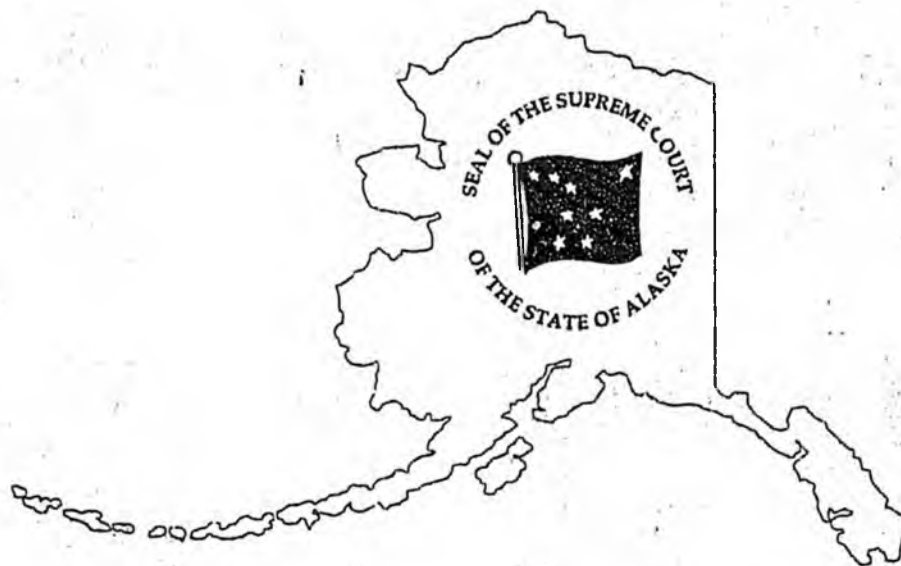
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## Key points about House Bill 372

- HB 372 – is post conviction, it does not interfere with the adjudication process
- HB 372 is crafted to be permissive, without being proscriptive
- The gate into and out the provisions of HB 372 is guarded by judicial review
- HB 372 is good for lower income folks because it allows them an option to pay by other than monetary means
- HB 372 is victim-friendly, offender allowed and judicially scrutinized.
- HB 372 intends to extend some of the strengths of the youth court model to non-violent adult offenders.
- HB 372 applies to non-violent offenders only, the penalties for crimes against persons, domestic violence, or arson where a life is threatened, can not be negotiated.
- By allowing non-violent offenders to work off their sentence, we reserve more prison beds for offenders who are a real threat to public safety.
- There will be some offenders who do not respond to the community sentencing option, for these we have a well established correctional system.
- Page 1 line 9-10 specify that whatever sentence is produced by negotiation much also comply with sentencing guidelines we already have in place – we are not undoing presumptive or mandatory sentencing.
- In section 3, HB 372 is adding one additionally mitigating factor to the 17 existing ones that may be considered by a court in mitigating the form the sentence takes.
- Because we have attempted to be non-proscriptive, some crimes that would be available to negotiate are technically impractical to do so: indecent exposure for example.
- Instead of detailing a multi-page laundry list of do's and don'ts it seems best to say: "No negotiation for serious arson, violent person to person crime or instances of domestic conflict (defined as one household member victimizing another), all others *may* be considered by the court and the victim or his/her community."

# THE STATE OF THE JUDICIARY



A MESSAGE BY  
CHIEF JUSTICE WARREN W. MATTHEWS  
TO THE SECOND SESSION OF THE  
TWENTY-FIRST ALASKA LEGISLATURE  
MARCH 8, 2000

## IMPLEMENTATION OF LEGISLATION


Although each branch of government has core areas where it must act independently, there are also many areas of shared responsibility. These take many and varied forms. What I propose to do now is list a number of activities the court system took last year in response to legislative initiatives.

### Mediation and Alternative Dispute Resolution

In 1997 you enacted legislation to encourage broader use of mediation. The Alaska Court System agrees with this goal. I will briefly describe the mediation programs which are now underway.

- The Third District has established a child custody and visitation mediation program. This is funded through a federal grant. The court provides trained mediators to low-income parents in order to help them resolve contested child custody or visitation issues. The program is in place in Anchorage, Fairbanks and Kenai, and is scheduled to begin soon in Southeast Alaska. So far our statistics show that 82 cases have been referred and that complete or partial agreements have been reached in about 70% of these cases.
- There are mediation programs for child-in-need-of-aid cases in Anchorage, Bethel, Fairbanks, Kenai, and Kotzebue. These are also

funded by a federal grant. Two months ago we provided 32 hours of specialized mediation training to 15 contract mediators. Two weeks ago the programs opened for business. We are anticipating a heavy demand for this service and we will be tracking referrals and resolutions.

- In Juneau, Presiding Judge Lary Weeks reports that the judges continue to order the mediation of many domestic relations cases by private mediators. A high percentage of mediated cases are partially or wholly resolved. 
- The Anchorage district court recently began a project using trained volunteer mediators to mediate small claims cases. The mediators make themselves available one day a week to any person who has a small claims trial scheduled.
- Also in Anchorage, a nonprofit corporation, the Resolution Center, is conducting a juvenile mediation program based upon principles of restorative justice. Under this program, when a youth is accused of a crime, Department of Health and Social Services intake officers evaluate the case to see whether it is appropriate for referral. If it is, and if the offender and the victim both agree to participate, a team of volunteer mediators conducts a meeting between the offender and the victim. At the

meeting, the victim relates the effects of the crime and the offender is expected to take responsibility for his or her actions. The victim and the offender often negotiate a sentence, which can include the payment of money, community work service and, necessarily, an apology. This program seems to be working well. It handled 104 cases in 1999.

⇒ Offenders paid over \$10,000 in restitution and the recidivism rate of offenders is said to be low.

- Also on the subject of mediation, the supreme court amended the rules of professional conduct governing lawyers. They must now inform their clients about mediation and alternative dispute resolution in any matter involving or expected to involve litigation. The court also facilitates private mediation by maintaining a directory of mediators on its home page.

#### Child Protection, Support and Custody

In 1998 the legislature made important changes in the child protection statutes. To reflect these changes, the supreme court has revised the rules governing child protection proceedings. We also added new provisions to ensure that these cases proceed expeditiously.


## LOOKING TO THE FUTURE

Speaking to you 28 years ago, Chief Justice Boney remarked that Abraham Lincoln would feel very much at home in most of the courts in America, since they really haven't changed very much since he practiced law in the 1840's in Illinois. In many respects that is still true in Alaska and in the other states. I find it comforting in a way, because common law trials are well designed to achieve justice. But it is also worthwhile to reflect on a trend that might signal an important shift in the way courts do business.


→ I'm speaking of the restorative justice and therapeutic court movements. Nationally the best known therapeutic court is the drug court, although the same model has been applied to other types of chronic destructive behavior. In the therapeutic court a single judge is assigned a certain class of cases and the judge uses the threat of sanctions to compel compliance with a long term treatment plan. Nationwide some remarkable successes have been reported in drug courts. Recidivism is said to be greatly reduced. In the therapeutic court the judge retains active control over cases for a long period of time, and many hearings are scheduled to ensure that defendants are complying with rehabilitation plans. Thus therapeutic courts are labor intensive and expensive. But advocates say the added costs are much less, viewed overall, than the costs of recidivism experienced in the present system.

In Alaska, the only therapeutic court is the mental health court conducted in the Anchorage district court. This project focuses on misdemeanor offenders who suffer from mental disabilities. These people have historically cycled through the district court following arrests for disorderly conduct or trespassing. In the mental health court, treatment is ordered and monitored closely, as an alternative to incarceration. The project was started in 1998 as a collaboration between the court system, the Department of Corrections, and a number of law enforcement and social service agencies. The program is funded in part by a grant from the Alaska Mental Health Trust. To date, the mental health court has handled the cases of 139 people. Positive results have been achieved. For example, one evaluation studied 36 mental health court participants. In the year prior to their participation, these individuals spent collectively 3,062 days in jail. In the year of their participation in mental health court, jail days were reduced to 585. Alaska Psychiatric Institution days were similarly reduced. Much credit for the initiative that led to the establishment of the mental health court should go to District Court Judge Stephanie Rhoades. We hope to see the program continue, and we also hope that the model can be used outside of Anchorage.

We have recently completed a study of the feasibility of a drug court for Anchorage. This was found to be feasible and a federal grant to begin operating such a project has been applied for.



The term restorative justice refers to an approach to criminal sentencing that is intended to be therapeutic not only for the offender, but also for the victim and the community. The goals of restorative justice are sometimes described as accountability and rehabilitation for offenders, restitution and healing for victims, and for the community. In each case a plan involving punishment, rehabilitation, restitution, apology, and often absolution is agreed to by all concerned, and then implementation of the plan is closely supervised. In Alaska, one adaptation of restorative justice is the use of sentencing circles. These have been used most systematically by Mike Jackson, our magistrate in Kake. He convenes sentencing circles that use restorative justice principles and local customs and traditions. Magistrate Jackson has convened 20 circles to date, usually involving misdemeanor assault and alcohol-related crimes. He reports that the process has worked well in most cases and that some offenders have turned their lives around after years of problems.



We are encouraging therapeutic court and restorative justice initiatives. We will monitor the results. Only time will tell whether these movements become important permanent elements of the administration of justice in Alaska.

But I should add that the youth court movement is a specific example of restorative justice, and it seems to be well on its way to becoming a permanent feature of our justice system. The Anchorage and Fairbanks youth courts are well established.

Anchorage handled more than 400 cases last year and Fairbanks more than 100. Youth court defendants have performed many thousands of hours of community service. The recidivism rate in both programs is low, only around 10%. Youth courts are underway or in the process of development in many other communities. We continue to support the youth courts and applaud the efforts of the many volunteers who participate in their operation.

## CONCLUSION

This concludes the substance of my report to you. It has been detailed, perhaps overly so, but I do not want this mass of detail to obscure the central point. The justice system in Alaska is functioning well. Cases are being promptly tried before judges who are fair and highly competent. Our non-judicial employees are doing an excellent job and their morale is good. Innovative initiatives to improve the system are underway, and we encourage them.

The Alaska Legislature has always supported the goal of providing the state with an outstanding justice system. We in the judiciary are also committed to that goal, and with your help we will continue to strive to achieve it.

On a personal note, I would like to observe that this year marks the end of my term as chief justice. This is the sixth time that I have given a State of the Judiciary

## Sponsor Statement for House Bill 372 (FIN) AM H

Alaska's Constitution is one of the few state founding documents to specifically recognize restitution and rehabilitation as primary goals of the correctional services.

HB 372 is a small first step towards promoting the values of restorative justice, a philosophy that is proving a highly successful response for low-impact non-violent offenders in other states. The central theme of restorative justice is accountability for the offender, restitution for the victim and reconciliation for the community. These are big words to say that the offender says, "I'm sorry", the victim gets his car fixed, and the community is allowed the chance to meet the offender and enforce the sanction.

Once an offender is found guilty, the provisions of HB 372 would permit a judge to allow the victim and offender to work out a sentence that would make the victim, or the victim's community, as whole as possible. For instance, if the offender broke a window, the window should be replaced. HB 372 is careful to specify that only willing, non-violent offenders, may be considered for a community-based sentence and only with the victim's consent. Domestic cases, where one household member acts against another, are also exempt from negotiation. In all cases, if the victim wishes to invoke the criminal sanctions all they have to do is ask. Only with a court's approval would a community-based sentence have the force of law and should an offender fail to meet the requirements agreed to, the judge may always invoke the standard penal response. Judicial review of these cases is important to ensure that similar offenses are countered with proportionate sentences.

In cases where the victim wishes to be involved and repaid by a non-violent offender, it is our belief that a more cost-effective community response is possible while still upholding the state's primary interest in public safety.

It is worth noting that traditional societies world wide have almost universally focused their justice systems on forcing the perpetrator to restore the victim to a pre-offense condition, to the degree possible. All Alaska Native groups enforced restorative principles to some extent and the Tlingit and Haida Indians had elaborate protocols for adjudicating offenses. Several Alaska and Yukon judges are now working with local volunteers to arrange for community-based, or "circle" sentencing in a number of Alaska communities.

# INNOVATIVE JUSTICE



MARC LESTER / Anchorage Daily News

"I had to see the place where he died," Arlene Soxie, a health aide from Unalakleet, told Anchorage police detective Joe Hoffbeck during a memorial visit to the Anchorage motel where her 30-year-old son was killed last November. Henry Ongtawasruk, diagnosed

as a teenager with schizophrenia, kept his appointments at the mental health court, but he exhibited such bizarre and occasionally violent behavior that his caseworker couldn't find a program or group home willing to accept him.

By SHEILA TOOMEY  
Daily News reporter

The woman in the near empty courtroom wore handcuffs and the faded red of the psychiatric unit at Hilland Mountain prison. She was round and pretty and the red went well with her coal black hair.

## Anchorage judges find new ways to slow the revolving door of defendants

Her diagnosis was "persistent psychosis," which means even strong medicine won't subdue all her symptoms. And sometimes she drinks too much. She was back in court because she attacked a therapist at the treatment center she was sent to after an earlier arrest.

"I really would like to find out why I do this," the woman told Judge Stephanie Rhoades.

She sounded puzzled, plaintive. "Me, myself, I don't have a good reason why I attack people," she said. "It's voices but it's not voices ... I don't want to have this," she said.

"Whatever it is."

A stranger to court procedure might not



District Judge Stephanie Rhoades tells a mentally ill defendant that it is a simple choice: Follow a few rules or go back to jail. Rhoades said the mental health court is the highest use of her judicial power to inch a chronic defendant toward a lawful, healthier life.

See Page A-4, DISTRICT COURT

Support

BOB HALLINEN / Anchorage Daily News

# DISTRICT COURT: Judges tap new ways to solve old problems

Continued from Page A-1

have noticed that the judge and the defendant spoke directly to each other and at length. Her lawyer remained silent at her side. That's not the way it usually works.

□

In another courtroom on another day, a young man told Judge James Wanamaker that once he was able to drink all the time and still maintain a respectable life. He was a party animal in college, he said, but "I was a functional person, a hard-working guy."

No more. Thanks to his drinking, he had been arrested again, this time for malicious destruction of property.

"I really was trying hard," he said. He was polite and well spoken. He was in his 20s but the accelerated aging of the chronic boozier already showed in his face.

After an earlier arrest, the man signed on to Wanamaker's experimental naltrexone program. Naltrexone is a drug that kills the craving for alcohol in most people who take it as part of a sobriety program. It doesn't work with everyone and often not the first time.

Wanamaker could have sent the young man to jail for a couple of months and closed the case. He had broken the rules of his probation. But the judge knew relapse is part of recovery. He left the man in jail over the New Year's weekend, away from temptation. In another week, judge and defendant would talk again and work out new rehab plans.

□

In yet another courtroom,



common.

But District Court has always been a revolving door. So what has changed? Attitude, it seems. The current crop of judges is relatively new and less willing to accept doing business as usual.

With its big volume and scant prestige, District Court hasn't always attracted the best and the brightest. It was often a dead-end job; misdemeanor judges rarely got appointed to a higher court.

Seven of the nine current judges have been on the job for less than 10 years. Six of them were appointed by Gov. Wally Hickel between 1991 and 1994. Hickel said recently that he used a special standard for his District Court appointments. "That court deals with human problems, with families," he said. "I didn't care what the resume said. I wanted people who cared about people."

Whatever the reason, judges like Rhoades, Wanamaker and Ashman, with support from presiding Judge John Lohff and encouragement from the municipal prosecutor's office are crossing lines that judges rarely cross, using the power of the bench to convince and coerce recidivists into lawful lives.

## SMALL STEPS

Rhoades, a former prosecutor named to the bench in 1992, runs the only officially supported and the most successful experiment to date.

The idea is simple: Identify defendants whose criminal behavior seems to be a result of mental illness. Put them on long-term bail or probation and supervise them closely as they take



District Judge Peter Asl defendants.



...he has broken the rules of his probation. But the judge knew relapse is part of recovery. He left the man in jail over the New Year's weekend, away from temptation. In another week, judge and defendant would talk again and work out new rehab plans.

□ In yet another courtroom, a group of people who rarely get to talk in court were invited to help Judge Peter Ashman fashion a sentence for a North Slope equipment operator, a hard-working father of five convicted of 15 alcohol-related crimes over a dozen years. Increasingly harsh punishment had not convinced him to change his behavior.

After much debate, the circle of family members, law enforcement officers, and people from victim groups concluded the defendant should be encouraged to continue his rehabilitation and spend only a minimum amount of time in jail.

The circle sentencing, an experiment by Ashman, took six hours over three days. People argue that the system can't spend so much time on a routine misdemeanor, the judge said later. "What takes so much time is processing the same people over and over again."

□ Once dismissed as "mondo misdemeanor," a place where meatball justice is doled out in five-minute servings to people who haven't done anything too awful, Anchorage District Court today is edgy and creative, almost visionary as courts go.

Rhoades' mental health court is one of only three in the country.

A few judges in other states are offering naltrexone to alcoholics as an alternative to more jail time, but the idea of judges expanding into areas usually reserved for social workers is not universally popular. Wanamaker and the municipal prosecutor's office got his program going with a minimum of official support.

Ashman's circle sentencing was an exploratory effort at therapeutic or restorative justice, something that is talked about in professional journals a lot more than it's used.

The blossoming of innovation at Fourth Avenue and K Street is the result of a handful of judges who are frustrated at seeing the same people show up in their courtrooms year after year charged with one petty crime after another. They say they think there must be a more effective way to deal with them.

These persistent customers are almost always "but for" cases: But for alcohol, but for drugs, but for mental illness, they would not be trespassing, destroying property, vandalizing some stranger's car or getting in fights with other people like themselves.

For these defendants, "it's clear the traditional approach doesn't work," Rhoades said.

Last year, the nine district judges handled 22,768 cases — drunken driving, domestic violence, minor assaults, trespassing, vandalism, shoplifting and small civil claims. The longest sentence possible for any single charge is a year. A few days or a few weeks are more

...Rhoades, a former prosecutor named to the bench in 1992, runs the only officially supported and the most successful experiment to date.



BOB HALLIEN / Anchorage Daily News

Laura Brooks, a caseworker for the Department of Corrections, recommends action for mentally ill defendants in Judge Stephanie Rhoades' courtroom. Brooks comes to court with the defendants and reports on their progress.

The idea is simple: Identify defendants whose criminal behavior seems to be a result of mental illness. Put them on long-term bail or probation and supervise them closely as they take small steps toward getting their lives under control.

These are people routinely subject to "mercy arrests" by police who worry about them freezing to death, hurting someone or getting hurt themselves. They are often homeless and are rarely focused enough to negotiate the social welfare system on their own. There is no place for them to go but jail.

America started emptying out its mental hospitals in the 1970s on the theory that, with some assistance, most patients could live in less restrictive, more humane settings. Unfortunately, the better settings rarely materialized and huge numbers of the mentally ill became victims of the streets.

Charged with trespassing or some other nuisance misbehavior, these chronic offenders plead no contest, do some jail time and are returned to their lives in the same or worse condition, primed for another arrest.

"These are the unwanted people," Rhoades said, people who hear voices, who speak to people who aren't there, who frighten a wary public, don't keep appointments and disrupt groups designed to help them.

Often they have stopped taking anti-psychotic drugs because the side effects are so bad. They sometimes substitute alcohol or a street drug, anything to blur the details of a fearful existence.

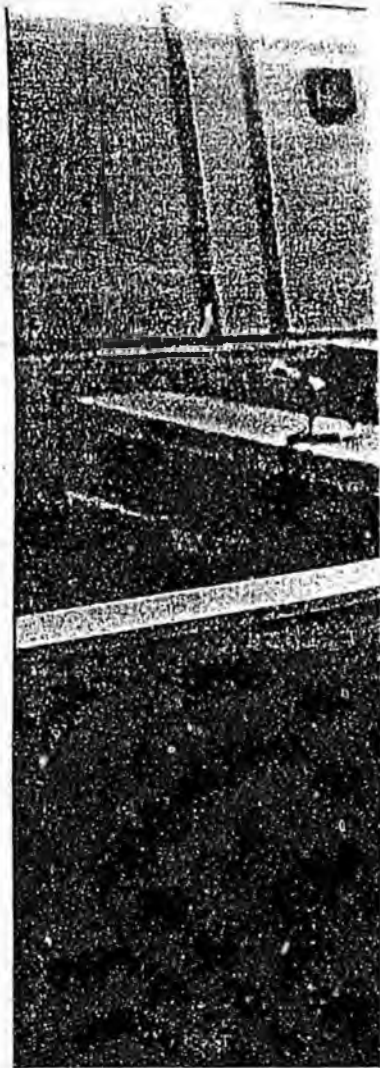
"I think self-medication is just the easier way to go for these folks," Rhoades said. "It's painful to be hearing voices and to be seeing things and to know what they are telling you to do is wrong." And when they get drunk or stoned, they get stupid like anyone else.

The Anchorage mental health court was started in 1998 with a grant from the Mental Health Trust and cooperation from the Department of Corrections. An analysis by corrections after a year of operation found that defendants who opt into the program get arrested less and spend significantly fewer days occupying expensive jail beds than those not in the program.

Rhoades convenes her special court for about an hour every Tuesday and Thursday. Judge Lohff holds a Wednesday session. On public notices, they're called CRP — the Coordinated Resources Project. "How would you like to see your name under something called 'mental health court?'" Rhoades said.

Defendants must volunteer for the project and be willing to waive trial or be finished with trial and ready for sentencing. Rhoades can revoke their bail and will eventually sentence them. This gives her leverage defendants understand and encourages compliance.

Forty defendants get the services of Laura Brooks, a caseworker for the Department of



To help reform DWI offenders, Dis for alcohol.

Corrections, paid for by the M Trust, which wants jail alternative the mentally ill. The rest have their lawyers and family to develop for them, which Rhoades approves.

Defendants are given an individual list, which Rhoades repeats with them. Are they reporting as therapy? To whoever monitors their housing? If not, why not? What their lives right now?

Brooks keeps tabs on the defendant. Alternative Services project them, talks to their families and tries to simplify their dealings agencies. She comes to court and reports their progress to Rhoades.

If someone does well, he or she of applause, led by the judge. If delivered, they get a stern talker list, a tighter timeline. If they badly, they might be sent back short reminder stay, then start over.

Most of the defendants who cl program are chronically ill. But it a ple like Mandy Gershon, a 35-year-old of four whose mental health col the weight of a back injury, fear and depression.

One day she found herself meanor arraignment, charged with a gun. "I was treated like a c

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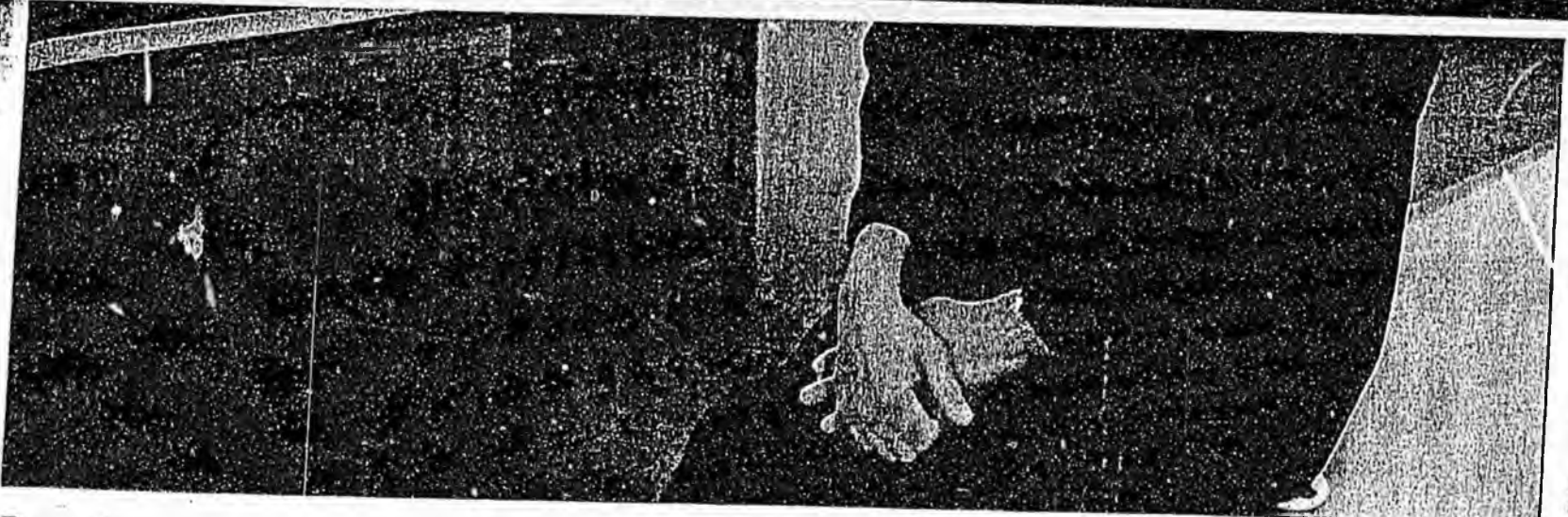
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One day she found herself at a misdemeanor arraignment, charged with discharging a gun. "I was treated like a criminal," she



BOB HALLINEN / Anchorage Daily News

To help reform DWI offenders, District Judge James Wanamaker instigated an experiment using the drug naltrexone, which helps kill the craving for alcohol.

Corrections, paid for by the Mental Health Trust, which wants jail alternatives offered to the mentally ill. The rest have to depend on their lawyers and family to develop a program for them, which Rhoades approves and monitors.

Defendants are given an individualized to-do list, which Rhoades repeatedly reviews with them. Are they reporting as scheduled to therapy? To whoever monitors their medication? Have they filled out an application for housing? If not, why not? What's going on in their lives right now?

Brooks keeps tabs on the defendants in the Jail Alternative Services project. She visits them, talks to their families and therapists, and tries to simplify their dealings with various agencies. She comes to court with them and reports their progress to Rhoades.

If someone does well, he or she gets a round of applause, led by the judge. If they haven't delivered, they get a stern talking to, a shorter list, a tighter timeline. If they've failed badly, they might be sent back to jail for a short reminder stay, then start over.

Most of the defendants who choose the program are chronically ill. But it also helps people like Mandy Gershon, a 35-year-old mother of four whose mental health collapsed under the weight of a back injury, family problems and depression.

One day she found herself at a misdemeanor arraignment, charged with discharging a gun. "I was treated like a criminal," she

said recently. "I think (the magistrate) read me as some crazy person on drugs. ... My self-esteem was so low I wanted to die. ... Not one person sat down and talked to me as a human being."

Luckily, Gershon's mother had heard of the mental health court, and her attorney, Rex Butler, got her case transferred to Rhoades. Butler and a psychologist worked up a treatment plan for Gershon, and Rhoades accepted it. Rhoades' court "treats the mentally ill the way they should be treated in the 21st century," Butler said.

The normal operating principle in District Court is to keep the cases moving or risk getting buried by them. Rhoades holds on to her CRP cases for as long as it takes to get a defendant plugged in to a support system that will help stop the criminal behavior or until the judge concludes that a defendant is not willing to take even small steps toward stability.

It's been almost a year since Gershon started treatment. She still reports to the judge, but she's on track and soon her case will be dismissed.

The difference between her two courtroom experiences was the difference between getting sicker and getting better, Gershon said. "I was literally touched to tears when the judge helped me get treatment."

**FOR SOME, THERE IS NO PLACE TO GO**

Gershon is not an average mental health

court defendant. She had a home, family nearby and a private lawyer. Henry Ongtowsruk, 30, did not.

Ongtowsruk, originally from the village of Wales, had had schizophrenia for about 16 years. His mother, a village health aide, tried for years to take care of him but finally had to admit she couldn't. He had been in and out of the Alaska Psychiatric Institute and had accumulated at least seven arrests since 1992, several for assault.

The latest charge was last year, malicious destruction of property, for kicking out a window at Southcentral Counseling. As a result, Southcentral kicked him out of its program, Brooks said.

His symptoms, never completely erased by medicine, included self-mutilation and sexual ritual.

When he did well, little children loved him, said his mother, who now works at the clinic in Unalakleet. He could sit and talk to them for hours.

"He did as well as his illness allowed," Brooks said. "When he was doing well, he was a sweet little guy. He tried."

He died in a cheap motel on Thanksgiving weekend, strangled by someone as yet unknown, police say.

He was living in the motel because there is no place in Anchorage for severely ill people like him to live; no program, no group home would take him. All it only admits people if they are an immediate danger to themselves or others.

in a motel that is clean but mentally ill, said Anchorage Joe Hoffbeck. He visited Rhoades as he investigated the death. He found many of the beds, not even watching television and with nothing to do.

In the months before Ongtowsruk took his medication for his court dates, Brooks said, he was doing it because someone killed him.

**PROMOTING INDEPENDENCE**

Robed and looking downcast, Rhoades assumes a neutral tone that edges into sternness reminding that the judge treats the mentally ill.

Out of her robes and in her hair, Rhoades looks with dismay about how the court treats the mentally ill.

"I have an interest because I'm a member who suffers from mental illness," she said. "I can't even cope with being arrested. My behavior attributable to his diagnosis."

Born in Massachusetts, Rhoades' way through college included managing a community center, analyzing grant budgets at the University of Alaska and researching legislation at the state Senate.

"This program does not do anything for these folks functioning better than the rest of the state. It's not creating public safety risk."

In courtroom exchanges, Rhoades adopts a paternalistic tone. "I grew up on welfare so I know how to grow up poor," she said, "but I have to seek help."

Rhoades said some of her criticism if this "social work" is a judge. To her, it is the highest form of social power, a persuasion/control that inches a chronic defendant toward a healthier, happier life.

"It's the psychology of what we send to everyone who has a mental illness," she said. "In life, the parents ... someone who will call attention to that reality."

Defense attorney Rex Butler points out: "For a smart person, it's in gear with what they have to do."

"I'm not interested in helping while they're going through this," she said. "I would like to promote



HALLINEN / Anchorage Daily News  
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District Judge Stephanie Rhoades presides over one of only three mental health courts in the country.

"It's hard to fault them for kicking the Henrys out," Brooks said. "They're not equipped to handle people like him."

So Ongtowsruk lived when he had money in a motel that is clean but houses many of the mentally ill, said Anchorage Police Detective Joe Hoffbeck. He visited and talked to the residents as he investigated Ongtowsruk's death. He found many of them lying on their beds, not even watching television, unsupervised and with nothing to do.

In the months before his death, Ongtowsruk took his medication and showed up for his court dates, Brooks said. "On the Henry scale, he was doing really well." Until someone killed him.

### PROMOTING INDEPENDENCE

Robed and looking down from her bench seat, Rhoades assumes a no-nonsense manner, a tone that edges into stern if a defendant needs reminding that the judge is not pleased.

Out of her robes and in her office, she talks with dismay about how the system normally treats the mentally ill.

"I have an interest because I have a family member who suffers from a mental disability," she said. "I can't even imagine how he would cope with being arrested and jailed for behavior attributable to his disability."

Born in Massachusetts, Rhoades worked her way through college there in jobs that included managing a community law center, analyzing grant budgets at Harvard Medical School and researching legislation for the state Senate.

"This program does not deal with dangerous offenders," she said. "My goal is to have these folks functioning better, not offending, not creating public safety risks."

In courtroom exchanges with defendants, Rhoades adopts a paternal but respectful tone. "I grew up on welfare so I know what it's like to grow up poor," she said, "how demeaning it is to have to seek help."

Rhoades said some of her colleagues question if this "social work" is appropriate for a judge. To her, it is the highest use of her judicial power, a persuasion/coercion approach that inches a chronic defendant toward a lawful, healthier, happier life.

"It's the psychology of what a judge represents to everyone who has grown up in this society," she said. "In life, the judge is your parents ... someone who will consider compassion issues as much as penalties. There is an importance to that reality."

Defense attorney Butler puts it more succinctly: "For a smart person, it helps them get in gear with what they have to do."

"I'm not interested in holding their hands while they're going through this," Rhoades said. "I would like to promote their indepen-

dence, just like I promoted my own independence."

### INNOVATIVE APPROACH

No one had to convince Judge Wanamaker that alcoholism is a physical addiction or that a predisposition is probably inherited. He had five uncles who were "raging alcoholics," and he grew up hearing dire warnings about a bad family gene.

So when a teacher at a school for judges mentioned naltrexone, a new anti-alcoholism drug, Wanamaker checked it out immediately. It seemed logical to him that a drug could change the brain chemistry that makes some people more vulnerable to addiction than others.

Last year, after months of research and a visit from a California judge who has been sentencing alcoholic defendants to naltrexone for four years, Wanamaker began offering it to a few selected repeaters. A mother with small children. A doctor. A bankrupt construction worker at the end of his rope.

So far, with 18 defendants in his little ad hoc program, Wanamaker is letting himself hope that the revolving door to the courthouse might one day spin a little slower.

It's too short a time and too small a sample for any big conclusions, but about 40 percent of his naltrexone people have stopped drinking and have not relapsed, Wanamaker said.

"On certain people, it hits a home run. It's astounding. ... They say, 'Judge, this is fantastic.' They've gotten brighter, more alert, more totally with it. They dress better, look you in the eye. They smile.

"How many times do people smile in court?"

Another 30 percent seem to be staying sober, but they claim the drug has nothing to do with it, Wanamaker said. Others relapse, and he has to issue warrants for their arrest.

Not every defendant is right for the naltrexone program. Under Alaska law, drunken drivers have to do at least some halfway house time. Some defendants have exhibited such aggressive or reckless behavior that they are a danger to the public and need to go to jail, he said. But the fact is, they all get out, usually in less than a year. If they go back to drinking, the cycle continues, and so does the danger to the community.

Wanamaker came to the bench in 1993 after a long career that included two years as Anchorage district attorney back in the 1960s. He was an assistant attorney general and in private practice for more than 20 years. He's a conservationist with expertise in resource law, a subject that doesn't come up much in "mondo misdemeanor."

At age 64, Wanamaker is hardly a young Turk, but he soon realized that just following the rules in his new job didn't work: three days

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□ Reporter She  
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for a first offense; 20 days for a second; 60 days for a third. Fines. Probation. Crowded jails, miserable families and no noticeable change in behavior by many of the defendants.

"We just put them through the mill."

Wanamaker didn't see any way out. Judges are not supposed to get involved. "We sentence people and turn them over to the professionals. I just said, 'Well it's a tough area. They're doing the best they can.'"

But it wasn't good enough, not for the people who kept drinking and getting arrested.

Since Wanamaker started his program last spring and started talking about it publicly, several treatment programs in Anchorage have added naltrexone to the options they offer.

"They should be serving this up in the jails," the judge said. "But that's a battle for another day."

There are problems with a judge orchestrating a rehab program, the first being time and the second money. Research, supervision and coordination require both. Wanamaker is looking for money to pay a part-time clerk to keep track of his naltrexone defendants. Tracking progress is essential to gauging success in any experiment.

To be effective, Wanamaker has to talk to each defendant every few weeks, which violates the get-'em-in, get-'em-out principle. But like Rhoades, Wanamaker said he thinks the authority of the bench is a crucial element in the mysterious and unpredictable mix that results in a longtime alcoholic finding the grit to stop drinking forever. However personable and supportive the judge is, the people who come before him stand convicted of a crime and he can send them to jail. Whatever conversation takes place, this subtext is always present.

There's an added urgency to Wanamaker's mission. A third drunken driving conviction within five years is now a felony. A second felony DWI conviction requires a two-year prison sentence, he said. Suspended sentences and probation are not allowed.

"I do these, and I just feel sick afterwards," Wanamaker said. "Because you know you're putting people in jail for a sickness."

### JUSTICE SHOULD HEAL, NOT PUNISH

The underlying philosophy of American law is that crimes are offenses against public order or, as local indictments put it, "against the peace and dignity of the state of Alaska." This raises law enforcement above personal vengeance and promotes equality of treatment.

But it also creates a justice system run by hired experts, far removed from the people damaged by crime. Justice is handed down. People feel alienated from the system, said Judge Ashman.

operator did nothing wrong... immunity and stay-in... United States was his wish to... route the... improve the... accusations

During the 1980s, legislatures around the country, including in Alaska, passed laws requiring prosecutors to keep victims informed. They ordered judges to let victims into closed hearings and invite them to speak at sentencings.

Ashman said he thinks it's time to move another step in some cases. Justice should heal and not just punish, he said. He points to a survey by the Vermont Department of Corrections that asked victims what they wanted from defendants. Full acceptance of responsibility, acknowledgment of guilt, full restitution, a commitment never to repeat the crime and that some good should come from it topped the list.

Violent predators were an exception, but those aren't the people who clog the calendars in District Court or pack the jails.

Last year Ashman invited the family of a DWI defendant to join the arresting police officer, the prosecutor and defense attorney, representatives from Mothers Against Drunk Driving, Victims for Justice and the Division of Family and Youth Services in a discussion circle. Tell me what to do with this man who has 15 alcohol related convictions, he said. Every possible sentence has been imposed against him over the years, but he always goes back to drinking and getting in trouble.

"How can it possibly matter what I do?" Ashman said.

It took six hours over three days, and in the end the circle gave the defendant a standard, even lenient, sentence: 60 days in jail, the mandatory minimum. It was better for him to continue a rehab program he had relapsed from than to spend months in jail watching television, they concluded.

Why spend so much time and effort for a result that could have been dished out by any judge in a 10-minute hearing? Because the process affects what happens after everyone leaves the courthouse, said municipal prosecutor John Richard.

"What I learned from the mental health court project was that defendants notice the difference between being on an assembly line moving rapidly through the criminal justice system with nameless, faceless prosecutors, defenders and judges who could obviously care less or being in a room with people who know their names and care about the outcome.

"I think it is good that we are finding ways of dealing with people's individual problems individually, rather than just knee-jerk throwing them in jail ... rather than the cookie-cutter assembly-line approach to justice."

Ashman said there's another compelling reason for trying new approaches. It has to do with keeping good people on the bench. "Basically it's a lot about getting reinvested in the work," he said. "I don't want to turn into a bench bureaucrat."

□ Reporter Sheila Toomey can be reached at stoomey@adn.com.

# Communities with Youth and Community Court Agreements February 2000

## Youth Courts

- Anchorage
- Kodiak
- Mat-Su
- Kenai Peninsula  
(Homer and Kenai)
- Fairbanks Northstar
- Nome
- Tetlin
- Sitka

## Emerging Youth Courts

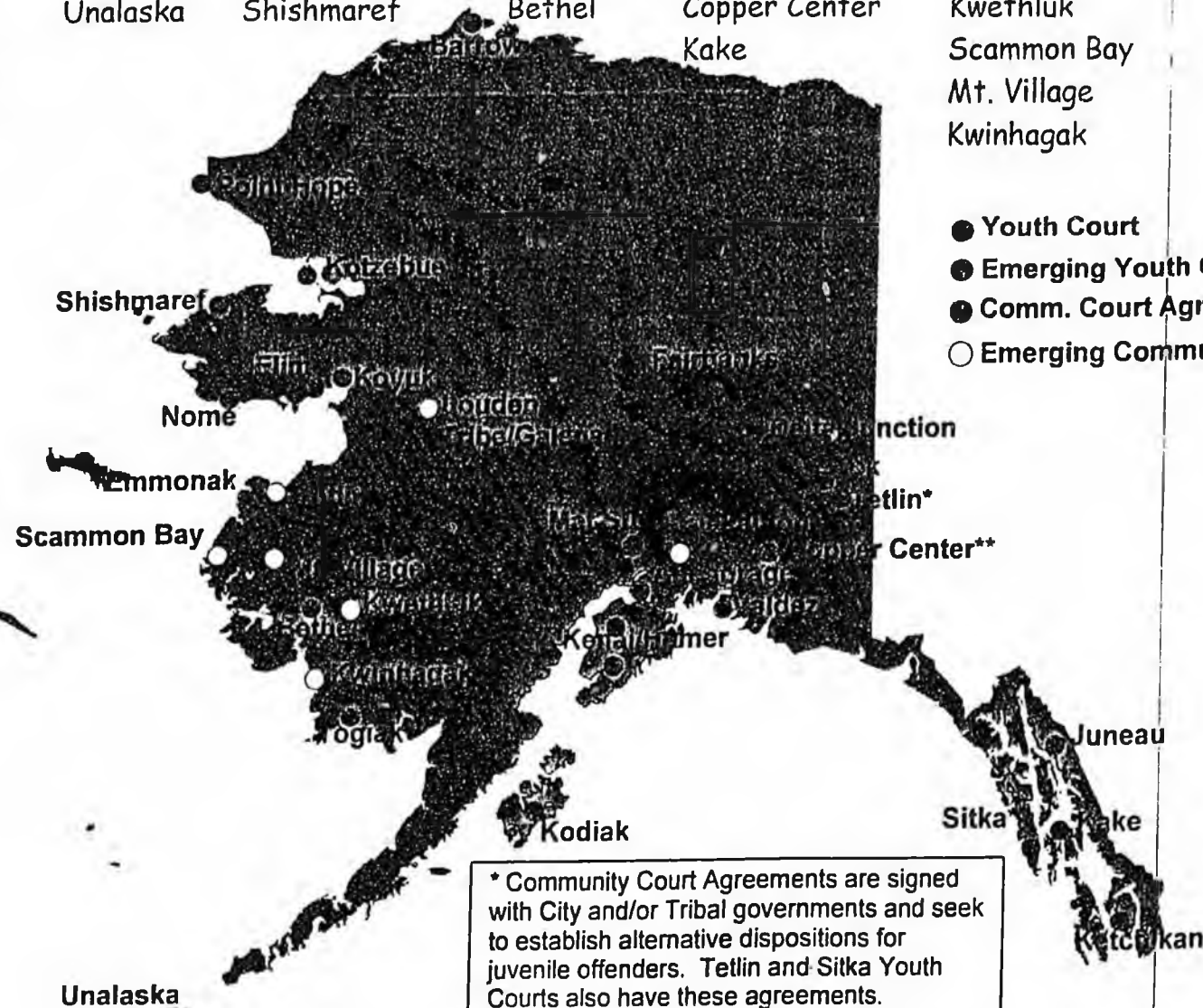
- Valdez
- Kotzebue
- Tok
- Unalaska
- Juneau
- Ketchikan
- Delta Junction
- Shishmaref

## Comm. Court agreements

- Togiak
- Barrow
- Elim
- Bethel
- Point Hope
- Koyuk
- Emmonak
- Copper Center
- Kake

## Emerging Comm. Courts

- Kotlik
- Louden (Galena)
- Chickaloon
- Kwethluk
- Scammon Bay
- Mt. Village
- Kwinhagak



- Youth Court
- Emerging Youth Court
- Comm. Court Agreement \*
- Emerging Community Court

\* Community Court Agreements are signed with City and/or Tribal governments and seek to establish alternative dispositions for juvenile offenders. Tetlin and Sitka Youth Courts also have these agreements.

\*\* Copper Center's court is a circuit court covering the communities of Cantwell, Kluti Kaah, Gulkana, Gakona, and Tazlina.

## 2. Community Courts

The rapid development of tribal courts and youth courts has been accompanied by the emergence of hybrid forums that adjudicate juvenile crimes in the context of the local community. These courts represent an interesting partnership of city, state, and tribal governments. They recognize youth crime as a serious problem for both community life and cultural survival. Unlike the urban youth courts, community courts do not follow the model of the western court system nor do they use peer adjudication. They represent an agreement between the adults in a community to handle juvenile crime quickly and locally, in a manner appropriate to the local community and culture.

Each of these courts has a slightly different structure and a slightly different relationship with the state justice system. In 1996, the villages of Elim and Koyuk entered into agreements with the state to handle juvenile misdemeanors.<sup>11</sup> In Elim, juvenile cases were heard by the IRA council sitting as a court; in Koyuk, the IRA council appointed three tribal members to act as judges. These courts functioned for a brief period of time but fell into disuse. In 1997, the Native Village of Togiak and the City of Togiak began an unofficial collaboration with DFYS and the Alaska State Troopers to accept referral of juvenile misdemeanors to a panel of tribal elders. This court was in operation for a year before the state entered into a formal memorandum of agreement recognizing the court. In 1998, Barrow community groups worked to establish an elders' court to which juvenile misdemeanors could be referred. This court came quickly into operation, although it does not yet have an official memorandum of agreement with the state. Several other communities are discussing similar agreements with the state. The map at the end of this excerpt shows the location of existing and emerging community courts and youth courts.

### A. Elim and Koyuk

In 1996, the State of Alaska entered into an agreement with the village councils of Elim and Koyuk to develop courts to handle youthful offenders. Koyuk did so under the authority provided by its village court ordinances, appointing three elders as judges. Elim acted under authority provided by its juvenile justice ordinances, which prescribe to the IRA council how to act as a court. Referrals came from the state troopers, VPSOs, and DFYS for misdemeanor cases where the juvenile was not already on probation. The state provided a limited amount of training, and Alaska Legal Services provided some procedural advice.

The first year of the program went well, with each village handling about three cases. When a case was referred, the council or court would meet with the parents and youth to discuss the youth's wrongdoing. If the youth was willing to admit the wrongdoing, the council or court would lecture the youth extensively, then work out an agreement with the parents and youth as to what the

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<sup>11</sup> The agreements make an exception for misdemeanor sexual abuse of a minor, which must be handled in state court.

consequences would be.<sup>12</sup> Although procedures were available to hold a public hearing if the youth would not admit wrongdoing, all of the juveniles referred to the program were willing to admit their wrongs. A state trooper noted that the program worked well at first and seemed to have a deterrent effect, because juvenile problems dropped off substantially for a while. He also reported no enforcement problems, saying the juveniles were willing to comply with the conditions set by the court or council.

Both programs became inactive after the first year. In late 1998, state representatives met with community leaders in both villages to reevaluate the programs. In Koyuk, community leaders attributed the court's inactivity to the fact that the village had not had a VPSO for much of the time, and requested that the state suspend the agreement until a new VPSO is appointed. At the request of the village, the agreement was suspended in January 1999 with the hope of reactivating it later. In Elim, community leaders are looking for someone to head the program and keep it on track.

#### **B. Togiak Community Court**

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<sup>12</sup> In Elim, community work service sometimes involves working on a local housing project. The village president noted that when the council heard cases in the 1940, community work service involved construction of the Iditarod Trail.

For several years, Togiak has had an elders' court using informal procedures and traditional counseling methods to handle a small number of cases. In early 1997, the Togiak Traditional Council entered into a cooperative agreement with the City of Togiak, the Alaska State Troopers, and DFYS to create the Togiak Community Court. The intent of the agreement is to improve the prosecution and rehabilitation of juvenile offenders at the village level for most misdemeanor offenses.<sup>13</sup> Unlike the state, the Togiak court takes jurisdiction over children 8-12 years old, which allows it to deal with young offenders at an earlier stage.

Under this agreement, the principal responsibility for handling misdemeanor juvenile offenses rests with the Togiak Community Court. Allegations of misdemeanor offenses coming to the attention of the troopers, city police department, or VPSO are referred to the court. If the court determines that the matter is appropriate for disposition, the court clerk meets with the juvenile and parents to review the court's procedures. If the juvenile agrees to participate, DFYS is notified and asked to concur. If the court determines the matter is not appropriate, or if DFYS does not agree, the juvenile will be referred to DFYS for investigation and prosecution under state law. If the community court hears the case, it determines whether the juvenile is innocent or guilty, and if guilty fixes the appropriate punishment pursuant to city law. DFYS is notified by the court clerk of the disposition of the case and to what extent the sentence of the court was obeyed. The state court system can be used for reinforcement in the event that community court enforcement and rehabilitation is ineffective with respect to a particular offender. The community court clerk maintains records in a form that can be used in state court, should it prove necessary to prosecute an individual in the state court system.

The court handled about 35 cases its first year. DFYS handled only one case from Togiak during this period, which DFYS and the troopers attribute to the effectiveness of the court. DFYS estimates that ten of these offenses would have received a response from DFYS, while the other 25 would have gone unaddressed if not for the community court. The cases mostly have been curfew violations, criminal mischief, fourth-degree assault, trespass, and forcible entry. The community court also asked and received referral of one state probation violation.

The cases are heard by three tribal elders who act as judges. Using a small grant from the Governor's Conference on Youth and Justice, the elders have received several hours of training from the police officer who helped establish their court and the Barrow community court. The elders generally question the juveniles and their parents, ask them why they committed the crime, and discuss the implications of their behavior. Most cases result in a sentence of community work service and an order of restitution. The court reports a high rate of compliance.

To determine if the community court was having an effect, the local VPSO did a community

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<sup>13</sup> The cooperative agreement sets up a process of continuous consultation among the parties on how cases should be handled. It provides: "Each party shall give substantial deference to the views of the other party during such consultation and all decisions shall, to the maximum amount possible, be made on the basis of consensus." The cooperative agreement applies to all misdemeanor offenses committed under Alaska Statutes Title 11 (the criminal code), with the exception of fourth-degree sexual abuse of a minor.

survey, going house to house before the project started and following up one year later. The survey results were evaluated by the UAA Justice Center. Because the community court responded to more offenses than DFYS would have, the number of juvenile cases increased, but the community did not perceive this as an increase in crime. The community perceived itself as a safe place to live, both before and after the inception of the court.

### **C. Barrow Community Court**

In early 1998, members of the Barrow community worked together to form a community court for juvenile offenses. The court is a cooperative effort among the City of Barrow, North Slope Borough police and youth services, Native Village of Barrow, ASNA, DFYS, Alaska Department of Law, and the state troopers. After considerable discussion about the form the court should take, Barrow decided to form an community court using elders as judges, similar to the Togiak model, rather than a youth court similar to the Anchorage model.

The court came together rapidly and held its first hearing at the end of June. At this hearing, a juvenile was prosecuted for a city curfew violation. The juvenile and his parents met with three elders and an interpreter, and the hearing flowed back and forth between Inupiaq and English. Most of the proceedings were translated at the time and all were recorded on tape. The family did not request confidentiality, and a number of community members came to witness the proceeding. One observer commented that it was a powerful emotional experience to watch elders to talk deeply with a child and his family about the importance of proper behavior for the family and for the community. The police officer in charge of the program said that parents like the concept of using an elders' court to intervene with youthful offenders before they get out of hand.

The Barrow Community Court now meets at least twice a month to hear cases. It expects to enter into a memorandum of agreement similar to the agreement governing the Togiak Community Court. If other villages are agreeable, jurisdiction might be extended so that youthful offenders who get in trouble while visiting Barrow can appear in front of the court there. DFYS has given the court a small grant to pay a stipend to the judges and to support training and coordination.

#### **4. Other villages**

Kotlik, Point Hope, and Galena are discussing establishment of community courts for juvenile offenses. The city of Kotlik includes three villages, Kotlik, Hamilton, and Bill Moore's Slough, a total of about 500 people. In December 1998, the mayor and 48 local residents met with state representatives to discuss formation of a community court and to request technical assistance. In Point Hope, community members are working with the same police officer who helped organize the community courts of Togiak and Barrow. In Galena, community members are discussing the concept of a community court for Galena and the surrounding area, combined with a leadership program for training local youth. In Bethel, Orutsaramiut Native Council has received a federal grant to develop a tribal court for juvenile offenders, which may receive referrals from DFYS.

COMMUNITY COURT AGREEMENT

Unde. AS 47.12.040, AS 47.12.060, and AS 47.12.120, the juvenile and the parents/guardian/custodian enter into the following agreement for informal diversion through the \_\_\_\_\_ Community Court.

1. The juvenile and parents/guardian/custodian have been advised of their rights and understand that any rights to a speedy trial are waived during the period of processing through this diversion action. All parties hereby consent to have the alleged offense(s) which occurred on \_\_\_\_\_ handled by the \_\_\_\_\_ Community Court.
2. The juvenile agrees to observe and obey all city, state and federal laws during this processing.
3. The juvenile agrees to attend school and follow school rules (or seek and maintain employment), obey the instructions of the parents/guardian/ custodian and seek permission before leaving or staying away from home
4. The juvenile agrees to participate in the program and to abide by the sentencing act set forth by the Community Court, understanding that the Community Court may not order removal from the home, formal state probation, or a formal state juvenile delinquency record.
5. Upon the juvenile's successful completion of this agreement the case will be adjusted and closed. If the juvenile fails to complete this agreement, he/she may be brought before the State Superior Court.
6. The juvenile and parent/guardian/custodian authorize DJJ Juvenile Intake or its designee to release, share and keep records for administrative purposes as necessary to coordinate the referral with diversion programs and to facilitate successful completion of any sentence imposed by Community Court. Otherwise information is confidential and shall be protected.

COURT DATE/ TIME: \_\_\_\_\_

\_\_\_\_\_  
Community Court Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Juvenile

\_\_\_\_\_  
Date

\_\_\_\_\_  
Parent/Guardian/Custodian

\_\_\_\_\_  
Date

\_\_\_\_\_  
Juvenile Probation Officer

\_\_\_\_\_  
Date