

***A Directory of
Dispute Resolution in Alaska
Outside Federal and State Courts***

March 1999

Alaska Judicial Council

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Introduction

This report presents an overview of Alaska dispute resolution entities other than state and federal courts.¹ These include tribal courts, tribal councils that address individual legal matters, youth courts, community courts, alternative dispute resolution programs, and state and municipal programs. The disputes resolved most commonly stem from crimes and children's cases, although other civil matters may be addressed. These entities resolve disputes through a number of methods: trials, decisions and judgments, mediation, intervention, counseling, or some mixture of these approaches.

This report focuses on four primary subjects. First, it covers the way tribal councils and tribal courts address individual legal matters in rural and urban communities, matters which may include child in need of aid cases, adoptions, property, and minor criminal matters. Second, it discusses youth courts, a largely urban phenomenon, which combine a legal training program for high school students with peer adjudication of juvenile offenses. A third section is devoted to community courts, which use collaborative agreements between state, municipal, and tribal governments to resolve juvenile delinquency cases in a setting sensitive to the culture and traditions of the community. A fourth section addresses alternative dispute resolution (ADR), which in its most general sense refers to dispute resolution procedures other than adjudication by a court. This section covers the work of community organizations and government agencies that provide mediation services or resolve complaints.

¹ The federal and state governments each operate a court system to handle matters arising under federal and state laws. These systems are large and complex, and are beyond the scope of this report. The federal courts handle a mixture of civil cases and criminal offenses. In Alaska, the federal courts often decide cases involving Native law issues, such as the nature and extent of tribal sovereignty, the extent to which Indian country exists in Alaska, and the extent of tribal court jurisdiction in particular cases. The federal court in Alaska consists of three district court judges in Anchorage who hear Alaska cases, and an appellate judge in Fairbanks who hears federal cases from the west coast. Magistrates are located in Anchorage, Juneau, Fairbanks, Ketchikan, and Kodiak.

The state courts have jurisdiction over the majority of legal matters in Alaska. The district courts have jurisdiction over smaller civil cases and over state and city misdemeanors and violations. The superior courts have jurisdiction over larger civil matters, all state felonies, probate, juvenile offenses, domestic relations, and children's cases. Although the interactions between state courts and tribal courts, youth courts, and ADR organizations are described in this report, the general work of the state court system is not covered here. Federal, state, and some municipal governments also have executive agencies that handle certain citizen complaints and provide administrative hearings for review of their own decisions; these are addressed here only briefly.

A rapidly changing area

The Alaska Judicial Council published a similar report on Alaska tribal courts and councils and ADR programs in 1993.² At that time, a number of tribal councils reported dispute resolution activities and an interest in tribal court development, but few villages had large caseloads or separate tribal courts. Today more tribal councils are taking an active hand in dispute resolution, there are at least 23 tribal courts established separately from their tribal councils, and there is substantially more organizational activity. At the same time, it is important to note that not all the courts and programs slated for development in 1993 came to fruition, a caution that should be kept in mind when reading about proposed developments in this report.

The proliferation of youth courts, where teenagers adjudicate the offenses of their peers, has been another striking development. In 1993, only Anchorage had a youth court; in 1998, youth courts for juvenile offenses are operating in most of the major cities. Cross-government partnerships have been formed to handle juvenile offenses through local community courts. The field of alternative dispute resolution has seen an increasing number of private practitioners, mediation pilot programs, and court rules designed to resolve legal problems without litigation.

These rapid changes can be attributed to many factors. There is a growing awareness of juvenile offenses and the need for early intervention. The same is true for child in need of aid cases, which have received a great deal of attention in the last several years. State executive agencies have become acutely aware how difficult it is to provide adequate law enforcement and children's services to remote villages. Many have noted that urban solutions are not always available or suitable in rural, predominantly Native areas.

At the same time, Alaska Natives have been looking at ways to enhance self-governance and local control, particularly through tribal governments. Many tribes are looking to Native culture and traditions for historic ways of handling social problems like child neglect, crime, and property disputes. Across the country, the American legal system is experimenting with variations on traditional adjudication and law enforcement, including alternative dispute resolution, community policing, restorative justice concepts, and stronger tribal law enforcement. In keeping with these trends, city and tribal governments in Alaska have been developing ways of resolving disputes locally.

Structure of this report

Chapter 1 of this report provides a context for the chapter on tribal courts and councils. It covers the historical workings of Alaska Native governments, the emergence of village councils, how tribal courts and councils currently resolve disputes, and what efforts are being made toward future development. It also addresses the complexities of state government and service delivery, federal law and funding, and the roles of Native corporations and local governments.

² J. CONNORS, T. CARNS, AND S. DI PIETRO, *RESOLVING DISPUTES LOCALLY: A STATEWIDE REPORT AND DIRECTORY* (1993) [hereinafter *RESOLVING DISPUTES LOCALLY II*].

Chapter 2 describes the work of individual tribal courts and tribal councils that provide dispute resolution and the organizations that support their work. This chapter is organized geographically by ANCSA region. Chapter 3 covers youth courts providing peer adjudication of juvenile offenses, listed by city or village. It also covers the development of village youth courts that use a tribal court model to handle juvenile offenses, with the participation of both youth and elders. Chapter 4 describes community courts that provide adult resolution of juvenile delinquency matters in a local context. Chapter 5 discusses alternative dispute resolution programs and dispute resolution by government agencies. Many of the organizations discussed in this report receive case referrals from state agencies and work with them to share information, develop case plans, and monitor the outcome; these interactions and the roles played by each agency are described in Chapter 6.

How this report was prepared

The information in this report was collected between April 1998 and January 1999, primarily through telephone interviews. To find out about tribal courts and councils, a Judicial Council attorney interviewed representatives of regional Native nonprofit corporations, other organizations interested in tribal justice systems, Native law experts, and federal granting agencies. Based on these sources, the interviewer called those villages reported to have a high level of activity, a separate tribal court, or an interesting program, about sixty villages in all. The interviewer talked with the tribal administrator, judge, court clerk, police chief, and/or ICWA worker in each village. To find out about youth courts, community courts, and ADR programs, the interviewer generally spoke with the administrator of each program. The interviewer also spoke with state judges, magistrates, troopers, VPSOs, social workers, probation officers, and attorneys about their experiences with these organizations. The report was reviewed for accuracy by a panel of readers with expertise in the field, although the Alaska Judicial Council takes responsibility for any mistakes.

Because this is an area of rapid change, the reader should keep in mind that significant changes can happen at any time. There are 226 federally recognized tribes in Alaska and the interviewer was not able to call all of them. Local communities, state agencies, and other organizations are working hard to develop new programs. The fact that a community is not mentioned in this report should not be taken as an indication that no current activity is occurring in the area. Similarly, many of the organizations described in this report rely heavily on volunteer effort and limited sources of funding, so organizations active today may become dormant in the future. The Judicial Council hopes to revisit this area in another few years to document further developments.

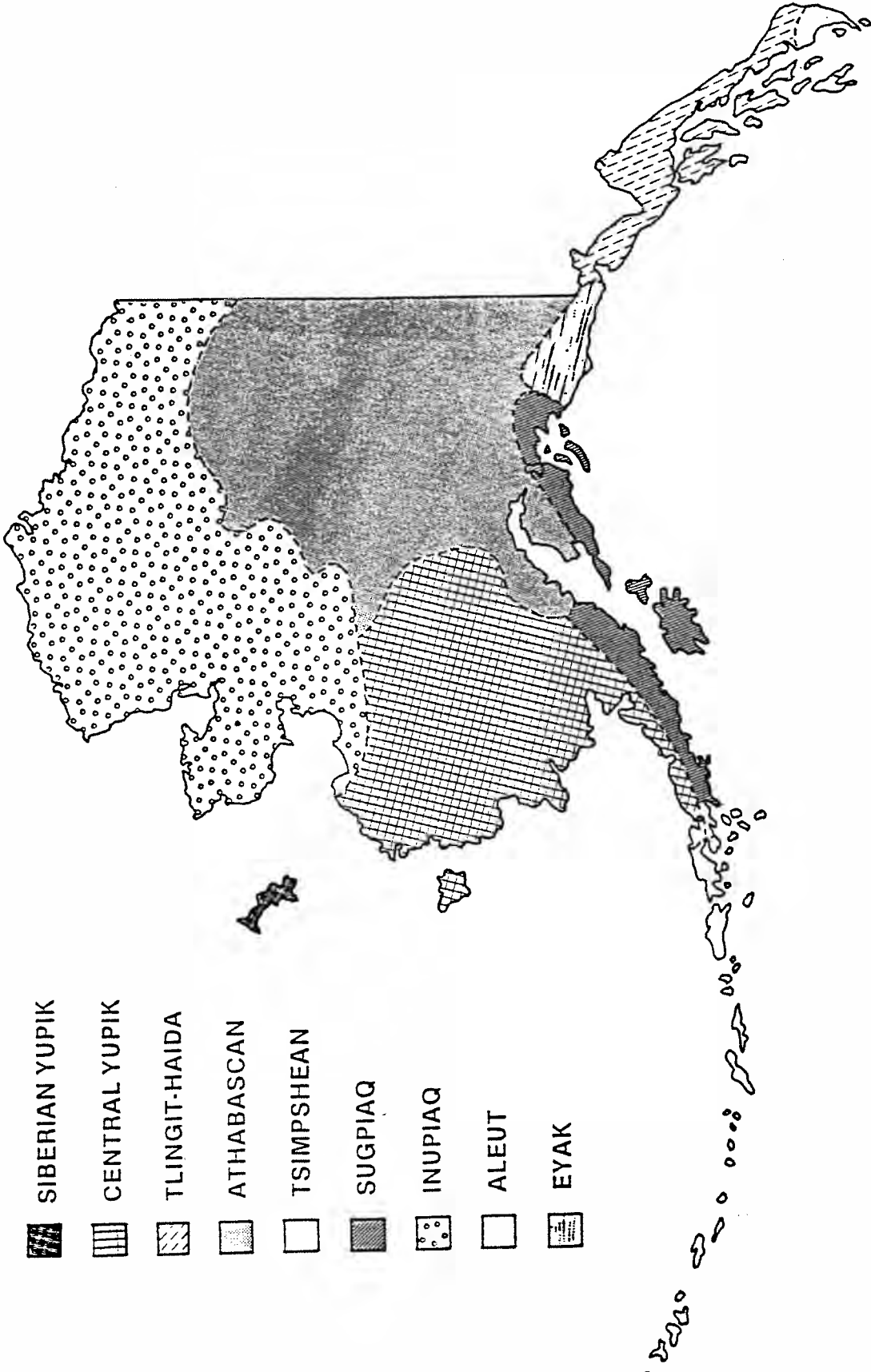
Tribal court jurisdiction

This report does not address the extent to which tribal courts may or may not have concurrent legal jurisdiction with state courts. The Alaska Supreme Court is now considering whether state and tribal courts have concurrent jurisdiction in parental custody disputes.³

³ *John v. Baker*, No. S-08099.

Figure 1
Alaska Native Languages and Peoples

**NATIVE LANGUAGE
BREAKDOWN**



Chapter 1

Context for Local Dispute Resolution

This introductory chapter provides background information about the complex context in which local justice programs operate. Most of this background information relates to tribal courts and councils, but it also is relevant to local efforts to set up youth courts, community courts, and alternative dispute resolution programs.

A. Evolution of traditional Native justice

1. Traditional Native governments

Anthropologists who have studied Alaska Native groups generally agree that more than 75,000 Natives lived in Alaska before the arrival of non-Natives. They spoke more than twenty different languages and were divided into several hundred societies consisting of members of closely related family groups.⁴ Generally, the structure of these societies was based first on familial allegiances, then on tribal allegiances.⁵ Figure 1 (page 4) shows the geographic location of the larger Native groups. Family structure and methods of self-governance differed among the groups. Figure 2 (page 7) is a summary of anthropological observations about the traditional legal structures of the major Native groups and how they changed after contact with non-Natives.

The Inupiat people include at least three major groups, those living on the Arctic Slope, Kotzebue Sound, and Norton Sound areas.⁶ The Inupiat historically governed themselves within the context of extended family groups on maternal and paternal sides of the family. An *umealik* (boat owner) influenced the actions of others, although not in the sense of making decisions or directly telling others what to do. Disputes were resolved only through direct action by the family.

⁴ A. FIENUP-RIORDAN, CULTURE CHANGE AND IDENTITY AMONG ALASKA NATIVES: RETAINING CONTROL 2, Institute of Social and Economic Research (1992).

⁵ “[O]nly in very specific contexts--such as contacts with speakers of another language--did they see themselves as Tlingit, Athapaskan, Aleut, Inupiat, or Yup’ik. Their primary allegiance was to their families and tribal groups. For example, people of Nelson Island in western Alaska thought of themselves first as Tununarmiut (people of the village of Tununak), second as Qaluyaarmiut (people of Nelson Island), and only as Yupiit (literally “real people”) or Yup’ik Eskimos in comparison with people who did not speak the Yup’ik language.” *Id.*

⁶ Other Inupiat groups live in Canada, Greenland, and other circumpolar areas.

Yupik peoples generally live in southwest Alaska from Norton Sound to Bristol Bay.⁷ Among Yupik family groups, the elder men of the households historically tended to hold more authority. Disputes were resolved through various social controls including gossip, feuding, and counseling.

Aleut culture was influenced by the Russian presence along the Alaska Peninsula and the Aleutian Chain during the 1700's and 1800's. Aleut groups tended to encompass an entire village, with one man from a dominant family assuming a leadership role. Disputes were often resolved by the action of this village chief.

Alutiiq peoples are Eskimos who were subject to the same Russian influence as the Aleuts. They reside along the southern Pacific coast from the middle of the Alaska Peninsula and Kodiak east to Prince William Sound. They governed themselves by family groups, with hereditary chiefs for larger groups. Disputes were generally resolved by action of the village chief.

Athabascan Indians include several distinct language and cultural groupings, including Tanaina, Gwich'in, Kenaitze and Ahtna. They reside in the Interior of Alaska, along the upper sections of the Yukon and other major rivers.⁸ Athasbaskan bands recognized matrilineal clans. Band chiefs tended to come from certain families, but their authority ultimately rested on demonstrated personal leadership. Disputes were resolved by meetings of elders and band chiefs.

Southeast Alaska Indians include Tlingits, Haidas, and Eyaks, with Tsimshian Indians from Canada moving to Metlakatla in the latter part of the nineteenth century. Southeast Native societies recognized matrilineal descent, and had extensive structures of social ranking, with elder males as the leaders within the houses and among the clans. Disputes were resolved through discussions among clan leaders. Only among a few southeast Native groups was there a "peacemaker," a person with a specific dispute resolution role among different groups. Southeast groups also developed elaborate peacemaking and restitution rituals, some lasting a year, that involved hostages, ceremonies, and feasts.

The types of disputes resolved traditionally included crimes such as theft and murder. Adultery was dealt with more frequently in Athabascan and Tlingit societies, where the matrilineal clan structure dictated more attention to lineage. Particularly among Athasbacans, failure to observe proper hunting practices was a serious offense, in some cases tantamount to murder. The response to an offense might be a demand for payment or restitution, physical punishment, lengthy probation for property offenders, or families moving away from a violent offender. For serious offenses, death was a fairly common means of balancing the scales of justice. Banishment, often equivalent to capital punishment, was also used. Among Southeast Indians and Athasbacan bands, the status of the offender and the victim were considered in determining the penalties. Traditional law also

⁷ The two largest groups of Alaskan Yupik live in the Yukon-Kuskokwim drainage and around Bristol Bay. Some southern Yupik may be found from Kodiak east along the Pacific Coast to Yakutat. Siberian Yupik live in Gambell and Savoonga.

⁸ Athasbascans are related to southern Indians such as Navajos and Apaches.

applied to marriage, adoption, child rearing, inheritance, and distribution of wealth within the social group. However, little information is available about how disputes arose over these matters and how they were resolved.

Figure 2
Traditional & Transitional Legal Structures
Of Alaska Native Groups

Group:	<i>Inupiat</i>	<i>Yupik</i>	<i>Aleut</i>	<i>Athabascan</i>	<i>Tlingit</i>
Family Organization	Bilateral extended, no clans	Bilateral extended, no clans	Not clear: village more important than family	Families/bands/matrilineal clans	House group, oldest male head, matrilineal clans
Dispute Resolution	Family; sometimes <i>umealik</i>	Family	Family; village leader (maybe with elders)	Family; band leader(s); Chief(s)	Clan elders; leaders; peacemaker
Peacemaker	No	No	No	No	Yes
Property	Territories defined; collective ownership w/in each group	Territories of groups defined; collective ownership w/in each group	Resource use areas maintained by villages; slaves (but none were captives)	Band control of territ. but not permanent; Southern groups had some slaves	Alienable prop. owned by clan, house; debt and war slaves
Leaders	<i>Umealik</i> , not inherited, but might run in families	Eldest man or men; inherited in some areas	Chief of village was from dominant family	Chief through ability; might run in families	Eldest man in house group; "nobles" in clans
Transition	Councils, brought in by teachers, etc.--members probably local family heads	Trading companies, churches appointed chiefs and councils, often calling on respected elders	Russians appointed chiefs, often from traditional families; under U.S., little information available	Elected chiefs/councils intro. by churches; today have both trad. and elected chiefs	Navy, etc., introduced councils of chiefs as jud. body. Clan structure maintained today

Alaska Judicial Council 1998

2. Transition to village councils

Contact with Russian traders and United States government agents changed the social structure and dispute resolution methods of Alaska Natives. What are now referred to as "traditional councils" actually are transitional government structures, not the pre-contact method of governance. The United States purchased Russian claims to Alaska in 1867, and for many years governed the territory with a combination of military, coast guard and revenue ships, marshals and commissioners, traders, missionaries and teachers. These groups encouraged the development of village councils composed of chiefs, elders or elected representatives to resolve disputes, and drew on existing local structures for identifying and choosing leaders. The councils typically had responsibility for handling a range of village affairs and could be characterized as combining the executive, legislative, and judicial functions into one organization.

The 1934 Indian Reorganization Act (IRA) clarified federal recognition of these governing bodies and gave Native groups a means of reorganizing village council structures. Some tribes used the model codes and court structures suggested by the Bureau of Indian Affairs as a starting point for their own courts, police, and written laws.⁹ Seventy-two of Alaska's tribes now have IRA constitutions. A 1935 BIA survey of about 50 villages brought to light a variety of governmental structures.¹⁰ Some villages had councils operating under the authority of an IRA constitution, some had councils operating under traditional or elected authority, and some had both.

Councils handled a variety of matters, including inheritances, quarrels between families or individuals, juvenile matters, regulation of alcohol use, and violations of community ordinances.¹¹ The councils did not deal with every dispute or instance of law-breaking. The ability of councils to screen cases, taking only those that they wanted to handle, depended on an outside presence capable of stepping in to handle more serious offenders. The U.S. military, the territorial commissioners and marshals, and later the state troopers, handled the investigation and arrest of serious, violent, or repetitive offenders. Village councils were encouraged or required to let the external government deal with serious offenders.

Alcohol use and control became a matter of deeper concern for village residents after statehood. Villagers were prohibited from using alcohol from the time of the Alaska Purchase until 1953. Although bootlegging existed during this period, alcohol use and availability did not change radically in most villages until the early 1960's, when market demand, transportation systems, and organized legal distribution systems changed, as did the presence of strict internal village norms and controls.¹² During the same period, the state took the position that alcoholism was a disease that should be treated, and that other interventions were inappropriate and even illegal.¹³ Since 1969, the state has had a local option law allowing Alaska cities and villages to vote to ban the sale, importation, and/or possession of alcohol.¹⁴

In 1976-77, the court system experimented with "problem boards" (also called "conciliation boards") to resolve some disputes and handle some local criminal matters. The boards were first tried in Emmonak and then six other villages. The court system paid a token sum to board members from the village who had been trained in negotiation techniques. The boards had some elements of

⁹ F. COHEN, HANDBOOK OF FEDERAL INDIAN LAW 332 (1982 ed.).

¹⁰ D. CASE, ALASKA NATIVES AND AMERICAN LAWS 443 (1984). For instance, Tatitlek had a council composed of three chiefs, Tanacross and Hooper Bay used multi-member councils and a chief, and Noatak and Selawik had multi-member councils without a separate chief or mayor.

¹¹ J. VANSTONE, POINT HOPE: AN ESKIMO VILLAGE IN TRANSITION 94, 102-03 (1962).

¹² T. Lonner and J. Duff, *Village Alcohol Control and Local Option Law: A Report to the Alaska State Legislature* II-1 (June 24, 1983).

¹³ The state now takes a much stronger stand against alcohol importation in dry villages, but it still does not provide as much enforcement as many of the village leaders interviewed would like.

¹⁴ Currently 75 communities have banned the sale and importation of alcohol.

council-type activity and some elements of alternative dispute resolution.¹⁵ In some villages, councils imposed fines and occasionally jail time, with village police officers serving as the source of cases.¹⁶ Fining and imposing jail time were not traditional activities for village councils, which earlier emphasized a more indirect and preventive role.¹⁷ The project evaluation found that about half the boards had few or no cases, and the others had not provided enough benefit to continue the program.¹⁸ The court did not continue to pay members after 1977, but both Napaskiak and Emmonak were said to have continued using the boards into the late 1980's.

A 1976 study of Eskimo councils found that most councils did not adjudicate issues of guilt or innocence or resolve civil cases based on provisions of established law. Rather than administer a system of law, the councils emphasized avoidance of violence and personalized justice. Punishment was far less important than community harmony.¹⁹

Between 1970 and 1985, state officials and rural and Native representatives participated in four bush justice conferences on access to justice in rural Alaska.²⁰ According to participants at all four conferences, the fundamental problem was that state agencies were so far removed from the villages that they were largely unaware of and unresponsive to village needs. Rural participants at the conferences asked for more local control over enacting and enforcing laws, saying that village life should be governed by village law and custom as much as possible. They noted the limited legal resources locally available to rural Alaskans, and said that the court system's highly centralized structure inhibited local access to justice. They said that the state justice system does not understand the Alaska Native, and the Alaska Native does not understand the state justice system. They expressed concerns about magistrate training and evaluation. They also objected to the removal of children and elderly people from the villages whenever they needed services.²¹

In 1992-93, the Alaska Judicial Council undertook a two-part study of local dispute resolution in Alaska. The first part, funded by the State Justice Institute, was an in-depth evaluation of three entities: the Minto Tribal Court, the Sitka Tribal Court, and PACT, a conciliation program in Barrow. The study found that the three entities functioned with varying degrees of effectiveness, depending on the strength of their case referral systems and the level of community support, but all

¹⁵ See J. MARQUEZ AND D. SERDAHELY, ALASKA COURT SYSTEM VILLAGE CONCILIATION BOARD PROJECT EVALUATION 4-6 (June 1977).

¹⁶ W. Nix, Department of Public Safety Report 2 (1972) (unpublished report to the Criminal Justice Planning Agency).

¹⁷ S. Conn, *Alaskan Bush Justice: Legal Centralism Confronts Social Science Research and Village Alaska* 12 (1981) (paper presented at IUAES Commission on Contemporary Folk Law Meeting in Lake Como, Italy).

¹⁸ J. Marquez and D. Serdahely, at 4 and 6.

¹⁹ Hippler and Conn, *The Village Council and its Offspring: A Reform for Bush Justice*, 5 U.C.L.A.-Alaska Law Review 33, 36 (1976).

²⁰ A Judicial Council summary of recommendations made at the four bush justice conferences is found in RESOLVING DISPUTES LOCALLY I at appendix 1.

²¹ *Id.*

were useful programs.²² The second report was similar to the current one, a statewide overview of local dispute resolution programs. It found a number of tribal councils active in dispute resolution, a few separate tribal courts, and a few ADR programs. The report concluded that these organizations handled cases effectively, improved the lives of rural Alaskans, and reduced the demand for state justice services.²³ The current report brings the information found in the second report up to date as of 1998.

B. Current work of tribal courts and councils

In many Alaska villages, tribal governments continue to exercise judicial or mediation functions to resolve individual disputes. The decision to take on or expand this role often originates in concern for community law enforcement or child welfare. As tribal governments grow in strength, they also turn their attention to judicial functions as a role of government. The cases they address most commonly involve minor criminal offenses, children in need of aid, adoptions, custody, property, and probate. These matters may be resolved through trials, judicial disposition, mediation, intervention, or counseling. From village to village, there is a wide variation in dispute resolution methods, court structure, and caseload.

1. Current dispute resolution structures

Many tribal governments handle cases that are legal in nature. Some use methods that are easily recognizable by the American legal system, where a judge or panel of judges holds a hearing, issues an order, and monitors for compliance. Some use methods more akin to mediation, where persons concerned about a problem air their views, reach a consensus, and implement the solution together. Some approaches are too subtle to meet an American definition of the judicial function, as where council members provide advice to troubled families or issue warnings to individuals. Tribal governments generally do not have three independent branches, and it is common for tribal councils to have executive, legislative, and judicial roles.²⁴ This unitary form of government, combined with an emphasis on problem-solving, sometimes blurs the lines that distinguish the judicial role from other functions.

1. Among the villages exercising a dispute resolution function, the most common structure is the tribal council providing advice. The council may summon a family to talk about child in need of aid problems, hear the concerns of relatives, recommend treatment, and provide advice and counseling. The council may summon a village troublemaker and demand that he stop drinking, ask him to leave town, or threaten to report him to the state for the next offense. In Inupiat villages,

²² RESOLVING DISPUTES LOCALLY I at ES-1.

²³ RESOLVING DISPUTES LOCALLY II at 113.

²⁴ Alaska Natives, like Indians in the other states, have historical forms of government that differ from the Anglo-American governmental tradition. Most tribes do not have separate executive, legislative, and judicial branches. Even among villages with separate courts, it is not uncommon for council members to serve simultaneously as judges. The fact that a judge might wear two hats does not offend traditional Indian notions of fairness. *See* V. DELORIA, JR. AND C. LYTLE, AMERICAN INDIANS, AMERICAN JUSTICE 80-109 (1983).

members of elders' councils are called on to help with advice and support.²⁵ Most villages do not call these judicial or court functions, but they serve a peacekeeping and preventive role.

2. A number of Alaska villages have tribal councils that convene themselves formally to sit as a court.²⁶ These councils often are empowered to sit as courts through a provision of the tribal children's code, law and order code, or a separate judicial ordinance. Councils sitting as courts most commonly handle children's cases. Not all tribal councils handle criminal cases, but those that do will hear evidence and impose sentences under the village law and order code. Some councils that sit as courts have a regular caseload, but most convene from time to time as the need arises.

3. The formation of tribal courts as a separate branch of government is a relatively recent development.²⁷ Most of the villages with separate courts have become active in the last five years. This report has identified at least 23 separate courts at present, with more in development. These courts have a wide range of activity, depending on the size of the village and the funding available. In Metlakatla, where the court is over 100 years old and has a significant BIA budget, the tribal council pays three full-time judges and three full-time clerks to handle 1,000 cases per year. At the other end of the scale is the Mekoryuk Tribal Court, four years old, which has three volunteer judges, a \$600 annual budget, and handles about three children's cases each year. A few courts have been activated for only one case involving ownership of clan property, artifacts, or tribal tax collection, with a law-trained judge hired from outside the village. Judges sometimes are elected and sometimes appointed by the tribal council; they may be required to be elders or chosen from among council members. Most courts operate with panels of judges, although there are a few single judges in locations where the caseload is larger or more routine.

4. A new development is the formation of community courts to handle juvenile offenses. These courts are formed as partnerships between tribal councils, the state, and local city or borough governments. Cases may be screened by DFYS or may be referred directly by the state troopers or local police officers. The community court provides a hearing and/or sentencing, with the understanding that if the juvenile does not comply with the court's conditions, the case will be sent to DFYS for action in state court. The format of these courts varies by location: in two villages, cases have been heard by the IRA council or tribal court, and in two villages cases are heard by a specially-appointed panel of elders. The Alaska Native Justice Center recently received a grant to develop

²⁵ An important difference between earlier and current councils often is the age of the members. Earlier councils tended to be composed of elders in the village. Since the 1970's, council members and tribal court judges often have been younger, although they may turn to elders for support, advice, and information about traditional laws. In Minto, younger judges on the tribal court reported they were uncomfortable taking on a counseling role in child in need of aid cases, since some village residents felt it was inappropriate for younger people to be giving advice. *RESOLVING DISPUTES LOCALLY II* at 17; *RESOLVING DISPUTES LOCALLY I* at 83.

²⁶ Not all villages convene the whole council for court proceedings; some use the officers, a special ICWA committee, or some other subset of the council; some add elders or alternates.

²⁷ Metlakatla has the oldest tribal court in the state, first established in 1891 and reestablished as a separate court under its IRA constitution. Minto set up a separate court under the IRA in 1940; it fell into disuse and was reestablished in 1985. The Sitka Tribal Court has been in continuous operation since 1981. The Native Village of Kluti Kaah (Copper Center) has records dating back to 1934 of the traditional council sitting as a court, but the village did not form a separate tribal court until the late 1980's.

tribal youth courts in two villages, which will follow a tribal court model, using young people as judges with substantial involvement from elders.

5. In a significant number of villages, tribal councils exercise no dispute resolution function and report no particular involvement in advising families or offenders.²⁸ Some express satisfaction with state services for these matters, some say they have too many other pressing issues to attend to, and some are reported to have a social structure that is not strong enough to support these activities.

Types of cases: Tribal courts and councils commonly handle children's matters such as children in need of aid,²⁹ custody, traditional adoptions,³⁰ and guardianships. They may investigate a reported problem, counsel the family, take custody of the child, make a foster care placement, or approve an adoption. When a case is filed under the Indian Child Welfare Act (ICWA) in state court, many tribal courts and councils open a case file, advise the village ICWA worker how to handle the case, and consider intervention in state court to be part of their judicial function. In villages where early intervention is emphasized, ICWA workers and the tribal council may try to help the family before problems become serious enough for DFYS to step in. Many villages have written ordinances covering child in need of aid cases.

Tribal courts and councils often enforce written tribal ordinances governing law and order, particularly with respect to alcohol. The most common offenses are alcohol importation and possession, public drinking, disturbing the peace, shoplifting and theft, and minor assaults.³¹ While they affect the quality of life in the village, many of these offenses are sufficiently minor that the state ordinarily would not make an arrest or prosecute the offense. Felonies generally are referred to the state.³² Depending on the offense, the tribal court or council may lecture the offender, impose a fine, require community work service, refer the offender to treatment, confiscate weapons or

²⁸ This finding is consistent with a recent survey on how tribes handle domestic violence cases, conducted by Alaska Legal Services Corporation. Most of the ninety villages answering the survey reported no tribal court function. A few villages said they handle domestic violence cases by referring serious cases to the state for prosecution and less serious cases to the church or the tribal council for counseling.

²⁹ Child in need of aid cases encompass allegations of parental abuse, neglect, or lack of supervision sufficient to call for government intervention in the family. Under state law, the state has jurisdiction over children who are habitually absent from the home, refuse to accept care, have no parent, guardian, or relative willing to provide care, have been physically abandoned, physically or sexually abused, at risk of substantial physical harm, in need of substantial health care that the parent will not provide, suffering mental harm, or committing delinquent acts under pressure from their parents. A.S. 47.10.010(a). Many tribes have written ordinances covering these types of cases and handle them under the provisions of the Indian Child Welfare Act 25 USC §§ 1901-1963. In this report, these cases may be referred to as CINA cases or ICWA cases.

³⁰ In many tribes, traditional adoptions occur without severing the ties to biological parents, who typically retain important traditional and ceremonial duties toward the child. The adoptive family often is enlarged to include the adopted child's biological family, creating new kinship obligations on all sides.

³¹ For purposes of this report, these offenses are referred to as criminal offenses because they are crimes under state law. Tribal ordinances may classify them as civil, civil regulatory, quasi-criminal, or misdemeanor offenses. They are almost never punishable by imprisonment.

³² For felony cases, villages often call the state troopers and request state investigation of the offense. However, troopers sometimes hear of felony cases that were not reported to the state, particularly with sexual abuse of a minor allegations.

alcohol, order restitution, or threaten state prosecution for future offenses. Where the offender has a history of offenses or has become particularly troublesome, the offender may be banished from the village.³³ Juvenile offenses are not handled as commonly as adult offenses. Some tribal courts and councils deal with curfew violations, minors consuming alcohol, shoplifting, and other minor offenses, but most villages rely on DFYS to take these cases.

Apart from child in need of aid and criminal cases, other cases generally are a small part of the caseload. Subjects include actions of the local housing authority, land use, contracts, probate, clan property and artifacts, trespass, and allotments. Tribal courts occasionally face complicated questions of traditional law that require consultation with village elders. Despite the importance of subsistence in rural Alaska, tribal courts and councils reported few individual cases arising out of subsistence, fish and game, or environmental issues.

Procedures: Some tribal court participants seek out the tribal court as their forum of choice, while some come reluctantly in response to a tribal court summons. People participate in tribal court for many reasons: some believe that the tribal court has jurisdiction over them and their affairs or behavior, some believe that tribal court is the best way to handle a particular problem or that Native institutions are best, some place their trust in known individuals or distrust the state, some prefer proceedings in their Native language, some cannot afford the travel and attorney fees inherent in state proceedings, and some come in response to social pressure to change their behavior or resolve a longstanding problem. Although participants usually are tribal members, nonmembers (commonly spouses and other village residents) sometimes submit themselves to the court's authority or seek out the court's services.

A case may be opened when the court or council receives a report from a social worker or law enforcement officer.³⁴ Sometimes an individual files a civil action or comes seeking advice. After gathering information, the court or council calls in the individual, extended family, and others affected by the problem. Most commonly, the proceeding opens with a report from the ICWA worker or law enforcement officer, followed by a roundtable discussion where everyone speaks. The discussion may be in English, the local language, or some combination. The discussion generally is focused on problem-solving and on establishing equilibrium for the family or the village. Some courts are more formal, and some are more formal for certain cases. In some courts, witnesses are sworn in, evidence is taken, and the judge issues a written decision. The interviewer did not learn of any jury trials.

Lawyers sometimes represent clients in front of tribal courts and councils. They appear rarely in criminal cases, occasionally in children's cases, and most commonly in the few complex tax and artifacts cases. Lawyers from Alaska Legal Services and the private bar sometimes appear in tribal court on domestic relations or children's matters, and private lawyers have been consulted to contest

³³ Some offenders are banished permanently, while others may be banished until they receive treatment or petition to return.

³⁴ VPSOs and village police officers often refer smaller cases to tribal courts and councils for resolution. In some parts of the state, state social workers and tribal ICWA workers consult on whether certain children's cases should go to state or tribal court.

or mediate a sentence of banishment. State agents like VPSOs and social workers sometimes participate. At least one court prohibits the appearance of lawyers in the ICWA cases it handles. Parties sometimes have friends or family there to speak for them. Special children's advocates (such as guardians ad litem or court-appointed special advocates) are not common.³⁵

In some courts the case is resolved by consensus; in some the judges or council members deliberate separately and reconvene later to announce their disposition. The courts have a range of potential remedies, depending on the case. The outcome of the case may be a mediated settlement, counseling and referral to treatment, a change in child custody, a protective order, a criminal sentence, or a judgment. Dispositions often are followed with home visits and continued monitoring by the ICWA worker, the tribal court clerk, the village police officer, or the judges themselves. Appeals are rare in Alaska tribal courts. In some villages with separate courts, the code provides a right of appeal to the tribal council. In Metlakatla, appeals are heard by judges from the Northwest Intertribal Court System, an organization that provides contract services by trial and appellate judges for tribes across the Northwest.

The law applied may be a combination of village ordinances, traditional law, state law, and federal law. Although villages sometimes find it difficult to capture their traditional law ways in writing, written ordinances are becoming more common. Overall, tribal court outcomes reflect an underlying value system based on cultural preservation, community cohesiveness, and the place of the individual in the context of the village or tribe. The legal system emphasizes restorative justice and reintegration, the needs of the extended family and community, and individualized consideration of each case.³⁶

Funding and training: Most tribes do not have a separate source of funding for their judicial operations. If they are able to pay the judges and clerks, they usually do so from general tribal operations dollars and small BIA grants.³⁷ Judges usually are volunteers or are paid a small amount of money per case; clerks often are volunteers or are tribal council employees with many other job duties. Training and technical assistance for tribal judicial functions are provided by several nonprofits and by private consultants and attorneys. Court efforts usually rely heavily on volunteer support.

2. Tribal court development efforts

While the desire for a local dispute resolution mechanism comes from within the village, development assistance often is provided from outside. Over the past five years, nonprofits and

³⁵ Tribal court ordinances in the Keweenaw region provide for the use of guardians ad litem in child in need of aid cases, but guardians are rarely appointed.

³⁶ This is consistent with the orientation of tribal courts in other parts of the country. *See, e.g., United States v. Wheeler*, 435 U.S. 313, 321-22 (1978); SYMPOSIUM ON INDIAN TRIBAL COURTS AND JUSTICE, 79 *Judicature* 126-150 (November 1995).

³⁷ In the last five years, a number of Alaska tribes and nonprofits have received federal development grants from the Administration for Native Americans and the Department of Justice. These grants are discussed in chapter 1, section C2.

individual tribes have pursued increased formalization of village ordinances and court structures, while attempting to retain their roots in Native culture and traditional law. Some have undertaken custom law projects or formal discussions with elders to learn about traditional and customary law ways.³⁸ Federal funding has become available for tribal domestic violence programs, drug courts, and youth courts. Alaska tribes have formed a statewide consortium to promote the development of tribal justice systems.

Training and organizing: Many efforts are underway to improve the substantive and procedural expertise of the tribal courts and councils. Several regional nonprofits provide training materials, technical assistance, and encouragement. The Interior Alaska Tribal College in Fairbanks offers training programs and written materials.³⁹ A number of Alaska attorneys, non-attorneys, and out-of-state institutes provide villages with comprehensive training for judges and administrators. One trainer provides a two-day course of lectures and role-playing, covering the limits of the court's jurisdiction, due process, the minimum standards of the Indian Civil Rights Act, and proper record-keeping. Another trainer says that he tries to provide a sense of legal principles and practical limits, while still encouraging creativity and solutions tailored to the local situation and culture. The state Division of Family and Youth Services provides training to help establish community courts and village youth courts. The U.S. Department of Justice also has sent tribal court organizers.

Domestic violence initiatives: In 1993, the federal Omnibus Crime Bill included set-aside funds for tribes under the Violence Against Women Act. The Department of Justice has administered a number of grants to Alaska organizations under VAWA and the subsidiary STOP Violence Against Indian Women program, to help Indian tribal governments enhance victim services and strengthen tribal law enforcement. The funding has been spent for training tribal courts and tribal councils, writing local ordinances and procedures for issuing protective orders, developing sexual assault response teams, adding Native advocates to existing women's shelters, training local volunteers, and providing court representation.⁴⁰ As a result, domestic violence has come to the forefront of many regional and village tribal court efforts.

Drug and alcohol courts: The Department of Justice has a drug court program office that provides grants and training for communities wishing to form special courts for alcohol and drug offenses. The federally-created drug courts are designed to emphasize rehabilitation and monitoring rather than imprisonment as a response to substance abuse crimes. The Department of Justice has

³⁸ Several people interviewed commented on the difficulty of writing modern ordinances that reflect the spirit and practice of traditional law.

³⁹ The Interior Alaska Tribal College is a project of Tanana Chiefs Conference. It currently is operated by the staff at Tanana Chiefs, but is intended to be an independent college once accredited. It offers seminars on tribal courts, ordinance drafting, Indian law, social services, forestry, and other subjects. The college is working to develop an associate degree program in tribal court administration. Its publications are described in chapter 4, section D, and listed in the bibliography.

⁴⁰ Grants under this program have been awarded to Tanana Chiefs Conference, Chugachmiut, Bristol Bay Native Association, Ketchikan Indian Corporation, Southcentral Foundation, the Sitka Tribe, Village of Larsen Bay, and Village of St. Michael. Related grants under other Department of Justice programs have been made to Alaska Legal Services Corporation and the Alaska Council on Domestic Violence and Sexual Assault. The specifics of each program are discussed in the regional and state sections of this report where each organization appears.

awarded grants to the villages of Chevak and Kwethluk to plan and develop tribal courts for nonviolent alcohol and drug offenders.⁴¹ Judges and tribal court administrators from these villages attended training in Washington during 1998.

Regional courts: Villages in many regions are discussing the development of regional tribal courts for all or part of the region. The only regional tribal court in operation as of January 1999 serves five villages in the Copper Center area, operating under a uniform set of ordinances for domestic relations and children's cases. In the Kotzebue Sound area, there is a regional council of elders that offers advice and intervention. Regional court agreements have been drafted but not implemented in the Bering Straits and Yukon-Kuskokwim regions. Regional courts are also under discussion by the Tlingit-Haida Central Council and by villages in the Chugachmiut/Prince William Sound area.

Juvenile offenses: The Alaska Native Justice Center is a nonprofit organization supported by Native regional corporations, federal grants, and private funding. It works to raise awareness about Native justice issues, take legal action against discrimination, develop innovative criminal justice programs, and provide information and training programs. In 1998, it received a \$500,000 federal grant to establish a pilot youth court program in two villages and promote the establishment of similar programs in other villages. This program and other youth courts are described in chapter 3 of this report. The growing use of community courts to handle juvenile offenses is described in chapter 4.

Tribal children's advocates: The state Office of Public Advocacy and a new organization called Alaska Tribal Court-Appointed Special Advocates are developing a program to provide better advocacy for Native children in need of aid. This program, funded by the National Court-Appointed Special Advocate (CASA) Association, will recruit and train Native volunteers to act as children's advocates in state courts, and will provide cross-cultural training for non-Native GALs and CASAs who work with Native children. Part of the program will encourage the use of child advocates in tribal courts and will allow for continuity of representation when cases are transferred between state and tribal courts.

Alaska Tribal Judicial Conference: Tribal court advocates recently established an organization for Alaska's tribal courts and councils to work together on issues of mutual concern. In December 1997, the Alaska Intertribal Council sponsored a gathering of tribal court judges and administrators to work on articles, bylaws, mission statement and goals for the new organization.⁴² The group determined that the mission of the Alaska Tribal Judicial Conference is to provide guidance and technical assistance for the development of tribal courts in Alaska. Its goals are to promote fair and equal tribal justice systems, promote and preserve traditional and cultural Indian

⁴¹ Although the Department of Justice has awarded grants for drug court development, it has not taken an official position on whether Alaska tribes have criminal jurisdiction over drug and alcohol offenses.

⁴² The Alaska Intertribal Council is a statewide nonprofit organization, formed in 1992, that advocates for the issues and concerns of Alaska tribes. Out of 226 recognized tribes, 177 are members of AITC. Its governing structure is divided into 12 regions corresponding to the ANCSA regions; ATJC has elected to use the same structure.

law, and provide testimony on legislation that will impact tribal councils and tribal court systems. Membership of the ATJC consists of tribal court judges, administrators, and clerks of recognized tribes, governed by an elected board of directors. ATJC is currently looking for funding to offer technical assistance and training to interested villages. It also hopes to promote the development of regional courts and courts of appeal, and to encourage tribes to work closely with other courts in their own areas.

Organizations

Alaska Intertribal Council
4201 Tudor Centre Drive, Suite 220
Anchorage, AK 99508
Phone: (907) 563-9334

Alaska Tribal Court-Appointed
Special Advocates
308 G Street, Suite 228
Anchorage, AK 99501
Phone: (907) 258-5811

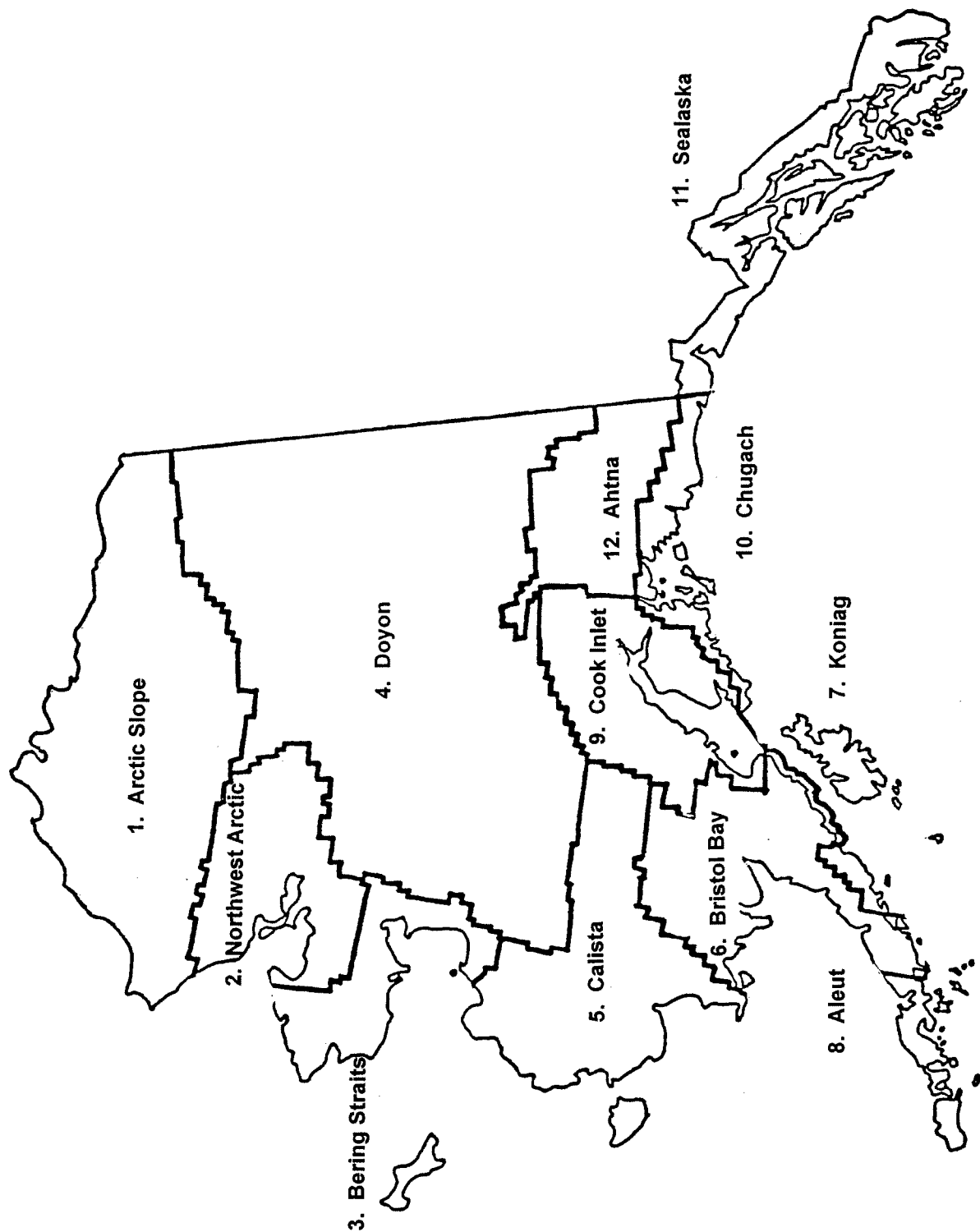
Alaska Tribal Judicial Conference
c/o Chief Judge Theodore Borbridge
456 Katlian Street
Sitka, AK 99835
Phone: (907) 747-3207

Interior Alaska Tribal College
Tanana Chiefs Conference
122 First Avenue
Fairbanks, AK 99701-4897
Phone: (907) 452-8251

National American Indian
Court Judges Association
1301 Connecticut NW, Suite 200
Washington, DC 20036
Phone: (860) 396-6319

Northwest Intertribal Court System
144 Railroad Avenue, Suite 302
Edmonds, WA 98020
Phone: (425) 774-5808

Figure 3
Alaska Native Regional Corporations



C. Complexities of Alaska governance and service delivery

1. Geography and economy of rural Alaska

It has been difficult for the state of Alaska to provide its remote areas with law enforcement, child protection, criminal prosecution and defense, court services, and corrections. In many rural communities, tribes have taken on some of the dispute resolution functions that are performed by the state in urban areas. The move toward local dispute resolution is motivated by many factors, historical, political, and practical. To understand the forces at work, it is helpful to have an overview of the geography, economy, and governmental structures of rural Alaska.

Since the passage of ANCSA, the state of Alaska has been divided into twelve regions corresponding to the boundaries of the twelve regional Native profit-making corporations created by the act and chartered by the state. (See Figure 3, page 18.) These areas also are served by a variety of nonprofit corporations and tribal organizations set up in each region to provide health and social services and economic development assistance. Like the state government, regional nonprofits and some tribal organizations have created a hub and spoke service delivery system. Because regional patterns have influenced the pattern of justice system development, the description of tribal court and council activity throughout the state is organized by ANCSA region. The Native groups tend to be somewhat culturally homogeneous within each of the regions.⁴³

Anchorage is the economic center of Alaska, serving as the major business center and transportation hub. The state government operates central offices in Anchorage, Fairbanks, and Juneau, with regional services provided from a number of hub communities. Most natural resources come from outlying coastal regions.

⁴³ The twelve regions are listed below, with the nonprofit corporations or tribal organizations active in tribal court development and law-related social services, and with the primary Native groups who live in the region. Many regions have a mix of other groups. Some regions have health care nonprofits with significant budgets; these agencies provide counseling and treatment but are not primarily responsible for court casework. A number of villages directly receive federal funding to provide these services.

1.	Arctic Slope Regional Corp.	Arctic Slope Native Assn. Inupiat Community of the Arctic Slope	Inupiat
2.	Northwest Arctic Native Assn.	Maniilaq Assn.	Inupiat
3.	Bering Straits Native Corp.	Kawerak, Inc.	Inupiat, Yupik
4.	Doyon, Ltd.	Tanana Chiefs Conference	Athabascan
5.	Calista Corp.	Assn. of Village Council Presidents Yup'it Nation	Yupik
6.	Bristol Bay Native Corp.	Bristol Bay Native Assn.	Yupik
7.	Koniag, Inc.	Kodiak Area Native Assn.	Alutiiq
8.	Aleut Corp.	Aleutian-Pribilof Islands Assn.	Aleut
9.	Cook Inlet Region, Inc.	CITC/ Southcentral Foundation	Athabascan
10.	Chugach Natives	Chugachmiut	Athabascan, Alutiiq
11.	Sealaska Corp.	Tlingit & Haida Central Council	Tlingit, Haida, Tsimshian
12.	Ahtna, Inc.	Copper River Native Assn.	Athabascan

Village economies, including those of larger hub communities such as Bethel, Barrow, Nome, and Kotzebue, rely on three sources of income. The largest is transfer payments, including state and federal revenue sharing, individual programs such as permanent fund dividends and Medicaid, and state and federal jobs such as teaching, social services, and transportation. One author estimated that fully 60% of village economies are based on transfer payments, and that three times as many people live in rural areas because of transfer payments as could be supported otherwise.⁴⁴ Second, a number of communities rely on a market economy based heavily on the extraction of natural resources, such as fish, timber, and oil. Communities that possess these resources are healthier economically than those that do not. A third aspect of village economies is subsistence. Studies have found that annual subsistence harvests range from 700-1,100 pounds of food per person per year in the smaller communities.⁴⁵ Most villages are located where they are for subsistence reasons and have little means of participating in a market economy.

State agencies face the unique challenge of administering justice in a state covering more than 586,000 square miles (one-sixth the area of the lower 48 states) and hosting a relatively small population of 615,000 people from many distinct cultures. While the hub cities have judges, district attorneys, public defenders, probation and parole officers, social workers, and state troopers, approximately 29% of the population lives outside the hub areas.⁴⁶ Most villages are not connected by road to larger communities, and inclement weather often disrupts travel by other means. As a result, justice services and facilities are unequally distributed across the state, causing many problems to go unaddressed.⁴⁷

2. Federal government

The President of the United States sometimes takes a leading role in determining federal policy toward Indian tribes. Under President Clinton, executive agencies have been directed to establish a direct government-to-government relationship with tribes and to support a substantial degree of self-determination.⁴⁸ Among the executive agencies, the Department of Justice, the Environmental Protection Agency, and the Department of Health and Human Services have been the most active recently in developing new relationships with tribal governments, while the Bureau

⁴⁴ L. HUSKEY, *THE ECONOMY OF VILLAGE ALASKA*, 1 Institute of Social and Economic Research p. 9 (1992).

⁴⁵ *Id.* at 8.

⁴⁶ ALASKA COURT SYSTEM, *REPORT OF THE ALASKA SUPREME COURT ADVISORY COMMITTEE ON FAIRNESS AND ACCESS* 14, 105 (1997) [hereinafter *FAIRNESS AND ACCESS REPORT*] This report is summarized in chapter 6, section F3.

⁴⁷ A court subcommittee found that lack of local services can have serious ramifications: minor criminal offenders receive little attention until they cause major problems in a village; prosecutors dismiss cases under travel budget constraints; probation officers cannot supervise offenders who return to their villages, forcing the offenders to remain in cities where they have no support; civil matters like child support, adoption, probate, and small claims go unattended; telephonic hearings work poorly when the witness has limited English skills or poor understanding of the concepts involved; and villagers remain ignorant of the law because they never see it in action. Findings of the rural access subcommittee, *id.* at 107.

⁴⁸ Reno, *A Federal Commitment to Tribal Justice Systems*, 79 *Judicature* 113 (Nov/Dec 1995), citing *PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES*, WILLIAM J. CLINTON, 1994, Book 1 at 800-803.

of Indian Affairs and Indian Health Service have maintained their roles in funding and supporting tribal governments.

Department of Justice: In June 1995, the Department of Justice issued its policy on strengthening Indian tribal governments and promoting Indian self-governance. Under this policy, Justice will consult with tribal governments concerning law enforcement priorities in Indian country, support duly recognized tribal governments, defend the lawful exercise of tribal governmental powers, investigate tribal government corruption when necessary, and support Indian tribes in the development of their law enforcement systems, tribal courts, and traditional justice systems.⁴⁹ Justice has established an Office of Tribal Justice to offer tribal courts technical assistance, training opportunities, and coordination with state and federal judiciaries.⁵⁰ Justice also has established an American Indian/Alaska Native desk to provide information about available federal funds and to assist in developing new programs.

Several Justice representatives came to Anchorage in December 1997 to meet with the Alaska Tribal Judicial Conference and to provide information about Department of Justice programs. Justice representatives returned in April 1998 for “listening meetings” in Fort Yukon, Akiachak, Sitka, and Anchorage. The Justice group also met briefly with representatives of the state government to discuss state and federal positions on tribal court jurisdiction and development. In 1998, a Justice Department lawyer appeared on behalf of the United States in front of the Alaska Supreme Court, arguing in favor of tribal court jurisdiction in domestic relations cases. Justice sent a tribal courts organizer to Anchorage in December 1998 for trainings and discussions.

Justice has seen considerable growth in its funding for tribal projects since 1995. Justice administers a number of federal grants through its Office for Victims of Crime, Bureau of Justice Assistance, and Office of Juvenile Justice and Delinquency Prevention.⁵¹ These include funds for drug courts, programs to stop violence against women, and juvenile justice projects. Justice also administers Community Oriented Policing grants (COPS grants), providing additional officers to city and tribal police departments. As of FY 1998, these grants paid for 162 additional officers in Alaska, including 53 tribal officers. Justice contracts with the National Judicial College at Reno to train a limited number of tribal court judges.

Youth court grants: Alaska youth courts also have received federal grants. Justice administers Byrne formula grants for state and local law assistance, along with Byrne discretionary grants for innovative criminal justice programs. In 1997, the Alaska Native Justice Center received a \$500,000 Byrne discretionary grant to set up youth courts in two Alaska villages. Federal money for youth courts also is provided through the Office of Juvenile Justice and Delinquency Prevention (with some Native set-asides), the National Highway Safety Planning Commission (to combat teen

⁴⁹ *Id.*

⁵⁰ *Id.* at 114. The mission statement of the Office of Tribal Justice can be found at www.usdoj.gov/otj/mission.html.

⁵¹ Further information about DOJ grants can be found at www.ojp.usdoj.gov or by calling 800-421-6770.

drinking and driving), and through Community Development Block Grants from the Department of Housing and Urban Development.⁵²

Other federal agencies: Other federal agencies support tribal court development through funding and technical assistance. The Administration for Native Americans (ANA), part of the Department of Health and Human Services, promotes the goals of self-governance and self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and Native American Pacific Islanders. It supports the development of tribal constitutions, ordinances, and tribal court systems, the development of agreements between states and villages, and the development of village-level mergers to coordinate programs and services among communities.⁵³ In 1998, Chugachmiut received a \$300,000 ANA grant to help villages rewrite their constitutions and write ordinances. Eklutna received \$147,000 to develop its child advocacy center and children's court, and to study the domestic relations practices of various tribes in the area.

The Bureau of Indian Affairs, part of the Department of Interior, traditionally has taken the lead in supporting and funding law-related programs by tribal governments.⁵⁴ BIA distributes \$1.2 billion dollars in program funds to tribes across the country. Of this sum, only \$14 million is allocated to direct funding for tribal court development. PL 280 states like Alaska have not been included in the historic funding pattern, although a few villages and nonprofits have received small grants, and the Metlakatla and Tanana tribal courts receive steady funding. BIA also provides baseline funding under the Indian Self-Determination Act for tribes to allocate according to their own priorities. In Alaska, most villages receive the minimum funding of \$160,000 per village. Villages frequently allocate much of this funding to generalized programs like tribal operations or tribal government services that have a wide range of allowable uses. BIA is unable to track whether these funds are used for tribal court development, but many tribes in Alaska report that they support their tribal court functions from this money. In 1993, Congress passed the Indian Tribal Justice Act authorizing up to \$58 million annually to reinforce the functioning of tribal courts, but the money has never been appropriated.

Federal courts: The federal courts in Alaska often decide cases involving Native law issues, such as the extent to which Alaska Natives have tribal status and the extent to which ANCSA lands constitute Indian country. Federal court decisions on tribal jurisdiction have not always agreed with state or tribal court decisions, setting up certain tensions.⁵⁵ To ease these tensions, the Ninth Circuit

⁵² The state of Alaska provides small grants for youth court development through DFYS Youth Services and through the Safe and Drug-Free Schools Program of the state Department of Education. Further information about state and federal youth court grants is available by calling the DFYS Youth Services office in Juneau, 907-465-3572.

⁵³ Federal Register, Volume 62, Number 186 at 50373-77 (September 25, 1997). Further information about ANA grants can be found at www.acf.dhhs.gov/programs/ana or by calling 202-690-7844.

⁵⁴ Further information about BIA funding can be found at www.doi.gov/bureau-indian-affairs or by calling BIA at (202) 208-4400 or (907) 586-7177. In the area of public health, the Indian Health Service works closely with tribal governments and funds health-related programs.

⁵⁵ Wallace, "A New Era of Federal-Tribal Court Cooperation," 79 *Judicature* 150 (November-December 1995); Pommersheim, *Federal Courts and their Role in the Context of Problems and Solutions Involving Tribal and State Courts*, Background paper for *Building On Common Ground: A Leadership Conference to Develop A National Agenda*

has formed a task force to examine federal-tribal court relations and has urged federal-state councils to include tribal court representatives. The federal-state councils in Oregon, Arizona, and Washington have incorporated tribal members into their councils, while Alaska has declined to do so to date.⁵⁶ Alaska federal court judges have expressed concerns about services to rural areas and have traveled around the state to hear concerns about gaps in service delivery. The federal district court in Anchorage is changing the way jury pools are drawn to get a more representative cross-section of Alaska jurors.

In 1994, the Alaska Judicial Council proposed a federal/tribal/state forum to discuss tribal court issues, build relationships, and identify problem areas. Participants were to include a federal judge, state judges and justices, and tribal court judges. The forum was intended to last a year, including meetings, public hearings, and a final report. The University of Alaska Justice Center made a similar proposal in 1996, securing funding from the National Indian Justice Center to cover part the cost. The Alaska Supreme Court declined to participate in either of these proposed forums.

3. State government

The Alaska state constitution creates a unified state court system without county or municipal courts. In response to rural caseload, the state has doubled its court locations over the last 40 years. The state court system now consists of superior courts in thirteen cities, district courts in seven cities, a statewide court of appeals for criminal cases, and a supreme court for general appellate jurisdiction and rule-making. These locations contain about three-fourths of the state's population.⁵⁷ In addition, magistrates sit in each of the communities with a superior or district court, and another 28 magistrates serve in rural communities.⁵⁸ The number of magistrates has gone up and down over the years. Figure 4 (page 27) shows the location of the state courts and magistrates. Approximately 7% of Alaska's population lives in areas serviced by magistrates (including traveling magistrates).

to Reduce Jurisdictional Disputes Between Tribal, State, and Federal Courts 1 (1993).

⁵⁶ State court groups have been making similar efforts. In 1993, the National Conference of Chief Justices and the National Center for State Courts invited leaders of state, tribal, and federal courts and prominent experts in Indian law to a symposium addressing the jurisdictional problems encountered by the courts; this symposium, held in Oklahoma, has become an annual event. In 1994, the Conference of Chief Justices formed a standing tribal relations committee to monitor federal legislation, encourage state-tribal liaison committees, and discuss current issues. The Chief Justice of the Alaska Supreme Court sits on this committee and is currently the vice-chair.

⁵⁷ See FAIRNESS AND ACCESS REPORT at 105.

⁵⁸ The rural magistrates occasionally travel to nearby villages and serve some villages by telephone. See FAIRNESS AND ACCESS REPORT at 105 and appendix F (1997). Six of the 28 rural magistrate positions were vacant as of October 1998.

Magistrates are hired by the presiding judge of each judicial district. Most magistrates in the larger communities are law-trained; many of those in the smaller towns are not. Most in the smaller communities are Natives and/or long time residents of the communities. In criminal matters, magistrates can try and sentence misdemeanors with the consent of the defendant, can try and sentence municipal ordinance violations, can do felony preliminary hearings and bail hearings, and can issue search warrants and arrest warrants. In civil matters, a magistrate may hold emergency CINA and delinquency hearings, serve as a coroner or passport agent, hear small claims cases, and be appointed as a master in domestic relations, children's, and probate cases. For a description of the rural magistrate system, see M. Blackman, SADIE BROWER NEAKOK, AN INUPIAQ WOMAN at 155 (1989).

About 6% of Alaska's population lives in communities without any judicial officer.⁵⁹ Most of these communities, however, do have a local law enforcement presence (a VPSO, a Village Police Officer, or other paid police).⁶⁰ Finally, a sizeable percentage of Alaska's population (13%) lives outside census designated places, particularly in the Mat-Su and Fairbanks North Star Boroughs.⁶¹ It is difficult to categorize these residents' access to the state courts.

The Alaska Court System has taken substantial steps to improve access to the court system by Alaska Natives and rural residents. The Court's Fairness and Access Report sets out these steps in detail.

Law enforcement in most of the smaller towns is provided by the Alaska State Troopers or by the Village Public Safety Officer (VPSO) program.⁶² The troopers have detachments in Ketchikan, Soldotna, Anchorage, Palmer, and Fairbanks, with posts in 30 other locations. Several of the mid-sized cities and boroughs have local police departments that may handle major felonies alone or in cooperation with the troopers. The Department of Corrections has probation and parole officers in each of the court locations. It maintains prisons in nine cities and jails in 14 other communities.⁶³

The state Department of Law handles most misdemeanors and all felonies, child in need of aid cases, and juvenile delinquency matters. The state Public Defender Agency and Office of Public Advocacy represent indigent criminal offenders, indigent parents in child welfare cases, indigent juveniles, and persons needing a guardian ad litem. The Division of Family and Youth Services is one of the more active state agencies in small towns, because of its role in child in need of aid cases and juvenile delinquency matters. Alaska Legal Services provides assistance in a limited number of civil cases in mid-sized communities, but funding cuts in recent years have limited its caseload severely.⁶⁴

4. Regional Native nonprofit corporations

Each of the ANCSA Native regional corporations has one or more nonprofit corporations serving many of the villages in the region.⁶⁵ The regional nonprofits typically provide services

⁵⁹ See FAIRNESS AND ACCESS REPORT at 105.

⁶⁰ *Id.*

⁶¹ *Id.* At 106.

⁶² The VPSO program is described in chapter 6, section A2.

⁶³ State prisons are located in Anchorage, Bethel, Eagle River, Fairbanks, Kenai, Ketchikan, Juneau, Nome, Palmer, and Seward. Jails are located in Barrow, Cordova, Craig, Dillingham, Haines, Homer, Kodiak, Kotzebue, Petersburg, Seward, Sitka, Unalaska, Valdez, and Wrangell. Roughly 70 other communities have holding facilities, including court building lock-ups, trooper posts, and city buildings.

⁶⁴ Chapter 6 details the role of various state agencies and their interactions with local organizations. Therefore, only a limited description of the state's role is included here.

⁶⁵ Most of the regional nonprofits date from the late 1960's and were organized by RuralCAP (a federally recognized, state-incorporated nonprofit corporation) with federal funds under the Economic Opportunity Act of 1964. All twelve are recognized in ANCSA as Native organizations. Two of the nonprofits are much older: the Central Council

promoting health, education, and economic development, and serve as a conduit for state and federal funds. Most of them contract with the Department of Public Safety to funnel VPSO funds to village councils. All provide family and children's services to residents of participating villages. However, there is no requirement that villages participate in the services offered by their regional nonprofit corporations, and many villages largely administer their own programs through direct compacts or contracts with the federal government. In some regions, other tribal organizations serve some of the region's tribes. Which villages are served by the regional nonprofit, and for which services, may vary from year to year. Relations between the regional nonprofits and the villages are sometimes strained, in part because state and federal agencies often funnel local program funding through the nonprofits rather than give it directly to the villages. This results in diminished local control over the money and often imposition of an administrative fee as well.

In some parts of the state, the regional nonprofits are particularly active in helping tribes develop their capacity for dispute resolution. Kawerak, Tanana Chiefs Conference, Association of Village Council Presidents, and the Alaska-Pribilof Islands Association have helped tribes in their areas write substantive ordinances, develop procedures for councils sitting as courts, find funding, and set up separate courts. They have offered training for council members, judges, and court administrators. Tanana Chiefs Conference has published a series of handbooks on tribal ordinances, court procedures, children's cases, and domestic violence.

5. Local governments

Alaska state law provides for several kinds and classes of municipal governments, including boroughs, cities, and unified municipalities.⁶⁶ Many smaller communities incorporated as second class cities during the early years of statehood to obtain benefits such as state and federal revenue sharing funds. Federal law allows Alaska Native villages to incorporate as IRA governments. IRA governments have been formed in 72 communities; 42 of these communities also are incorporated as cities. There are 150 communities with traditional councils; 74 of these communities also are incorporated as cities. Out of the state's 145 cities, only 39 have neither an IRA council nor a traditional council.⁶⁷ Out of 226 tribes, about half live in communities incorporated as cities. Only Metlakatla is governed as a federal Indian reservation. In addition, most villages have ANCSA village corporations, providing local investment, employment, and land management. While village corporations are not integrally involved in justice system issues, they are an additional source of leadership in the villages.

of Tlingit and Haida Indians was formed in the 1930's as a tribal government, and Tanana Chiefs Conference dates back to about 1912 as a consortium of Athabascan bands in Interior Alaska.

⁶⁶ Boroughs are regional governments that include more than one city. Most boroughs provide education, planning, platting, and zoning, and tax assessment. Some provide additional services such as police, water & sewer, and transportation. Three boroughs have formed a unified government with the cities inside them. Organized boroughs cover about 38% of the state's area, but much of the population and resource base.

⁶⁷ Information provided by the Alaska Department of Community Affairs, Municipal and Regional Assistance Division, Local Boundary Commission, on January 20, 1999. The Local Boundary Commission publishes a report called "Local Government in Alaska", found at www.comregaf.state.ak.us.

Most municipal governments have some role to play in dispute resolution. A number of cities and boroughs use municipal codes to handle traffic offenses, planning and zoning, litter control, air and water quality, and animal control. Most of these problems are handled through fines or negotiated resolutions. If they cannot be resolved, the city attorney will bring an action in state court, since cities in Alaska do not have municipal courts. Although a number of cities have criminal codes that cover misdemeanor offenses like theft, drunk driving, and domestic violence, most cities charge these offenses under state law and turn the cases over to the state for prosecution. Anchorage and Juneau regularly prosecute misdemeanors under their municipal codes. Fairbanks prosecutes only traffic offenses and misdemeanor domestic violence.

Many cities have their own police departments.⁶⁸ In cities with no police department, city ordinances may be enforced by a VPSO. In villages with an active tribal council or court, tribal ordinances may be enforced by a VPSO, a village police officer (VPO), or a tribal officer.⁶⁹ A recent informal survey conducted by the Alaska State Troopers determined that there were at least 129 VPOs or tribal officers working in Alaska's rural communities, mostly in the Yukon-Kuskokwim area.

Sometimes there can be a confusing amount of overlap or disagreement among the various local governments.⁷⁰ In other places, local governments may work well together. The Northwest Arctic Borough has recognized the tribes in the region for purposes of intergovernmental cooperation and contracting. In Kwinhagak, the city and the IRA government have unified to some extent under an agreement to share funding and co-manage service delivery. In Kiana and Selawik, the city council and the tribal council meet regularly to discuss issues of mutual concern. In Tanana, the city and tribal governments have formed a nonprofit corporation to run the village's utilities. In Tyonek, where there is no municipal government, the village corporation and tribal council send members to each other's meetings and hold joint retreats.

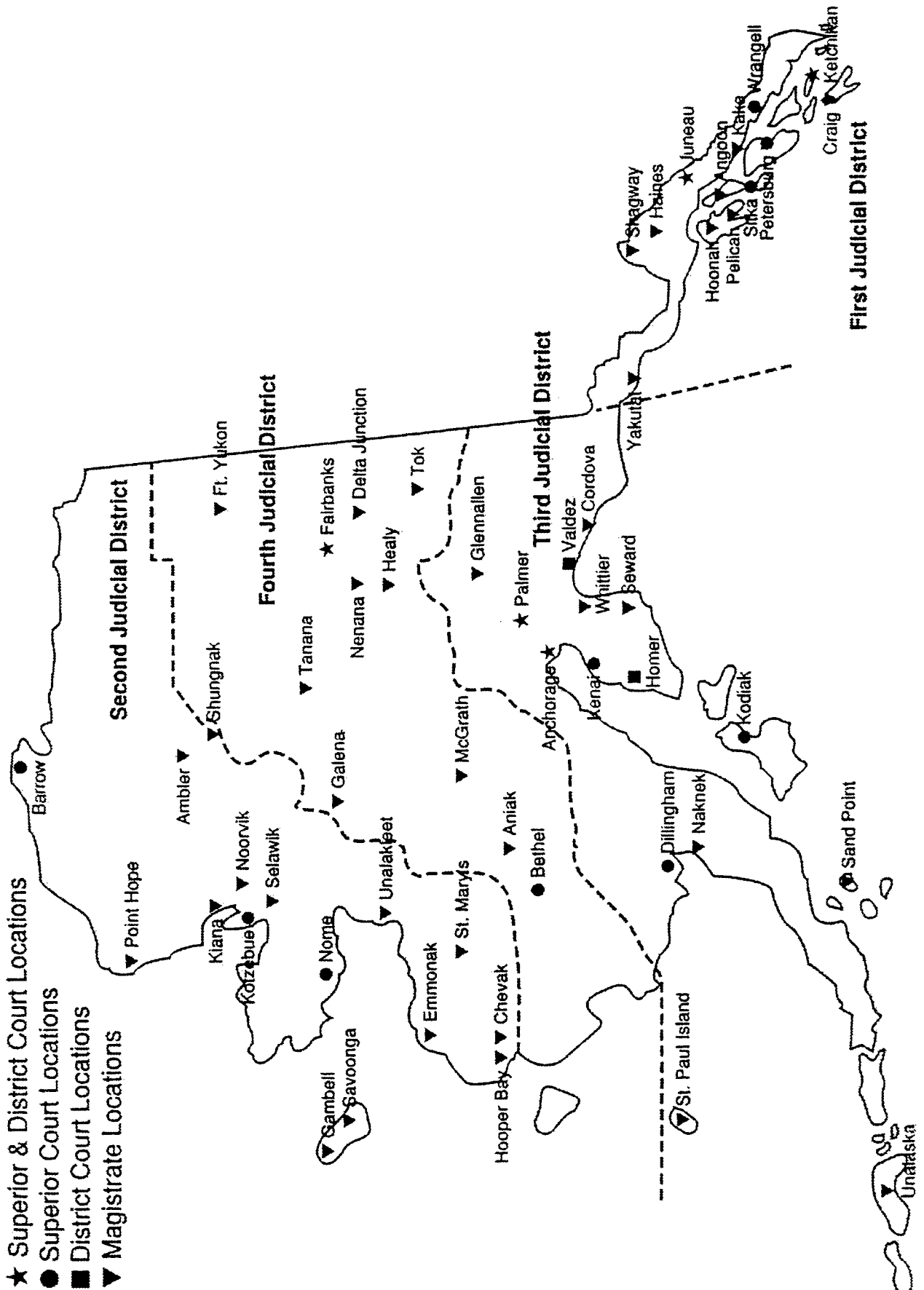
⁶⁸ Municipalities with their own police departments are Aleknagik, Anchorage, Angoon, Bethel, Bristol Bay Borough, Cordova, Craig, Dillingham, Fairbanks, Fort Yukon, Galena, Gambell, Haines, Homer, Hoonah, Hooper Bay, Juneau, Kake, Kenai, Ketchikan, Kiana, King Cove, Klawock, Kodiak, Kotzebue, Kwethluk, Nenana, Nome, North Slope Borough, Palmer, Petersburg, Quinhagak, St. Mary's, St. Paul, Sand Point, Seldovia, Seward, Shaktoolik, Sitka, Skagway, Soldotna, Tanana, Togiak, Tununak, Unalaska, Valdez, Wasilla, Whittier, Wrangell, and Yakutat. The Metlakatla city police department is administered by the tribal government.

⁶⁹ VPSOs are hired with state funds; village police officers are hired with tribal funds; tribal officers are hired with federal Community Oriented Policing (COPs) grant funds. Some villages have both city and tribal law enforcement. The U.S. Department of Justice has given COPS grants to at least two villages for both city and tribal police officers.

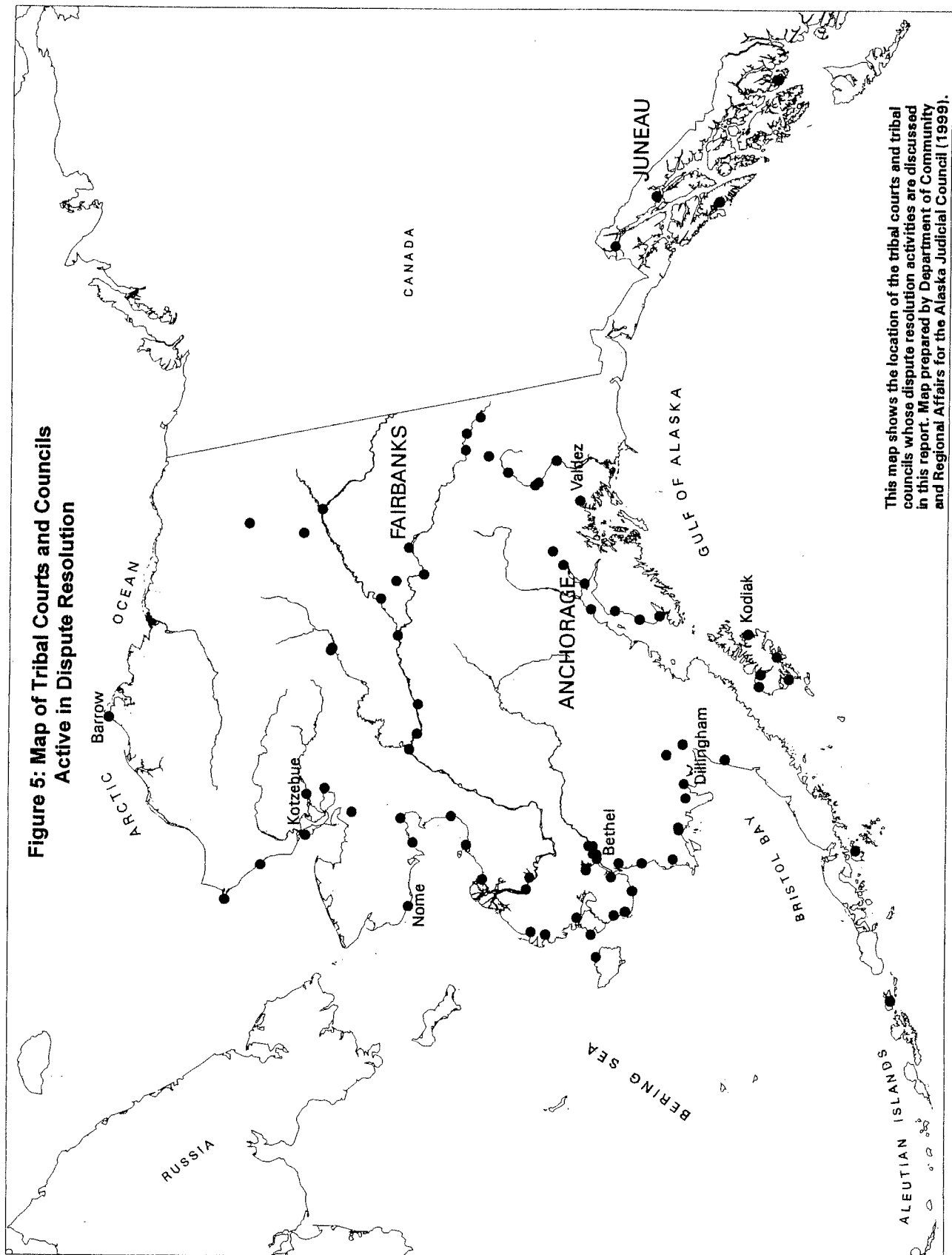
⁷⁰ These multiple layers of government differ from the rest of the United States in kind, but not in complexity. An average metropolitan area in the United States may have a city government, several suburbs with their own governments, a county government, and a variety of bodies with legislative and executive authority to handle transportation, waste, or education. In addition, numerous nonprofit and profit corporations in a metropolitan area may draw their entire funding from the many government entities and exist only to provide government-related services. The situation is similar in small Alaska communities, with the difference that only a few hundred or thousand people are served by the array of organizations.

Figure 4
Alaska State Judge & Magistrate Locations

ALASKA COURT LOCATIONS



Map provided by Alaska Court System, November 1998



Chapter 2

Tribal Courts and Councils

This chapter describes how tribal courts and tribal councils handle individual legal cases. The chapter is organized by region, with twelve sections corresponding to the twelve ANCSA regions in the state. (See Figure 3, page 18.) Each section begins with a brief description of the region. It discusses those tribal courts and tribal councils that provide dispute resolution for their members or their local communities.⁷¹ It describes the efforts of regional organizations to promote tribal judicial services through training, ordinance writing, coordination with social services, and regional court development. At the end of each section there is a list of regional organizations and tribes with addresses and phone numbers.⁷² Figure 5 (page 28) is a map showing the locations of the tribal courts and councils and other organizations described in this report. Figure 7 (page 122) is a table summarizing their work.

A. Arctic Slope

The Arctic Slope covers the northernmost portion of the state bordering on the Arctic Ocean. The largest community is Barrow; other federally recognized tribes in the region are Anaktuvuk Pass, Atkasuk, Kaktovik, Nuiqsut, Point Hope, Point Lay, and Wainwright. Historically, the Inupiat of the Arctic Slope lived in extended families that provided social structure. The economy was dependent upon whaling and subsistence activities. Village councils developed around the turn of the century under the influence of school teachers and missionaries, and later under the charter of the IRA.⁷³ Since 1972 and the advent of oil revenues, the North Slope Borough has been the dominant political entity in the area, providing education, social services, water and sewer systems, and law enforcement. As a result, village and tribal governments have not been as active as in other regions of the state.

⁷¹ The fact that a community is not mentioned in the text does not necessarily mean that there is no activity there, since the interviewer for this report was not able to contact every tribe, and significant changes can happen at any time. Some tribal governments participate in community courts, which are collaborative agreements with state and municipal agencies to handle juvenile delinquency cases. Because of their significantly different structure, these courts are addressed in chapter 4 of this report.

⁷² For updated information, readers can consult the BIA tribal list for the names of tribal council leaders and their current addresses, phone, and fax numbers. This list can be found on the Internet at www.doi.gov/bureau-Indian-affairs/areas/06june.html or by calling the BIA Juneau office at 907/586-7454. The tribal names and addresses used in this report are taken from the BIA tribal list or from lists provided by the regional nonprofits of tribal councils in their areas. The Alaska Judicial Council did not verify the accuracy of most listings provided.

⁷³ MINERALS MANAGEMENT SERVICE, A DESCRIPTION OF THE SOCIOECONOMICS OF THE NORTH SLOPE BOROUGH 254 (Technical Report No. 85) (September 1983).

The Arctic Slope Regional Corporation is the Native profit-making corporation. Nonprofits that work on judicial issues are the Arctic Slope Native Association (ASNA) and the Inupiat Community of the Arctic Slope (ICAS). The Alaska Court System has a superior court and magistrate location in Barrow; state offices include DFYS, probation, district attorney, and the public defender. The state does not provide VPSOs to Arctic Slope villages; law enforcement is provided by North Slope Borough public safety officers or the City of Barrow police force.

1. Inupiat Community of the Arctic Slope

The Inupiat Community of the Arctic Slope (ICAS) is a federally recognized tribe with a regional IRA council composed of one representative from each village and five Barrow representatives. Its early years were fraught with difficulties stemming from mismanagement of federal grants, tax problems, and debt repayments. ICAS still serves as a conduit for federal funds, and retains an executive director, financial officer, grant writer, and attorney. The attorney currently is writing ordinances to provide the groundwork for development of a regional tribal government, including a regional tribal court system. As currently envisioned, the court will be based in Barrow with magistrates or judges from each community. The court might handle housing, pollution, and wildlife management issues. Most ICAS funding for tribal court development comes from the North Slope Borough.

2. Arctic Slope Native Association

ASNA was formed in 1966 to advocate for the passage of ANCSA and the establishment of the Arctic Slope Regional Corporation and the North Slope Borough. After ASNA met these goals, it commenced a long period of inactivity. In 1991, the ASNA Board of Directors reorganized around a new focus, administering federally funded programs and social services on behalf of its member villages. ASNA intervenes in ICWA cases on behalf of its villages and coordinates case planning and management with DFYS social workers. Local village councils sometimes follow up on ICWA cases and also handle traditional adoptions.

In March 1998, ASNA completed a one-year domestic violence pilot program, using community policing funds granted to the North Slope Borough from the Department of Justice. A team from the Barrow Women in Crisis Shelter and the North Slope Borough police traveled to all villages in the region, providing a two-day training to all councils, law enforcement officers, and other interested citizens. The program was well-received and reportedly has shown some success in reducing the number of domestic violence cases. Anaktuvuk Pass, Kaktovik and Wainwright formed committees to intervene in domestic violence situations before a crime is committed and someone is injured. Team members will visit a family to offer moral support and direct the family to services such as substance abuse treatment, counseling, anger management, and safe homes.

In 1996-97, ASNA received an Administration for Native Americans grant to develop culture-based jail rehabilitation programming. It formed a committee of over twenty people, including representatives from each village, the Department of Corrections, and North Slope Borough police. The committee made recommendations on culturally appropriate programming for

alcohol and drug treatment, sex offenses, and anger management. It investigated programs in other places, sent a delegation to northern Canada, and sought input from each village. ASNA is hoping to use the information for programming in a proposed correctional facility to be located in Barrow. If the correctional facility is built, ASNA may seek additional ANA funding to train local residents to work there.

3. Native Village of Barrow Tribal Council

The Native Village of Barrow is the IRA council for the Barrow area. The council regularly convenes itself as an adjudicatory body, hearing 50-70 cases per year. The caseload is primarily traditional adoptions, custody, and child in need of aid cases. The council has its own social worker who presents cases to the council and intervenes on behalf of the council when DFYS files an ICWA action in state court. The Native Village of Barrow has submitted a petition to the Secretary of Interior seeking exclusive jurisdiction over ICWA cases. The council does not receive separate funding for its adjudicatory work. An elders' advisory board at the Barrow Senior Center provides advice on elders' issues like burial plots, elder abuse, and assisted living. The elders also help train borough police.

4. 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. Barrow decided to use court of elders 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. The court is described in more detail in chapter 4, the community court section of this report.

5. Native Village of Point Hope

The Point Hope⁷⁴ IRA council occasionally sits as a juvenile committee to hear juvenile delinquency cases referred to it by DFYS. In the summer of 1997, the council heard two cases of vandalism and theft. The village family caseworker sent out case information and invited people to attend a special meeting where the cases would be considered. The meetings were attended by the DFYS juvenile probation officer, the VPSOs, the juveniles and their parents, and community leaders. An initial meeting was held to bring out the facts of the case, followed by a second meeting where the council gave its recommendations on sentencing. The council entered into two-page agreements with the juveniles and their families. The juveniles were required to submit a written apology, perform community work service, report daily to the family caseworker, pay restitution, and other conditions. The parents and the family caseworker were asked to report back to the council by a certain date. One juvenile performed all of the conditions; the other has not completed one condition,

⁷⁴ Point Hope is located within the North Slope Borough and receives planning and public safety services from the Borough. The village is physically located within the Arctic Slope Regional Corporation, although a number of its residents are shareholders of the NANA Corporation out of Kotzebue. Point Hope receives its social services from Maniilaq, the NANA nonprofit. Within the state court system, it is considered part of the Kotzebue venue district.

so the case is still pending. The Point Hope community is discussing possible formation of a community court to hear juvenile offenses.

The Point Hope IRA council does not hear ICWA cases, but intervenes in state court through the family caseworker. The council handles traditional adoptions at its regular meetings, without designation as a special committee. It has a traditional law committee to discuss how certain matters traditionally would be handled in an Inupiaq community.

In 1990, the Native Village of Point Hope received a \$140,000 ANA grant to promote management and capacity-building for the tribal government, economic development, and planning and ordinance work for development of a tribal court. The reach of the grant was ambitious, and the village was unable to do all of the work necessary to develop a tribal court. Although the tribe remains interested, the staff members feel that their hands are always full with pressing matters and that further tribal court development is not likely without additional funding. They sometimes monitor cases for state agencies to see whether local juveniles comply with DFYS or court conditions. While tribal staff members are happy to handle these things locally, they find that it can be time-consuming and adds a hidden administrative cost that is not reimbursed by the state.

6. Alaska Eskimo Whaling Commission

The Alaska Eskimo Whaling Commission was created in 1977 to represent the whale management interests of Native whaling communities nationally and internationally. It monitors the activities of subsistence whalers and apportions quotas set by the International Whaling Commission. It has ten member villages, each with its own executive board of whaling captains from the village, plus a regional group of commissioners. The commission has worked to adopt a standard set of regulations in cooperation with the National Oceanic and Aeronautic Administration and the National Marine Fisheries Service. The commission is funded through NOAA and the North Slope Borough.

One of the whaling commission's functions is to resolve disputes among whaling captains. A dispute arising between two captains from the same village is heard by the local board; a dispute between captains from different villages is resolved by the regional board. The staff of the whaling commission states that most disputes are easily settled by reference to the comprehensive regulations, so the regional board has handled only one dispute since 1990.

Regional Organizations

Alaska Eskimo Whaling Commission
Box 570
Barrow, AK 99723
Phone: (907) 852-2392

Arctic Slope Native Association
P.O. Box 1232
Barrow, AK 99723
Phone: (907) 852-2762

Inupiat Community of the Arctic Slope
Box 934
Barrow, AK 99723
Phone: (907) 852-0250

Tribal Councils and Courts

Village of Anaktuvuk Pass
General Delivery
Anaktuvuk Pass, AK 99721
Phone: (907) 661-3113

Native Village of Nuiqsut
General Delivery
Nuiqsut, AK 99723
Phone: (907) 480-6714

Atkasuk Village
General Delivery
Via Barrow, AK 99723
Phone: No phone

Native Village of Point Hope
Box 109
Pt. Hope, AK 99766
Phone: (907) 368-2330

Native Village of Barrow
P.O. Box 1139
Barrow, AK 99723
Phone: (907) 852-4411

Native Village of Point Lay
P.O. Box 101
Point Lay, AK 9975
Phone: (907) 833-2428

Kaktovik Village
P.O. Box 8
Kaktovik, AK 99747
Phone: (907) 640-6120

Village of Wainwright
P.O. Box 184
Wainwright, AK 99782
Phone: (907) 763-2726

Alaska Court System

Superior Court Judge Michael Jeffery
Magistrate Karen R. Hegyi
Box 270
Barrow, AK 99723-0270
Phone: (907) 852-4800

B. Northwest Arctic

The Northwest Arctic region includes the city of Kotzebue and villages on Kotzebue Sound and surrounding river drainages. The federally recognized tribes and villages are Ambler, Buckland, Deering, Kiana, Kivalina, Kobuk, Kotzebue, Noatak, Noorvik, Selawik, and Shungnak. The residents differ somewhat from more northern Inupiat in their subsistence activities and some aspects of their culture. Residents of Kivalina hunt whales, the coastal Inupiat further south hunt other sea mammals, and interior Inupiat rely more on caribou.

The regional ANCSA profit-making corporation is Northwest Arctic Native Association (NANA), which developed the Red Dog Mine in cooperation with the state. The mine provides much of the region's private economic activity and supplies ten percent of the world's zinc, as well as some lead and silver. The area has been incorporated as the Northwest Arctic Borough to capture tax revenues from this resource. The regional nonprofit corporation is Maniilaq Association, unique among regional nonprofits because it is incorporated to serve both Natives and non-Natives.⁷⁵ In addition to health and family services, Maniilaq has a tribal services director who works on the development of tribal courts.

Village councils in this area have performed a dispute resolution function for at least a century. In cases of unacceptable behavior, council members historically would gather in a special meeting to speak to an offender about his or her actions. All of the tribal councils in this region continue to participate in some form of dispute resolution activity. Dispute resolution is also shaped by the spirit movement, the Inupiat Ilitqusiat⁷⁶, and elders' councils.

The state of Alaska has a superior court judge and magistrate in Kotzebue, a magistrate who serves the three villages of Ambler, Kobuk, and Shungnak, and a vacant magistrate position in Kiana. Kotzebue also has adult and youth probation offices, a DFYS family services social worker, district attorney, public defender, and a state trooper post. A youth court for Kotzebue is in the organizational stage.

1. Maniilaq Association

The Maniilaq tribal services division works to support tribal court development in each of its member villages. In 1998, Maniilaq funded some tribal members to attend a workshop on tribal

⁷⁵ D. CASE at 401. The name "Maniilaq" means "no money" (i.e., nonprofit) and also is the name of a traditional nineteenth-century Inupiaq prophet who lived in the area. *Id.* at 397.

⁷⁶ The *Inupiat Ilitqusiat* is a statement of guiding principles developed from a series of town meetings held throughout the region twenty years ago. It reads:

Every Inupiaq is responsible for the survival of our cultural spirit and the values and traditions through which it survives. Through our extended family we retain, teach and live our Inupiaq way. With guidance and support from our elders we must teach our children Inupiaq values: knowledge of language, sharing, respect for others, cooperation, respect for elders, love for children, hard work, knowledge of family tree, avoid conflict, respect for nature, spirituality, humor, family roles, hunter success, domestic skills, humility, responsibility to tribe. Our understanding of our universe and our place in it is a belief in God and a respect for all his creations.

court jurisdiction and judicial processes and sponsored its own workshop on tribal court development. In this region, the impetus to establish courts comes from the desire to formalize the historic and current dispute resolution function of the village councils. While that the council system has worked well, Maniilaq believes that establishing formal courts would better allow the villages to seek funding, state cooperation, and recognition.

2. Elders' Councils

Maniilaq tribal services supports the regular meetings of regional and village elders' councils. The regional elders' council has a representative from each village and meets four times a year to provide guidance to communities about social issues. The philosophy behind the elders' councils is to take care of disputes within the extended family, through conflict resolution and counseling. When the disputes get bigger than the village can handle, the elders ask the state authorities to take over.

Bootlegging and alcohol abuse are primary concerns, as villages do their best to stop alcohol importation. From time to time, the elders meet with the state troopers to discuss state policies and what the elders can do to stop bootlegging within the limits of Alaska law.⁷⁷ Local elders' council members sometimes establish a team to work with persons abusing inhalants. Elders' council members visit the Kotzebue jail, to let the inmates know they are still an important part of the community and that the community will help support them when they are released.

Family issues also are a principal concern. Elders' council members will talk with families affected by abuse or violence and will act as role models and mentors. One person described this as "not a program, just a way of life." The regional elders' council advocates for keeping children in their extended families or in the region and tries to stay in touch with the state court judge, DFYS, and the state troopers. They recently reviewed the report of the Alaska Supreme Court's Fairness and Access Committee and sent recommendations to the court system. While the elders' councils have not gone to court as a group, some go individually to offer comment in sentencings and ICWA proceedings.

3. Kotzebue IRA Council

The Kotzebue IRA Council is active in ICWA cases, adoptions, guardianships, and some lands cases. For ICWA cases, the council appoints three council members as an ICWA committee to decide how the village social worker should handle cases in state court. The social worker intervenes on behalf of the tribe, helps to find placements, monitors cases, and does home visits when needed. If DFYS decides to remove a child from the home, DFYS asks the council to find a foster family that might be eligible for licensing. The council has adjudicated only one ICWA case, where a state court in Louisiana declined jurisdiction because the family went to the tribal council first for direction. The council also acts as a judicial body in handling adoptions and guardianships.

⁷⁷ For instance, in Noorvik the regional elders' council met with the U.S. Fish and Wildlife Service and the Alaska State Troopers to discuss a bootlegging operation operating out of the Selawik Wildlife Refuge. The elders' council wrote letters to the bootleggers warning them to stop their behavior.

The IRA council mediates trespass and allotment disputes as an administrative matter. The staff is directed to keep people well-informed, make sure everyone understands each other's positions, and try to come to an amicable resolution. The council also pressed for remediation of an oil spill on land that a developer had leased to the state, and was able to achieve a successful resolution.

The Kotzebue IRA Council does not handle alcohol importation or juvenile delinquency cases because they are handled by the city of Kotzebue. A village representative stated that he would like to see better enforcement of liquor laws at a local level, because alcohol problems are getting worse and delay in dealing with them will impact community survival. He thought the state should work with the villages to address quality of life issues, particularly budding criminal behavior.

4. Kiana and Selawik

The villages of Kiana and Selawik both have had tribal courts in the past. Kiana's court was originally established in 1986, using council members trained as judges. Later, the council appointed separate judges to the court. According to one village leader, the impetus for establishing the tribal court came from a desire to return to the days when the council and the village elders took care of the social order. Strong unwritten laws, enforced by a council, governed the villagers' responsibilities to the community, to their families, and to each other. Because the villagers perceived that state laws were sometimes were ineffective in controlling people, they established a tribal court to regain the power of social control. High turnover and a lack of training for new judges eventually led to the demise of the court. However, the structure remains in place, and Kiana is working to reinvigorate it.

The village councils of Kiana and Selawik meet jointly with their respective city councils to handle local issues. These discussions may include planning for a new clinic, the impact of state welfare reform, and other issues that affect tribal members and the community at large.

5. Other villages

A number of villages have active councils that have formed working relationships with the state court system in Kotzebue. The council in Selawik has accepted referrals from the state court to monitor criminal offenders released from prison. In Kivalina, the council asked the superior court judge for permission to work with offenders in a property case. A young Buckland offender agreed to be sentenced in the presence of the elders, teachers, school administrators, and assembled junior and senior high school students. The elders spoke to the offender in the framework of the state court sentencing. The judge reports that he makes it a practice to go to a village to impose sentences and to involve the elders, so that their ideas and offers of assistance can help structure the sentences imposed.

Regional Organization

Maniilaq Association Tribal Services
Box 256
Kotzebue, AK 99572
Phone: (907) 442-3311

Local Organizations

Native Village of Ambler
P.O. Box 47
Ambler, AK 99786
Phone: (907) 445-2196

Native Village of Buckland
Box 63
Buckland, AK 99727
Phone: (907) 494-2171

Native Village of Deering
Box 89
Deering, AK 99736
Phone: (907) 363-2138

Native Village of Kiana
P.O. Box 69
Kiana, AK 99749
Phone: (907) 475-2109

Native Village of Kivalina
P.O. Box 50051
Kivalina, AK 99750
Phone: (907) 645-2153

Native Village of Kobuk
General Delivery
Kobuk, AK 99751
Phone: (907) 948-2203

Native Village of Kotzebue
P.O. Box 296
Kotzebue, AK 99752
Phone: (907) 442-3467

Native Village of Noatak
P.O. Box 89
Noatak, AK 99761
Phone: (907) 485-2173

Noorvik Native Community
P.O. Box 71
Noorvik, AK 99763
Phone: (907) 636-2144

Native Village of Selawik
P.O. Box 59
Selawik, AK 99770
Phone: (907) 484-2225

Native Village of Shungnak
P.O. Box 63
Shungnak, AK 99773
Phone: 437-2163

Alaska Court System

Superior Court Richard Erlich
Magistrate Sherry Clark
Box 317
Kotzebue, AK 99752-0317
Phone: (907) 442-3208

Magistrate (vacant)
Box 170
Kiana, AK 99759-0170
Phone: (907) 475-2167

Magistrate Janet Henry
(serves Ambler, Kobuk and Shungnak)
Box 86028
Ambler, AK 99786
Phone: (907) 445-2137

C. Bering Straits

The Bering Straits region surrounds Norton Sound on Alaska's western coast. Nome serves as the hub for twenty tribes in the area: Brevig Mission, Council, Diomed (Inalik), Elim, Gambell, Golovin, King Island, Koyuk, Mary's Igloo, Nome, Saint Michael, Savoonga, Shaktoolik, Shishmaref, Solomon, Stebbins, Teller, Unalakleet, Wales, and White Mountain. The Inupiat population of this area traditionally structured their governments around extended families. Siberian Yupik peoples live in the St. Lawrence Island villages of Gambell and Savoonga, who also structured themselves as extended families. Village councils developed around the turn of the century in response to contact with western cultures.

The Bering Straits Native Corporation is the regional Native profit-making corporation. Nonprofits include Kawerak and the Western Alaska Tribal Council. Kawerak has actively promoted the adoption of tribal court ordinances and the use of elders' councils. In cooperation with the Western Alaska Tribal Council, it has drawn up a governing agreement for establishment of a regional court system.

The state maintains a superior court and magistrate location in Nome, along with offices for the district attorney, public defender, DFYS, state troopers, adult probation, and a prison. There is a magistrate in Unalakleet and a vacant magistrate position for Gambell and Savoonga. Nome also has a youth court, described in chapter 3.

1. Kawerak

In the early 1990's, Kawerak worked with its member villages to draft ordinances and establish courts. Sixteen of the villages adopted tribal court ordinances providing that the village councils may sit as courts to hear matters arising under village ordinances and traditional law⁷⁸. The tribal court ordinances in eight of the villages provide for a court of elders to advise the tribal court on traditional law and custom. Most villages also have ordinances providing for their future participation in the Western Alaska Intertribal Court System. In addition to court codes, the villages have adopted a number of substantive ordinances governing elections, membership, children's matters, foster care licensing, and adoptions. A few villages have codes dealing with domestic violence, inhalant abuse,⁷⁹ probate, and marine mammals.

Kawerak was able to obtain grant funding to help draft the village ordinances, but as a former employee observed, "there are always grants to develop a program, but never to run it." Kawerak provided tribal court training to local judges, which seemed to go well, but without operational dollars the programs did not continue. Today, the codes have largely fallen out of use except in children's cases. Several villages use their codes to license foster care facilities under their own

⁷⁸ The sixteen villages are Brevig Mission, Diomed, Gambell, Golovin, King Island, Koyuk, Mary's Igloo, Nome Eskimo Community, St. Michael, Shaktoolik, Shishmaref, Stebbins, Teller, Unalakleet, Wales and White Mountain.

⁷⁹ Inhalant abuse is a matter of considerable concern throughout the area. In Gambell, the tribal council has called juveniles before the council and spoken to them about the problems associated with inhalant abuse.

standards. The Unalakleet IRA Council has taken custody of children in several cases. Most villages will intervene in state court ICWA cases, but do not take custody of the children themselves. A number of villages also certify traditional adoptions.

So far, most of the activity in the Bering Straits region centers around ICWA cases and tribal certification of traditional adoptions. Three cases highlight the range of issues handled and solutions developed by the area's tribal councils. In the first case, an Alaska Native mother lost custody of her child in Oregon. Upon receiving notice of the child's proposed adoption under ICWA, Kawerak began working with an Oregon agency to arrange for adoption into the child's ancestral village, and the Oregon court transferred jurisdiction of the case to the tribal court in Alaska. Because the birth mother wanted the child to grow up in an urban setting, Kawerak found a family from the village now living in an urban area. The adoptive parents have encouraged continuing contact between the birth mother and the child.

The second case involved a second-generation Alaska Native child born in Ohio and taken into state custody there. Kawerak found extended family members who agreed to adopt the child with the mother's consent. After the adoptive mother took the child, the birth mother changed her mind and asked to have the child back. The tribal court held an all-day custody hearing with the birth mother present. At the end of the hearing, the judges gave the parties 48 hours to come to an agreement among themselves. The parties decided that the adoptive family would keep the child, again with the understanding that the birth mother would maintain ties. In the third case, older children were orphaned, and the extended family wanted the village, not the state, to make decisions about the children's welfare. The tribal council found a home and approved the adoption without the involvement of the state.

In November 1998, representatives from Kawerak, Elim, Koyuk, Shaktoolik, Solomon, and Unalakleet attended a three-day tribal court training session presented by the Interior Alaska Tribal College in Fairbanks. Kawerak plans to bring the same trainers to Nome in April 1999 to train council members from the remaining villages.

2. The Western Alaska Intertribal Court System

The Bering Straits region is home to the Western Alaska Tribal Council, an association made up of the regional village council presidents. This group was originally formed to bring tribal matters to the forefront of regional attention; as the Kawerak board has become more tribally oriented, the membership of the tribal council and the Kawerak board now substantially overlap.

Kawerak and the Western Alaska Tribal Council have drawn up a governing agreement to create the Western Alaska Intertribal Court System, along with articles and bylaws. The purpose of the court system is to provide "judicial and other staff services, training, technical assistance, and funding necessary to help each participating tribe develop and maintain its own competent, efficient and fair court system." Each village in the Bering Straits region with tribal court ordinances is eligible for membership. The governing body is intended to be drawn from each of the participating villages. So far this organization exists only on paper.

3. Elim and Koyuk

In 1996, the State of Alaska entered into an agreement with the villages of Elim and Koyuk to handle youthful offenders. Referrals came from the state troopers, VPSOs, and DFYS for misdemeanors cases where the juvenile was not already on probation.⁸⁰ The state provided a limited amount of training. Both programs have become inactive, but may be reorganized in the future. These courts are described in chapter 4 of this report.

4. Native Village of St. Michael

In 1997, the Native Village of St. Michael received a grant from the Department of Justice under the STOP Violence Against Indian Women program. The goal of the program is to develop and strengthen tribal justice systems, address violent crimes against Indian women, and improve victim services. St. Michael has received \$82,000 to hire and train a project coordinator to implement the program. The project coordinator will work with the village domestic violence/sexual assault counselor and the village police officer, set up a system of safe homes in the village, and work with the elders' advisory court.

The elders' advisory court in St. Michael was established by ordinance in 1991 to apply traditional laws and customs to village problems. It was not used until 1998, when the village activated the court and appointed five judges to work on domestic violence cases. The role of the elders is to work with the counselors and police to advise families how to deal with violence and drug and alcohol problems. The village expects that most cases will result in arrest and referral to the state under state reporting laws, but the elders will help the family talk about its problems and reach solutions. St. Michael is currently seeking funding from the Bureau of Justice Assistance to train the elders' advisory court to hear criminal matters, particularly those involving alcohol abuse. The St. Michael IRA Council occasionally sits as a tribal court to hear ICWA cases and may take custody of children who are tribal members. It also handles adoptions, guardianships, and foster care placements.

5. Unalakleet IRA Council

The Unalakleet IRA Council sits as a court under the authority of its tribal court code and children's code. In children's cases, three of the seven members sit as a panel. Unalakleet has ten ICWA interventions pending in state court and four traditional adoptions pending in tribal court. The council considers recommendations on state court cases to be part of its tribal court function. It has assumed primary ICWA jurisdiction in three cases: referral jurisdiction from two courts in other states and a case where the child went to live with his grandmother and DFYS never became involved.

Unalakleet currently handles only children's cases and guardianships, but it would like to expand its role to consider minor crimes like public drunkenness, disturbing the peace, and similar

⁸⁰ The agreements apply to all misdemeanor offenses committed under the Alaska criminal code, with the exception of fourth-degree sexual abuse of a minor.

juvenile offenses. According to the tribal ICWA worker, the city police place these offenders on a 12-hour hold to sober up, but there is no follow-up with fines, community work service, or referral to treatment, and the council thinks it could fill that gap. Unalakleet also is interested in domestic violence training. Council members have received tribal court and ICWA training from their ICWA worker, who in turn has been trained by Kawerak and by the nonprofit Council Lodge Institute.

6. Nome Eskimo Community

The IRA Council for Nome Eskimo Community sits in special session to perform tribal court functions authorized by its tribal court ordinance. It hears only ICWA cases, traditional adoptions, and name changes. As part of its court function, the council also makes recommendations to the village ICWA worker on how to handle cases where young tribal members are in state custody. In August 1998, Nome had ten tribal cases and 12 state interventions pending. Nome had one case where ICWA jurisdiction was referred to it by a Montana court. Nome does not generally take custody unless the state is not providing for the child. Council members have received tribal court training from an Anchorage law firm specializing in Indian law. There is no separate source of funding for the tribe's court functions.

Regional Organizations

Kawerak, Inc.
Tribal Affairs
Box 948
Nome, AK 99762
Phone: (907) 443-5231

Western Alaska Intertribal Council
c/o Kawerak Tribal Affairs
P.O. Box 948
Nome, AK 99762
Phone: (907) 443-9000

Tribal Councils and Courts

Native Village of Brevig Mission
Box 85063
Brevig Mission, AK 99785
Phone: (907) 642-4301

Native Village of Diomedes (Inalik)
Box 7099
Diomedes, AK 99762
Phone: (907) 686-2175

Chinik Eskimo Community (Golovin)
Box 62020
Golovin, AK 99762
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Native Village of Elim
Box 39073
Elim, AK 99739
Phone: (907) 890-3737

Native Village of Council
P.O. Box 2050
Nome, AK 99762
Phone: (907) 443-5312

Native Village of Gambell
Box 90
Gambell, AK 99742
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King Island Native Community
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Nome, AK 99762
Phone: (907) 443-5494

Native Village of Shishmaref
P.O. Box 72110
Shishmaref, AK 99772
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Native Village of Koyuk
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Koyuk, AK 99753
Phone: (907) 963-3651

Village of Solomon
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Nome, AK 99762
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Native Village of Mary's Igloo
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Teller, AK 99778
Phone: (907) 642-3731

Stebbins Community Association
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Nome Eskimo Community
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Nome, AK 99762
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Native Village of Teller
Box 567
Teller, AK 99778
Phone: (907) 642-3381

Native Village of St. Michael
Box 59058
St. Michael, AK 99659
Phone: (907) 923-2304

Native Village of Unalakleet
Box 270
Unalakleet, AK 99684
Phone: (907) 624-3622

Native Village of Savoonga
Box 120
Savoonga, AK 99769
Phone: (907) 984-6414

Native Village of Wales
Box 549
Wales, AK 99783
Phone: (907) 664-3062

Native Village of Shaktoolik
Box 100
Shaktoolik, AK 99771
Phone: (907) 955-3701

Native Village of White Mountain
Box 84082
White Mountain, AK 99784
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Alaska Court System

Superior Court Ben J. Esch
Magistrate Bradley Gater
Box 1110
Nome, AK 99762-1110
Phone: (907) 443-5216

Magistrate Heidi Erickson
Box 250
Unalakleet, AK 99684
(907) 624-3015

Magistrate (vacant)
(serves Gambell & Savoonga)
Box 48
Gambell, AK 99742
(907) 985-5133

D. Interior Alaska

The interior Alaska region covers a vast area ranging from the Canadian border on the east to within 100 miles of Norton Sound on the west, and from Denali National Park on the south to the Arctic Circle on the north. Fairbanks is the major city and center of government, with a full range of government services. Dozens of Native villages are located along the rivers. Along the road system, the economy is diverse; off the road, subsistence hunting and fishing take a much larger role in the economy, and state service delivery decreases. The state court system has magistrates at Delta Junction, Fort Yukon, Tok, a magistrate who serves Galena and McGrath, and a magistrate who serves Tanana, Nenana, and Healy. DFYS has social workers in Fairbanks, Galena, Fort Yukon, and McGrath. The state troopers have eight posts throughout the region. Fairbanks is the center of the North Star Borough and a court location for the United States Ninth Circuit Court of Appeals. The Fairbanks youth court is described in chapter 3. There also is a Denali Borough.

Historically, Athabascan Indian bands populated the areas along the rivers, governing themselves in small groups. Neets'aii Gwich'in Indians live in the northeast corner of the region. Transitional governments took the form of village councils, sometimes with elected members. Where Caucasian settlers or government administrators encouraged development of new forms of government, the newly-elected village councils and more traditional governments with chiefs sometimes co-existed.

This area is served by Doyon Limited, the regional Native profit-making corporation, covering the largest land area of any of the corporations. The regional nonprofit is Tanana Chiefs Conference, one of the oldest Native organizations in the state, dating back to 1912. Tribes on the lower Yukon also receive some services through the Council of Athabascan Tribal Governments. The federally recognized tribes in the area are Alatna, Allakaket, Anvik, Arctic Village, Beaver, Birch Creek, Chalkyitsik, Circle, Dot Lake, Eagle, Evansville (Bettles), Fort Yukon, Galena, Grayling, Healy Lake, Holy Cross, Hughes, Huslia, Kaltag, Koyukuk, Manley Hot Springs, McGrath, Minto, Nenana, Nikolai, Northway, Nulato, Rampart, Ruby, Shageluk, Stevens Village, Takotna, Tanacross, Tanana, Telida, and Tetlin. Tanana Chiefs also serves Fairbanks, Tok, and several non-recognized tribes.⁸¹

Most of the tribes in the Interior are active in dispute resolution. In most villages the judicial function is exercised by the tribal council acting as a tribal court. Standing tribal courts with separate judges have been established in several villages. Many villages have written ordinances governing children's cases, domestic violence, and criminal matters. Tanana Chiefs has been active in assisting its member villages to write ordinances and to address as many disputes as possible at the local level.

1. Tanana Chiefs Conference

Tanana Chiefs Conference is a leader in the tribal court movement and has been extremely active in assisting its member villages to provide local dispute resolution. According to Tanana Chiefs, all 37 villages in the region have an active dispute resolution mechanism. The tribal

⁸¹ Canyon Village has a tribal recognition application pending with BIA.

government services division has long employed staff to encourage tribal court development, assist with ordinance writing, provide training, and promote the interests of tribal justice systems as they interact with state agencies. It also has a well-funded social services department that brings cases directly to tribal courts and councils and intervenes in state court.

Tribal court development: Tanana Chiefs believes that tribal councils are fully empowered to exercise judicial functions and resolve disputes without establishing a separate branch of government.⁸² At the same time, Tanana Chiefs works to assist those villages that wish to create separate tribal courts with more formalized procedures. It provides ongoing tribal court training on issues such as conflict of interest, how many judges should hear a case, how hearings are conducted with evidence and witnesses, how decisions are reached, what sentencing options are available, and how to keep proper case files and recordings. Given the lower level of law enforcement, emergency services, and social services available in small villages, Tanana Chiefs encourages its members to be innovative in reaching local solutions.

Tanana Chiefs publishes a series of tribal government handbooks. The tribal court handbook, now under revision, describes traditional Athabascan justice, principles of jurisdiction, tribal court jurisdiction in Alaska, the Indian Civil Rights Act, types of tribal courts, tribal court procedures, appellate procedure, enforcement of court orders, court management, and sample forms. The tribal ordinance handbook discusses tribal legislative powers, how to write ordinances, the procedure for passing or repealing ordinances, sample resolutions, and sample ordinances. Tanana Chiefs also has a tribal domestic violence handbook.⁸³

Children's cases: In Interior Alaska, half of children's cases are handled by tribal organizations and half by the state. Tanana Chiefs has an active and experienced social services department that encourages early tribal involvement with families, before the situation gets bad enough for the state to step in. Some cases involve only informal counseling by the social workers; others involve formal proceedings in front of the tribal court or council. DFYS will contact Tanana Chiefs if it knows that a tribe is working with a family, to see if the tribe is able to handle the child in need of aid case. The tribe generally will take the case unless the children have minimal connection to the village, or need services that the tribe cannot provide, or the case poses an internal

⁸² The tribal council membership is not always coextensive with the tribal court: courts sometimes consist of the tribal council officers, a subset of the council, or additional elders and alternates.

⁸³ Titles in this series are available from the tribal government services office, Tanana Chiefs Conference, 122 First St., Fairbanks, Alaska, 99701-4897, or by calling (907) 452-8251. Materials include *Tribal Courts: In the Interest of Our Children*, a judge's manual and videotape for children's cases in tribal court; *Tribal Government Handbook for Alaska Tribes*, covering all areas of tribal government; *Tribal Ordinance Handbook*, with model ordinances and discussion of substantive law; *Traditional Tribal Adoptions and Birth Certificates*, instructions for obtaining a new birth certificate from the state in recognition of traditional and customary adoptions; and the new *Handbook on Domestic Violence Cases for Alaska Tribal Courts*.

political problem of some kind.⁸⁴ DFYS generally does not have time to consult with the tribe during the investigatory phase of a case.

Children's proceedings in front of tribal courts and councils have some similarities and some differences from the state system. The ICWA worker conducts a preliminary investigation, schedules a hearing in front of the court or council, and notifies the parents and extended family. At the hearing, the family members talk with the judges or council members about the family's problems and possible solutions. No lawyers are involved, and everyone talks until the problem has been talked out. The parents and extended family are included in development of the case plan. This gives the parents a better feel for how others see the problem, a chance to vent their own frustrations, and a feeling of ownership in the case plan. The court or council may take custody of the children and make a temporary placement until the goals of the case plan are met. The case plan frequently calls for counseling, anger management, parenting classes, and alcohol treatment. The proceedings are intended to be holistic and therapeutic, rather than confrontational or punitive.

When tribal courts take custody of children and make foster care placements, the placements ordinarily do not qualify for foster care funding from the state. Tanana Chiefs is fortunate to have direct foster care funding from BIA to relieve this financial burden on foster families, and is able to refer more cases to tribal court because of it.

Tanana Chiefs finds that parents rarely refuse to appear in front of the tribal court or council in children's matters. They do have occasional compliance problems with tribal court orders. If compliance continues to be unsatisfactory, the tribe will relinquish custody of the child to DFYS. Tanana Chiefs reports that tribal courts and councils have occasional enforcement problems backing up tribal court custody orders if the family leaves the village. Generally, Tanana Chiefs and DFYS have a good working relationship and are able to confer and cooperate on most cases.

Domestic violence: Tanana Chiefs has received funding through the federal STOP Violence Against Indian Women program to work on domestic violence cases. Tanana Chiefs has distributed much of this money to each of its member villages to use for safe homes and other programs, and for airfare when necessary to fly victims or perpetrators out of the village. Tanana Chiefs is working with tribal courts and councils to write domestic violence ordinances and set up procedures for issuing and enforcing protective orders. As of this writing, no villages have issued a protective order, but a number stand ready to do so if the case should arise. Tanana Chiefs has proposed a court rule to implement the full faith and credit provision of the Violence Against Women Act recognizing tribal orders.

⁸⁴ Tanana Chiefs provided the following statistics, comparing children's cases handled by the region's 37 tribal courts and councils with state court cases from the same villages, from 7/1/97 to 6/30/98.

	<u>State</u>	<u>Tribal</u>
Children in custody	135	147
Adoptions finalized	4	9
Guardianships granted	2	4
Children returned home	25	86
Children in foster care to age 18	4	2
Average length of foster care	13 months	9 months

Quasi-criminal and juvenile delinquency cases: The Interior region has been particularly active in the regulation of destructive social behavior. A number of villages have local ordinances providing penalties for problems like alcohol importation, public drunkenness, disorderly conduct, curfew, and vandalism. These ordinances also deal with quality-of-life issues like animal control and litter control. This approach is consistent with the general tenor of tribal law, which is oriented toward problem-solving for the community rather than punishment of the individual. By classifying these ordinances as civil regulatory or quasi-criminal, villages have attempted to avoid arguments with the state over their criminal jurisdiction.

The most common offenses involve possession of alcohol and drinking in public.⁸⁵ Most villages approach these cases through the use of community work service coupled with a strong push for treatment. Tribes sometimes confiscate weapons or alcohol and sometimes impose fines. When faced with a repeat offender who cannot be controlled, some village councils will ask the state district attorney to press charges and remove the offender from the village. Other village councils may banish the offender from the village until the offender undergoes treatment or in some cases permanently. Banishment is a traditional penalty in Athabascan society, and can still be used effectively in cohesive villages. Tanana Chiefs reports that over the last six years, its member villages have considered banishment in approximately twenty cases and have imposed it in twelve. All but one of these offenders left the village as ordered, and the other one stopped his offensive behavior. Banishment is used only in extreme cases where the offender has a long record of causing problems. A village may also impose banishment concurrently with investigation and prosecution by the state.

Although Interior villages generally handle low-level misbehavior as a civil matter, cases occasionally will be approached as criminal. In one Yukon River village, a non-Native man had been living with a woman from the village, selling alcohol to children. When one child was found passed out in a snowbank, the tribal council decided to act. The tribal council provided the man with the notice and hearing required by the Indian Civil Rights Act in a criminal case. In front of the tribal council, the man confessed to the crime and was given two weeks to leave the village, which he did. Tanana Chiefs reports that both Natives and non-Natives rarely refuse to appear in front of the court or council when summoned on a quasi-criminal matter.

With juvenile offenders, Interior tribal courts focus on rehabilitation and family intervention. Sometimes just being brought in front of the elders is enough. Case resolutions sometimes involve community work service, treatment, learning skills, going to fish camp, or riding with the VPSO. Juvenile cases frequently are handled on an informal basis, through the efforts of social services workers or individual council members.

Traditional Koyukon Athabascan society handled criminal cases by instructing the person and putting pressure on them to behave. If problems continued, the person was subject to escalating

⁸⁵ For felonies and serious misdemeanors, Interior villages often call the state troopers and request state investigation of the offense. However, troopers sometimes hear of felony cases that were not reported to the state, particularly with sexual abuse allegations.

gossip and criticism, culminating in shunning or banishment. According to an area magistrate, there is still a degree of that instruction and pressure exercised by the tribal court and by community members, backed up with a threat to call the state troopers if there is further misbehavior. The tribal court sometimes imposes fines or community work service in these situations, and takes minutes of the proceedings, but it does not issue a formal judgment. The magistrate can get information on an offender's prior record, although if the contact with the tribal court or council was informal the information will be informal as well. The magistrate reports a decreased caseload in those villages where there are active courts and councils.

2. Minto Tribal Court

The Minto Tribal court was initially organized around 1940 under an IRA constitution. The court fell into disuse at some point in time. In 1985, a need for community law enforcement, especially in juvenile and alcohol-related matters, impelled the village residents to reactivate the court. The court presently operates with a panel of five elected judges who sit together to decide cases. The Minto court has had the same court clerk for eleven years. Over this time, the court has remained consistently active and strong, although elections occasionally lead to judicial turnover. The judges and the clerk are volunteers, and the court's only funding comes from fines it collects. Technical assistance and training are provided by Tanana Chiefs. Cases are referred to the court by DFYS, the VPSO, and through a citizen complaint form that the court provides.⁸⁶ The judges evaluate each case and decide which to accept.

The Minto court covers a wide range of subjects, including child in need of aid, alcohol regulation, disorderly conduct, juvenile delinquency, and traditional adoptions. The court handles as many child custody cases as it can and intervenes in child custody cases in state court. The working relationship between DFYS and the village council has improved over the last few years, so that intervening in state court has become easy, and Minto feels the agencies work jointly on reunifying families. Minto recently received a letter from a state court judge commending its efforts in a child custody case. The clerk noted that child custody cases tend to be difficult and are sometimes a cause of judicial burnout.

The Minto court handled a case where the father and mother were from two different villages. In the other village no one wanted to speak out because they were scared of the family, although the children were in danger. The Minto court issued an order taking custody of the children and unsuccessfully sought law enforcement support to remove the children from the other village. It finally worked out an arrangement with the chief of the other village and a private air carrier, allowing the plane to touch down long enough to pick up the children and fly them back to Minto.

Minto handles criminal cases in a direct fashion. It conducts hearings, then orders fines, counseling, treatment, and community work service. If necessary, the court allows the offenders to pay half the fine and work off half the fine within a certain period of time. If offenders do not comply with the conditions of the sentence, the court can seize their property and hold it as

⁸⁶ The Minto court also received one child neglect case upon referral from a state court in another state. The Minto court was described in detail and evaluated in *Resolving Disputes Locally I*.

collateral, or can impose a stiffer fine. Minto has recently written domestic violence ordinances and has provided domestic violence training for its judges, VPSO, and social worker.

Juvenile delinquency cases are most frequently curfew violations and minors consuming alcohol. Sometimes these cases come to court when a citation is issued, and sometimes the parents ask the court to intervene with their child. The court will offer alcohol treatment and counseling and may impose a fine. The local magistrate and one of the superior court judges report that they see few cases arising out of Minto, which they attribute to the active tribal court.

Minto has handled few cases involving non-tribal members unless they have married into the tribe. Although parties occasionally have said they might appeal a decision to the village council, no one has done so. According to the court clerk, village residents would rather go through the tribal court than the state court, and she hopes the court will be able to do more in the future. "I can't say where the village would be today if we didn't have the tribal court and its volunteers."

3. Northway Tribal Court

The Northway Tribal Court has seven judges, five elected by popular vote and two appointed by the tribal council. Usually five to seven judges sit on a panel to hear a case. The judges and staff have been trained by Tanana Chiefs and use its tribal court handbook as a procedural guide; they call on the services of an attorney if they have special questions. The court has no funding apart from operational expenses paid by the tribal council, and the judges and tribal court clerk are all volunteers.

The court handles mostly child welfare and custody cases. Most ICWA cases arising in Northway are handled by the tribal court and ICWA worker. In the few cases that go to state court, the tribal council will appear as an intervenor. When a case requires more funding than the tribe can provide, like Medicaid or foster care payments, the ICWA worker will refer the case to DFYS. Where child custody or welfare is in issue, the ICWA worker will encourage parents to work out a solution and present a joint order to the tribal court. The tribe tries to keep in mind the best interests of the child, not the parent, even if only one parent is a tribal member.

Northway was the tribal court that heard the child custody dispute in *John v. Baker*,⁸⁷ where the father was a Northway tribal member and the mother was not. The Northway court invited the other village council to participate in its deliberation and attempted to work out a solution that was best for all concerned. The father later disputed the Northway court's jurisdiction and sought resolution in state court. The tribal court administrator said that when the state court took jurisdiction over the case, people lost faith in the tribal court.

The Northway court does not handle criminal or juvenile delinquency cases because of funding and enforcement concerns. The court would like to do more, particularly with juvenile delinquents, because it feels it could be tougher with the children than the state court has been. The

⁸⁷ No. S-08099 (1998).

court administrator tries to keep good records, having experienced cases where well-documented procedures made it easier for state agencies to recognize the tribal court's decisions.

4. Tanana Tribal Court

Tanana is incorporated under state law as a first class city and also has an IRA council. A council ordinance formally established the Tanana Tribal Court in 1981. For many years before that, the IRA council operated as a tribal court. The court hears civil cases involving tribal members (many of whom live outside the village) and occasional cases involving non-tribal members. The judges meet once a month to hear three or four cases each time. The court has been operating at this level since 1992, when it began to receive BIA funding.

The court uses its BIA funding to support an ICWA worker and court clerk. The clerk is responsible for training the judges, handling paperwork, and monitoring cases. The court consists of seven elected judges and two elders appointed by the tribal council, who sit in panels to hear cases. The court does not allow attorneys to practice before it, but the parties can present witnesses and may have others speak for them. After hearing from both sides, the judges recess to confer among themselves and announce their consensus. The court has written rules of procedure, and applies the tribal children's code, tribal health and safety code, ICWA, and traditional law in its deliberations. The court reports that it has few enforcement problems and no appeals. It reports a good relationship with DFYS.

The Tanana court used to consider criminal cases such as trespass, vandalism, and theft, but it rarely does so anymore. The Tanana tribal court handles smaller criminal cases in an informal, traditional way. According to the court clerk, the tribal court has developed a working relationship with the magistrate in Nenana, who understands the kinds of cases the tribal court can handle. The tribal court proceeding in criminal cases is very informal, avoiding an adversarial or procedural approach. The police or troopers sometimes discuss a case with the magistrate and tribal court; if it appears the tribal court is willing to address the problem, the police do not file charges. The tribal court will call the offender and ask the offender to come in and discuss the problem.

5. Ruby Tribal Council

The Ruby constitution designates the tribal council as a tribal court. The tribal chief presides over a panel of four other council members. The court hears children's cases, primarily child in need of aid. The tribal family and youth specialist acts as clerk for the court and handles the paperwork and notices. Council members are not paid for their judicial duties, and funding for the program comes from the tribe's ICWA budget. The council members, VPSO, and tribal specialist take turns going to training in Anchorage and receive occasional training from Tanana Chiefs.

Most cases begin with a referral from the tribal family and youth specialist. If the council decides that an emergency custody order is necessary, a group of council members, the specialist, and the VPSO visits the family to explain the necessity for the action and to remove the children. Notices are sent and a regular hearing is held within a week. The village has tribal foster homes and state foster homes where the children remain until they can return home. The hearing aims for

consensus, with everyone talking and making recommendations, and focuses on what the parents can do to fix their problems. The specialist does home visits and monitors the situation; hearings are held every three to six months until the home visits bring consistently good reports.

Ruby handles children's cases for children living in the village and lineal descendants who live elsewhere. The village works with the state social worker and magistrate in Galena and with social workers from Tanana Chiefs. The village has referred one case to DFYS and DFYS has referred a few to the village; most transfers of jurisdiction come from courts outside the state. The village has terminated parental rights only once, with the parents' agreement. The court has enforcement problems during the times when there is no VPSO.

The court keeps files on every case. Each children's file includes a case plan, any emergency custody orders or protective orders, authorizations for release of information, daily contact reports, records of counseling and referrals to treatment, a record of council action, and a contact list of agency and family phones and addresses. These files are kept locked and are stored indefinitely.

6. Fort Yukon Tribal Court

The Native Village of Fort Yukon has a two-year-old tribal court that hears children's cases, including ICWA proceedings and traditional adoptions, under the village child in need of aid ordinance. The village has one ICWA worker in the village who investigates reports of abuse and neglect, prepares reports for the tribal court, monitors families, and handles the court's paperwork. The village has a second social worker stationed in Fairbanks who participates in state court cases and works with tribal members there. Cases are occasionally referred to the tribal court by DFYS. The court meets about once a month to hear cases. Hearings generally follow a roundtable format, with discussion by all concerned. The court sometimes places children out of the home, with relatives or in local foster homes.

The court has five judges; three are needed to hold court. The judges are elected yearly from among tribal members. The judges have had some tribal court training, as have the ICWA workers and tribal operations director. Fort Yukon has received \$3,000 under its compact with Tanana Chiefs that it will use for judicial training in 1999. The village is interested in expanding the subject matter of the court to include underage drinking and domestic violence intervention and prevention.

7. Native Village of Tetlin

The Native Village of Tetlin has just completed a comprehensive set of tribal ordinances, covering tribal council structure, sovereign immunity, membership and enrolment, rights of members, tribal business operations, cooperative agreements, legislative functions, tribal court structure and procedure, elections, meetings, and ethics. The domestic relations code covers child protection, adoption, custody, termination of parental rights, marriage and divorce, protection of elders, domestic violence, and foster homes. The law and order code (a civil code) covers alcohol, drugs, vandalism, trespass, traffic, domestic violence, theft, assault, disorderly conduct, curfew, truancy, gambling, and other offenses. The health and safety code covers animal control, firearms, environmental matters, litter control, and abandoned vehicles. The land management code covers

land use planning, natural resources, and cultural resources. The complete set of ordinances comes to 200 pages.

The tribal council sits as a court to work on cases. The council handles about 30 children's cases and nine law and order cases each year. The tribal council hears ICWA cases, takes occasional custody of children, and has three foster homes available. It can hear domestic violence cases under either its domestic relations code or the law and order code, and it has three safe homes available. The batterer is told to leave the village and the victim is encouraged to stay; both are referred to counseling in Tok or Fairbanks. More serious cases are referred to the state. Law and order cases are referred to the council by the VPSO.

Tribal council members are not paid for their judicial duties, and the village is considering establishment of a separate court to take the burden off the council. The village has no extra source of funding for the court. Council members have received some training through Tanana Chiefs Conference and have attended juvenile justice workshops in Anchorage in connection with the new youth court.

8. Tetlin Youth Court

The Native Village of Tetlin is in the process of developing a youth court modeled on tribal court methods of handling juvenile offenses. The court is part of a pilot program run by the Alaska Native Justice Center to develop village youth courts, described in chapter 3.

9. Other active tribal courts and councils

Some of the more active councils include Allakaket, Alatna, Tanacross, and Koyukuk. These villages handle children's cases and traditional adoptions, intervene in state ICWA cases, and handle minor offenses. Nenana and Rampart have separate tribal courts that hear a small number of children's cases each year. A number of other villages have received tribal court training and are working on tribal court development.

The Native Village of Venetie Tribal Government is a regional IRA governing Venetie and Arctic Village. It convened a tribal tax court to hear one case involving tribal taxation of a school construction project.⁸⁸ Venetie employed a lawyer from outside the village to sit as a judge on a panel with two tribal members. The State of Alaska sought and obtained a federal court injunction to prevent the tax court from hearing the case. After nearly ten years of litigation, the U.S. Supreme Court heard the case and held that the tribe and the tax court had no jurisdiction to impose or enforce the tax. Venetie and Arctic Village each have a local tribal council that handles children's cases and traditional adoptions, and intervenes in state ICWA cases.

⁸⁸ *Alaska v. Native Village of Venetie Tribal Government*. 521 U.S. 1103 (1998).

Regional Organizations

Tanana Chiefs Conference
122 First Ave.
Fairbanks, AK 99701-4897
Phone: (907) 452-8251
Council of Athabascan Tribal Govts.
P.O. Box 33
Fort Yukon, AK 99740
Phone: (907) 662-2587

Tribal Councils and Courts

Alatna Village
P.O. Box 50
Allakaket, AK 99720
Phone: (907) 968-2304

Allakaket Village
P.O. Box 50
Allakaket, AK 99720
Phone: (907) 968-2237

Anvik Village
P.O. Box 10
Anvik, AK 99558
Phone: (907) 663-6322

Native Village of Arctic Village
P.O. Box 22059
Arctic Village, AK 99722
Phone: (907) 587-5990

Beaver Village
P.O. Box 24029
Beaver, AK 99724
Phone: (907) 628-6126

Birch Creek Village
Dendu Gwich'in Traditional Council
Fort Yukon, AK 99740
Phone: (907) 221-2211

Chalkyitsik Village
P.O. Box 57
Chalkyitsik, AK 99788
Phone: (907) 848-8893

Circle Native Community
P.O. Box 89
Circle, AK 99733
Phone: (907) 773-2822

Village of Dot Lake
P.O. Box 2275
Dot Lake, AK 99737
Phone: (907) 882-5137

Native Village of Eagle
P.O. Box 19
Eagle, AK 99738
Phone: (907) 547-2281

Evansville Village (Bettles)
P.O. Box 26087
Evansville, AK 99726
Phone: (907) 692-5005

Native Village of Fort Yukon
P.O. Box 169
Fort Yukon, AK 99740
Phone: (907) 662-2685

Galena Village (Louden)
P.O. Box 244
Galena, AK 99741
Phone: (907) 656-1711

McGrath Native Village
P.O. Box 134
McGrath, AK 99627
Phone: (907) 524-3024

Org. Village of Grayling (Holiachuk)
General Delivery
Grayling, AK 99590
Phone: (907) 453-5116

Minto Tribal Court
P.O. Box 37
Minto, AK 99758
Phone: (907) 798-7448

Healy Lake Village
P.O. Box 60300
Fairbanks, AK 99707
Phone: (907) 876-5018

Nenana Native Association
P.O. Box 356
Nenana, AK 99760
Phone: (907) 832-5461

Holy Cross Village
P.O. Box 89
Holy Cross, AK 99602
Phone: (907) 476-7124

Nikolai Village (Edzeno')
P.O. Box 9105
Nikolai, AK 99691
Phone: (907) 293-2311

Hughes Village
P.O. Box 45029
Hughes, AK 99745
Phone: (907) 889-2239

Northway Village
P.O. Box 406
Northway, AK 99764
Phone: (907) 778-2311

Huslia Village
P.O. Box 32
Huslia, AK 99746
Phone: (907) 829-2294

Nulato Village
P.O. Box 65049
Nulato, AK 99765
Phone: (907) 898-2239

Village of Kaltag
P.O. Box 9
Kaltag, AK 99748
Phone: (907) 534-2224

Rampart Village
P.O. Box 67029
Rampart, AK 99767
Phone: (907) 358-3312

Village of Koyukuk
P.O. Box 109
Koyukuk, AK 99754
Phone: (907) 927-2208

Native Village of Ruby
P.O. Box 103
Ruby, AK 99768
Phone: (907) 468-4479

Manley Hot Springs Village
P.O. Box 23
Manley Hot Springs, AK 99756
Phone: (907) 672-3177

Shageluk Native Village
P.O. Box 35
Shageluk, AK 99665
Phone: (907) 473-8239

Native Village of Stevens
General Delivery
Stevens Village, AK 99774
Phone: (907) 478-7228

Takotna Village
General Delivery
Takotna, AK 99675
Phone: (907) 298-2212

Tanacross Tribal Court
P.O. Box 76009
Tanacross, AK 99776
Phone: (907) 883-5024

Tanana Tribal Court
P.O. Box 93
Tanana, AK 99777
Phone: (907) 366-7170

Telida Village
P.O. Box 4
Nikolai, AK 99691
Phone: (907) 524-3550

Native Village of Tetlin
P.O. Box TTL
Tetlin, AK 99779
Phone: (907) 324-2130

Native Village of Venetie
P.O. Box 119
Venetie, AK 99781
(907) 849-8212

Native Village of Venetie Tribal Govt.
(Arctic Village & Venetie)
P.O. Box 81080
Venetie, AK 99781
Phone: (907) 849-8165

Alaska Court System

Fairbanks Superior Court Judges
Judge Ralph R. Beistline
Judge Mary E. Greene
Judge Charles Pengilly
Judge Richard D. Savell
Judge Niesje J. Steinkruger
604 Barnette Street
Fairbanks, AK 99701
Phone: (907) 452-9260

Fairbanks District Court Judges
Judge Ray Funk
Judge Jane Kauvar
Judge Mark I. Wood
Magistrate William Ronald Smith
Magistrate Katherine Bachelder
604 Barnette Street
Fairbanks, AK 99701
Phone: (907) 452-9260

Magistrate Tracy L. Blais
Box 401
Delta Junction, AK 99737
Phone: (907) 895-4211

Magistrate James A. Jackson
(serves Galena & McGrath)
Box 167
Galena, AK 99741-0167
Phone: (907) 656-1322

Magistrate Paul Verhagen
(serves Healy, Tanana, Nenana)
Box 298
Healy, AK 99743-0298
Phone: (907) 683-2589

Magistrate Thomas Knudson
Box 211
Fort Yukon, AK 99740-0211
Phone: (907) 662-2336

Magistrate Joseph Miller
P.O. Box 187
Tok, AK 99780
(907) 883-5171

E. Yukon-Kuskokwim

The Yukon-Kuskokwim delta is a large area in the southwest part of Alaska, consisting of 55 river and coastal villages centered around Bethel as their hub.⁸⁹ Yupik peoples populate the region, which has the largest population of Natives for whom English is a second language. The economy of the area is based on commercial fishing and subsistence activities. The regional corporation is Calista; its nonprofit is the Association of Village Council Presidents. Tribal court organizing for some area tribes is provided by Yupiit Nation. There is a state court and magistrate location in Bethel, with offices of the district attorney, public defender, DFYS, state troopers, and a state prison. Magistrates are located in Aniak, Chevak, Emmonak, and St. Mary's. There are DFYS offices and state trooper posts in Aniak and St. Mary's.

Traditionally, the Yupik peoples governed themselves in extended family structures, with leadership centered in groups of elders rather than in a single person. Missionaries and teachers coming to the region introduced village council governments in the late 1800's and early 1900's. Few villages had tribal courts until very recently, but several villages have long had very active tribal and village councils. Currently, ten villages have separate tribal courts, and a number of tribal councils exercise similar functions.⁹⁰ The sovereignty movement is strong in this region, leading to an interest in tribal courts as an aspect of self-governance. There also is interest in the formation of regional courts, community courts, and tribal youth courts.

1. Association of Village Council Presidents

AVCP hired a tribal court coordinator in 1992 to implement family justice system courts in eight villages. The project was funded by a grant from the Administration for Native Americans (ANA), to help the villages develop tribal codes, courts, and a financial plan for continued operation when grant funds ran out. From this project, four of the eight villages were able to develop and sustain separate tribal courts, while the others remain active in children's cases.⁹¹

⁸⁹ The federally recognized tribes in the area are Akiachak, Akiak, Alakanuk, Andreafski, Aniak, Atmautluak, Bethel (Orutsarmiut), Bill Moore's Slough, Cheforak, Chevak, Chuathbaluk, Chuloonawick, Crooked Creek, Eek, Emmonak, Georgetown, Goodnews Bay, Hamilton, Hooper Bay, Kalskag, Kasigluk, Kipnuk, Kongiganak, Kotlik, Kwethluk, Kwigillingok, Kwinhagak, Lime Village, Lower Kalskag, Marshall (Fortuna Ledge), Mekoryuk, Mountain Village (Asa'carsarmiut), Napaimute, Napakiak, Napaskiak, Newtok, Nightmute, Nunapitchuk, Ohogamiut, Oscarville, Paimiut, Pilot Station, Pitka's Point, Platinum, Red Devil, Russian Mission (Iqurmuit), St. Mary's (Algaaciq), Scammon Bay, Sheldon's Point, Sleetmute, Stony River, Toksook Bay (Nunakauyarmiut), Tuluksak, Tuntutuliak, Tununak and Umkumiut.

⁹⁰ Because of the large number of villages in this region, the interviewer was unable to call all villages reported to have councils active in dispute resolution. More villages are likely to handle cases than are mentioned here. Several people interviewed appeared to be cautious about sharing tribal court information with a state agency.

⁹¹ The villages that participated in the program were Chevak, Goodnews Bay, Kipnuk, Kotlik, Kwethluk, Mekoryuk, St. Mary's (Algaaciq) and Toksook Bay (Nunakauyarmiut). The four that have separate tribal courts today are Chevak, Kipnuk, Kwethluk, and Mekoryuk. Chevak and Mekoryuk use their courts to handle children's cases, Kipnuk handles only criminal matters, and Kwethluk handles criminal and civil cases, but few children's matters. The tribal councils in the other villages are active intervenors in state court and sometimes take custody of tribal children.

AVCP continues to support tribal court development in the villages, supplying information on court procedures, roles and responsibilities of judges, and limits on tribal court jurisdiction. It helps villages develop tribal ordinances. The AVCP social services department provides ICWA training for tribal councils and ICWA workers, and the grant writer works to find funding for tribal court development.

In late 1997, an AVCP social worker conducted interviews with 35 villages (out of 42 served) as part of a tribal foster care needs assessment. This survey found that three-quarters of the villages were governed by traditional councils, with the remaining quarter governed by IRA councils. One quarter of the outlying villages had VPSO services, one quarter had VPO services, and one quarter had both.⁹² Eighty percent of the villages reported that they intervened in ICWA cases, 88 percent worked with DFYS in developing a family case plan and ongoing case management, and 62 percent had a formal or informal child protection team. Almost all of the villages had constitutions, half had ordinances, and half were in the process of developing ordinances. The survey indicated that eight of the villages had tribal courts as a separate decision-making body, while the tribal council acted as a court in 24 villages.⁹³ The survey found a high level of interest in further training and involvement in children's matters.

2. Regional Courts

Another organization, the Yupiit Nation, encourages the formation of tribal courts in this region as an aspect of its advocacy for sovereignty. The villages that are members of the Yupiit Nation have a history of active village councils. In the early 1990's Yupiit Nation drafted ordinances establishing a regional court and a court of appeals. It is currently working with AVCP to find federal funding to create these courts. The regional court would serve villages on the lower Kuskokwim and Kuskokwim Bay. Villages interested in a regional court include Akiak, Napakiak, Kwigillingok, Akiachak, Kipnuk, Tuntutuliak, and Goodnews Bay. The purpose of the regional court would be to avoid conflict of interest problems arising in small villages and to provide for appeals.

On the lower Yukon River, several villages are discussing formation of a regional court and have formed a consortium called Quigpagmiut to submit grant applications. The interested villages are Asa'carsarmiut (Mountain Village), Algaaciq (St. Mary's), Andreafski, Pilot Station, Marshall (Fortuna Ledge), and Pitka's Point. People travel frequently between these villages, and an intertribal court would allow each village to enforce a consistent set of ordinances against visiting members of other villages, and would provide a court of appeals. The formation of such a system would call for negotiation of an intertribal treaty on a government-to-government basis.

⁹² The remaining villages either were served by the state troopers out of Bethel or had no law enforcement presence.

⁹³ The survey results were somewhat unclear; other aspects of the survey indicate that the number could be lower.

3. Akiachak Tribal Court

The Akiachak Tribal Council passed an ordinance creating a separate tribal court in 1984, but the court has only become active in the last several years. The court enforces tribal ordinances governing public behavior, solid waste disposal, curfew, and alcohol problems. The tribal court reports a good working relationship with the VPSO and the state troopers. The VPSO and the troopers generally contact the tribal council when tribal members have been arrested, and in some cases will refer the case back to the tribal court. The village also has a VPO.⁹⁴

If the offense is minor, like a curfew violation, a single judge may hear the matter and impose community work service. For more serious matters, two or three judges will meet as a panel to counsel the offender, impose community work service, and sometimes impose a fine. For curfew violations, parents are required to attend the hearing after the first offense. The court reports that it has no trouble with enforcement of its orders, since the VPSO and VPO help with enforcement.

The Akiachak court handles adoption and ICWA cases and intervenes in state cases. Akiachak reports that state agencies are slow to honor or accept tribal court decisions regarding child custody, and no financial assistance is available for foster parents appointed by the tribal court. The tribal court administrator is trying to work with DFYS in Bethel to improve their relationship.

The judges are four elders and one younger member of the tribal council. The judges are paid \$15 per hour, and the court also pays a tribal court administrator and clerk. The judges and staff have received limited training, mostly from out-of-state nonprofits. The Akiachak court is currently operating under a three-year ANA grant for tribal court development. It tapes all of its proceedings and keeps records of all cases.

4. Chevak Tribal Court

The Chevak Tribal Court began operation in 1993, and now hears 30-40 formal cases per year. The tribal court operates under an establishment ordinance and a code of procedure. The court consists of five elected elders, two of whom are necessary to hold a session.

The court reports a mixture of activities. In civil matters, the judges engage in peace-keeping and mediation, handling most problems informally before they become court cases. The court has formally handled civil cases involving property damage and failure to pay for using equipment.

⁹⁴ The village police officer once went to tribal court to obtain a search warrant after he heard that a carload of alcohol was on its way into town from Bethel. The tribal court approved the warrant, so the VPO searched the car and arrested the driver, who was taken to Bethel to face a state probation revocation. It appeared that the village police officer approached the tribal court simply out of expediency and was not attempting to usurp state authority. The public defender moved to suppress evidence seized in the search because the warrant was not granted by a state court. The state court judge agreed, ruling that this was police misconduct with which the state court could not be associated, because otherwise the floodgates of tribal litigation would be opened. On appeal, the state argued that even if the evidence were illegally seized, it could still be admitted in a probation revocation and sentencing, so the trial court's ruling was not addressed on appeal. *Morgan v. State*, MOJ No. 3869. The assistant public defender commented that if the liquor had reached the town, she might have had many more clients.

In children's cases, the court handles tribal adoptions and does the state paperwork for tribal members needing new birth certificates. In child in need of aid cases, the tribe reports all cases to DFYS, and the tribal court clerk intervenes on behalf of the tribe. Chevak reports a cooperative working relationship with DFYS, generally making sure that DFYS is in compliance with ICWA in terms of placement preferences, involvement of relatives, and notice. Chevak filed a petition for reassumption of jurisdiction over child custody proceedings in January 1996 that is still pending with the U.S. Department of Interior.⁹⁵

A major concern of the tribal government is the control of alcohol and drugs in the community. Chevak recently received a \$100,000 grant from the U.S. Department of Justice drug court program to plan and implement a court for misdemeanor alcohol and drug offenses.⁹⁶ The tribal court judges have received training from the Department of Justice on how to create a multi disciplinary program emphasizing rehabilitation and monitoring. Chevak plans to review city and tribal ordinances to make sure they are consistent, and hopes to sign a formal agreement with the city allowing the tribal court to handle cases that the city would otherwise handle. Chevak hopes to work out an agreement with the state to refer misdemeanor cases to the court, similar to a community court agreement, but the Department of Law questions the court's jurisdiction over these offenses.

5. Kwethluk Tribal Court

The Kwethluk Tribal Court hears 30-35 cases a year, mostly upon referral from individuals and the village police officer. It hears traditional adoptions, general civil cases, and minor offenses like curfew and breaking and entering. Minor offenses generally result in counseling for the offender, community work service, and fines. The court does not hear ICWA cases or juvenile delinquency matters, although a children's code has been drafted and is in the process of adoption.

The Kwethluk court was formed in 1995. It has six elected judges, plus two in training. Judges have received training from AVCP, Tanana Chiefs Conference, and other organizations. Judges are paid \$50 per session.

Like Chevak, Kwethluk has received a \$100,000 grant from the U.S. Department of Justice to plan and implement a court for alcohol and drug misdemeanors. It plans to work with the city and state to develop consistent ordinances, and to work out agreements to allow these offenses to be handled locally. As with Chevak, the Department of Law questions the tribal court's jurisdiction over these offenses.

6. Kipnuk Tribal Court

The Kipnuk Tribal Court consists of five judges appointed by the traditional council; the judges must be elders and must know the tribal codes. The tribe's primary code governs law and order, including curfew, stealing, and alcohol possession. Most cases are handled through informal

⁹⁵ So far, the only Alaska tribe that has successfully petitioned for reassumption of jurisdiction is Metlakatla.

⁹⁶ Although the Department of Justice has awarded grants for drug court development, it has not taken an official position on whether Alaska tribes have criminal jurisdiction over drug and alcohol offenses.

procedures, involving counseling of the offender and sometimes a \$50 fine. The court handles perhaps twenty cases per year, which it considers to be a fairly small caseload. Kipnuk attributes its low crime rate to the fact that it is a truly dry village, because of the village practice of searching luggage at the airport. Although Kipnuk had a local option law to make sale and possession of alcohol illegal, it was not a strong enough deterrent to keep alcohol out of the village. Following an alcohol-related drowning in 1986, Kipnuk started a tribal court and established a search house near the airport. The first few years of the tough policy were stressful on the council, but the village now considers the policy to be a great success.

The Kipnuk council and court recently met with representatives of the Department of Law and the state troopers to discuss whether the tribal court could handle juvenile misdemeanors. The tribal council would like to handle juvenile problems at an early stage, to preserve village peace and help redirect the children. The tribe is hopeful that if it does a good job with juvenile misdemeanors, the state may someday be willing to recognize its efforts with adult misdemeanors as well.

Kipnuk receives a small amount of BIA tribal court funding (\$1,600), which it supplements with money from its BIA tribal priority allocation. It does not handle children's cases; the tribal ICWA worker intervenes in state court on behalf of the council. The council also approves traditional adoptions.

7. Kwinhagak Tribal Court (Quinhagak)

The Kwinhagak Tribal Court was formed several years ago to help address alcohol as the number one problem in the village. The court consists of a chief justice and an alternate justice, along with three elders and two alternate elders, all elected at a general tribal meeting. The chief justice and is paid out of tribal council funds to work half-time; the elders receive a stipend of \$50 per case. The current chief justice was the state magistrate at Quinhagak for eight years until the magistrate position was discontinued. He has provided much of the court's training, emphasizing due process, proper record keeping, and caseload management. Until recently the court had a half-time clerk, but it has suffered recent budget cuts and had to cut the position, so the chief judge is looking for additional funding. The tribal council is in the process of reorganizing the tribal codes.

The court has a substantial caseload. It handled 281 cases in 1997 (a bad year, according to the clerk) and 112 cases in 1998. Unlike many courts and councils, Kwinhagak keeps computerized case statistics, which show the following 1997 caseload: curfew 114, alcohol 104, minor consuming alcohol 13, disturbing the peace 12, civil 9, and a mixture of 29 other cases. The court referred four cases to the state and issued three search warrants. Civil cases included harassment and truancy; the court also handled one adoption and two child in need of aid cases. The 1998 caseload was smaller because of decreased alcohol traffic. The chief judge noted that he hears more cases as a tribal court judge than he did as a magistrate.

The court's cases arise under tribal ordinances and are referred to the court by the city police, the probation officer, and citizen complaints. The court screens the cases, referring some cases to the state or to DFYS. If an offender pleads not guilty, the court will set a date for a hearing where the offender, the police officer, and the judges will talk about what happened. For alcohol problems,

the first offense generally results in a warning, twenty hours of community work service with ten suspended, and a possible \$250 fine. A second offense results in a \$500 fine and more community work service.

Two years ago, the Kwinhagak Tribal Court imposed banishment on a tribal member who brought alcohol to the village whenever he got out of jail. Each time he brought in alcohol, the village saw an rise in domestic violence and accidents, and the village felt it had to do something. After the bootlegger had been gone a year, his family asked that he be allowed to return. He performed community work service projects upon his return and has not had further problems.⁹⁷

For the last several summers, Kwinhagak has experienced problems with sport fishermen camping illegally and leaving waste. The village asked the state for assistance, suggesting that the state cross-deputize tribal police officers and Kwinhagak's river rangers to enforce state regulations. The state was concerned with the seriousness of the situation and decided to send its own officers to accompany the river rangers.

8. Orutsaramiut Native Council (Bethel)

ONC is in the process of reviewing a children's code and forming a court to handle children's matters. The tribal council has appointed an ICWA advisory committee to develop criteria for elected judges. The court plans to handle adoptions, abuse and neglect cases, and custody disputes among parents and family members.

ONC has used a grant from the Administration for Native Americans to develop a tribal court for juvenile offenders, and is working on an agreement with DFYS to handle juvenile delinquency cases upon referral. Using a grant from the Department of Justice Bureau of Justice Assistance, ONC is working to develop intertribal agreements to handle cases for children from other villages as well. Because Bethel is the hub for the region and many children have dual membership with ONC and other tribes, the goal is to promote efficient consideration of the cases, while preserving cultural values and applying traditional law. ONC has undertaken a custom law research project to understand how the Yupik people traditionally resolve juvenile delinquency problems and other family matters. ONC also plans to develop a peacemaker program along the lines of the Navajo Nation Program. This program will use a mediation approach to problems, to keep cases out of both the state court system and the tribal court system. ONC is looking into tribal victim-offender mediation and tribal mediation of custody disputes.

9. Chefornak Tribal Council

The Chefornak Tribal Council is working to establish a separate tribal court. Council members are discussing to what extent the village should have a traditional court, acting as the ancestors did, and to what extent the court should be more like state and federal courts, in order to get state recognition.

⁹⁷ T. Kizzia, "Get out of Town", Anchorage Daily News at 16 (July 2, 1997).

The council currently hears ICWA cases (10 are pending) and adoptions (3 are pending). It also hears alcohol cases, which come in cycles: fewer during fishing season and more in the winter and spring (up to 15 in a bad month). The village has alcohol ordinances that cover importation, public drunkenness, and disturbing the peace. The first offense results in counseling and referral to treatment, the second and third offenses result in fines, and the fourth offense results in a report to the state troopers. If there is a serious problem, the troopers are called sooner. The council also hears juveniles offenses such as shoplifting, curfew, and drinking. The first offense results in counseling and the second offense in community work service. The council hopes to develop a more comprehensive law and order code.

10. Kwigillingok Tribal Court

Kwigillingok has a separate tribal court that began to hear cases about ten years ago. It consists of five judges appointed by the tribal council, with a quorum of three needed to hear cases. The judges used to be elders but are now a mix of ages. They are paid \$25 each court session from a small BIA tribal court fund. Most court sessions are conducted in Yupik, and are documented by meeting minutes, case files, and tape-recordings. The tribe has trouble finding enough money for travel to training workshops, and also has trouble finding training for the elders who only speak Yupik. The tribe handles these problems by sending one person who is fluent in English, and that person trains the other judges.

The tribe has law and order ordinances covering curfew, speeding, disturbing the peace, minor assaults, shoplifting, alcohol, and domestic violence. The court meets once a month and handles two to three cases each time. For most cases, the VPO reports the crime to the court, the clerk issues a summons to be delivered by the VPO, and the individual reports to the court. Sentences may involve community work service, referral to treatment, and fines from a written schedule. Most cases involve adults; the village refers a greater percentage of juvenile cases to the state because they tend to be more serious. The tribal court has received one referral from the state troopers, for two defendants accused of violating state law by breaking and entering. One of the defendants was on state probation. The tribal court heard the case and sentenced the defendants to community work service and a fine.

11. Tuntutuliak Tribal Court

Tuntutuliak has a separate tribal court with five judges who sit as a panel to enforce the village's criminal ordinances. The judges are appointed by the council, after being interviewed by the council, VPO, family and criminal services specialist, and elders. So far the judges have not received formal training. The tribal council handles adoptions, children's cases, and ICWA interventions in state court. The council has a family and criminal services specialist who also functions as court clerk. Funding for his position is half-time, paid out of federal funding for ICWA workers. For the criminal services specialist and court clerk portions of his job, he essentially is a volunteer, as are the judges and council members.

The tribal court enforces the village criminal code covering a range of misdemeanors. The most common offenses are drinking in public, alcohol importation, curfew violations, and use of

inhalants. Cases begin when a citation is issued by the VPSO or tribal police officer, or when a private citizen files a complaint. The court sends the defendant notice of an arraignment. At arraignment, the charges are read, the penalties explained, and a plea taken. If the defendant pleads guilty, the court imposes judgment at the same proceeding; if the defendant denies the charges, the court sets a separate date for a hearing. At the hearing, testimony and evidence are taken and the complaining witness must be present. Hearsay is admissible if the court rules that it is reliable. After the judges hear the evidence, they vote by ballot whether the defendant should be found guilty. The sentence may require a combination of jail time, restitution, a fine, probation, treatment, counseling, community work service, or other sanction. The code sets fines and work service requirements of \$50 and one day for first offenders, \$100 and three days for second offenders, and \$150 and one week for third offenders. Sentence conditions are monitored by the criminal services specialist.

Tuntutuliak is unusual among Alaska Native villages because it has a four-cell jail run by the traditional council. The village built the jail after it received a COPS grant for two tribal police officers and a substitute officer. The tribal officers and the VPSO have offices in the jail, and the high costs of running it are somewhat offset by the rent they pay. The council is discussing monthly fundraising activities to support the jail. So far, the jail only has been used for protective custody of intoxicated persons, because the tribal court has not yet sentenced anyone to jail. The village has a number of repeat offenders who do not pay their fines or perform their community work service, so the council is discussing using the jail as a halfway house where offenders can stay at night and work during the day. The village also has problems with defendants who do not respond to complaints or citations. The court clerk said the judges were aware of the requirements of the Indian Civil Rights Act regarding imposition of jail time.

Reports of domestic violence are handled by the VPSO or the VPO in cooperation with the state troopers. The tribal council meets with the family to assist with conflict resolution and make recommendations for counseling and treatment.

Children's cases are handled by the tribal council rather than the court. The village has the final draft of a children's code ready for council approval. The village has a child protection team that works with at-risk families, trying to get involved before cases reach the level where DFYS would step in. The family specialist presents the problem to the child protection team members; if they determine that the family is at risk, they work with the family to make a case plan. Sometimes the tribal council will take children into tribal custody with the agreement of the parents. The tribe usually cannot afford to take custody without parental consent, in order to preserve eligibility for public benefits. When DFYS brings a case in state court, the family specialist intervenes on behalf of the council; council members often participate in case planning sessions and hearings by teleconference. If a change of placement is needed, the council meets and directs the family services specialist on the council's position.

12. Napakiak Youth Court

The Native Village of Tetlin is in the process of developing a youth court modeled on tribal court methods of handling juvenile offenses. The court is part of a pilot program run by the Alaska Native Justice Center to develop village youth courts, described in chapter 3.

13. Other villages

A number of villages continue their traditional function of social control through the council structure. Other villages have developed tribal court procedures for use by the council or are developing a separate court. Many councils handle traditional adoptions and actively intervene in state ICWA cases.

In Newtok and Mekoryuk, the tribal councils have established separate courts to handle their relatively small caseloads. In Newtok the court uses traditional law to address alcohol problems and curfew violations. For the first two offenses, judges counsel the offenders. The third alcohol offense results in community work service, while the fourth offense results in a complaint to the Alaska state troopers. The third curfew violation results in a report to the child's parents, while the fourth calls for community work service and a fine. The court administrator said that the court was trying to take easy cases for now, because it opened in early 1998 and the judges, three elected elders, are still learning. So far, the court has heard four offenses. In Mekoryuk, three elected judges operate under rules of judicial conduct, administering a law and order code and a children's code. This court has been in effect since 1995, hearing three child in need of aid and adoption cases each year. Although the court is empowered under its ordinances to hear juvenile delinquency and misdemeanor matters, it has not done so.

In Nunapitchuk, the municipal government has a local code covering minor criminal offenses, and most of the problems that arise under it are alcohol-related. Troublemakers are referred by the VPO to a joint panel of village leaders, one or two from the city council and one or two from the tribal council. This panel tries to do things in the traditional manner, through counseling and helping the violator understand that alcohol importation is wrong. In Eek, the tribal council provides intervention and counseling in domestic violence cases.

In 1994, the Tununak elders' council stopped a state trooper from arresting a villager wanted for assault and tried to arrest the trooper under tribal authority. A planeload of troopers returned to arrest the suspect, along with a tribal administrator and tribal police officer charged with hindering prosecution. The tribal administrator hid out in Tununak for over a year, as the troopers declined to make a house-to-house search for him. Finally the elders' council told the administrator to turn himself in and serve his short sentence.⁹⁸ Several villages have asked the state troopers to notify the council before coming to make an arrest or conduct an investigation, but the troopers do not do so if they believe it will jeopardize their work.

A number of villages are working on tribal court procedures and selection of judges. These villages include St. Mary's (Algaaciq), Kasigluk, Goodnews Bay, and Scammon Bay. The councils in these villages are active in children's cases, developing case plans, ordering treatment and services for families, and sometimes placing children out of the home.

⁹⁸ T. Kizzia, "Tribal Courts: Whose Law and Order?" Anchorage Daily News, page 20 (July 3, 1997).

The tribal council in Napaskiak has received an ANA grant to develop a tribal court. It will study circle sentencing as it is practiced in Canada and will decide whether to modify it and incorporate it into tribal court sentencings. Kotlik residents are discussing formation of a community court to handle juvenile offenses on referral from DFYS.

Regional organizations

Assn. of Village Council Presidents
Pouch 219
Bethel, AK 99559
(907) 543-3521

Quigpagmiut
P.O. Box 32209
Mountain Village, AK 99632
(907) 591-2834

Yupiit Nation
Box 109
Akiachak, AK 99551
(907) 825-4626

Tribal Councils and Courts

Akiachak Native Community
P.O. Box 70
Akiachak, AK 99551
Phone: (907) 825-4626

Village of Atmautluak
P.O. Box ATT
Atmautluak, AK 99559
Phone: (907) 553-5610

Akiak Native Community
P.O. Box 52165
Akiak, AK 99552
Phone: (907) 765-7112

Orutsararmuit Native Council (Bethel)
835 Ridgecrest Dr.
Bethel, AK 99559
Phone: (907) 543-2608

Village of Alakanuk
P.O. Box 149
Alakanuk, AK 99554
Phone: (907) 238-3419

Village of Bill Moore's Slough
P.O. Box 20037
Kotlik, AK 99620
Phone: (907) 889-4712

Yupiit of Andreafski
P.O. Box 368
St. Mary's, AK 99658
Phone: (907) 438-2312

Village of Chefnak
P.O. Box 110
Chefnak, AK 99561
Phone: (907) 867-8850

Village of Aniak
P.O. Box 176
Aniak, AK 99557
Phone: (907) 675-4349

Chevak Tribal Court
P.O. Box 140
Chevak, AK 99563
Phone: (907) 858-7252

Native Village of Chuathbaluk
P.O. Box CHU
Chuathbaluk, AK 99557
Phone: (907) 467-4313

Village of Kalskag
P.O. Box 50
Kalskag, AK 99607
Phone: (907) 471-2248

Chuloonawick Native Village
General Delivery
Chuloonawick, AK 99581
Phone: (907) 949-1147

Native Village of Kasigluk
P.O. Box 19
Kasigluk, AK 99609
Phone: (907) 477-6927

Native Village of Crooked Creek
P.O. Box 69
Crooked Creek, AK 99575
Phone: (907) 823-2215

Native Village of Kipnuk
P.O. Box 57
Kipnuk, AK 99614
Phone: (907) 896-5515

Native Village of Eek
P.O. Box 87
Eek, AK 99578
Phone: (907) 536-5128

Native Village of Kongiganak
P.O. Box 5069
Kongiganak, AK 99559
Phone: (907) 557-5226

Emmonak Village
P.O. Box 126
Emmonak, AK 99581
Phone: (907) 949-1720

Village of Kotlik
P.O. Box 20096
Kotlik, AK 99620
Phone: (907) 899-4326

Native Village of Georgetown
1400 Virginia Court
Georgetown, AK 99501
Phone: (907) 274-2194

Organized Village of Kwethluk (IRA)
P.O. Box 84
Kwethluk, AK 99621
Phone: (907) 757-6714

Native Village of Goodnews Bay
P.O. Box 03
Goodnews Bay, AK 99589
Phone: (907) 967-8929

Native Village of Kwigillingok
P.O. Box 49
Kwigillingok, AK 99622
Phone: (907) 588-8114

Native Village of Hamilton
P.O. Box 20130
Kotlik, AK 99620
Phone: (907) 899-4027

Lime Village
General Delivery
Lime Village, AK 99627
Phone: (907) 526-5128

Native Village of Hooper Bay
P.O. Box 41
Hooper Bay, AK 99604
Phone: (907) 758-4915

Village of Lower Kalskag
P.O. Box 27
Lower Kalskag, AK 99626
Phone: (907) 471-2307

Native Village of Marshall
(Fortuna Ledge)
P.O. Box 10
Fortuna Ledge, AK 99585
Phone: (907) 642-3731

Native Village of Mekoryuk
P.O. Box 66
Mekoryuk, AK 99630
Phone: (907) 827-8828

Asa'carsarmuit Tribe of Mt. Village
P.O. Box 32249
Mountain Village, AK 99632
Phone: (907) 591-2814

Native Village of Napaimute
P.O. Box 96
Aniak, AK 99557
Phone: No Phone

Native Village of Napakiak
General Delivery
Napakiak, AK 99634
Phone: (907) 589-2227

Native Village of Napaskiak
P.O. Box 6109
Napaskiak, AK 99559
Phone: (907) 737-7626

Newtok Village
P.O. Box 5545
Newtok, AK 99559
Phone: (907) 237-2314

Native Village of Nightmute
General Delivery
Nightmute, AK 99690
Phone: (907) 647-6215

Native Village of Nunapitchuk
P.O. Box 130
Nunapitchuk, AK 99641
Phone: (907) 527-5705

Native Village of Ohogamiut
General Delivery
Fortuna Ledge, AK 99585
Phone: (907) 679-6740

Oscarville Traditional Council
P.O. Box 1554
Oscarville, AK 99559
Phone: (907) 737-7321

Native Village of Paimiut
General Delivery
Hooper Bay, AK 99604
Phone: (907) 758-4420

Pilot Station Traditional Village
P.O. Box 5040
Pilot Station, AK 99650
Phone: (907) 549-3512

Native Village of Pitka's Point
P.O. Box 127
St. Mary's, AK 9965
Phone: (907) 438-2833

Platinum Traditional Village
General Delivery
Platinum, AK 99651
Phone: (907) 979-8114

Kwinhagak Tribal Court (Quinhagak)
Box 149
Quinhagak, AK 99655
(907) 556-8015

Village of Red Devil
P.O. Box 5
Red Devil, AK 99656
Phone: (907) 447-3225

Iqurmuit Tribe (Russian Mission)
P.O. Box 9
Russian Mission, AK 99657
Phone: (907) 584-5511

Algaaciq Native Village (St. Mary's)
P.O. Box 48
St. Mary's, AK 99658
Phone: (907) 438-2932

Native Village of Scammon Bay
P.O. Box 126
Scammon Bay, AK 99662
Phone: (907) 558-5227

Native Village of Sheldon's Point
General Delivery
Sheldon's Point, AK 99666
Phone: (907) 498-4226

Village of Sleetmute
P.O. Box 21
Sleetmute, AK 99668
Phone: (907) 449-9901

Village of Stony River
General Delivery
Stony River, AK 99557
Phone: (907) 537-3214

Nunakauyak Traditional Council
(Toksook Bay)
Box 37048
Toksook Bay, AK 99637
(907) 427-7114

Tuluksak Native Community
P.O. Box 156
Tulusak, AK 99679
Phone: (907) 695-6828

Native Village of Tuntutuliak
General Delivery
Tuntutuliak, AK 99680
Phone: (907) 256-2128

Native Village of Tununak
P.O. Box 77
Tununak, AK 99681
Phone: (907) 652-6527

Umkumiut Native Village
General Delivery
Nightmute, AK 99690
Phone: (907) 647-6213

Alaska Court System

Superior Court Judge Dale Curda
Magistrate Craig McMahon
Box 130
Bethel, AK 99559
(907) 543-3348

Magistrate Margaret Murphy
P.O. Box 147
Aniak, AK 99557
(907) 675-4325

Frank Chayalkun
Box 238
Chevak, AK 99563
(907) 858-7231

Robert Hall
(serves Mtn. Village & St. Mary's)
Box 183
St. Mary's, AK 99658
(907) 438-2912

Magistrate (vacant)
P.O. Box 176
Emmonak, AK 99581
(907) 949-1748

F. Bristol Bay

The Bristol Bay area is located along a bay in southwest Alaska and its contributing river drainages. The economy of the area is heavily dependent on commercial fishing, sport fishing and guiding, and subsistence fishing. Culturally, the area is a transition zone; the villages to the west of Dillingham are largely Yupik, while the villages to the east and north are mixed, including Yupik, Alutiiq, and Athabascan. Several of the villages have a substantial number of non-Native residents. Twelve of the villages in the region have both city and tribal governments. A number of the villages are growing quickly, and Togiak has seen a small influx of Central American immigrants.

Bristol Bay Native Corporation is the profit-making corporation and Bristol Bay Native Association (BBNA) is the regional nonprofit. The federally recognized tribes are Aleknagik, Chignik, Chignik Lagoon, Chignik Lake, Clark's Point, Dillingham (Curyung), Egegik, Ekuk, Ekwo, Iguigig, Iliamna, Ivanoff Bay, Kanatak, Kokhanok, Koliganek, Levelock, Manokotak, Naknek, Newhalen, New Stuyahok, Nondalton, Pedro Bay, Perryville, Pilot Point, Portage Creek, Port Heiden, South Naknek, Togiak, Twin Hills, and Ugashik.

The largest city is Dillingham, which has a superior court and offices of the district attorney, public defender, DFYS, and a state trooper post. There is a magistrate in Naknek, and a DFYS office and state trooper post in King Salmon. The area also includes the Bristol Bay Borough centered around Naknek and the Lake and Peninsula Borough in the southeast part of the region.

1. Bristol Bay Native Association

The Bristol Bay Native Association serves Dillingham and the area villages. BBNA hires social workers to provide services to children in all of its villages. The social workers intervene in ICWA cases in state court and work with DFYS. Individual village councils meet privately to discuss how local ICWA cases should be handled, then pass their decisions on the social worker assigned to the case. BBNA social workers also work with the villages to find foster homes through relatives of the children. Both BBNA and DFYS report a good working relationship between the tribal councils and the state.

BBNA received a grant from the Department of Justice for a two-year child justice project from 1990-1992. The project was designed to improve local responses to child in need of aid cases and included work on tribal court codes and court development in several villages. As part of this effort, Nondalton and New Stuyahok revised their constitutions to authorize tribal courts and enacted local ordinances regarding domestic relations, general law and order, child in need of aid cases, and judicial codes.

In 1997, BBNA received a grant from the Department of Justice STOP Violence Against Indian Women program to improve tribal responses to domestic violence cases. BBNA has used this money to hire a legal resources coordinator and administrative assistant to work at the SAFE program in Dillingham. The coordinator tracks sexual assault and domestic violence cases committed against Native women, does regional training, promotes safe home development, and provides crisis intervention. Alcohol can legally be sold in Dillingham, while outlying villages are

dry, so many violent episodes occur when villagers come to Dillingham. The coordinator will inform local police and tribal councils about any acts of domestic violence and about any release conditions imposed on the defendant, so the village can work to assist and protect the victim. BBNA and SAFE have developed a domestic violence video and discussion guide, developed a recruitment and training program for bilingual advocates, and hosted a STOP Violence Against Indian Women conference for the Alaska grantees.

2. Togiak Community Court

For several years, Togiak has had an elders' court using informal procedures and traditional counseling methods to handle a small number of cases. In recent years, the elders became concerned that they and the state were failing in their responsibilities to the children. In early 1997, the Togiak Traditional Council entered into a memorandum of 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 adjudicate and rehabilitate juvenile offenders at a local, village level. Because this court is structured as a community court, its work is described in chapter 4. The elders' court continues to operate occasionally in other cases.

3. Manokotak Tribal Court

The Manokotak Tribal Court has been developing over the last several years. It has three appointed judges, consisting of two elders and one tribal council member. Department of Justice grants have paid for training the judges and hiring five tribal police officers. Manokotak's compact with BBNA provides enough funding to offer the judges some pay.

The court handles ICWA cases and nonviolent criminal offenses arising under its law and order code. The judges will hear an ICWA case themselves if they believe that it is one that can be handled in the village. If the case is referred to DFYS, the judges will participate in making a recommendation to DFYS, in cooperation with the village council president and the ICWA worker.

The tribal police officers refer violent cases to the state and nonviolent cases to the tribal court. The village council has passed a resolution allowing the tribal officers to search suspected bootleggers at the airport, upon a showing of probable cause to the court. Domestic violence cases may be investigated locally or referred to the state troopers.

4. Other village councils

Councils in the villages of Egegik, Twin Hills, New Stuyahok, Dillingham, and Togiak take an active role in the resolution of ICWA cases. Cases are sometimes initiated by the council members who tell DFYS their concerns about a particular family. If the members of the council and the state social worker agree, the council summons the family and informs them that if they cooperate with the council, the state will delay taking action. The councils use a combination of state law, traditional law, and ICWA to reach their decisions. The council monitors the family's progress and reports back to the state social worker. If problems recur, the council notifies the state social worker, who steps in and takes the case.

Levelock has hired a tribal police officer with federal funds. New Stuyahok has developed a new set of ordinances. Many villages in this area have local ordinances governing minor offenses committed by tribal members, and the councils handle these by imposing fines and community work service. The basis of this jurisdiction appears to be consensual.

In the early 1990's, a group from Aleknagik declared themselves a tribal court, without authorization from the tribal council. The group had no written laws or procedures and never handled routine village problems like alcohol regulation or children's cases. The group received publicity when one of its members was charged with state fish and game violations and the group purported to acquit him of those charges. Aleknagik's elected tribal council never has established a tribal court.

Bristol Bay villages have discussed setting up a regional court, rather than having courts for each village. They have spoken with courts in the Tanana Chiefs area and sent a group to a Navajo reservation to see how tribal courts are run there. The purpose of the regional court would be to avoid the conflicts of interest sometimes found in small villages, to conserve resources, and to provide an appellate court. Villages in the Lakes Region of the Bristol Bay area have also discussed setting up a subregional court which would hear cases from a number of villages.

Regional Organization

Bristol Bay Native Association
Box 310
Dillingham, AK 99576
Phone: (907) 842-5257

Tribal Councils and Courts

Native Village of Aleknagik
P.O. Box 115
Aleknagik, AK 99555
Phone: (907) 842-2080

Chignik Lake Village
P.O. Box 33
Chignik Lake, AK 99548
Phone: (907) 845-2212

Native Village of Chignik Bay
P.O. Box 48
Chignik, AK 99564
Phone: (907) 749-2301

Village of Clark's Point
P.O. Box 9
Clark's Point, AK 99569
Phone: (907) 236-1221

Native Village of Chignik Lagoon
P.O. Box 57
Chignik Lagoon, AK 99565
Phone: (907) 840-2281

Curyung Tribal Council (Dillingham)
P.O. Box 216
Dillingham, AK 99576
Phone: (907) 842-4508

Egegik Village
Box 29
Egegik, AK 99579
Phone: (907) 233-2211

Native Village of Ekuk
General Delivery
Ekuk, AK 99576
Phone: (907) 842-5937

Ekwok Village
P.O. Box 70
Ekwok, AK 99580
Phone: (907) 464-3336

Igiugig Village
P.O. Box 4008
Igiugig, AK 99613
Phone: (907) 533-3211

Village of Iliamna
P.O. Box 286
Iliamna, AK 99606
Phone: (907) 571-1246

Ivanof Bay Village Council
P.O. Box K1B
Ivanof Bay, AK 99695
Phone: (907) 699-2207

Village of Kanatak
1700 Trail Circle
Wasilla, AK 99654
Phone: (907) 263-9820

Kokhanok Village
P.O. Box 1007
Kokhanok, AK 99606
Phone: (907) 282-2202

Koliganek Village
P.O. Box 5057
Koliganek, AK 99576
Phone: (907) 596-3434

Levelock Village
Box 70
Levelock, AK 99625
Phone: (907) 287-3030

Manokotak Village
P.O. Box 169
Manokotak, AK 99628
Phone: (907) 289-2067

Naknek Native Village
P.O. Box 106
Naknek, AK 99633
Phone: (907) 246-4210

Newhalen Village
Box 207
Iliamna, AK 99606
Phone: (907) 571-1410

New Stuyahok Village
P.O. Box 49
New Stuyahok, AK 99636
Phone: (907) 693-3173

Nondalton Village
Box 49
Nondalton, AK 99640
Phone: (907) 294-2220

Pedro Bay Village
P.O. Box 47020
Pedro Bay, AK 99647
Phone: (907) 850-2225

Native Village of Perryville
P.O. Box 101
Perryville, AK 99648
Phone: (907) 853-2203

Native Village of Pilot Point
P.O. Box 449
Pilot Point, AK 99649
Phone: (907) 797-2208

Portage Creek Village (Ohgsenakale)
P.O. Box 330
Portage Creek, AK 99576
Phone: (907) 842-5218

Traditional Village of Togiak
P.O. Box 209
Togiak, AK 99678
Phone: (907) 493-5004

Native Village of Port Heiden
P.O. Box 49007
Port Heiden, AK 99549
Phone: (907) 837-2218

Twin Hills Village
Box TWA
Dillingham, AK 99576-8996
Phone: (907) 525-4821

South Naknek Village Council
P.O. Box 70106
South Naknek, AK 99670
Phone: (907) 246-6552

Ugashik Traditional Village Council
909 Chugach Way, Suite 82
Anchorage, AK 99503
Phone: (907) 842-4004

Alaska Court System

Superior Court Judge Fred Torrissi
Magistrate Deborah K. Burlinski
P. O. Box 909
Dillingham, AK 99576-0909
Phone: (907) 842-2050

Magistrate William Garrison
Box 229
Naknek, AK 99633
(906) 246-6151

G. Kodiak Island

Kodiak Island was the site of the first Russian settlement in 1784. The largest city is Kodiak, where the state has a superior court, district attorney, public defender, DFYS office, and state trooper post. There is a youth court in Kodiak, described in chapter 3. The city of Kodiak also is the center of government for the Kodiak Island Borough. Koniag is the regional profit-making corporation; its nonprofit arm is the Kodiak Area Native Association (KANA). The federally recognized tribes are Afognak, Akhiok, Karluk, Larsen Bay, Lesnoi, Old Harbor, Ouzinkie, Port Lions, and the Shoonaq Tribe of Kodiak.

Currently none of Kodiak Island's villages has a tribal court. Community leaders have attributed the absence of tribal courts to several factors: early and intense contact with Russians and white Americans, a high non-Native population leading to a high level of integration and intermarriage, and a number of municipal governments to handle enforcement of local ordinances. KANA is not actively working on tribal court development or tribal council dispute resolution. In 1990, the seven Kodiak Island tribes formed a consortium known as the Kodiak Intertribal Council, which discussed the possibility of setting up a regional tribal court. More recently, representatives from several individual villages attended a tribal court training put on by a private consultant from South Dakota.

1. Larsen Bay

The Larsen Bay Tribal Council has received a grant from the Department of Justice STOP Violence Against Indian Women program to form a tribal domestic violence court. The village will use its grant of \$66,500 to rewrite its tribal constitution and bylaws, provide training and technical assistance for judges and staff, expand its women's support group, and enhance volunteer services for its response team. The primary focus will be on improving victim services and educating community members about domestic violence. The community is particularly interested in protecting elder women.

As part of that effort, Larsen Bay plans to form a tribal court, consisting of four council members and the ICWA coordinator. The village decided to use a panel, rather than an individual judge, to represent a cross-section of the families in the village and to avoid the alienation that sometimes occurs when one person has too much authority. The court will derive its powers from the tribal council and will represent the desire of the community to protect its people against family violence. The tribal council plans to pursue a model that focuses on education, early intervention, and counseling. The court hopes to be able to work with families before violence becomes a serious problem and to incorporate elders into its proceedings. The village expects that it will continue to call state troopers to handle serious felonies, and it hopes to have a cooperative working relationship with state agencies. Tribal council members received tribal court training in 1998.

2. Other villages

In early 1998, two tribal council members from the village of Akhiok attended a tribal court training put on by a consultant from South Dakota. The tribal council currently handles traditional

adoptions and intervenes in ICWA cases in state court. It is interested in developing its own ordinances so that it can handle misdemeanors and juvenile delinquency cases. It has discussed forming a consortium with Karluk and Old Harbor to pool resources and cases. It also has talked with the Alaska Native Harbor Seal Commission about developing a local court that could handle cases involving wanton waste of harbor seals and stellar sea lions.

The Shoonaq Tribe of Kodiak, tribal council for Natives living around the city of Kodiak, handles ICWA cases. Sometimes it intervenes in state court, and sometimes it issues its own custody and placement orders.

Regional Organizations

Kodiak Area Native Association
402 Center Avenue
Kodiak, AK 99615
Phone: (907) 486-5725

Kodiak Intertribal Council
P.O. Box 1974
Kodiak, AK 99615
Phone: (907) 486-4449

Tribal Councils and Courts

Native Village of Afognak
P.O. Box 1277
Kodiak, AK 99615
Phone: No Phone

Native Village of Larsen Bay
P.O. Box 35
Larsen Bay, AK 99624
Phone: (907) 847-2207

Native Village of Akhiok
Box 5030
Akhiok, AK 99615
Phone: (907) 836-2213

Native Village of Old Harbor
Box 62
Old Harbor, AK 99643
Phone: (907) 286-2215

Native Village of Karluk
Box 22
Karluk, AK 99608
Phone: (907) 241-2218

Native Village of Ouzinkie
Box 13
Ouzinkie, AK 99644
Phone: (907) 680-2259

Shoonaq Tribe of Kodiak
Box 1974
Kodiak, AK 99615
Phone: (907) 486-4449

Native Village of Port Lions
Box 69
Port Lions, AK 99550
Phone: (907) 454-2234

Lesnoi Village

Alaska Court System

Superior Court Judge Donald D. Hopwood
Magistrate Anna M. Moran
202 Marine Way
Kodiak, AK 99615-9987
Phone: (907) 486-5765

H. Aleutian and Pribilof Islands

The Alaska Peninsula, Aleutian Chain, and Pribilof Islands include about a dozen communities, although historically the number was larger. Some communities were decimated by disease during the Russian occupation; others were evacuated by the United States during World War II and never re-populated. The economy of the region depends upon commercial and subsistence fishing, with a declining military presence. Aleuts traditionally organized themselves by families and villages, with the village being the primary social unit. Village councils were introduced at some point in time, but far less information is available about Aleut history than about other Native groups.⁹⁹

The regional corporation is the Aleut Corporation, and the regional nonprofit is the Aleutian-Pribilof Islands Association (APIA). East Aleutian Tribes, Inc. provides health services to some villages. The federally recognized tribes are Akutan, Atka, Belkofski, False Pass, King Cove (Agdaagux), Nelson Lagoon, Nikolski, Pauloff Harbor, St. George, St. Paul, Sand Point, Unalaska, and Unga.

The court system has magistrate positions in Sand Point, Unalaska, and St. Paul Island, but superior court cases are handled from Anchorage. District attorney and public defender services are provided out of Anchorage, while DFYS services are handled out of Unalaska or Kodiak. The state troopers have a post in Cold Bay and handle some Aleutian cases from the Dillingham post. There also is an Aleutians East Borough.

1. Aleutian-Pribilof Islands Association

APIA provides a range of social services and encourages its member villages to take an active role in ICWA cases. APIA supports local self-governance and has provided tribal court training and ordinance development for villages in its region. The APIA self-governance counsel assists the tribe in writing codes and handling cases. St. Paul, St. George and Unalaska are in the process of developing children's codes. APIA has conducted a regional meeting to provide information about tribal courts. APIA counsel has also represented Sand Point in an extended litigation regarding the tribe's jurisdiction in a child custody dispute. All villages in the region handle traditional tribal adoptions.

2. Qagan Tayagungin Tribal Council (Sand Point)

Qagan Tayagungin is the tribal council for Natives from the Sand Point area. A tribal court was established when the tribe wrote its IRA constitution, with jurisdiction extending to elections, membership, ICWA cases, and "all tribal-related matters." The tribe is in the process of activating its court by electing and training three tribal court judges. The tribe has a children's code, elections ordinance, and enrollment ordinances. Once operational, the court plans to handle ICWA cases primarily.

⁹⁹ The paucity of historical information is due in part to the Russian occupation and the dominance of Russian culture during the late 1700's and 1800's.

In 1996, the tribal council sat as a court to hear a child custody case and make a temporary placement. Because the state already had asserted jurisdiction over the children in a domestic violence case and ordered a different placement, considerable confusion resulted. On behalf of the tribe, APIA sued the State of Alaska in federal court. The tribe maintained that jurisdiction in a child in need of aid case should take precedence over jurisdiction in a domestic violence case, but the federal court ruled in favor of state jurisdiction. When the case returned to state court, the tribe was able to intervene. At the tribe's request, the custody investigation was conducted jointly by APIA's ICWA worker and DFYS.

3. Akutan Traditional Council

Akutan has a probate ordinance and court rules, with a children's code under consideration. It has convened a tribal court once to conduct a probate hearing about disputed claims to the property of an elder who died in a fire. It hired an independent chief judge from outside the village to preside over a panel consisting of the traditional council members. Although in this case there was no necessity to transfer title, the court would seek state recognition of such an order if it were to issue one. On its own, the council has heard traditional adoptions.

Regional Organizations

Aleutian/Pribilof Islands Association
401 E. Fireweed Lane
Anchorage, AK 99503-2111
Phone: (907) 276-2700

Tribal Councils and Courts

Native Village of Akutan
P.O. Box 89
Akutan, AK 99553
Phone: (907) 698-2300

Native Village of Atka
P.O. Box 47030
Atka, AK 99547
Phone: (907) 839-2229

Aleut Community of St. George
P.O. Box 940
St. George, AK 99591
Phone: (907) 859-2205

Native Village of Belkofski
P.O. Box 57
King Cove, AK 99612
P: 907/497-2304

Aleut Community of St. Paul
P.O. Box 86
St. Paul, AK 99660
Phone: (907) 546-2211

False Pass Tribal Council
P.O. Box 29
False Pass, AK 99583
Phone: (907) 548-2227

Agdaagux Tribe of King Cove
P.O. Box 18
King Cove, AK 99612
Phone: (907) 497-2648

Native Village of Nelson Lagoon
P.O. Box 13 - NGL
Nelson Lagoon, AK 99571
Phone: (907) 989-2204

Native Village of Nikolski
General Delivery
Nikolski, AK 99638
Phone: (907) 576-2225

Pauloff Harbor Village
P.O. Box 194
Sand Point, AK 99661
Phone: (907) 383-3991

Qagan Tayagungin Tribe
of Sand Point Village
Box 447
Sand Point, AK 99661
Phone: (907) 383-5616

Qawalangin Tribe of Unalaska
P.O. Box 334
Unalaska, AK 99685
Phone: (907) 581-2920

Native Village of Unga
P.O. Box 508
Sand Point, AK 99661
Phone: (907) 383-5215

Alaska Court System

Magistrate Mary Hawkins
Box 245
Unalaska, AK 99685-0245
Phone: (907) 581-1266

Magistrate (vacant)
P.O. Box 170
St. Paul Island, AK 99660

Magistrate (vacant)
P.O. Box 89
Sand Point, AK 99661

I. Cook Inlet Region

The Cook Inlet Region includes the Anchorage bowl, the Mat-Su Valley, the western half of the Kenai Peninsula, and the village of Tyonek across Cook Inlet to the west. The area is largely urbanized, and the economy and population is diverse. The area is home to a number of dispute resolution organizations, including four tribal courts, three youth courts, and a nonprofit dispute resolution center. Cook Inlet Region Inc. (CIRI), the profit-making corporation, has divided its nonprofit services into several agencies. The federally recognized tribes are Chickaloon, Eklutna, Knik, Ninilchik, Salamatof, Seldovia, and Tyonek.

The Alaska court system has superior courts and magistrates in Anchorage, Palmer, and Kenai, with an additional district court in Homer. The full range of state government services is available to most residents via the road system. DFYS has offices in Anchorage, Palmer, Kenai, and Homer. The area also is divided into three borough governments, the Greater Anchorage Area Borough, the Matanuska-Susitna Borough, and the Kenai Peninsula Borough. The largest city is Anchorage, which has its own ordinances, prosecutors, and services. The Municipality of Anchorage has an ombudsman's office to assist citizens in resolving complaints involving the municipal government, an administrative hearing office that handles civil violations, and an equal rights commission to investigate and resolve complaints involving race and gender discrimination.¹⁰⁰

1. CIRI Nonprofit Agencies

CIRI funds several nonprofit corporations. Cook Inlet Tribal Council provides social and family services, including ICWA services. The Southcentral Foundation provides primary health care, behavioral health and treatment programs, and education. CIRI has other nonprofits providing employment services, housing services, scholarships, and broadcasting.¹⁰¹ None of these agencies have the mission of promoting tribal court development in CIRI villages.

The Southcentral Foundation has received funding from the STOP Violence Against Indian Women program to develop domestic violence training to help service providers and criminal justice professionals address the needs of Alaska Native women and children. Part of this grant will be used to track batterers (from domestic violence or other assaults) whose victims are Alaska Native women in Anchorage, and assess how well municipal and state services work for these victims. Southcentral Foundation will also produce a training manual and protocols to help frontline employees recognize domestic violence and refer Native families to the proper services.

2. Native Village of Eklutna

Although thousands of Alaska Natives from around the state live in the Anchorage area, the Native village of Eklutna is the only tribe located in the Anchorage area. Eklutna is working to

¹⁰⁰ The ombudsman, equal rights commission, administrative hearing office, and community dispute resolution center are described in chapter 5.

¹⁰¹ CIRI also is a primary sponsor of the Alaska Native Justice Center, described in chapter 1, section B2.

develop an expertise in representing distant tribes when their tribal members are involved in state proceedings in Anchorage. Eklutna also is developing a tribal court which it hopes will adjudicate children's cases for distant tribes when the parties would prefer to have the case heard in a tribal court. It plans to study the domestic relations law of tribes in the Anchorage area so that its children's code can accommodate varied customs and practices.

Eklutna's Child Advocacy Center has ICWA workers who represent Alaska Native children in DFYS proceedings, court interventions, and follow-up monitoring. Tribes who wish to monitor their children in Anchorage turn the case over to the child advocacy center in order to have representation in person rather than over the telephone. Eklutna is a participant in Project Succeed, a state-funded program to recruit adoptive homes for children lingering in the state system. Eklutna will attempt to find adoptive homes for Native children in the Anchorage area.

Eklutna has received a \$247,000 grant from the Administration for Native Americans to continue this work and to establish a tribal court. It has completed a children's code and a judicial code, and is now writing a bench book for its new judges. Its judicial panel consists of five judges, four elected and one appointed elder. The court plans to start with child in need of aid cases and a few juvenile delinquency cases, such as curfew, drinking, and shoplifting. If all parties consent to jurisdiction, it hopes to hear juvenile delinquency cases from other tribes involving Native children living in Anchorage. The tribe also will use the grant to help recruit Native court-appointed special advocates (CASAs) and foster home parents.

3. Kenaitze Indian Tribal Court

The Kenaitze Indian Tribe is an IRA government serving Alaska Natives on the central and upper Kenai peninsula. The tribe has no land base, but federal authorities recognize it as responsible for representing Natives from a large part of the Cook Inlet region. Kenaitze's seven-member tribal council has functioned as a tribal court for some time, and the tribe has recently developed a separate court. The court currently hears only ICWA cases, perhaps twelve a year, and also intervenes in state court proceedings. The court hears one or two juvenile delinquency cases per year (fights, shoplifting, drinking), but limits its role to an advisory one because it lacks enforcement power. In juvenile proceedings, the court may require community work service or recommend treatment, but if restitution is required the case is referred to DFYS.

The court has two judges, one of whom is an elder, appointed by the tribal council. The standard for selection of judges is that they be fair-minded, not personally involved in the case, drug- and alcohol-free, with a working knowledge of ICWA. The court receives no funding and the judges are volunteers. The tribal ICWA director handles the record-keeping system. Training for the judges has been provided by the Council Lodge Institute. While one of the current judges used to be a tribal council member, the tribe is moving to separate the judicial and tribal council functions.

4. Chickaloon Village Traditional Court

The Native Village of Chickaloon has an activist tribal government that established a tribal court in 1986. The court takes jurisdiction over matters involving its tribal members and has asserted

territorial jurisdiction over its traditional lands. The tribal council has passed ordinances regulating traffic, fish and game, environmental issues, and children's matters. The court does not handle criminal or juvenile delinquency cases because it has no mechanism for enforcement. The court handles an average of eight cases per year, but feels it could handle more if the state were to recognize its jurisdiction. The court has one working judge, a volunteer, appointed by the tribal council. It also has a panel to handle appeals but has had no appeals of its decisions so far. In 1994, it received an ANA grant to work on the tribal constitution, ordinances, ICWA policies, and court system policies and procedures.

The Chickaloon court has faced occasional jurisdictional challenges from non-Natives who take issue with enforcement of the tribe's traffic code and fish and game code. Chickaloon members in turn have challenged the jurisdiction of the state. One Chickaloon member argued that the state should dismiss reckless driving charges against him on the grounds that the Chickaloon Village Traditional Court had exclusive jurisdiction over the offense. The state court of appeals refused to dismiss the charge, holding that "Indian tribal courts do not have exclusive jurisdiction over criminal offenses committed by Alaska Natives in Alaska even if the offenses occur in 'Indian country.'"¹⁰²

5. Native Village of Tyonek

The Tyonek Traditional Council occasionally sits as a tribal court to hear cases involving tribal members and entry onto privately-owned land. The council hears mostly non-ICWA cases, usually involving community peace-keeping and social control of disruptive tribal members. In one case a juvenile committed a serious crime, along with fighting and general disruption. Tyonek referred the serious case to the state troopers and imposed community work service and monitoring for the less serious incidents when the juvenile returned to the village.

6. Ninilchik Tribal Court

Ninilchik Traditional Council formed a separate tribal court in 1995 with the help of a one-year BIA grant for tribal court development. It hired a tribal court clerk to set up the court and help the council develop a court ordinance. The court consists of one elder appointed by the council and five elected judges: an elder and an alternate, a regular judge and an alternate, and an appellate judge. The judges sit in panels of three and primarily hear ICWA cases. Some ICWA cases are handled by the court and some are addressed by the traditional council, which handled those cases before the court was developed. The judges were trained when funding was available but would like more training. When BIA continuation funds were not available, the court was no longer able to pay the clerk and has had trouble maintaining the strength to handle a regular caseload. The court is substantially assisted by a consultant who does training and development and makes recommendations to the traditional council when the judges have a conflict of interest.

¹⁰² *State v. Harrison*, 784 P.2d 681, 683 (Alaska App. 1989). Concurrent criminal jurisdiction was not discussed in this opinion.

During 1997-98, a dispute developed between the Ninilchik Traditional Council and a dissident member who also was a judge on the tribal court.¹⁰³ The dissident alleged nepotism and conflict of interest against the tribal council president, and challenged the tribe's policy of keeping its membership rolls secret. The dissident raised these challenges in the tribal court, but several of the judges had conflicts, so the case went back to the council. The council dismissed the nepotism and conflict of interest issues on the grounds that a tribal government cannot be sued without its permission, even by its members, and referred the question of opening the rolls to a vote of the members.

The dissident and other members began to campaign for creation of a larger council and new tribal leaders, leading to further disagreements. The dissidents attempted to remove records from the tribal offices and were stopped by the Alaska State Troopers. The traditional council then voted to disenroll dissident leaders from the tribe for 20 to 23 years, for attempting to remove the records and trying to form a rival council. The president said that this was one of the few penalties available to the tribe, since their civil and criminal jurisdiction was limited by the courts. A dissident was elected to the council in September and tribal rolls were opened. The dispute also led to a BIA investigation of the tribe's federal contracts.

Regional Organizations

Alaska Native Justice Center
670 W. Fireweed Lane, Suite 200
Anchorage, AK 99503
Phone: (907) 265-5971

Southcentral Foundation
4501 Diplomacy Drive
Anchorage, AK 99508
Phone: (907) 276-3343

Cook Inlet Tribal Council
670 W. Fireweed Lane, Suite 200
Anchorage, AK 99503
Phone: (907) 561-5537

Tribal Councils and Courts

Chickaloon Village Traditional Court
P.O. Box 1105
Chickaloon, AK 99674
Phone: (907) 745-0707

Eklutna Child Advocacy Center
702 Cordova Street
Anchorage, AK 99501
Phone: (907) 278-5437

¹⁰³ This account comes in part from interviews and in part from Kizzia, "A Tribe Divided: Expelled Dissidents Challenge Rules," Anchorage Daily News, p. A1 (July 5, 1998), and "Ninilchik Tribe, Feds in Standoff," Anchorage Daily News, p. B1 (November 12, 1998).

Eklutna Tribal Court
26339 E. Village Road
Chugiak, AK 99567
Phone: (907) 688-6020

Village of Salamatof
P.O. Box 2682
Kenai, AK 99611
Phone: (907) 283-7864

Kenaitze Indian Tribe
P.O. Box 988
Kenai, AK 99611
Phone: (907) 283-3633

Seldovia Village Tribe
P.O. Box Drawer L
Seldovia, AK 99663
Phone: (907) 234-7898

Knik Tribe
Box 2130
Wasilla, AK 99687
Phone: (907) 373-2161

Native Village of Tyonek
P.O. Box 82009
Tyonek, AK 99682-3009
Phone: (907) 272-0707

Ninilchik Village
P.O. Box 39070
Ninilchik, AK 99639
Phone: (907) 567-3313

Alaska Court System

Anchorage Superior Court
Judge Elaine Andrews
Judge Larry D. Card
Judge Rene Gonzalez
Judge Karen L. Hunt
Judge Peter A. Michalski
Judge John Reese
Judge Eric T. Sanders
Judge Brian C. Shortell
Judge Milton Souter
Judge Dan A. Hensley
Judge Sen K. Tan
Judge Michael Wolverton
820 W. 4th Ave.
Anchorage, AK 99501
(907) 274-8611
Anchorage District Court
Judge Peter Ashman
Judge John R. Lohff
Judge Natalie Finn
Judge William H. Fuld

Judge Stephanie Joannides
Judge Gregory J. Motyka
Judge Sigurd E. Murphy
Judge Stephanie Rhoades
Judge James Wanamaker
820 W. 4th Ave.
Anchorage, AK 99501
(907) 274-8611

Superior Ct. Judge Harold M. Brown
Superior Ct Judge Jonathan H. Link
Magistrate Lynn Christensen
125 Trading Bay Drive, Suite 100
Kenai, AK 99611-7717
Phone: (907) 283-3110

Superior Court Judge Beverly Cutler
Superior Court Judge Eric Smith
District Ct. Judge Suzanne Lombardi
Magistrate David L. Zwink
435 South Denali Street
Palmer, AK 99645
Phone: (907) 746-7500

District Court Judge Francis Neville
3670 Lake Street, Suite 400
Homer, AK 99603-7686
Phone: (907) 235-8171

J. Chugach

A narrow strip of land along Prince William Sound and the Gulf of Alaska is home to a handful of Alutiiq villages and an Athabascan subgroup. Chugach Natives is the regional profit-making corporation, and Chugachmiut is the nonprofit. The federally recognized tribes are Chenega Bay, Eyak (Cordova), Nanwalek (English Bay), Port Graham, and Tatitlek.¹⁰⁴ The state court system in this area consists of district courts in Valdez and Homer, with magistrates in Seward and Cordova. DFYS has offices in Cordova, Seward, and Valdez. The state troopers have posts in Homer, Seward, and Glenallen.¹⁰⁵ The community of Valdez is discussing formation of a youth court to serve Valdez and perhaps other communities; this possible development is discussed in chapter 3.

1. Chugachmiut

Chugachmiut is a well-organized and relatively well-funded organization. Over the years, it has received funding from the STOP Violence Against Women program, the Department of Health and Human Services, BIA, and the Children's Justice Act. Chugachmiut has used this federal funding to develop an integrated approach to its social services, mental health systems, alcohol treatment, and community development. When developing a program, Chugachmiut works closely with the village councils to ensure that the community is ready to help develop the program and participate. It then provides training to council members, service providers, schools, and interested members of the community on how to recognize problems, address them, and hold state agencies accountable. In 1998, Chugachmiut received a \$300,800 grant from the Administration for Native Americans to help villages rewrite their constitutions and ordinances. It has worked with village councils to ensure that the general elements of due process and fairness are present in their proceedings, to add credibility to their traditional justice practices.

Child protection teams: Chugachmiut has used some of its federal funding to initiate child protection teams in the villages. These teams sometimes are agents of the traditional councils, and are charged with identifying high-risk situations and making recommendations to the councils or to DFYS. Membership of the teams varies by village, but may include council members, elders, ICWA workers, village health aides, school teachers, or others. The idea is to provide early intervention into troubled families. The team or one of its members will meet with a family and explain the team's concerns, discuss how to avoid more official action, and refer the family to services. Child abuse is reported to DFYS; DFYS also is notified if the intervention is rejected. At least two communities have put these teams into action, with good results. In one case, the DFYS social worker felt that the situation was not yet severe enough to intervene, but the team felt it was better to intervene while the parents were still amenable to treatment and while the problem could be solved without a lot of emotional, adversarial involvement. The family voluntarily complied with the team recommendations, and the compliance was monitored by the village child protection team. The Chugachmiut

¹⁰⁴ The area also includes two Native groups with pending applications for recognition: the Quteckak Tribal Council in Seward (formerly Mt. Marathon) and the Valdez Native Tribe.

¹⁰⁵ State offices in this region are less centralized than in other places. In Chenega, for instance, a complaint of family violence may be handled by a trooper from Glenallen, a district attorney from Palmer, and a DFYS social worker from Cordova, with court hearings in Seward or Valdez.

ICWA specialist helps provide ICWA training to DFYS employees. Chugachmiut is developing its protocols for responding to child abuse by working with DFYS and the state troopers. Chugachmiut works with parents and foster families to make sure the children remain eligible for as many benefits and services as possible.

Domestic violence: Chugachmiut is in the second year of a STOP Violence Against Indian Women Grant. It has helped to develop sexual assault response teams in some of the hub communities and has provided team members with cross-cultural training. Chugachmiut also provides training to villages on domestic violence and sexual assault. One council has met with a domestic violence perpetrator to tell him he must change his behavior or leave the village. In another village, Chugachmiut assisted the state by contacting air and water carriers to make sure a perpetrator was not returned to the village and the family. According to the Chugachmiut STOP Violence coordinator, it is hard for the state troopers or the court to provide safety for the victim in such a remote area.¹⁰⁶

Criminal cases: Traditional councils in this area use customary justice practices to deal with inappropriate adult behavior (like drinking and disturbing the peace) and juvenile delinquency. In some villages, the tribal council or a few of its members will sit with the individual and the family to explain the problem and to offer counseling. In other villages the council does not become officially involved, but individual community members will take on the responsibility to perform the same function. The consultation model used by the child protection team has many elements of this customary approach.

2. Other villages

Natives in Seward, Valdez, and Cordova make heavier use of state services than the four villages not connected to the road system. In the remote villages, the tribal councils function as tribal courts employing customary justice practices. There is some interest in establishing separate tribal courts or regional courts. Nanwalek and Port Graham have discussed forming a single court to serve both communities, as have Chenega and Tatitlek.

Regional Organization

Chugachmiut
4201 Tudor Centre, Suite 210
Anchorage, AK 99508
Phone: (907) 562-4155

¹⁰⁶ The coordinator gave the illustration of a state trooper who was called to Chenega in bad weather to handle a domestic violence episode. It was impossible to fly, so the trooper spent six hours in heavy seas to reach the village. By the time he arrived, the trooper was too seasick to take the perpetrator back to Seward by boat. They both waited in Chenega until the weather cleared.

Tribal Councils and Courts

Native Village of Chenega Bay
Box 8079
Chenega Bay, AK 99574-9999
Phone: (907) 573-5132

Native Village of Nanwalek
(English Bay)
Box 8065
Nanwalek, AK 99603-6665
Phone: (907) 281-2227

Native Village of Eyak (Cordova)
Box 1388
Cordova, AK 99574
Phone: (907) 424-7738

Native Village of Port Graham
Box 5510
Port Graham, AK 99603
Phone: (907) 284-2227

Native Village of Tatitlek
Box 171
Tatitlek, AK 99677
Phone: (907) 325-2311

Alaska Court System

Superior Ct. Judge Harold Brown
Superior Ct. Judge Jonathan H. Link
Magistrate Lynn Christensen
125 Trading Bay Drive, Suite 100
Kenai, AK 99611-7717
Phone: (907) 283-3110

District Ct. Judge M. Francis Neville
Deputy Magistrate Jeannette Olson
3670 Lake Street, Suite 400
Homer, AK 99603-7686
Phone: (907) 235-8171

District Court Judge Joel H. Bolger
Box 127
Valdez, AK 99686-0127
Phone: (907) 835-2266

Magistrate Susan Weltz
Box 898
Cordova, AK 99574-0898
Phone: (907) 424-3378

Magistrate George Peck
Box 1929
Seward, AK 99664-1929
Phone: (907) 224-3075

Magistrate (vacant)
P.O. Box 729
Whittier, AK 99693

K. Southeast Alaska

Southeast Alaska is a narrow strip of land extending several hundred miles along the Pacific Coast of Canada. Juneau is the capital, with a full range of justice services and state agencies. The court system has superior court judges in Juneau, Sitka and Ketchikan, with ten magistrates in smaller towns. The Alaska State Troopers have five posts and the Public Safety Academy in Sitka, and DFYS has seven offices. The youth courts for Sitka and Juneau are described in chapter 3. The economy of the region is diverse, with a mix of fishing, timber, tourism, and government. There are five borough governments: the City and Borough of Juneau, the City and Borough of Sitka, the City and Borough of Yakutat, the Ketchikan Gateway Borough, and the Haines Borough.

Sealaska is the profit-making corporation. The regional nonprofit corporation is the Central Council of Tlingit and Haida Indian Tribes, which does not serve all villages in the area. The federally recognized tribes are Angoon, Chilkat (Klukwan), Craig, Chilkoot (Haines), Douglas, Hoonah, Hydaburg, Kake, Kasaan, Ketchikan, Klawock, Metlakatla, Petersburg, Saxman, Sitka, Skagway, Wrangell, and Yakutat. Tlingit Haida also is a federally recognized tribe, created in the 1930's to represent the Tlingits and Haidas in land claims litigation.¹⁰⁷

Historically, the Tlingit and Haida lived in clans and house groups, governing themselves with chiefs and clan leaders. In the late 1800's, representatives of the United States government and cannery owners encouraged the use of local leaders to keep order. Tribal councils developed partly in response to pressures from teachers, government officials, and missionaries.¹⁰⁸

1. Metlakatla Court of Indian Affairs

Metlakatla is unique in having the only remaining Indian reservation in Alaska, the Annette Island Reserve. A group of Tsimshian Indians from British Columbia migrated to the island in the late 1800's; a reservation was created at their request in 1891. Later, the community established a governing structure that included both traditional and IRA forms of government and a tribal court. When the Alaska Native Claims Settlement Act was passed, Metlakatla chose to retain its status as a reservation rather than participate in the corporate structure. For many years there has been substantial agreement that Metlakatla is sovereign in the same sense as Indian tribes on reservations in other states.¹⁰⁹ As a result, its tribal court and tribal government have received a level of recognition from the State of Alaska not accorded any other tribe.

Metlakatla's court was first established at the time the reservation was created. It serves Tlingit, Tsimshian, and Haida Indians living in Metlakatla. It receives sufficient funding to pay a court clerk and two full-time judges appointed by the tribal council. It used to have a local appellate court that heard roughly twenty appeals per year. Now appeals are handled on contract with the

¹⁰⁷ D. CASE at 378.

¹⁰⁸ *Id.* at 339.

¹⁰⁹ See *Metlakatla Indian Community v. Egan*, 369 U.S. 45 (1962), *Atkinson v. Haldane*, 569 P. 2nd 151, 156 (Alaska 1977).

Northwest Intertribal Court System, whose judges decide if the issue is appealable and visit periodically to hear oral argument.¹¹⁰

The court applies federal law, ICWA, state law, local ordinances, and traditional law. Elders advise the court on matters of traditional law. The reservation has a new law and order code, a civil code, a fish and game code, a children's code, and jurisdiction over all traffic offenses occurring on the island. It has its own bootlegging law, subject to a \$5,000 fine. The village police used to conduct airport searches when people came to the island, but the new council has discontinued the practice. Felonies generally are referred to the state for prosecution.¹¹¹ Metlakatla has a police force of seven and a lock-up facility with three cells.

The Metlakatla court handles about 1,000 cases per year. The docket is divided into adult and juvenile misdemeanors, traffic, and civil cases (such as ICWA, small claims, landlord-tenant, and probate). During the first three quarters of 1998, the adult docket showed 316 criminal cases (mostly alcohol and alcohol-related), 150 traffic cases, 4 warrants, 18 restraining orders, and 40 trials. The juvenile docket showed 82 criminal cases, 39 traffic cases, 1 restraining order, and 7 trials. The civil docket showed 275 cases regarding restitution, child custody, and probate.

2. Tlingit Haida Central Council

The Central Council of Tlingit and Haida Indian Tribes is both the nonprofit arm of the Sealaska Corporation and a federally recognized tribe in its own right. Since 1990, the council has discussed formation of a circuit court with traveling judges, to enforce each community's ordinances and apply traditional law, and an appellate court. Judges have been elected for the last several years and have received some training, but have not heard cases. Tlingit Haida does not intend to pursue the matter aggressively until it receives some federal funding, believing that it takes money to do the job right. The council has discussed whether it might convene itself as a tribal court, but has decided not to do so because of concern over conflicts of interest. If formed, the court would most likely deal with ICWA cases and ownership of artifacts.

3. Sitka Tribal Court

The Sitka Tribe of Alaska established the Sitka Tribal Court in 1981 by tribal council ordinance. This ordinance also created the Sitka Native Child Welfare Agency and delegated to it the tribe's authority and responsibilities under ICWA. The court was established with two primary goals in mind: to assert the tribe's powers of self-governance and to assume responsibility for tribal children through application of federal and traditional Tlingit law.¹¹² The court consists of two judges appointed by the tribal council. The court's jurisdictional authority is described in tribal court rules, children's and civil procedure codes, and an appellate code. In cases involving traditional law, a

¹¹⁰ The address for the Northwest Intertribal Court System is included in chapter 1, section B2.

¹¹¹ The Department of Law occasionally hears of felonies that are not referred, but has no way to verify this or to know the strength of the cases.

¹¹² The court explained the meaning and importance of clan membership and traditional law in children's cases in *Hepler v. Perkins*, 13 Indian L. Rptr. 6011 (May 1986).

court of elders may advise the judge. Parties have a right of appeal to the Sitka Tribal Council. The court recently went through a period of inactivity due to high turnover in the child welfare agency, but it is now busy again.¹¹³

The court's funding has come from various sources over the years: the Administration for Native Americans, the Bureau of Indian Affairs, and recently from the STOP Violence Against Indian Women program. Base funding of \$20,000 per year is provided through the tribe's self-governance compact. The court has two judges, a tribal court administrator, and two VAIW positions. The Sitka tribe provides space and supplies. The chief judge is co-chair of the newly formed Alaska Tribal Judicial Council, promoting development of tribal courts across Alaska.¹¹⁴

Children's cases: About 90% of the court's cases are children's proceedings, mostly guardianships, adoptions, and child in need of aid matters. The court handles two to three cases a month, and now has about twenty cases pending. During the court's period of inactivity, the staff used the time to rewrite policies and procedures, and to create ICWA case studies for training new social workers. Sitka reports a cooperative working relationship with DFYS. Sitka and DFYS jointly do training for school system employees and justice system employees on child abuse reporting requirements. Sitka solicits foster homes for tribal court placements, and the judge personally has recruited families at community functions and on public television. The state does not allow the tribe to license foster homes, so foster parents for tribal placements do not receive financial assistance. Sitka is hopeful that in the future it may be able to work out a cooperative arrangement with DFYS for foster home licensing.

Domestic violence: The Sitka Tribe has received federal funding to work on rural child victimization and domestic violence. It has entered into a memorandum of agreement with the local shelter to contribute two half-time positions, a Native women's advocate and a sexual assault response team coordinator. It has entered into a memorandum of agreement with the City and Borough of Sitka pledging full faith and credit for domestic violence restraining orders issued by the tribal court, as part of a cooperative working relationship with the city attorney and police.

A Sitka representative sits on a state committee on domestic violence and sexual assault, to coordinate state and tribal policies and press for state enforcement of tribal domestic violence orders. The Sitka Tribe has been invited to take part in a national initiative to develop training and protocols for hospitals to use for domestic violence victims and child victims. The initiative seeks to provide support services to the family as a whole, in keeping with the tribe's philosophy of including the victim, the batterer, and the entire family in its domestic violence proceedings. Sitka's domestic violence coordinator hopes to work with the other Alaska Violence Against Indian Women grantees to share information and training and to coordinate interactions with state programs.

Juvenile justice: In the future, the Sitka court would like to do more work with juvenile delinquency cases. DFYS currently refers all prevention opportunities to the tribe first, for behavior

¹¹³ The Sitka Tribal Court was evaluated in detail in *Resolving Disputes Locally I*.

¹¹⁴ The work of the Alaska Tribal Judicial Council is described in chapter 1, section A4.

such as underage drinking and abusive behavior toward parents. The court would like to handle juvenile cases that call for adjudication, in order to explore alternative sentencing methods.

Probate: The Sitka court recently considered a case involving ownership of a home in the village.¹¹⁵ The Sitka tribal housing authority tried to repossess the home from a tribal member who claimed a right of inheritance in the house. The case involved many lawyers and witnesses, and construction of federal HUD rules. Because this was one of the few cases handled by the Sitka court that was not confidential, there were a number of observers, including the local superior court judge and magistrate.

Clan leaders project: Because the Sitka Tribal Court was envisioned as a judicial link between the tribe and other governments, the format and protocols of the tribal court closely resemble those of the western system, with court rules, process and codes designed to be compatible with other courts of record. This was seen as necessary to make full faith and credit and comity between the tribe and other courts an easier matter to accomplish. However, proceedings are rarely adversarial; the tribal court uses a mediation approach and tries to create a relaxed atmosphere for litigants. The court seeks to use traditional law whenever possible for resolution of conflict, for questions of natural resource use and preservation, for protection of the cultural heritage of the tribe, for probate matters under traditional law, for children's interests, and for domestic relations. The tribe convened the Sitka Community Association Court of Elders in 1984, bringing the clan leaders together to discuss traditional law. The court of elders provides advice and decisions on probate matters within the tribe, protection of ceremonial artifacts and gravesites, and child placement. The court of elders has fallen into disuse in recent years, but the tribe is reviving a similar forum.

Sitka's former tribal court administrator interviewed current IRA council members, who agreed that the clan leaders should be involved in the governmental process, to preserve the integrity of tribal society and to strengthen the tribal-clan relationship. The tribal court hopes to provide a forum where clan leaders and other elders can meet to discuss traditional law and develop a working relationship with the IRA council. As questions arise over ownership of clan houses, ceremonial property, and artifacts, the clan leaders and elders can discuss these matters and provide guidance to the tribal council or the tribal court.

4. Chilkat Indian Village Tribal Court

The Chilkat Indian Village Tribal Court serves the 120 Tlingit members of the village of Klukwan. The village's IRA constitution was amended in the mid-1970's to provide for the exercise of judicial authority, but the court's first case was not filed until 1990. The village received a \$32,000 BIA grant in 1992 for court training. The court has two volunteer judges who hear cases on an as-needed basis, perhaps once a year, and a volunteer clerk. The court can hear children's cases, but usually handles them through Tlingit Haida social services and DFYS. Informally, the court and council intervene in family situations to deal with drinking and disorderly behavior.

¹¹⁵ *In re Peck*, 24 Indian L.Rptr. 6197 (October 1997).

The court had one extended case involving the proper ownership of certain artifacts, a rain screen and four carved house posts. The federal district court retained jurisdiction over the entire case, but required the parties to exhaust tribal court remedies. The Chilkat court hired a judge *pro tem* to consider whether a tribal member violated a tribal ordinance by selling the artifacts to an art dealer without permission of the village council.¹¹⁶

In juvenile delinquency cases, the tribal council provides traditional counseling to errant young people. In one case, several youths broke into the principal's office at Klukwan High School. Although the case was heard in state court, a state trooper and juvenile probation officer worked to get the suggestions of the tribal council, village elders, and school board regarding probation conditions. The state court judge issued a suspended imposition of sentence and required the youths to comply with community work service and parental supervision conditions to be monitored by the village. All of the conditions were met and the village was happy with the outcome.

5. Klawock Cooperative Association

The Klawock Cooperative Association has discussed formation of a regional court with Hydaburg and Craig. It has not convened itself as a court, although its name was invoked in a banishment several years ago.¹¹⁷ A Washington state court was considering the sentencing of two young men from Klawock convicted of a brutal beating. A Tlingit man named Rudy James told the court that the culturally appropriate sentence was to banish the youths to an island for a period of time, and he convinced the court to transfer jurisdiction to a Tlingit tribal court for imposition of banishment. He promised that the tribe would pay restitution to the victims with the help of the young men. The Klawock tribal council had never functioned as a tribal court and declined to convene itself to hear the case, but the village council of elders favored the banishment. The court heard testimony from an anthropologist who supported the banishment, but other anthropologists later said that banishment was rarely used by Tlingits and only as a death sentence. James conducted a proceeding of his own and banished the youths to an island. The youths spent some time there but occasionally left the island. Eventually the Washington court reassumed jurisdiction over the case and gave the young men a conventional sentence.

Regional Organization

Central Council Tlingit and Haida Indian Tribes of Alaska
Andrew P. Hope Building
320 W. Willoughby Ave., Suite 300
Juneau, AK 99801-9983
Phone: (907) 586-1432

¹¹⁶ See *Chilkat Indian Village v. Johnson*, 870 F. 2nd 1469, 1473-75 (9th Cir. 1989). The Ninth Circuit held that application of the ordinance against the non-Indian art dealer was a matter that could be heard in federal court, while the acts of the tribal member who offered the artifacts for sale fell within the internal jurisdiction of the village. The decision of the tribal court is found at 20 Indian L. Rptr. 6127 (December 1993).

¹¹⁷ Meyerowitz, "Tradition on Trial: Is Banishment of Young Tlingits Legitimate Punishment — or One Man's Coup?" Anchorage Daily News, page F1 (July 22, 1994).

Tribal Councils and Courts

Angoon Community Association
Box 188
Angoon, AK 99820
Phone: (907) 788-3411

Chilkat Indian Village (Klukwan)
P.O. Box 210
Klukwan, AK 99827
Phone: (907) 767-5586

Chilkoot Indian Association (Haines)
Box 490
Haines, AK 99827
Phone: (907) 766-2323

Craig Community Association
P.O. Box 828
Craig, AK 99921
Phone: (907) 826-3396

Douglas Indian Association
P.O. Box 240541
Juneau, AK 99824
Phone: (907) 364-2916

Hoonah Indian Association
Box 602
Hoonah, AK 99829
Phone: (907) 945-3545

Hydaburg Cooperative Association
Box 305
Hydaburg, AK 99922
Phone: (907) 285-3666

Organized Village of Kake
Box 316
Kake, AK 99830-0316
Phone: (907) 785-6471

Organized Village of Kasaan
Box KXA-Kasaan
Ketchikan, AK 99950-0340
Phone: (907) 542-2230

Ketchikan Indian Corporation
429 Deermont Ave.
Ketchikan, AK 99801
Phone: (907) 225-5158

Klawock Cooperative Association
Box 411
Klawock, AK 99925
Phone: (907) 755-2265

Metlakatla Court of Indian Affairs
P.O. Box 8
Metlakatla, AK 99926
Phone: (907) 886-4021

Petersburg Indian Association
Box 1418
Petersburg, AK 99833
Phone: (907) 772-3636

Organized Village of Saxman
Route 2-Saxman, Box 2
Ketchikan, AK 99501
Phone: (907) 247-2502

Sitka Tribal Court
456 Katlian St.
Sitka, AK 99835-7505
Phone: (907) 747-3207

Skagway Village
P.O. Box 399
Skagway, AK 99840
Phone: (907) 983-2885

Wrangell Cooperative Association
Box 1198
Wrangell, AK 99929
Phone: (907) 874-3481

Yakutat Tlingit Tribe
Box 418
Yakutat, AK 99689
Phone: (907) 784-3238

Alaska Court System

Superior Court Judge Larry Weeks
Superior Court Judge (vacant)
District Court Judge Peter Froehlich
Magistrate John Sivertsen, Jr.
Box 114100
Juneau, AK 99811-4100
Phone: (907) 463-4741/4742

Superior Ct. Judge Michael Thompson
Superior Ct. Judge Thomas Jahnke
District Ct. Judge Patricia Collins
Magistrate Teresa R. Chenhall
415 Main Street, Room 400
Ketchikan, AK 99901-6399
Phone: (907) 225-9876

Superior Court Judge Larry C. Zervos
Magistrate Bruce E. Horton
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Sitka, AK 99835-7759
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Magistrate Mike A. Jackson
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Magistrate Christine Ellis
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Craig, AK 99921-0646
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Magistrate Lesley Ann Olerud
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Magistrate Gail D. Corbin
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Magistrate Robert Carlson
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Magistrate Terry A. Bissonette
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Wrangell, AK 99929-0869
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Magistrate Victoria Demmert
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Yakutat, AK 99689-0426
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L. Copper River

The Copper River basin is sparsely populated, with no large communities. Historically, Athabascan Indians inhabited the area, governing themselves in small bands; currently, the area is also home to a number of non-Natives. The economy of the area is dependent on subsistence hunting and fishing and commercial recreation. Most of the communities in this area are on the road system. State court cases are heard by the district court in Valdez or by magistrates in Glenallen and Tok. DFYS has an office in Valdez; the state troopers have posts in Delta Junction, Glenallen, and Tok. Community members in Valdez are in the process of organizing a youth court, discussed in chapter 3, with possible satellite courts in Copper Center and Cordova.

The regional profit-making corporation is Ahtna, and the regional nonprofit is the Copper River Native Association (CRNA). The federally recognized tribes are Cantwell, Chistochina, Chitina, Gakona, Gulkana, Kluti Kaah (Copper Center), Mentasta, and Tazlina. The area is home to the first regional tribal court to begin operation in Alaska.

1. Copper River Native Association

CRNA has worked with its villages on development of individual tribal courts and on a regional court agreement. CRNA social workers work on children's cases in tribal courts and interventions in state court. CRNA has entered into an agreement with the state on the licensing of foster homes and has worked with the tribes to identify foster families who might be eligible for licensing. CRNA also is interested in possible development of community courts for juvenile offenses.

2. Copper River regional tribal court

In late 1998, the five villages currently served by CRNA (Kluti Kaah, Gulkana, Tazlina, Cantwell, and Gakona) entered into a regional tribal court agreement to serve all five villages. Because Kluti Kaah had a well-established tribal court, the villages decided to use that court as the foundation of the regional court. Each tribal council passed a resolution to use the Kluti Kaah tribal court for its domestic relations and child in need of aid cases, and passed an agreed-upon set of ordinances governing domestic relations and child in need of aid procedures. Each village will add a judge to the Kluti Kaah panel of judges.

In the Kluti Kaah court, the parties usually pay a fee for use of the court; when they cannot, the tribal council picks up the expense. It is expected that funding for the regional court will work the same way, with each party's tribe paying the fee if the party cannot. As of January 1999, the court has handled only one case, a traditional adoption from Tazlina. The villages hope that establishment of the court will improve the handling of ICWA cases, allowing tribal social workers to follow cases from referral and investigation to placement and monitoring.

3. Kluti Kaah Tribal Court

The Native Village of Kluti Kaah has records of court proceedings dating back to 1934. The traditional council settled civil disputes, addressed disruptive behavior, and performed traditional

marriages. In 1984, the traditional council began writing down its ordinances, which now cover custody, adoption, family matters, taxes, and juvenile misbehavior. The village formed a separate tribal court in the late 1980's, and the court has been fairly active since 1994.

Apart from the regional court agreement, the Kluti Kaah court consists of four active judges and one alternate, chosen by the traditional council. The judges currently are three elders and two council members, although it is not necessary to be a council member to be one of the judges. The judges sit in panels of three at hearings. Paperwork is handled by the village administrator and the tribal court clerk. In 1997, the court heard 12 cases, six of which required some monitoring. Monitoring is usually done by one of the judges who did not sit on the panel. The court meets once a month, and the tribe finds that it takes a fair amount of energy to keep it going. Judges are paid \$100 per court session, but are not paid for monitoring. The court clerk is paid by the hour and also donates many hours of his time.

The court handles mostly traditional adoptions and juvenile misbehavior. When juveniles act up and violate village ordinances, the court may sentence them to community work service, to stay in school and pass their classes, and to observe curfew. More serious cases might be referred to the Native children's program at Galena, to substance abuse treatment, or to counseling. Most juvenile problems seem to involve drinking.

Kluti Kaah generally has not used its tribal court for child in need of aid cases, although it has done so on occasion. In 1997, it summoned a mother and father into tribal court to discuss the welfare of their two children, and the tribal court sent the children to a foster home. The mother later went to state court to get a restraining order against the father and a state custody order giving the children to her. Kluti Kaah contested the state custody order and the state court returned custody to the village, because it was a federally recognized tribe that took custody of the child before the state became involved. Kluti Kaah has developed a child protection team of volunteers chosen by the council.

In 1992, the Kluti Kaah Tribal Court took jurisdiction over a tax case against Alyeska Pipeline Service Company for taxes due where the pipeline ran over village land. Alyeska sued the tribe, and in 1996 the Alaska federal district court held that the tribe did not have jurisdiction to tax the pipeline. The tribe did not appeal.

4. Chitina Tribal Council

The Chitina Tribal Council convenes separately as a court to hear cases. The village has ordinances governing curfew, noise, and other disruptive behavior, and violations most often lead to a sentence of community work service. The council enforces rules against drinking in the village housing complex, where all of the tribal members live, and repeated violations lead to an eviction action. The village does not have a village police officer or VPSO, and usually will call the state troopers for any instance of violence or more serious crime. The village has a memorandum of agreement with Adult Victims of Violence in Valdez to report domestic violence and to transport victims to a safe house in Copper Basin. It also sends families to counseling in Anchorage or Copper Center.

The council has been hearing its own ICWA cases for three years and has adopted ICWA as a village ordinance. The village ICWA worker files a petition with the council and presents the case; if warranted, the council will take custody of the child. The council has handled 22 ICWA cases in the last several years, six of which were transferred to the council's jurisdiction by courts in other states. The tribes report a generally good working relationship with the DFYS caseworker in Valdez, who refers cases to them, discusses treatment plans, and follows up with families if problems develop. However, in one ICWA case the tribe spent \$39,000 in attorney fees to establish its right to intervene. The village council eventually was able to work out an agreement with DFYS to keep both parents' tribes involved, even after Chitina's tribal member relinquished custody of the child. The village council has not had any appeals of its decisions while sitting as a tribal court. If necessary, an appeal would be referred to a panel of elders for decision.

Chitina hopes to begin a children's court, something like a youth court, to handle minor juvenile misbehavior. The first two infractions will be heard in front of a group of the youth's peers; after that, the youth will be summoned in front of the tribal council. Parents and neighbors will be able to hand out citations for noise and curfew violations, and the council will issue a subpoena to appear in the children's court.

5. Mentasta Lake and Chistochina

Mentasta Lake has an ordinance that authorizes the council to act as the tribal court on a variety of issues. Although the council regularly hears cases of disturbing the peace and vandalism, its caseload has dropped considerably over the last ten years. The council currently hears five to seven cases per year of disturbing the peace, compared to 25 per year in 1990. Mentasta Lake sponsors community activities that encourage sobriety, such as open gym nights and Alcoholics Anonymous meetings. Village leaders feel the sobriety movement has greatly improved the quality of life in the village.

An offender will usually admit to the offense and will be told to stop drinking; referral to alcohol counseling is one of the most common sanctions. If the individual continues to drink or commits a serious violation of village law, the council may ban him from the village for thirty days, ninety days, or a year. All members of the council go in person to deliver a letter announcing the banishment. When individuals are banished, state troopers are sometimes able to remove them from the village because of outstanding warrants, but otherwise the troopers do not get involved.

Mentasta Lake has been called upon to handle family complaints. In one case a family violated traditional law by failing to supervise its children, one of whom was getting into trouble. The court called the family before it for an explanation. The family agreed to leave the village on its own initiative. When the family had not left a week later, the court issued a judgment ordering them to leave, and the family complied. In another case, parents sought the council's advice on how to prevent a certain young man from seeing their daughter, and the council sought advice from one of the elders on the traditional way to deal with such a problem. The Mentasta Lake and Chistochina councils share an ICWA worker who intervenes in state court. The councils themselves do not hear ICWA cases unless they are uncontested.

Regional Organization

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Tribal Councils and Courts

Native Village of Cantwell
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Cantwell, AK 99729
Phone: (907) 768-2591

Gulkana Village
Box 254
Gakona, AK 99586
Phone: (907) 822-3746

Native Village of Chistochina
P.O. Box 241
Gakona, AK 99586
Phone: (907) 822-3503

Mentasta Traditional Council
P.O. Box 6019
Mentasta, AK 99780
Phone: (907) 291-2319

Native Village of Chitina
P.O. Box 31
Chitina, AK 99566
Phone: (907) 823-2215

Native Village of Kluti Kaah
P.O. Box 68
Copper Center, AK 99573
Phone: (907) 822-5541

Native Village of Gakona
Box 303
Copper Center, AK 99573
Phone: (907) 822-4086

Native Village of Tazlina
Box 87
Glenallen, AK 99588
Phone: (907) 822-5865

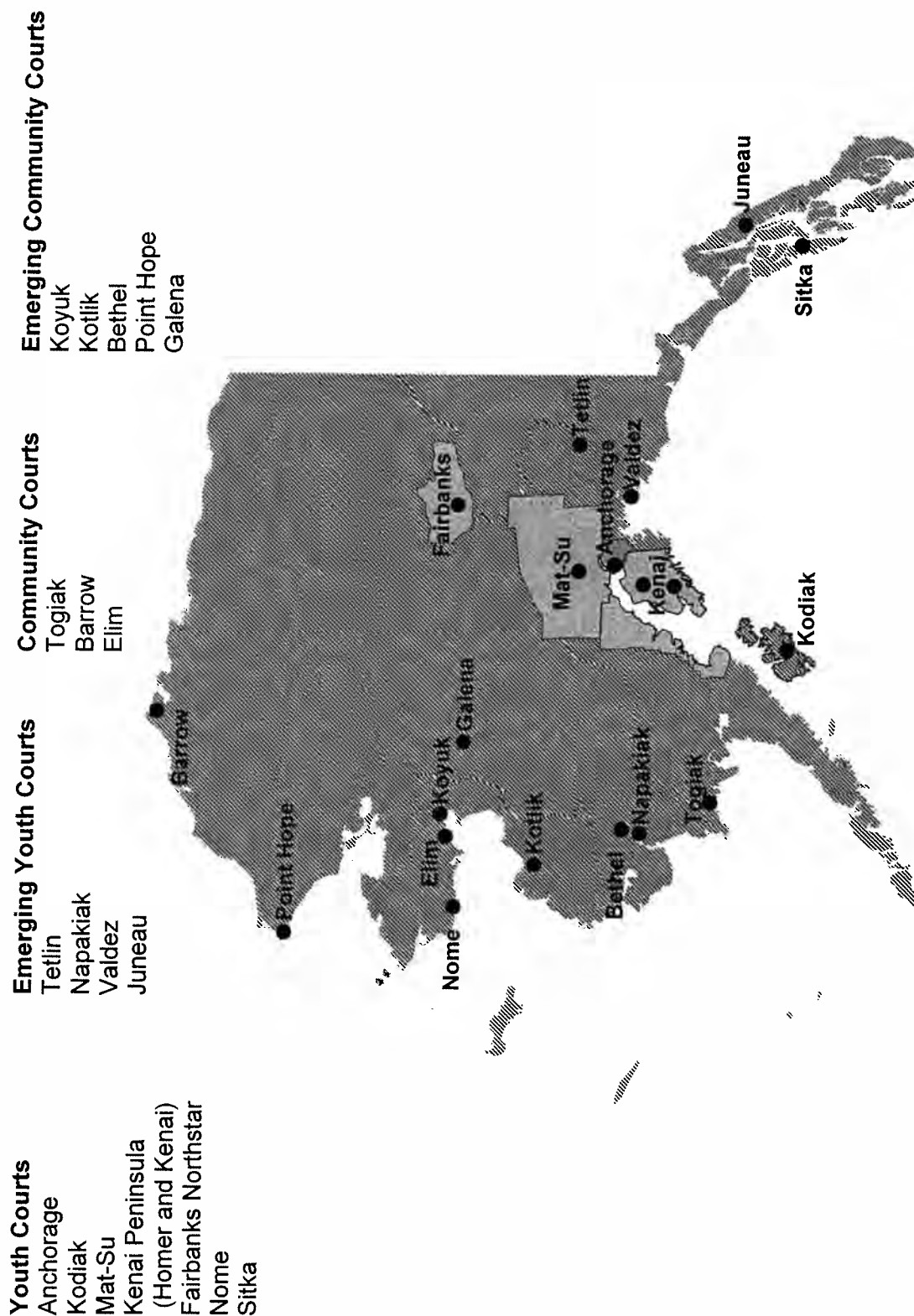
Alaska Court System

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Valdez, AK 99686-0127
Phone: (907) 835-2266

Magistrate Joseph W. Miller
Box 187
Tok, AK 99780-0187
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Magistrate Jean Wilkinson
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Glenallen, AK 99588-0086
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Figure 6
Communities with Youth and Community Courts
December 1998



Map provided by Alaska Department of Health and Social Services, Division of Family and Youth Services, January 1999

Chapter 3

Youth Courts

The first youth court in the state was formed in 1989 in Anchorage. The goal of the program was two-fold: to provide peer adjudication of juvenile delinquency cases on referral from the state, and to offer high school students a hands-on training program in the American criminal justice process. For the first seven years of the program, student participants tried and sentenced approximately twenty cases annually. In 1996, the program had enough participants to begin arraigning and sentencing the larger number of juveniles who plead guilty.¹¹⁸ With that structural change, the Anchorage caseload expanded to over 500 cases in 1997, making it a major alternative to DFYS and the Alaska Court System.¹¹⁹

Because of the success of the Anchorage program, the last two years have seen the proliferation of youth courts across the state. Youth courts are up and running in the Mat-Su Valley, Kenai-Soldotna, Homer, Fairbanks, and Kodiak. Courts began operation in Nome and Sitka at the start of the 1998-99 school year, while courts in Kotzebue and Valdez are in organizational stages, and the Juneau court is reorganizing.¹²⁰ In most of these courts, students act as judges, prosecutors, bailiffs, and jurors, providing trials and sentencings for juvenile misdemeanors and violations.¹²¹ Figure 6 (page 102) is a map showing the location of existing and emerging youth courts and community courts.

The development of new youth courts has been greatly assisted by the Anchorage Youth Court, which reproduces its training materials and provides volunteer technical assistance to students from new courts. Youth court development also has been encouraged by DFYS, through the services of a project coordinator and small technical assistance grants. A student from the Homer Youth

¹¹⁸ Alaska youth courts are unusual in allowing defendants to enter a not guilty plea and proceed to trial; in most other places, defendants are only eligible for youth court if they are willing to plead guilty. While the Alaska procedure involves much more training and time, those involved say that holding trials teaches more about the American system of justice and promotes respect for the system. The courts occasionally get acquittals, as well as dismissals by the student prosecutor.

¹¹⁹ In FY 1997, DFYS handled 8,163 youth corrections referrals statewide. About one-third of these cases were referred to the state court system on a petition for adjudication. Referrals to youth court are made under the authority of AS 47.12.400.

¹²⁰ Community members in Valdez are discussing possible satellite courts in Cordova and the Copper Center area.

¹²¹ Community courts handling juvenile delinquency matters have been formed or are under discussion in a number of places. In these courts, the defendants are juveniles but the judges are tribal council members or elders. Because of their significant differences from youth courts, these courts are addressed in the next section of this report.

Court has set up a statewide youth court association to assist youth courts in their networking efforts. The state's youth courts hold regular conferences to exchange ideas and receive further training. Anchorage will host the national youth court conference in May 1999.

In addition to youth courts based on a state court system model, some villages are developing youth courts modeled after tribal courts. These youth courts plan to employ open discussion and restorative justice approaches rather than an adversary system, and to seek the involvement of elders. The Alaska Native Justice Center is developing pilot youth court programs in Tetlin and Napakiak, and plans to train other villages if the programs prove successful.

Youth court development has been aided by federal and state funding. The Department of Justice administers Byrne formula grants for state and local law assistance, along with Byrne discretionary grants for innovative criminal justice programs. The Alaska Native Justice Center received a \$500,000 discretionary grant for its tribal youth court project. Federal money for youth courts also is provided through the Office of Juvenile Justice and Delinquency Prevention (with some Native set-asides), the National Highway Safety Planning Commission (to combat teen drinking and driving), and through Community Development Block Grants from the Department of Housing and Urban Development. The state of Alaska provides small grants for youth court development through DFYS Youth Services and through the Safe and Drug-Free Schools Program of the state Department of Education.¹²²

Most youth courts have been initiated through the volunteer efforts of local youth, attorneys, and teachers, with the support of the juvenile probation officer. They have attracted support from the local community, receiving monetary and in-kind contributions from individuals, teachers, businesses, attorneys, and judges. Some receive private or municipal grants; others have hot dog sales to raise funds. They represent a dynamic development, energizing student and adult volunteers and often handling a significant number of cases.

A. Anchorage Youth Court

The Anchorage Youth Court is the oldest and largest youth court in the state, serving as the model and training ground for many of the state's other youth courts. It was organized in 1989 by the Young Lawyers Section of the Anchorage Bar Association with support from the Anchorage Police Department, the Alaska Court System, DFYS, the Anchorage School District, and student and parent volunteers. Between 1989 and 1995, student volunteers adjudicated between 18 and 20 cases annually and earned awards from the American Bar Association and Information America. In 1995, the Anchorage Assembly began to provide substantial funding to the state (\$125,000 in 1997) to support three state juvenile intake officer positions to handle referrals to youth court.¹²³ Community donations now provide up to \$125,000 of further support each year. Starting in 1996, there was a

¹²² Further information about state and federal youth court grants is available by calling the DFYS Youth Services office in Juneau.

¹²³ The Municipality of Anchorage also funds a community service coordinator for the Making a Difference Program, the parent organization for the youth court, who helps supervise work service for the youth court.

dramatic increase in the number of student volunteers and the number of defendants referred to the court.

Cases are referred to the Anchorage Youth Court by the DFYS intake unit at McLaughlin Youth Center. Typical cases involve acts of vandalism, theft, second-degree burglary, and destruction of property. DFYS informs the juvenile and the family that going through Anchorage Youth Court is voluntary, but that failure to comply will result in DFYS action. DFYS holds the file open for up to six months, and all action by Anchorage Youth Court must be completed within this time. If the defendant complies with the conditions set by Anchorage Youth Court, the record will be closed and no formal record of the case will be kept. If the juvenile refuses to cooperate or is arrested again, the referral is revoked and the case goes back to DFYS. Eligible offenders are those aged 12-18 who are arrested for committing a criminal offense but who are not considered a threat to themselves or society.

In the Anchorage Youth Court, the roles of attorneys, judges, bailiffs, clerks, and jurors are filled by young people between the ages of 12-18, with some adults in supervisory roles. Defendant youths are afforded a chance to be tried by their peers and to resolve their legal problems without receiving a criminal record. In order to become attorney members of Anchorage Youth Court, students complete an intensive legal training course where they learn basic legal principles and practices, eventually passing a special bar exam and taking an oath as a youth court attorney. Twice a year, Anchorage trial attorneys and judges provide a two-day workshop for youth court attorneys on how to prosecute and defend trials.

In 1998, Anchorage Youth Court's volunteer membership was up to 325 students. DFYS referred 515 cases in 1997 and 440 cases in 1998. In 1997, defendants paid victims \$6,925 in restitution and worked 10,692 hours in community work service. Since 1996, 80% of defendants referred to the program have completed it. Of those completing the program, 89% have not reoffended. The program has recently won recognition from the Department of Justice Office of Juvenile Justice Delinquency Prevention. The Anchorage Youth Court now has an executive director, a case manager, and several support staff.

B. Mat-Su Youth Court

The Mat-Su Youth Court follows the Anchorage model as far as student involvement and court procedures. One difference is that the Mat-Su adult program coordinator acts as the intake officer and screens police reports for appropriate referrals in consultation with DFYS. The court has 35 student volunteers and a number of active adult volunteers. The local district attorney and public defender help teach the courses and attend a number of the hearings.

The court hears 100-150 cases a year, mostly misdemeanors, with occasional felonies like possession of marijuana on school grounds. Approximately 60-70% of the cases are shoplifting or theft, with another substantial percentage of fights and minor assaults. Court sessions are held in the Palmer courthouse on Saturdays. The youth court bar association meets every month for continuing education programs. The court receives funding from the Alaska Department of Education, DFYS,

and the federal Office of Juvenile Justice Delinquency Prevention. Student members of the court have traveled to Valdez to provide training for the youth court there.

C. Kenai Peninsula Youth Court

The Kenai Peninsula Youth Court has two offices, one serving the Kenai/Soldotna area and the other serving Homer. The courts use the Anchorage model and materials, with some modifications to make the program sustainable in a smaller community. The courts have been hearing cases since March 1997, a total of 73 cases in Kenai and 34 in Homer. The major offenses are thefts, fights, and marijuana possession. The court hears mostly misdemeanors, although occasionally DFYS will refer a felony case as a misdemeanor when youth court seems the appropriate way to handle the offense. The courts are currently trying to work out a memorandum of agreement with local police and the Department of Law to handle first-time instances of minors consuming alcohol.

Sentences commonly involve community work service. The program director said that community work service is more visible in a smaller community, and local agencies often call the court looking for student defendants to act as volunteers. When the Homer court first was set up, there was concern over conflicts of interest and whether it was possible to have a youth court in a one high-school town. The program director has found that the student attorneys are very sensitive to conflicts of interest and straightforward about avoiding those cases. The court has had no instances of retaliation against attorneys or judges. Student prosecutors have dismissed several cases referred to the court by DFYS. So far, the Kenai DFYS office has accepted the dismissals as an appropriate exercise of the student prosecutor's power to screen out weak cases for lack of evidence.

The Homer court meets in the state district courtroom, and the judge and magistrate stay after hours to keep the building open. In Kenai, the group uses the old state courthouse. Local judges, attorneys, police officers and high school teachers work together to teach the classes. Office space is donated by private attorneys, and the two communities in general provide excellent support. The Kenai courts are funded by an Office of Juvenile Justice Delinquency Prevention grant and local contributions.

D. Kodiak Teen Court

In fall 1995, a Kodiak attorney spearheaded the effort to establish a youth court at Kodiak High School modeled after the Anchorage Youth Court. Interested students take an intensive four-month class, followed by a bar exam. There are thirty to forty teen court attorneys at any one time, acting as judges, prosecutors, and defense attorneys. Cases are screened for the court by the DFYS juvenile probation officer, who refers appropriate cases after speaking with the teen and the parents. Approximately one-third of the cases are felonies, including burglaries, criminal mischief, and felony theft. The rest of the cases are misdemeanors, primarily shoplifting, marijuana, and theft.

When an offender is found guilty, the sentence always involves community work service, restitution, and an apology to the victim in person or in writing. The Kodiak teen court invites victims to attend the hearing, make a victim impact statement, and bring photographs of any damage

done. The court finds that this technique is very effective for showing juveniles the effect of their impulsive behavior. In cases involving shoplifting or drugs, the court may order the juvenile to write an essay on the effect of the crime on society. Juveniles may be referred to alcohol and drug counseling as part of the sentence. A 17-year-old who is sentenced will be ordered to attend an adult criminal sentencing, to understand how serious criminal proceedings become once an offender is no longer in the juvenile system. The court is run by three adults: a volunteer attorney, a volunteer school teacher, and a paid half-time administrator funded through a state juvenile justice grant.

E. North Star Youth Court

The North Star Youth Court in Fairbanks is modeled after the Anchorage program. It began in 1996 by hiring a coordinator and training students, and heard its first cases in June 1997. Its caseload consists of juvenile misdemeanors, primarily theft, marijuana possession, assault, and trespass. Most of the juveniles are first-time offenders, although a handful are repeat offenders. Most Fairbanks cases go to trial. The court handled 61 cases in its first year and hopes to double that the second year. The court uses a sentencing structure that provides a set number of community work service hours for a particular offense, adjustable up or down depending on the circumstances. Sentences may include essays, apology letters, restitution, drug and alcohol assessment, and referral to the anti-shoplifting program. Each juvenile's diversion agreement with DFYS sets a number of other conditions, including an agreement to remain in school.

The program receives its funding from the state Department of Education Drug and Violence Prevention Program, DFYS, and the Fairbanks Private Industry Council. The program receives donations and in-kind support from the school district, bar association, Optimists, Rotary, and other nonprofit organizations. Ten attorneys and judges act as legal advisors to the court, helping to staff court sessions every Thursday night. The state court provides courthouse space and security. There are 60 active students in the student bar association, who participate in training, courtroom activities, conferences, and community presentations. The students contributed 2,500 hours to the program in its first year.

F. Nome Youth Court

The city of Nome began setting up a youth court at the high school during the summer of 1998. It is using a model similar to youth court in Anchorage, but has developed its own curriculum for student training, for which it received an innovative law enforcement grant. The youth enters into a non-binding no contest plea, with nothing formal on the youth's record if all conditions are completed satisfactorily.

The Nome Youth Court began hearing cases during the 1998-99 school year. A total of 16 students took the 10-week youth court class at the high school, taught by a local teacher. Local attorneys helped train the student attorneys and will act as legal advisors in court proceedings. The superior court judge has donated courtroom space, teaches a class, and advises the youth court coordinator. The coordinator is paid out of a grant from DFYS. Student volunteers raise money by

selling hot dogs at snow machine races and at the finish line of the Iditarod. A student-run coffee shop generated over \$5,000 during the 1998 Iditarod to support the youth court.¹²⁴

The court hears misdemeanors like theft, assault, and vandalism, and violations like tobacco, minor consuming alcohol, and curfew. Misdemeanors are referred by DFYS, and violations may be referred directly by the court. Student judges sit in panels of three, while prosecutors and defense attorneys work in pairs. Adults act as legal advisors and bailiffs if necessary.

G. Juneau-Douglas High School Youth Court

The Juneau-Douglas High School Youth Court operated from 1994 to 1998 as a way to handle school offenses for which a student would ordinarily be suspended, such as fistfights, theft, cheating, and forgery of parental signatures. Student who admitted the offense were given the option of referral to youth court. The sentencing was handled like a trial, with a student prosecutor, defense attorney, and jury for sentencing. Sentences included community work service, restitution, service on another jury, and a letter of apology. The court handled 20-24 cases per year. It did not receive funding or local contributions, but relied heavily on the volunteer efforts of lawyers and teachers. The local district court judge provided courtroom space, trained student judges, and helped to preside over some court proceedings.

As of the 1998-99 school year, the court is no longer active. The Juneau-Douglas community has formed a group to discuss formation of a youth court, based on the Anchorage model, to handle crimes arising outside the school context.

H. Sitka Youth Court

The Sitka Youth Court began training student lawyers and setting up its procedures during the 1997-98 school year, with plans to begin hearing cases during 1998-99. The court was originally designed as a teen court for Blatchley Junior High, handling first-time offenders who violated school rules. Due to lack of cases, the program has expanded to include youth referred by DFYS for offenses such as vandalism, curfew, smoking, drinking, and fighting. The court has a student judge, prosecutor, and defense attorney, and sentencing by a student jury. For violations of school rules, there is a school sentencing grid showing minimum and maximum sentences under the school disciplinary policy. The court received a DFYS grant to help it expand to a wider range of misdemeanors. It has received significant support from the district attorney, the judge and magistrate, local attorneys, the juvenile probation officer, and teachers. It has received some DFYS funding for a part-time coordinator and a number of in-kind contributions.

I. Village Youth Courts

In 1998, the Alaska Native Justice Center received a \$500,000, two-year grant from the Department of Justice Bureau of Justice Assistance to establish a pilot youth court program in two

¹²⁴ For its strong support of its youth, the Nome community received an award from the Department of Health and Social Services.

Native villages. Once the pilot programs are in operation, ANJC will provide training and technical assistance to other interested villages based on the experience of the pilot programs. Like the urban youth courts, the courts will handle juvenile offenses on referral from DFYS, in lieu of official referral to state court. The courts also may handle violation of municipal or tribal ordinances. Unlike the urban youth courts, the village courts will not be modeled on the American adversary system. Instead, the Native Justice Center will work with the local communities to design youth court models similar to tribal court procedures, consistent with local Native cultures and traditional law. With DFYS funding, the Native Justice Center also will be writing a guide to establishing successful urban and rural youth courts.

One village youth court will be located in the Native Village of Tetlin, near Tok. The traditional council has hired a coordinator and appointed a coordinating committee to design the program, with the assistance of the Native Justice Center, DFYS, and Tanana Chiefs. The Tetlin traditional council currently acts as a tribal court, primarily hearing ICWA cases. The council will train the youth court members how to act as a tribal court, and the council will act as an appellate court if necessary. The youth court expects to handle problems such as vandalism, theft, drinking, and curfew violations. Since there are only 16 secondary students in Tetlin, all of them will participate in the court. The school will set up a youth court class and offer school credit. The coordinating committee is discussing the possibility of handling cases from Tok as well. The committee and council also are discussing how to structure meaningful alternative sentences.

The other village youth court will be in the Native Village of Napakiak, near Bethel. This court is in the organizational stage, with active participation by the school, the city and tribal governments, and village elders. A coordinator was hired in December 1998. Although students will be strongly involved, the court also may include elders in its deliberations.

Statewide Organizations

Alaska Youth Court Association
c/o Kenai Peninsula Youth Court
3691 Ben Walters, Suite 3
Homer, AK 99603
Contact: Lorne Absher (907) 235-7129

Alaska Native Justice Center
670 West Fireweed Lane
Anchorage, AK 99503
Contact: Lynn Ballou (907) 265-5971

Division of Family & Youth Services
P.O. Box 110630
Juneau, AK 99811
Contact: Tom Begich (907) 465-3572

Youth Courts

Anchorage Youth Court
Box 102735
Anchorage, AK 99510-2735
Phone: (907) 274-5986

Juneau-Douglas Youth Court
10014 Crazy Horse Drive
Juneau, AK 99801
Phone: (907) 586-5742

Kenai Peninsula Youth Court (Kenai)
145 Main Street Loop #146
Kenai, AK 99611
Phone: (907) 283-4017

Kenai Peninsula Youth Court (Homer)
3691 Ben Walters, Suite 3
Homer, AK 99603
Phone: (907) 235-4985

Kodiak Teen Court
326 Center Avenue, Suite 203
Kodiak, AK 99615
Phone: (907) 486-8505

Mat-Su Youth Court
1801 Parks Highway, Suite C-06
Wasilla, AK 99654
Phone: (907) 373-5193

Napakiak Youth Court
c/o Napakiak Corporation
P.O. Box 34030
Napakiak, AK 99634
Phone: (907) 589-2135

Nome Youth Court
Box 801
Nome, AK 99762
Phone: (907) 443-2585

North Star Youth Court
800 Cushman Street, #101
Fairbanks, AK 99701
Phone: (907) 457-6792

Sitka Youth Court
Box 1034
Sitka, AK 99835
Phone: (907) 747-3500

Tetlin Tribal Youth Court
P.O. Box TTL
Tetlin, AK 99779
Phone: (907) 883-3676

Chapter 4

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 an Alaska Native context. 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.¹²⁵ 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.¹²⁶ 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, apparently successfully, 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. Figure 6 (page 102) is a map showing 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

¹²⁵ The village youth courts developing with the help of the Alaska Native Justice Center are described in chapter 3.

¹²⁶ The agreements make an exception for misdemeanor sexual abuse of a minor, which must be handled in state court.

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 consequences would be.¹²⁷ 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

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.¹²⁸ 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

¹²⁷ 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 1940s, community work service involved construction of the Iditarod Trail.

¹²⁸ 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.

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 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 a 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 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.

D. 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, the Orutsaramiut Native Council has received a federal grant to develop a tribal court for juvenile offenders, which may receive referrals from DFYS.¹²⁹

Statewide Organizations

Division of Family & Youth Services
P.O. Box 110630
Juneau, AK 99811
Contact: Tom Begich (907) 465-3572

Community Courts

Barrow Community Court
c/o Native Village of Barrow
P.O. Box 1139
Barrow, AK 99723
Phone: (907) 852-4411

Native Village of Elim
Box 39073
Elim, AK 99739
Phone: (907) 890-3737

Native Village of Koyuk
Box 30
Koyuk, AK 99753
Phone: (907) 963-3651

Togiak Community Court
c/o City of Togiak
P.O. Box 99
Togiak, AK 99678
Phone: (907) 493-5932

¹²⁹ The Bethel court is described in Chapter 2, Section E8.

Chapter 5

Alternative Dispute Resolution

Alternative dispute resolution can take a number of forms. Several government and nonprofit agencies offer investigation, complaint resolution, mediation, and conciliation services tailored to specific types of problems. In urban areas, private mediation services are available for a fee. The state court system has initiated several pilot projects and rules changes designed to encourage resolution of disputes without litigation. Although two nonprofit ADR agencies have been unable to sustain operations,¹³⁰ another one has been developed and is working on expansion to other communities.¹³¹

A. Community Dispute Resolution Center

The Community Dispute Resolution Center (CDRC) was formed in 1994 to help Alaskans find peaceful solutions to family and community problems through mediation and negotiation. Its primary program is victim-offender mediation, providing victims and juvenile offenders the opportunity to meet face-to-face to discuss the offense and negotiate its consequences. Through this program, victims can negotiate a restitution agreement and tell the juvenile offender about the problems caused by their misbehavior, while the juveniles are made to take responsibility for their crime. The program is coordinated with DFYS, the Anchorage Police Department, and the Anchorage Youth Court. The victim-offender mediation program received more than 100 referrals in 1997, a 20% increase from the previous year.

CDRC recruits and trains volunteer mediators to facilitate the face-to-face meetings. Participation is voluntary for both victims and offenders. Outcomes usually include restitution agreements, community work service, letters of apology, and answers to victim questions.

¹³⁰ The PACT organization in Barrow began conciliation of small civil cases and business disputes in 1989. According to local sources, PACT imposed a number of restrictions on what kind of cases it would take, resulting in a very small caseload. It also experienced death and divorce in the core group of people supporting the agency. After five or six years, it went out of business. This program was evaluated in *RESOLVING DISPUTES LOCALLY I*.

An earlier Anchorage program, the Conflict Resolution Center, also lasted about five years before going out of business. The Conflict Resolution Center was established in 1982 to provide alternative dispute resolution for landlord-tenant problems, family mediation, lawyer fee arbitration, and other civil cases. It handled approximately 100 cases a year from 1984-86. It closed its doors in 1987 after sharp declines in municipal revenue sharing led to loss of financial support from the municipality. *Id.* at 37.

¹³¹ For further description of conflict management programs in Alaska, see Resource Solutions, *Who's Doing What: Overview of Public Involvement and Conflict Management Programs and Resources for Alaska*, ENRI, University of Alaska (1997), and ALASKA JUDICIAL COUNCIL, *ALTERNATIVE DISPUTE RESOLUTION IN THE ALASKA COURT SYSTEM* (December 1997).

Compliance is monitored by CDRC staff and volunteers; juvenile offenders who do not comply generally are referred back to the DFYS intake officer.

CDRC recently has begun a parent-adolescent mediation program to assist families in conflict by providing short-term mediation. The mediators assist the family in identifying their underlying needs, exploring solutions to conflict, and improving communications. The program focuses on the family as a system rather than singling out the parents or the adolescent as the problem. The process encourages participants to gain an understanding of each other's perspectives, to accept responsibility for developing solutions, and to abide by agreements reached. The program handled eight cases in the first half of 1998. CDRC also trains volunteer mediators for this program.

CDRC receives its funding from DFYS and the Municipality of Anchorage "Making a Difference" Program, which in turn receives contributions from the Anchorage commercial sector. CDRC is working with the University of Alaska Anchorage to set up similar programs in other Alaska communities. The Fairbanks community policing coalition is developing a victim-offender mediation program similar to the Anchorage program. It has received a tentative grant from DFYS to begin operations, pending approval of the organization's nonprofit status. A group on the Kenai Peninsula is working to set up a similar program.¹³²

B. Better Business Bureau of Alaska

The Better Business Bureau of Alaska provides mediation and arbitration services for consumers and businesses. When consumers experience problems with Alaska businesses, or businesses have problems with each other, they can call the Better Business Bureau for assistance. The BBB receives 75-125 complaints a month, involving such problems as defective materials and merchandise, requests for refunds, and nonpayment for merchandise delivered. It tries to resolve the problem by staff mediation first. If the problem cannot be resolved, the parties may agree to use BBB's arbitration services for a fee. Although only one-third of the complaints involve BBB member businesses, the staff provides mediation and arbitration for nonmember businesses too.¹³³ About one percent of the complaints it receives end up in arbitration. The BBB has a special class of members called CARE members, who have agreed to participate in arbitration any time there is a consumer complaint. The BBB is a nonprofit organization, supported by member dues and donations.

C. Government Agencies

1. Ombudsman's Offices

The State of Alaska has an office of the ombudsman to investigate and resolve complaints by citizens against state government agencies and workers. The Municipality of Anchorage and the City and Borough of Juneau also offer ombudsman services to their citizens for complaints against

¹³² For further information about Fairbanks efforts, contact Julie Smith at (907) 452-7362. For information about Kenai, contact Ginny Espenshade at the Kenai Peninsula Youth Court, (907) 235-4985.

¹³³ The arbitrators charge a fee of \$25 per hour for member businesses and \$75 per hour for non-members; these fees are generally split between the parties.

municipal agencies. These agencies do not handle complaints against elected officials or judges, to keep them from becoming involved in political or legal battles. Rather, their focus is on proper service delivery and correct procedures by executive agencies and employees.

When a citizen has a complaint, the ombudsman explores the nature of the complaint, investigates the facts, and determines if the government action has been inappropriate. The state ombudsman prepares a preliminary report and sends it to the state agency for response before it is released publicly.¹³⁴ If the ombudsman finds a mistake by the agency, it will make recommendations on how to fix the problem or prevent it in the future. However, the ombudsman's office has no enforcement powers of its own; it relies on its logic and impartiality to encourage change.

The caseload of the state ombudsman typically involves complaints about child support collection, child in need of aid cases, permanent fund dividends, and student loans. The caseloads for Anchorage and Juneau typically involve animal control, public works, street maintenance, and police services. Although 90% of each ombudsman's calls are more appropriately referred to other agencies, it is part of the ombudsman's function to help the citizens sort out the complaint and find the appropriate agency. Throughout the process, they attempt to clear up misunderstandings, facilitate solutions, and inform citizens of their rights and responsibilities.

2. Human Rights Commissions

The Alaska State Commission for Human Rights enforces state laws prohibiting discrimination on the basis of race, national origin, religion, gender, and physical or mental disability.¹³⁵ It applies to discrimination in employment, sale or rental of property, places of public accommodation, financing and credit, and practices by the state or its political subdivisions. The Human Rights Commission investigates complaints, dismisses them where no violation of the human rights laws has occurred, conciliates complaints where the law has been violated, and holds public hearings where conciliation efforts have failed. The commission may order back pay, reinstatement, or elimination of discriminatory practices; its decisions may be appealed to the state superior court. The commission also trains employers, unions, landlords, businesses, and others who must comply with the law.

The Anchorage Equal Rights Commission handles discrimination complaints regarding race, nationality, religion, gender, familial status, and sexual preference that arise within the Municipality of Anchorage. Staff members investigate and mediate complaints. They refer cases to the commissioners for a decision if the complaint cannot be resolved. Most of the complaints involve employment issues, along with a number of housing issues. In the first half of 1998, the commission resolved 75 cases and had another 52 pending. The commission is funded by the Municipality of Anchorage and by a work-sharing contract with the federal Equal Employment Opportunities Commission.

¹³⁴ The state ombudsman has the discretion to release or not release the final report; a synopsis of each report is generally published on the ombudsman's website and sent to the legislature.

¹³⁵ In some instances, discrimination is also prohibited on the basis of age, marital status, pregnancy, parenthood, or changes in marital status.

3. Administrative agencies

The state government has a number of agencies that investigate citizen complaints and try to reach some resolution. The state has special offices for complaints about long-term care, legislative ethics, political candidate violations, judicial misconduct, occupational safety and health violations, wage and hour violations, and discrimination complaints. The state has 22 occupational licensing boards that address complaints about the legal and ethical misconduct of their members. Almost every state agency has some formalized process for reconsidering its own decisions. Reconsideration usually consists of an administrative review, followed by an administrative hearing within the agency, with the possibility of appeal to state superior court. Administrative hearings are available for disputes over permanent fund dividends, child support enforcement, public utilities, taxes, liquor licensing, environmental permitting, student loans, and other issues.

Cities also have procedures for administrative review of city government decisions. In Anchorage, there is an administrative hearing office that hears cases arising from civil citations by municipal officers. The most common cases involve curfew violations and underage tobacco purchases (punishable by fines), and zoning violations and land use enforcement (which may involve fines or orders of compliance). The decisions of the hearing officer are appealable to the state superior court. The hearing officer also drafts opinions and makes recommendations to city agencies on appeals from city administrative decisions. The most common appeals involve taxicab regulation, real property taxes, hotel room taxes, and animal control.

D. Court-Connected Alternative Dispute Resolution

Alaska's state and federal courts have shown an increased interest in ADR in recent years. The Alaska Supreme Court has made a number of rule changes and initiated three ADR pilot projects.

1. ADR in the Alaska Court System

Except for an experiment in the 1970's with rural conciliation boards,¹³⁶ the Alaska Court System's formal involvement with ADR began in 1988.¹³⁷ In that year, the Alaska Supreme Court established a mediation task force in response to legislative intent language included in the court's budget. The task force explored the "uses, availability and limits of mediation," summarized the history of mediation in Alaska, and made ten recommendations to the supreme court.¹³⁸ Based on

¹³⁶ The conciliation boards are described in chapter 1, section A2.

¹³⁷ Informally, judges have always hosted settlement conferences for litigants in their own cases or in cases assigned to other judges. Some judges devote a significant amount of time to settling cases and have come to be regarded as highly skilled facilitators.

¹³⁸ The task force recommended that the court system should: (1) undertake a mediation pilot project; (2) distribute mediation information; (3) seek statutory confidentiality for mediation; (4) adopt a new court rule on mediation; (5) train judges about mediation; (6) encourage judges to use mediated settlement techniques; (7) consider imposing a requirement in pretrial orders that attorneys advise their clients of available ADR services; (8) help develop a system to provide mediation to indigents; (9) support local efforts throughout Alaska to establish mediation programs; and (10) appoint a standing committee on mediation. REPORT OF THE TASK FORCE ON MEDIATION TO THE SUPREME COURT OF ALASKA, Executive Summary (1990).

these recommendations, the supreme court established a standing advisory committee on mediation and provided judicial training. The supreme court also promulgated a mediation rule, Civil Rule 100, authorizing judges to order parties to attend an initial mediation session, either upon the request of a party or on the judge's initiative.¹³⁹

In December 1997, the Alaska Judicial Council issued a report recommending increased use of ADR within the Alaska Court System.¹⁴⁰ In 1998, the supreme court made several rules changes designed to increase the voluntary use of ADR. The court broadened Civil Rule 100 to address several forms of court-connected ADR, including mediation, arbitration, early neutral evaluation and judge-hosted settlement conferences. It amended its discovery rules to require opposing counsel to meet and confer early in the litigation to develop a written ADR plan. At the pretrial conference, the judge can discuss ADR options with the litigants. The court also amended its probate rules to include a new rule on mediation modeled after Civil Rule 100.¹⁴¹

The recent rules changes have led to a demand for further education about ADR for judges, lawyers, and litigants. In October 1998, the state and federal court systems sponsored a two-day joint training session for their judges. The training covered the different types of ADR, which procedures are most effective for which cases, ethical considerations, and actual hands-on training on how to mediate and/or how to run a settlement conference. The ADR section of the Alaska Bar Association sponsored a continuing legal education program explaining the new court ADR rules and their effect on litigation. The probate section of the bar association sponsored a similar program explaining the new probate mediation rule and discussing how mediation might be appropriate in probate, trust, guardianship and conservatorship cases. To educate litigants, the Judicial Council is drafting an informational pamphlet to explain various ADR processes, explain the court system's ADR programs, and help litigants decide whether ADR might be right for their case.

The Alaska Court System currently is working on development of three ADR-related projects:

Appellate Case Settlement Program. The supreme court asked the mediation committee to design an appellate case settlement conference program. The committee designed a pilot project using retired judges and justices to host the settlement sessions. The proposal is awaiting review by the appellate rules committee before going to the supreme court for consideration.

¹³⁹ Although exact figures are not available, judges seem to be getting more comfortable with ordering mediation under Civil Rule 100. A 1997 survey sent to all state trial court judges showed that 71% of the 28 trial court judges who responded had ordered mediation at least once in the past two years. About 54% of the judges who ordered ADR reported that they had ordered it one to five times in the past year.

¹⁴⁰ The Judicial Council recommended that: (1) the court system amend its rules of court to increase the voluntary use of ADR; (2) the court system and the bar association train judges and attorneys about ADR; (3) the Judicial Council and the court system provide information to the public about ADR; (4) the court system implement several small ADR pilot programs. ADR IN THE ALASKA COURT SYSTEM at 48. The Judicial Council was directed by the legislature to conduct this study.

¹⁴¹ The civil rules committee currently is considering whether attorneys should be required to discuss ADR with their litigation clients.

CINA Mediation Project. The court system participates in an ongoing federally-funded project to improve the handling of Child in Need of Aid cases. As part of this project, the court system has planned a pilot CINA mediation project in Anchorage to be funded by the federal grant, using contract mediators and focusing on early case intervention. This project is scheduled to begin in 1999. It may later be expanded to Fairbanks, using an existing court employee and focusing on older cases.

Anchorage Family Mediation Project. The court system has received another federal grant to offer mediation services in cases where child custody, support, and visitation are at issue. The court system is contracting with private mediators to offer mediation for income-eligible litigants in Anchorage. The caseload includes original divorce actions, paternity and support actions, and post-decree motions involving support, custody and visitation issues. The project began in October 1998.

2. ADR in Alaska's Federal District Court

Alaska's federal district court has endorsed the concept of ADR as one that can help reduce cost and delay, but it has not established any court-connected programs. The court's Civil Justice Reform Act Advisory Group concluded that the district is too small and its resources too limited to offer court-connected ADR. The federal court has adopted a local rule on mediation modeled after Alaska Civil Rule 100,¹⁴² and jointly sponsored a two-day ADR training for all Alaska state and federal court judges. In 1998, Congress passed the Alternative Dispute Resolution Act (Public Law 105-315), requiring every district court to offer all civil litigants at least one ADR process, including mediation, early neutral evaluation and arbitration. In response, the local bankruptcy rules committee has begun drafting rules to create mediation and early neutral evaluation programs, and the local district court has assigned a committee to study the idea of forming a joint program with the bankruptcy court.

Organizations

Alaska Court System
Administrative Offices
820 West 4th Avenue
Anchorage, AK 99501
Phone: (907) 264-0548

Alaska Human Rights Commission
800 A Street, Suite 204
Anchorage, AK 99501
Phone: 274-4692
1-800-478-4692

Alaska Ombudsman
P.O. Box 113000
Juneau, AK 99811
Phone: (907) 465-4970

Anchorage Equal Rights Commission
620 E. 10th Ave., Suite 204
Anchorage, AK 99501
Phone: 343-4342

Anchorage Ombudsman
632 W. 6th Ave. 2nd Floor
Anchorage, AK 99501
Phone: 343-4461

¹⁴² District of Alaska Local Rule 52.2.

Better Business Bureau of Alaska
2805 Bering Street
Anchorage, AK 99503
Phone: (907) 562-2824

Community Dispute Resolution Center
505 West Northern Lights, Suite 210
Anchorage, AK 99503
Phone: (907) 274-1542

United States Federal District Court
District of Alaska
222 West 7th Avenue, Suite 54
Anchorage, AK 99513
Phone: (907) 271-5621

Figure 7
Local Dispute Resolution Organizations in Alaska 1998

AREA	ORGANIZATION	STRUCTURE	ACTIVITIES
Arctic Slope	Inupiat Community of Arctic Slope	regional tribe	drafting regional tribal government code with regional court
	Arctic Slope Native Association	regional nonprofit	domestic violence training, jail rehabilitation programming, intervention in state ICWA cases
	Native Village of Barrow	council sitting as court	50-70 adoptions & children's cases per year
	Native Village of Point Hope	council sitting as court, possible community court	some juvenile delinquency cases, traditional law committee; community court under discussion
	Barrow Community Court	community court	tribal/city/borough/state consortium: elders handle juvenile offenses under agreement
	Alaska Eskimo Whaling Commission	nonprofit	resolves disputes among whaling captains
Northwest Arctic	Other villages	councils	most villages in this region do not choose to sit as courts
	Maniilaq Association	regional nonprofit, elders' councils	Maniilaq funds tribal court workshops; elders' councils advise families, counsel offenders, fight alcohol problems, work with state and federal governments
	Kotzebue IRA Council	council sitting as court	intervention in state ICWA cases; mediation of trespass, allotment, and environmental issues
	Other villages	councils	intervention in state ICWA cases; work with state courts on criminal sentencing
	Kawerak	regional nonprofit	ordinance drafting, ICWA intervention, regional court development
Bering Straits			

Local Dispute Resolution Organizations in Alaska 1998 (Continued)

AREA	ORGANIZATION	STRUCTURE	ACTIVITIES
	Western Alaska Tribal Council	village council presidents	regional court development
	Native Village of Elim	community court	council sitting as court for juvenile offenses under agreement with state (inactive)
	Native Village of Koyuk	community court	tribal court for juvenile offenses under agreement with state (inactive)
	Native Village of St. Michael	council sitting as court, elders' advisory court	federal domestic violence grant for training & safe homes -- DV cases will be prosecuted under state law but elders' court will counsel families; council hears children's cases
	Native Village of Unalakleet	council sitting as court	adoptions, ICWA interventions, guardianship
	Nome Eskimo Community	council sitting as court	children's cases, adoptions, ICWA interventions
	Nome Youth Court	youth court	students handle juvenile offenses under agreement with state
	Other villages	councils sitting as courts	16 villages have ordinances authorizing councils to sit as courts; 8 have elders' advisory courts; several villages have heard ICWA cases referred from other states
	Tanana Chiefs Conference	regional nonprofit	tribal court development, training, and ordinances; handbooks on tribal courts, ordinances, domestic violence, children's cases; works closely with DFYS on children's cases; federal domestic violence grant for training, development of ordinances & procedures for tribal protective orders
	Minto Tribal Court	tribal court	criminal offenses, juvenile offenses, child abuse & neglect, traditional adoptions
Interior Alaska			

Local Dispute Resolution Organizations in Alaska 1998 (Continued)

AREA	ORGANIZATION	STRUCTURE	ACTIVITIES
	Tanana Tribal Court	tribal court	variety of 40 civil cases per year; criminal cases handled informally with counseling, monitoring, work service
	Northway, Nenana, Rampart, Fort Yukon	tribal courts	child in need of aid, custody, adoptions
	Native Village of Ruby	council sitting as court	children's cases
	Native Village of Tetlin	council sitting as court	children's cases, criminal cases
	Tetlin Youth Court	developing youth court	students will handle juvenile offenses under agreement with state, using tribal court model, with involvement of elders
	North Star Youth Court	youth court	students handle juvenile offenses under agreement with state
	Galena	possible community court	developing community court to handle juvenile offenses under agreement with state
	Fairbanks Community Dispute Resolution Center	developing ADR nonprofit	developing victim-offender mediation program
	Other villages	councils sitting as courts	many active councils handling children's cases, traditional adoptions, minor criminal offenses, ICWA interventions; some working on court development
Yukon-Kuskokwim	Assn. of Village Council Presidents	regional nonprofit	tribal court training, family justice systems project, ordinance development, grantwriting for court development
	Yup'it Nation	nonprofit	planning regional court for lower Kuskokwim

Local Dispute Resolution Organizations in Alaska 1998 (Continued)

AREA	ORGANIZATION	STRUCTURE	ACTIVITIES
	Quigpagmiut	consortium	planning regional ordinances and court for lower Yukon
	Orutsaramiut Native Council (Bethel)	developing court	will hear children's cases; may handle children's cases and juvenile offenses for tribes outside Bethel; possible community court agreement with state; custom law project
	Chevak Tribal Court	tribal court	property cases, civil peace-keeping & mediation, ICWA interventions; federal grant to start tribal drug & alcohol court
	Village of Cheformak	council sitting as court	children's cases, criminal offenses; planning separate court
	Akiachak Tribal Court	tribal court	criminal offenses, civil, children's cases, ICWA interventions
	Kipnuk, Newtok, Kwigillingok	tribal courts	criminal and juvenile offenses
	Kwethluk Tribal Court	tribal court	general civil, traditional adoptions, criminal offenses; federal grant to start tribal drug & alcohol court
	Kwinhagak Tribal Court (Quinhagak)	tribal court	100-300 cases per year, mostly criminal with some mixed civil
	Mekoryuk Tribal Court	tribal court	children's cases
	Native Village of Tuntutuliak	tribal court, council	tribal court hears criminal offenses; council hears ICWA cases
	Napakiak Youth Court	developing youth court	students will handle juvenile offenses under agreement with state, using tribal court model, with involvement of elders
	City of Kotlik	possible community court	developing community court for three villages to hear juvenile offenses under agreement with state

Local Dispute Resolution Organizations in Alaska 1998 (Continued)

AREA	ORGANIZATION	STRUCTURE	ACTIVITIES
Bristol Bay	Other villages	councils sitting as courts	region has many active councils handling children's cases & ordinance violations; other tribal courts in development
	Bristol Bay Native Association	regional nonprofit	DOJ domestic violence grant for training, safe homes, and village coordination; ICWA interventions
	Togiak	community court, elders' court	tribal/city/state consortium: elders hear juvenile offenses under agreement with state; elders' court provides counseling in other cases
	Manokotak Tribal Court	tribal court	children's cases, nonviolent criminal offenses
	Other villages	councils sitting as courts	children's cases, minor criminal offenses under local ordinances; regional courts under discussion
Kodiak	Larsen Bay Tribal Council	developing tribal court	federal grant to form domestic violence court, emphasizing counseling, education, early intervention, victim services
	Shoonag Tribe (Kodiak)	council sitting as court	ICWA cases
	Kodiak Teen Court	youth court	students handle juvenile offenses under agreement with state
	Other villages	councils	some tribal court training; regional courts under discussion
Aleutian & Pribilof Islands	Aleutian-Pribilof Islands Assn.	regional nonprofit	assists tribes in writing codes, handling cases, developing courts; encourages village activity in ICWA cases
	Qagan Tayagungin (Sand Point)	council sitting as court	one child custody case; developing separate court to hear ICWA cases

Local Dispute Resolution Organizations in Alaska 1998 (Continued)

AREA	ORGANIZATION	STRUCTURE	ACTIVITIES
Cook Inlet	Akutatan Tribal Council	council sitting as court	adoptions; council heard one probate case with outside judge
	Cook Inlet Tribal Council	regional nonprofit	ICWA interventions
	Southcentral Foundation	regional nonprofit	federal domestic violence grant for tracking batterers; assessing state domestic violence services; training
	Alaska Native Justice Center	nonprofit	federal grant to start youth courts in two villages
	Native Village of Eklutna	represents other tribes; developing court	represents distant tribes in Anchorage ICWA proceedings; federal grant to develop tribal court for children's cases & juvenile offenses; foster home recruitment
	Kenaitze Indian Tribe	tribal court	children's cases & interventions, advice to juvenile offenders
	Chickaloon Village Traditional Court	tribal court	children's cases, civil regulatory
	Native Village of Tyonek	council sitting as court	trespass, peace-keeping, juvenile offenses
	Ninilchik Tribal Court	tribal court, council	some ICWA cases handled by court, some by council
	Anchorage, Mat-Su, Kenai, Homer	youth courts	students handle juvenile offenses under agreement with state
	Anchorage Community Dispute Resolution Center	ADR nonprofit	victim-offender mediation & parent-adolescent mediation; may expand to other communities
	Anchorage Ombudsman's Office	municipal agency	investigation & mediation of citizen complaints against municipal government

Local Dispute Resolution Organizations in Alaska 1998 (Continued)

AREA	ORGANIZATION	STRUCTURE	ACTIVITIES
Chugach	Anchorage Administrative Hearing Office	municipal agency	hearings on municipal civil violations; appeals from municipal administrative decisions
	Chugachmuit	regional nonprofit	federal grants to develop child protection teams, provide domestic violence training for councils and law enforcement, and rewrite tribal ordinances and constitutions
	Other villages	councils	handle criminal offenses through counseling; participate in child protection teams
Southeast Alaska	Tlingit-Haida Central Council	regional nonprofit & tribal council	ICWA interventions; considered regional court
	Metlakatla Court of Indian Affairs	tribal court	juvenile & adult offenses, children's, civil, traffic; 1000 cases per year
	Sitka Tribal Court	tribal court	children's & civil cases; federal grant to address domestic violence; agreement with city to enforce tribal protective orders; clan leaders project to discuss traditional law
	Chilkat Indian Village (Klukwan)	tribal court, council	some children's cases; convened court with outside judge to decide ownership of artifacts; council makes sentencing recommendations, counsels juvenile offenders
	Other villages	councils	most councils in this region choose not to sit as courts
	Sitka Youth Court	youth court	students handle juvenile offenses under agreement with state
	Juneau Youth Court	developing youth court	developing youth court; former court for school infractions is now inactive

Local Dispute Resolution Organizations in Alaska 1998 (Continued)

AREA	ORGANIZATION	STRUCTURE	ACTIVITIES
Copper River	Juneau Ombudsman's Office	municipal agency	investigation & mediation of citizen complaints against municipal government
	Copper River Native Association	regional nonprofit	ICWA interventions; tribal court development
	Copper River Regional Tribal Court	regional court	children's cases and domestic relations for five villages
	Klutti Kaah Tribal Court	tribal court	juvenile offenses, traditional adoptions, occasional children's cases, one tax case
	Chitina Tribal Council	council sitting as court	ICWA, minor criminal offenses, housing authority rules, civil; plan to develop tribal youth court
	Mentasta Lake Traditional Council	council sitting as court	minor criminal offenses
Statewide	Valdez	developing youth court	developing youth court to handle juvenile offenses, may include other communities
	Better Business Bureau	nonprofit	mediation & arbitration of consumer & business disputes
	State of Alaska Ombudsman's Office	state agency	investigation & mediation of citizen complaints against state government
	Alaska Human Rights Commission	state agency	investigation & conciliation of discrimination complaints; provides training; administrative hearings
	Alaska Court System	state agency	pilot mediation projects for child in need of aid cases, custody and child support cases, settlement of appellate cases

Chapter 6

State Agencies

This chapter discusses the interactions of state government agencies with tribal courts and councils, regional Native nonprofits, youth courts, and ADR organizations. The state agencies with the most frequent contact are family services workers, youth corrections officers, state troopers, and VPSOs. Local organizations interact to a lesser degree with state court judges and magistrates, district attorneys, public defenders, GALs, and probation and parole officers. Most interactions occur in the context of the Indian Child Welfare Act or criminal and juvenile offenses.¹⁴³

Over the last ten years, state agencies have developed closer working relationships with regional Native nonprofits and individual tribes. While some of these relationships have been formalized by written agreements, most are informal. Good working relationships developed over time have been subject to change with each change in personnel, and arrangements that work for most cases may not hold when a difficult case arises. The lack of formality leads to wide regional variations, uncertain lines of authority, and sometimes a diminished role for the tribal court or council. The state now is moving toward greater use of negotiated agreements for working with youth courts, community courts, and tribes, helping to clarify the roles and expectations of the parties.

Although this section focuses on state agencies, virtually every local dispute resolution organization operates in a complex political layering of other organizations and governments. In most villages there is an ANCSA village corporation, an IRA or traditional council, and often a municipal government as well. North Slope Borough villages work closely with borough police officers and social workers. As tribes step up their efforts to deal with domestic violence problems, they frequently work with the domestic violence and sexual assault programs and shelters located in the hub communities. Some villages coordinate with federal agencies on crimes occurring in parks and wildlife refuges. Youth courts, in particular, derive their support from a wide range of community organizations, including local businesses, municipal assemblies, tribal councils, and police.

A. Department of Public Safety

The Alaska Department of Public Safety provides most of the law enforcement in rural areas of the state, primarily through the state troopers, village public safety officers, and fish and wildlife protection troopers. From rural hub communities, the troopers respond to life-threatening

¹⁴³ This section of the report is a general guide to interactions with state agencies that were documented as of 1998. Readers referring to the report in the future should keep in mind that the informality of arrangements, state and federal funding, rapidly changing case law, and evolving policy decisions may substantially alter the situations described.

emergencies, felonies, and some misdemeanors. VPSOs are employed by the regional Native nonprofits, funded by the legislature through Public Safety. VPSOs are trained by the troopers and their law enforcement work is supervised by the troopers. They live in the villages they serve and provide a range of services, including search and rescue, fire protection, emergency medical assistance, and law enforcement.

A number of cities in Alaska have their own police departments which serve all or part of the city. The North Slope Borough provides law enforcement for Barrow and the other seven villages in the borough. Some villages hire their own village police officers or tribal officers with local funds or federal grants. Federal marshals occasionally become involved in high-profile fish or game offenses. However, most day-to-day law enforcement, especially for more serious offenses, remains the province of the Alaska State Troopers and the VPSOs.

1. Alaska State Troopers

The troopers have 34 posts across the state, some situated in hub areas with superior courts and some in smaller communities.¹⁴⁴ They serve all rural areas of the state except for the North Slope Borough. Troopers also serve the urban areas, but typically only those sections not covered by urban law enforcement. Troopers are trained at the Public Safety Academy in Sitka and certified by the Alaska Police Standards Council.

Troopers try to provide routine patrols to villages and support for local law enforcement, but they cannot provide daily law enforcement for the villages. A village crisis may precipitate a request for immediate trooper assistance. Depending on weather, staff, transportation, and urgency of the problem, response time may vary from an hour to several days. Troopers visit villages to investigate serious crimes, train VPSOs, and meet with community leaders.

Public Safety recognizes the difficulty of providing adequate law enforcement to rural villages. The department works hard to train VPSOs, VPOs, and tribal officers to handle local problems.¹⁴⁵ The troopers work with the Western Community Policing Center to train these officers in community policing and community problem-solving, to strengthen their ability to identify and resolve public safety problems within their villages. They also support these officers in organizing volunteer fire departments, search and rescue teams, and water safety patrols.

Troopers work directly with village governments to encourage community problem-solving and to resolve local concerns. Troopers have been active in establishing community courts for juvenile crimes, promoting curfew laws, and promoting local option laws restricting the possession or sale of alcohol within a village. Troopers sometimes refer misdemeanor offenses directly to a tribal

¹⁴⁴ Fish and Wildlife protection officers and court services officers are located in additional communities.

¹⁴⁵ VPSOs are hired with state funds; village police officers are hired with tribal funds; tribal officers are hired with federal Community Oriented Policing (COPs) grant funds. Some villages have both city and tribal law enforcement. Although VPOs and tribal officers are not formally associated with the Department of Public Safety, the state troopers provide them with investigative support and technical assistance, in order to treat villages as equally as possible.

court or council rather than file charges in state court.¹⁴⁶ They may ask the tribal court or council to handle a probation violation rather than filing a revocation action in state court. Administrators within the department believe that encouraging village entities to handle small crimes is helpful for both villages and the state, and that early village intervention helps prevent more serious crime in the future. Encouraging local law enforcement and adjudication is consistent with Public Safety's focus on community policing and local solutions to local problems. Although they understand the concern that some cases may be handled poorly, the troopers see this as a problem that largely can be solved by adequate training and assistance for local villages.

In 1995, the Department of Public Safety commissioned the University of Alaska Justice Center to survey village residents about their public safety concerns and their satisfaction with law enforcement. The study found that the overall rating of police and trooper performance by village residents was very good. VPOs and VPSOs received very favorable grades and comments from most of the citizens sampled in the communities these officers serve. However, village officials wanted closer cooperation and more support for the VPOs and VPSOs. Many wanted VPSOs to report more directly to the local governing body and to provide more service under village ordinances. They wanted reduced turnover to establish longer-term relationships among village officials, community residents, and local troopers. Finally, throughout the state, village officials expressed a desire to work with local troopers in the joint development of better understanding and more effective methods of dealing with crime and community problems.¹⁴⁷

2. Village Public Safety Officers

The VPSO program began in 1982 to provide rural Alaska communities with local public safety services. VPSOs reside in rural villages and respond to public safety emergencies. VPSOs receive nine weeks of basic training at the Public Safety Academy in Sitka. VPSO positions have been reduced from a high of 125 positions in 1989 to the current level of 84 funded positions.

VPSOs must respond to a number of governing bodies. State troopers train them, provide oversight and backup, and make decisions about what happens to the more serious cases. Public Safety provides grants to the regional Native nonprofits to administer their own local VPSO program, and the nonprofits contract with the villages to provide VPSOs. VPSOs serve the villages and work closely with local governments, but they are employees of the regional nonprofit. The situation becomes more complicated when the village maintains both a city government and a traditional or IRA council, since the regional nonprofits contract with city governments whenever possible. Both the city government and the tribal council may have their own ordinances, and the tribal council may adjudicate its own offenses. Any strain in the relations between these various entities creates difficulties for the VPSO.

¹⁴⁶ Troopers have a range of options available for dealing with crimes. The trooper may decide not to file charges or may negotiate a settlement acceptable to all parties. The trooper may consult the district attorney before deciding whether to file charges or what charges to file. The trooper may refer the case to the district attorney's office before an arrest is made, in which case the district attorney may file charges or present the case to the grand jury. In many areas, the trooper consults with elders, village councils, and tribal leaders before deciding on the appropriate charge.

¹⁴⁷ University of Alaska Justice Center, *Public Safety and Policing in Alaska Native Villages* (1995).

In 1997, VPSOs responded to 9,631 requests for assistance. Of these requests, 84% were non-criminal, such as first aid, search and rescue, emergency messages, fire safety inspections, barking dogs, family monitoring, etc. VPSOs investigated 1,503 criminal complaints, almost all misdemeanors. Most of these were misdemeanor assaults, alcohol offenses, and traffic offenses. Forty-three percent of the non-criminal cases and 58% of the criminal cases arose in the Bethel area alone.

The VPSO program has had a stormy history. Turnover historically has been very high, currently 42% per year. There are many contributing factors: long hours, low pay, poor benefits, dangerous conditions, and stress. VPSOs are expected to respond to emergencies at night as well as work a regular daytime shift. They may be on-call seven days a week, twenty-four hours a day, because they often are the only safety officer in the village. Because of high turnover, many positions remain unfilled. In 1997, Public Safety and the University of Alaska Justice Center received funding from the National Institute of Justice to conduct a study of the turnover problem. The study will examine why VPSOs have left the program and make recommendations for reducing turnover and strengthening the program.

There have been a number of recent improvements in the VPSO program. In 1995, the Department issued formal regulations governing participation in the program and minimum hiring and training standards. In 1996, an advanced two-week training course was established for VPSOs in community policing, search and rescue techniques, crime scene investigation, grant writing, interviewing, disaster planning and control, and other issues. VPSOs also have been trained as drug abuse resistance education (DARE) instructors for school children, a program that was well-received. During the 1998 legislative session, VPSOs received a 5% raise for FY98, along with a 12% raise in FY99.

3. Council on Domestic Violence and Sexual Assault

The Department of Public Safety houses the Council on Domestic Violence and Sexual Assault. This agency coordinates the state's response to domestic violence and sexual assault problems and provides training, funding, and support for state and local agencies. CDVSA currently is working with tribal groups on domestic violence issues.

CDVSA has used some of its discretionary funds under the Violence Against Women Act to provide rural sexual assault training and seed money for sexual assault response teams. It is working with the Sitka Tribe to certify the Sitka batterers' program under state standards. CDVSA participates in a statewide committee on rural domestic violence and child victimization training, along with representatives of Tanana Chiefs Council, the Sitka Tribe, Chugachmiut, and Ketchikan Indian Community. CDVSA keeps in touch with Alaska grantees under the STOP Violence Against Indian Women program.¹⁴⁸ Its representative sits on a Public Safety committee drafting

¹⁴⁸ The first round of grantees under this program were Tanana Chiefs Council, the Sitka Tribe, Chugachmiut, Ketchikan Indian Corporation, and Bristol Bay Native Association. Recent grants have gone to the Native Village of Larsen Bay, the Native Village of St. Michael, and the Southcentral Foundation. These programs are described under their regional sections. The Sitka Tribe recently submitted a grant application to help coordinate tribal domestic violence programs and act as a liaison with state agencies.

recommendations on implementation of the full faith and credit provision of the Violence Against Women Act.

CDVSA generally supports local initiatives and willingness to address family violence. However, the staff see some potential problems with tribal courts or councils handling domestic violence cases. It has taken a long time for domestic violence agencies to educate state judges and law enforcement on the cycle of family violence and the need for effective intervention, so considerable training will be necessary at the tribal level as well. Cultural values may be in conflict, placing less weight on the safety of the individual victim and more weight on community or family cohesion. The tribal council must make sure that community and family politics do not affect important safety decisions. In general, however, CDVSA supports more domestic violence awareness and responsiveness at the local level.

B. Department of Health and Social Services

The Department of Health and Social Services routinely interacts with tribal organizations and rural residents through the Division of Family and Youth Services (DFYS). This division includes family services social workers, who work with troubled families and children in need of aid, and youth corrections, which provides juvenile probation officers and youth corrections facilities. DFYS has social workers in 29 communities throughout the state, providing more direct contact with rural clients than most other justice-related agencies.¹⁴⁹ DFYS also interacts with social workers employed by regional Native nonprofits and tribal councils. Some of the interactions are mandated by the Indian Child Welfare Act, and some are voluntary and less formal.

1. Indian Child Welfare Act Cases

In 1990, the state drafted the Indian Child Welfare Act State-Tribal Agreement, a set of formal, voluntary protocols that encouraged and formalized tribal participation in state child welfare cases. Approximately 25 tribes signed the agreement. Many other tribes declined to sign, some because the agreement did not resolve issues of tribal court jurisdiction and funding for tribally-ordered services, and some because it seemed unsuited to their circumstances. Although some of the agreements technically are still in effect, they are seldom referred to.

In 1994, representatives of seven regional tribal organizations and DFYS began to meet to address shared concerns about children and families. These meetings evolved into the Tribal-State Collaboration Group, with an expanded membership of tribes and state agencies. It continues to meet regularly and has developed a positive level of trust and common effort. It has written training materials for family service workers¹⁵⁰ and has provided an impetus for many DFYS improvements in its handling of ICWA cases and its relationship with tribes. The group has been working on notice and intervention issues.

¹⁴⁹ Juvenile probation officers are located in 16 communities, most of which have a superior or district court location. Youth correctional facilities are located in Anchorage, Bethel, Fairbanks, Juneau, and Nome.

¹⁵⁰ The group developed and published materials for a University of Alaska associate degree program that trains paraprofessionals to work with Native families and children in rural areas.

DFYS social workers are an important source of referral and support for the tribal courts and councils that handle children's cases. During the last legislative session, the governor and the legislature devoted considerable attention to the problems of children in need of aid in all parts of Alaska, increasing their awareness of the crushing caseload that DFYS social workers attempt to handle. Given the increasing ability of many tribes to share the caseload and provide the needed services, DFYS supports tribal court jurisdiction over domestic relations cases.

However, the strength of the working relationship between DFYS and the tribes varies considerably by location. The state's smoothest relationships are with the Tanana Chiefs Conference and the Sitka Tribe, who have long worked closely with the state. In these areas, tribal and state social workers discuss cases, decide which agency is best able to provide services, and develop case management plans together.¹⁵¹ In half of the cases, the tribe elects to handle the case through its own ICWA worker and tribal court or council. DFYS in these areas makes it a policy not to take custody of children unless it sees no alternative. The tribes emphasize early intervention and voluntary participation by the family, so that DFYS need never become involved. In those cases that do reach state court, the tribes intervene and take an active role in case plans and placement.

In most regions, the majority of ICWA cases are heard in state court, with tribal councils taking the role of active intervenors. The tribal court or council advises DFYS on family history and desirable outcomes, helps to find placements, and sometimes monitors the family's progress. Some of these areas report a smooth working relationship with DFYS, with general improvements over the last five years. Some villages, whether through satisfaction with DFYS, lack of personnel, or lack of notice, seldom intervene in state ICWA proceedings.

In some communities, poor communication between state and tribal social workers causes tribes to contend that they are excluded from the case management process, do not receive necessary paperwork, and find roadblocks to their right to intervene. Satisfaction goes up and down with changes in state personnel, depending on the state social worker's experience and willingness to work with tribes. The biggest communication problems arise when a state social worker handles village cases from a distant urban location. Tribal social workers occasionally criticize urban state social workers for their poor understanding of ICWA.

To respond to these problems, DFYS has undertaken a number of initiatives to improve its handling of ICWA cases and its relationships with tribes. In 1998 DFYS created three new positions, a statewide coordinator in Juneau and ICWA specialists in Anchorage and Fairbanks, in order to develop relationships with tribes, identify and overcome impediments, coordinate strategies, and set policy. The Anchorage office faces special problems because of the large number of Natives migrating in and out from remote locations, making it hard for Anchorage social workers to develop a working relationship with all the necessary villages. DFYS plans more training for the Anchorage office, with greater emphasis on ICWA and tribal relations.

¹⁵¹ DFYS does not always have time to coordinate with the tribe during the investigatory phase of the case.

DFYS participates in cross-training efforts with some tribes to educate each other's social workers. In 1998, the legislature passed House Bill 375, designed to move children out of temporary placements more quickly and into permanent situations.¹⁵² DFYS and the Department of Law trained state social workers on the ramifications of the bill and invited tribal social workers to trainings offered at thirteen sites across the state. DFYS also undertook extensive training of its own workers, provided by a tribal representative and a senior DFYS employee.

Cases needing a high level of expensive services almost always end up with DFYS, in part because tribes cannot afford to pay for those services. When tribal courts place children in tribal foster care, federal funding usually is not available to pay for that placement. The federal government provides money to the state for foster care, subject to home licensing, accounting, financial eligibility, court language, and other requirements. DFYS is working with Tanana Chiefs Conference to use some of that money for tribal foster care in Tanana Chiefs villages.¹⁵³

2. Youth Courts and Community Courts

The Youth Corrections arm of DFYS has been a strong supporter of youth courts and community courts throughout the state.¹⁵⁴ The project coordinator for the Governor's Conference on Youth and Justice (located within DFYS) spends a substantial portion of his time working with existing youth courts and community courts and with communities interested in developing them. The state provides small start-up grants for equipment and training, and also refers court organizers to sources of federal money, foundation funding, and community fund-raising. DFYS has funded a model policies and procedures manual for community courts. DFYS is working cooperatively with the Alaska Native Justice Center as it sets up Native youth courts in two communities. With DFYS funding, the Native Justice Center will be writing a guide to establishing successful urban and rural youth courts.¹⁵⁵

DFYS Youth Corrections has received a \$650,000 federal grant to implement pilot projects in up to eight rural communities, focusing on development of local responses to juvenile crime. These funds may be used for local courts, local sentencing options, ongoing training, and other approaches. DFYS also administers funding provided by the Governor's Conference on Youth and Justice to promote community courts and youth courts.

¹⁵² HB 375 places time limits on some court processes, changes the basis for termination of parental rights and grounds for intervention, changes time limits for permanent placement, and sets up multi-disciplinary child protection teams. Native organizations have criticized the bill for failing to include Native villages and tribal social workers as members of the child protection teams.

¹⁵³ DFYS began its foster care collaboration with Tanana Chiefs because Tanana Chiefs has the administrative capacity to address the federal requirements. If successful, more funding may be available for other villages later. Tanana Chiefs also receives some federal foster care funding directly.

¹⁵⁴ Youth court programs are described in chapter 3; community court programs are described in chapter 4.

¹⁵⁵ The community courts model policies and procedures manual is currently available from DFYS Youth Corrections. The guide for establishment of youth courts should be available from DFYS or the Native Justice Center after June 1999.

C. Department of Law

The Department of Law is a state agency with multiple responsibilities. The attorney general has a major policy role in state government, acting as legal advisor to the governor, working with the legislature to promote statutory changes, serving on law-related commissions, and providing policy guidance to executive agencies. The Department of Law represents the state in litigation by defending the constitutionality of state laws and the actions of state agencies. The Department of Law also represents the state in criminal prosecutions, juvenile delinquency adjudications, child in need of aid proceedings, and child support collection.¹⁵⁶

1. Civil Division

Most civil law interactions between the Department of Law and rural residents come in the context of the Indian Child Welfare Act. The number of children's cases is increasing, and DFYS has become concerned about its ability to handle all of the potential cases, particularly in rural areas. Despite the state's historical opposition to tribal jurisdiction, the Department of Law has long been aware of the collaborative efforts between DFYS and tribes in child in need of aid cases. The attorney general has described the state's position on domestic relations issues as "schizophrenic."¹⁵⁷

The Department of Law filed an amicus brief in *John v. Baker* supporting concurrent tribal jurisdiction over domestic relations cases, but it has a number of remaining concerns. Because of the difficulties inherent in dealing with 226 tribes, each with their own procedures, statutes, and constitutions, the attorney general would like to see the evolution of some uniformity in tribal law, perhaps through codification of basic rules of procedure and principles of law. There is a need for development of court rules governing relations between state and tribal courts, particularly with respect to full faith and credit and comity for other court decisions. He hopes to pursue a dialog among the state courts, tribal courts, and practitioners on how to smooth relations, deal with procedural questions, and address the levels of expectations for particular proceedings, in order to reach a more realistic and practical arrangement with the tribes. In 1998, the Department of Law devoted a day of statewide training to Native law and policy issues, including a discussion of tribal courts.

2. Criminal Division

Individual district attorneys and assistant district attorneys occasionally work with tribal councils on village law enforcement. Some villages handle problems locally, only calling the state when serious offenses are committed or when offenders do not comply with tribal court sanctions. The tribal council sometimes provides the troopers with information needed to file charges and get the offender out of the village. Village councils also offer information about an offender's past actions for use in sentencing, and sometimes play a role in supervising an offender's sentence.

¹⁵⁶ No. S-08099 (1998).

¹⁵⁷ Interview with Attorney General Bruce Botelho, "Knowles Offers Tribes Joint Court Jurisdiction," Anchorage Daily News, page A-1 (April 22, 1998).

The prosecutor's role varies with the amount of criminal activity in a village and the local response to it. Dry villages have far fewer crimes than villages where drinking is allowed. Villages with strong tribal councils or courts often are able to handle all but the most serious offenses and offenders. Other villages have high crime rates and a weak social structure; these villages frequently call the state for law enforcement. A village may occasionally become dominated by a village bully or an overbearing family who intimidate local officials, making it difficult either to report the crime to the state or to impose local sanctions. A few villages have a surprisingly high tolerance for crime and rarely report it or confront it themselves. The Fairbanks district attorney considers the input of tribal councils or courts if they seek removal of an offender from the village or express concerns about conditions of release.

Although the Department of Law supports some concurrent jurisdiction for tribal courts in civil cases, it has taken the position that tribes do not have criminal jurisdiction. It believes as a matter of federal law that most Alaska tribal courts have no authority to deal with misdemeanor or felony offenses. Without Indian country, tribes have no land base that would provide the physical limits of criminal jurisdiction. While tribes have some jurisdiction over their own internal affairs, the state does not believe that criminal cases fit that description.

As with civil jurisdiction, state agencies frequently work around the state's official position. Some VPSOs refer some cases to tribal courts; some troopers help enforce local ordinances; some magistrates encourage tribal courts to handle minor offenses. The state does nothing to disrupt the workings of local courts and councils so long as the local justice system seems to be operating smoothly.¹⁵⁸ Prosecutors tend to agree with the general principle that it is most effective to handle small offenses quickly and locally, particularly in juvenile cases. The prosecutors interviewed also agreed that the state has limited ability to prosecute small offenses in remote locations.

While not conceding misdemeanor jurisdiction to tribes as separate sovereigns, the Department of Law supports deferred prosecution agreements that transfer certain state cases to local governments under negotiated agreements. The Department of Law has approved agreements between DFYS and local governments that send juvenile cases to courts whose judges are tribal council members or village elders. While community courts have the authority to handle almost all juvenile misdemeanor cases,¹⁵⁹ the state retains the power to prosecute if the juvenile offender does not comply with local court sanctions. The attorney general foresees more deferred prosecution agreements with other villages, at least for juvenile cases, in order to maximize the use of resources and provide a quick local response to smaller offenses.

The prosecutors interviewed expressed some concern over U.S. Department of Justice grants to form drug courts and domestic violence courts. The state does not concede that a village court can have jurisdiction over alcohol and drug offenses, particularly since most drug offenses are felonies. In domestic violence cases, they saw value in tribal courts being able to issue protective orders, but questioned whether tribal courts have the training and resources to prosecute the offenders and

¹⁵⁸ One state trooper called the state's position a "don't ask, don't tell" policy.

¹⁵⁹ The agreements make an exception for misdemeanor sexual abuse of a minor, which must be handled in state court.

adequately protect the victim. Prosecutors felt that consistent prosecution policies, thorough training, and strong enforcement powers are necessary to deal with domestic violence.

D. Department of Administration

The Department of Administration houses the Public Defender Agency and the Office of Public Advocacy. The Public Defender, which represents indigent defendants in criminal cases, juvenile offenders, indigent parents in child in need of aid cases, and persons facing civil commitment proceedings. The Office of Public Advocacy represents indigent defendants and juvenile offenders in cases where the Public Defender cannot, and provides guardians ad litem for children in need of aid.

1. Alaska Public Defender

The Public Defender Agency has no official policies or agreements regarding tribal courts and councils. Assistant public defenders interact with tribal courts and councils occasionally in the course of representing criminal defendants and juveniles. Some attorneys seek out the involvement of the tribal council to work out case dispositions acceptable to the victim and the community. In the Dillingham area, the assistant public defender has asked village councils to make disposition recommendations to the state court in juvenile cases, and the court often makes use of these recommendations. In one case, the village council was present at the hearing and the judge adopted its recommendations. Occasionally, a client may ask the public defender to request that the case be transferred to a tribal court, although the interviewer did not hear of any transfers once state charges were filed.¹⁶⁰

One assistant public defender commented that when a village votes to become dry, behavior that used to be commonplace becomes criminal. Some villages would prefer to handle alcohol offenses locally to avoid piling up criminal charges and sending village residents to jail, if the problem can be handled through less aggressive means.

The Public Defender also represents parents in state child in need of aid proceedings. In the rural offices, interaction with tribal councils is common. Tribal councils are often involved with the protection and placement of Native children, and may offer treatment resources, supervision, and extended family involvement in the context of a state court case.

2. The Office of Public Advocacy

The Office of Public Advocacy (OPA) handles criminal cases and juvenile offenses in which the public defender has a conflict of interest, and provides court-appointed guardians ad litem (GALs) or attorneys for parents in state child in need of aid proceedings. GALs are advocates, often lawyers, who represent the best interests of the child, rather than the interest of the parents, the state, or the tribe. GALs often work cooperatively with village councils and ICWA workers to determine

¹⁶⁰ The exception to this is the Washington banishment case of tribal members from Klawock, discussed in chapter 2, section J.

appropriate placements and programs for the children. The level of interaction varies according to whether the village has an active council and staff, as well as the GAL's caseload and funding for travel. GALs rarely appear in tribal court: GALs hired by OPA have appeared once in Kluti Kaah Tribal Court when a case was transferred there from state court, and once in Metlakatla. The head of the guardian ad litem program said that it was important in children's proceedings to have an adult who could advocate for the children's interests, rather than the interests of the parents, and that tribal proceedings do not always provide for this point of view.

To provide better advocacy for Native children, OPA is working to develop a statewide CASA program under a grant from the National CASA Association. CASAs are court-appointed special advocates, non-lawyer volunteers who advocate for children in need of aid, work closely with children and families, and assist the GALs. In conjunction with a new organization, Alaska Tribal CASAs, OPA plans to recruit and train Native volunteers to act as children's advocates in state courts and provide cross-cultural training for non-Native GALs and CASAs who work with Native children. The program also will encourage the use of child advocates in tribal courts and will allow for continuity of representation when cases are transferred between state and tribal courts.

E. Department of Corrections

The Department of Corrections has no formal policies regarding interaction with tribal courts and councils. However, probation and parole officers and presentence report writers report a number of informal contacts with village leaders, village councils, and elders. In the northern region, Corrections officers in Bethel, Nome, Kotzebue, and Barrow report a generally good working relationship for obtaining sentencing and monitoring information. Presentence report writers will contact village leaders to find out about an offender's family, criminal history, support systems, and the effect of the crime on the victim and the community. The amount of contact the officers have depends on how well organized the village is and how much credibility village leaders have with the officer. Officers supervising offenders from smaller villages may turn to the local council or tribal court for assistance in overseeing an offender's probation, supervising community work service, or meeting other conditions. In some cases, probation and parole officers or law enforcement officers ask tribal councils to intervene in probation or parole violations rather than return the offender to state court.

Presentence report writers may receive a request that the offender be allowed to return to the community because the offender serves a valuable role there or is needed by a family. When an offender is released, Corrections sends a letter to the tribal council or VPSO to let them know. On occasion, a village will request that the offender not be allowed to return, either permanently or long enough to see if the offender has reformed.¹⁶¹ Judges and probation officers are generally willing to honor such a condition.

¹⁶¹ Sometimes when a village imposes such a condition, the offender will want to go to a neighboring village, and the neighboring village will refuse him as well. In one case, the neighboring village council explained to the probation officer that allowing the offender into the village would create a hardship for his relatives, who couldn't refuse to let him live with them but who thought he would bring trouble to the village.

Probation officers report an uneven level of support from the various villages they serve. Some tribal council members and tribal police have criminal convictions of their own, and their recommendations do not carry a great deal of weight with the probation officers. Others make recommendations for sentencing in domestic violence and sexual assault cases that Corrections considers far too lenient and demeaning to the victim. In the Bethel area, the probation officer reports a strong need for domestic violence and sexual assault training programs. However, a number of villages have strong elected councils that are able to deal strictly with misdemeanor offenses like alcohol importation and disruptive behavior. In these villages, when the probation office receives a request to remove a probationer or a parolee, it knows that the village has already done its best to deal with the problem and that the state needs to step in.

Corrections is beginning a program called “Safety Net” to monitor sex offenders when they return to rural communities. Under this program, a group of people who know the sex offender and will be having regular contact with him are trained to recognize his relapse patterns and report danger signs to the probation officer. The program is currently being tried in Metlakatla, where five offenders are participating. One offender who attempted to return to Metlakatla without participating was met at the airport by a delegation of community leaders, who told him to sign up for the program or get back on the plane. Corrections also is developing culture-based treatment programs, providing cultural diversity training to prison superintendents and probation officers, and learning about traditional sentencing circles as a way to handle sentencing in Native communities.

F. Alaska Court System

1. Superior and District Courts

The court system serves smaller communities through a network of judges and magistrates. Single-judge superior courts serve the hub communities of Barrow, Kotzebue, Nome, Bethel, Dillingham, Kodiak, and Sitka, along with the outlying areas. Two-judge superior courts are located in Juneau, Kenai, Ketchikan, and Palmer. Judges in Fairbanks and Anchorage assist with the Bethel caseload and cases from the Aleutian and Pribilof Islands; they also travel to smaller communities as needed. None of the judges “ride a circuit” in the sense that they make regular appearances in each community. The court has established a number of sites across the state at which trials can be held, although judge-tried cases in villages are rare. Figure 4 (page 27) is a map showing the location of state judge and magistrate locations.

State judges in rural areas are aware of the judicial role taken on by local tribal courts and tribal councils. They are generally supportive of those efforts, believing that strong local governments are important to the social order of the villages. However, most state judges have limited contact with village judicial systems. The Sitka judge meets regularly with his tribal court counterpart, has observed a trial in that court, and has supported the tribe’s domestic violence initiative. Several judges

have helped train village ICWA workers and at least one has participated in training for tribal court judges. The Nome judge visits villages on an informal basis to meet with village leaders.¹⁶²

For judges, the primary contact with tribes comes through ICWA cases and criminal sentencings. Village ICWA workers routinely intervene in children's cases to represent the position of the tribal council.¹⁶³ Judges in the Nome and Kotzebue areas travel to villages to impose sentences and to hear from members of the community. Rural judges often rely on the recommendations of village councils or village elders in formulating criminal sentences. Sometimes the judge may impose a sentence in which the tribal council supervises an offender's probation or community work service, counsels the offender, or participates in some other way.

Occasionally state court judges attempt to refer cases to tribal courts when clan law or traditional law is at issue. A superior court in Juneau, faced with a dispute about a clan house in Haines, tried to find a tribal court to consider the issue. Since there was no tribal court in Haines, any tribal court that heard the matter would be acting more as a matter of alternate dispute resolution than as a court with jurisdiction. The Sitka tribal court was willing to consider the matter, but the parties were unable to work it out, so the case came back to state court. In another case, the state museum in Juneau filed an interpleader action asking the state court to determine ownership of a significant artifact known as the Thunderbird Screen. Although the judge was willing to send the matter to tribal court, there was no recognized tribe that could handle it. So the judge held hearings in Sitka and Juneau, bringing in older Natives to talk about their laws and customs. Although a settlement was eventually worked out to split ownership of the screen between two groups, the judge concluded that state court was not the proper forum for a case so deeply based in language, culture, and traditional law.

In interviews with regional nonprofits, village council presidents, and ICWA workers in rural areas, most reported general satisfaction with their local judge. Judges were generally perceived as being sensitive to the Native culture and to the dynamics of villages. There was a lower level of satisfaction when judges were brought in from outside the area, particularly when the judges came from Anchorage or Fairbanks.¹⁶⁴

Judges made a number of comments about the development of tribal justice systems and youth courts in their areas:

¹⁶² The Nome judge shares a plane with probation officers and juvenile probation officers when they fly to villages to do home studies; the judge spends his time meeting with the tribal council, village elders, ICWA workers, and village police officers. Each year he travels to a few villages to put faces with the voices that he hears on the phone, understand community concerns about the law, and generally try to put a human face on the state court.

¹⁶³ ICWA workers from smaller villages generally appear telephonically. A number of judges noted that the ICWA workers in their area often do not speak at the hearing, but rather work out placement with DFYS beforehand. Even in cases where the tribe has no statutory right to intervene, the judge may make provisions for the ICWA worker to be heard upon request.

¹⁶⁴ This same contrast in satisfaction level also applied to DFYS social workers, with the majority of complaints directed at the Anchorage office.

- I have appointed tribal children's services workers as custody investigators and as GALs. There is a lack of alternatives here for children, particularly with Native foster homes and group homes for emergency situations. The caseload for DFYS is too high, and state social workers don't get the time needed to develop new options. Resources are the toughest thing to deal with, and the fact that the state has twenty billion dollars in the bank would never be noticed at this end of the law.
- Most of the tribal courts and councils in this area handle quasi-criminal cases. I find that they are often fairly late to intervene in a pattern of criminal behavior. I have had no juvenile delinquency cases where there appeared to be prior intervention by the tribal court. The courts and councils do work on alcohol control, but it is more likely to be informal, private advocacy than head-on criminal sentencing. Only one village handles criminal cases head-on, and I rarely see criminal cases from that village.
- The biggest problem with tribal courts will be inconsistency, in what cases they take and how they decide them. I would like to see accommodation and cooperation with tribal justice systems, consistent with whatever the supreme court tells me. I think everyone is benefitted by local dispute resolution, to administer justice as close to home as possible. Half the magistrates in this area are gone, and it's hard for us to do a good job of delivering justice. As a question of resource allocation, village courts make sense.
- Tribal courts may decide cases differently than state courts would. People in villages are more willing to forgive than the state system is. I see it in the victim impact statement: "he was drunk," "his parents need him," "when he hunts he brings meat to elders." Villages are more inclusive of all the people affected by the crime.
- Words like "sovereignty" and "tribal court" scare people in the state system. I feel tribal courts in my area have a sense of their own limitations, limiting themselves to smaller offenses and children's cases. People in these communities want the power to deal with their own problems. They want the flexibility to work with rehabilitation-oriented programs, especially for young offenders. Unless the local villages are strong, we eventually get the symptoms in state court.
- It's hard to stay neutral in small villages, especially if the village is dominated by one or two strong families.
- We have a well-organized tribal council in this area with a good social services department. As a result, I don't hear many children's cases because they are handled well by the tribe.
- I often hear from tribal councils at sentencing, but I find there is a distinct lack of documentation about prior offenses at the village level. In children's cases, the villages in my area have made quantum leaps in their ability to intervene effectively in state court.

- The stronger villages are becoming educated about justice issues. Sometimes I get strident letters, but I find that those villages don't want to take over the case, they want to have input, and it's good input.

Judges in all areas of the state have been strong supporters of their local youth courts. Judges frequently make courtroom space available, muster community support, and provide training for the student lawyers. They generally support other ADR efforts in the community.

2. Magistrate Courts

The need to provide court services in remote locations has been a concern since statehood. The court used magistrates from statehood on, expanding the number substantially during the 1970's. Magistrates are state court officials who handle preliminary proceedings, smaller criminal and civil cases, and other matters if appointed by the judge. Unlike judges, magistrates need not be lawyers. Magistrates in smaller communities tend to be local residents, often Natives, while those in the larger communities tend to be lawyers and often handle caseloads similar to those of the district court judges. Outside of the superior court locations, the court system has 33 magistrate positions, some serving several towns and villages. There often are a number of vacancies in magistrate positions.

Some magistrates are well aware of which villages in their area have active tribal courts and councils. Other magistrates, even those who are Native or who have lived in the area for many years, are not aware of tribal court and council activities. In those parts of the state where tribes handle misdemeanors, the magistrates report the same phenomenon observed by prosecutors and judges: the villages with strong councils and courts have far fewer offenders coming through the state system.

A few magistrates have developed working relationships with their local tribal councils. The magistrate in Chevak has referred people to the AVCP family counseling program and supported traditional council involvement with troubled families. He supports the development of a drug court in Chevak to handle alcohol and drug offenses in order to emphasize counseling and rehabilitation. The magistrate in Nenana refers custody cases and civil disputes to the tribal court where appropriate, refers people to tribal social services, and asks tribal councils to make sentence recommendations in more serious cases. He sometimes explains the differences between state court and tribal court to people asking questions about adoption procedures and criminal summonses.

Magistrates commented on the work of tribal councils in their area:

- For Native people, tribal courts and councils are not as intimidating. Issues are thoroughly discussed, everyone gets to have their say, the procedure is more informal and less adversarial. In a criminal case, the summons might say "We are going to discuss this problem, and you're welcome to be there."
- Troopers and police in my area sometimes weigh the advantages of taking small criminal cases to state or tribal court. They may consult the tribal court by asking, on a hypothetical

basis, if we had this kind of case, what would you do? If the answer seems appropriate, the police or troopers may not file in state court and let the village handle it.

- I support tribal courts, but I see their weaknesses. There are villages where everyone feels that certain families are in charge and their members are benefitted. Some councils impose community work service and never enforce it. Villages need to earn their right to full faith and credit.
- I can get more compliance with a criminal sentence if the whole village knows about it. I sometimes invite the tribal court or council to the sentencing and ask them to speak. I tell them I am not bound by their recommendations but will seriously consider them.
- There are a number of villages that I never hear from, because they are taking care of themselves. I have other villages from the same culture, with related families, who can't seem to pull it together.

3. Court System Administration

The Alaska Court System has increased its efforts over the last several years to serve Native and rural populations. The supreme court appointed a committee to address how ethnicity, culture, language, and rural residence affect access to court system services. It appointed another committee to address how the court handles child in need of aid cases, including many ICWA cases. It has begun several programs designed to improve court services in rural areas. In addition, the Chief Justice has made a series of informal visits to all district and superior court locations and a number of magistrate locations. The Chief Justice also sits on the tribal relations committee of the National Conference of Chief Justices.

Fairness & Access Committee: In 1996, the Alaska Supreme Court formed a committee to examine racial and ethnic bias in the Alaska state court system. This committee was assisted by six subcommittees composed of community members and court employees from a variety of ethnic backgrounds, professions, and locations. The committee found significant disparities between urban and rural residents in legal representation, understanding of the court system, access to social services and treatment programs, and participation in jury service. It found that ethnic minorities make up a high proportion of the prison population and a low proportion of court system employees. The courts serve a significant number of people who do not speak English well enough to understand court forms or in-court proceedings, and Alaska judges are not trained to know when a language interpreter is needed. Based on these findings, it made a number of recommendations.¹⁶⁵ In 1998, the supreme court

¹⁶⁵ The full report of the Alaska Supreme Court Advisory Committee on Fairness and Access can be obtained by calling or writing the Alaska Court System, 820 W. 4th Avenue, Anchorage, AK 99501; (907) 264-8233, or by visiting the Alaska Judicial Council website at www.ajc.state.ak.us. The recommendations relevant to tribal courts and councils are summarized here:

- The Alaska Court System should establish its presence in rural areas not now being served and should increase its presence in underserved areas. It should encourage and fund judicial travel to local hearings, trials, and sentencings, and send circuit-riding judges to rural areas.
- Judges should appoint local residents as special masters for appropriate proceedings. Judges also should

appointed a committee to work on implementation of these recommendations. The court system ordered diversity training for all employees in 1998.

CINA Committee: In 1996, the Alaska Court System received a four-year federal grant to improve the court process for child in need of aid (CINA) cases.¹⁶⁶ During the first year, the Alaska Judicial Council studied how well the court system and other state agencies met the needs of children in need of aid and their families. The study concluded that judges were insufficiently involved in the cases, cases dragged on too long, procedures were inconsistent across the state, not enough focus was placed on the individual children, tribal notice and participation needed improvement, and adjudication rates for Native children were much higher than for other children.¹⁶⁷ The study recommended that the court system form a CINA committee to review the study, recommend specific changes in court rules and policies, and oversee implementation of the changes.

The CINA committee has worked through 1997-98 to do so. The court system sponsored a three-day ICWA training conference for ICWA workers, tribal court judges, state court judges, state social workers, GALs, CASAs, and lawyers.¹⁶⁸ The court began a pilot project on the use of mediation in CINA cases. It plans to train state court judges on recent legislative changes affecting children's cases. The court system is also upgrading its information systems to improve tracking of children's cases and assess the timeliness of case dispositions.

Other grant projects: In 1998, the court system began a pilot project to assist Alaska Natives understand the court system in Bethel. The court has hired a Bethel resident to act as a "cultural navigator" to help victims, witnesses, and parties understand court processes and legal issues, untangle logistical problems, and obtain information about social services. The court system received

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- consider appointing tribal judges and council members as marriage commissioners and guardians ad litem.
 - The Alaska Court System should ensure that all employees, including judicial officers, receive cross-cultural training upon hiring and at frequent intervals thereafter. The training should include information about the ethnic and cultural groups living and working in the areas served by each court location.
 - The Alaska Court System and individual judges should actively support the use of local dispute resolution organizations to which parties voluntarily submit their disputes for resolution.
 - Judicial officers should seek the assistance of local dispute resolution and tribal organizations when the organizations can provide useful information, advice, or services.
 - The Alaska Court System should train judicial officers in the appointment and supervision of language interpreters in civil and criminal proceedings, and should recruit and train local interpreters of commonly used languages.
 - The Alaska Supreme Court should ensure that the procedures used to resolve children's cases do not have an unjustifiably disparate impact on children of ethnic minorities.
 - The Alaska Supreme Court should require that all judicial officers receive training in the handling of children's cases and the Indian Child Welfare Act.

The report also contains extensive public testimony on tribal courts, tribal councils, and court-related social services.

¹⁶⁶ The grant came from the federal Department of Health and Human Services Court Improvement Program to the Alaska Court System. Staff and travel funding for the court's CINA committee has been funded by a later phase of this grant.

¹⁶⁷ ALASKA JUDICIAL COUNCIL, IMPROVING THE COURT PROCESS FOR ALASKA'S CHILDREN IN NEED OF AID 81-140 (October 1996).

¹⁶⁸ The conference was sponsored by the court system, BIA, Native Village of Eklutna, Alaska Native Indian Child Welfare Association, and DFYS.

a \$109,000 grant from the Bureau of Justice Assistance to provide these services for one year and evaluate the success of the program. The court system will soon begin another pilot project to fund a master and court clerk to travel to rural villages, hearing juvenile cases and working with village leaders. Funds for this project came from the federal Office of Juvenile Justice Delinquency Prevention Program. A third grant, from the State Justice Institute, will help the court measure its case handling against national trial court performance standards, with particular emphasis on how rural residents and ethnic minority group members are served. In late 1998, the court system received a federal grant to examine drug court models and study their applicability in Alaska.

G. Alaska Legal Services Corporation

Alaska Legal Services Corporation provides legal representation to low-income people in civil cases.¹⁶⁹ It has a history of advocacy for tribal rights in Alaska, frequently appearing in state and federal court on behalf of tribes seeking to exercise governmental powers.¹⁷⁰ Legal Services attorneys represent tribes when they intervene in Alaska state court ICWA cases, often arguing for transfer of jurisdiction to tribal courts. Legal Services attorneys also represent individual clients in front of tribal courts and councils. Legal Services attorneys sometimes encourage clients to take legal problems to tribal forums for resolution. Typically, cases referred to the tribal court or council involve adoptions and minor criminal matters that are not addressed by the troopers.

Legal Services has received a grant under the federal Violence Against Women Act to work on rural domestic violence and child victimization. Legal Services will provide some direct representation to battered women for child custody and support orders, protective orders, and applications for public assistance. Legal Services is working with Tanana Chiefs Conference to provide domestic violence training to 30 Interior villages and tribal courts. Tanana Chiefs and Legal Services are exploring ways to provide emergency relief at a local level, particularly in villages where no local law enforcement is accessible. One Legal Services attorney commented that tribal court protective orders might be more effective than state court orders in this situation, because more people in the village would know about the order and could provide support for the victim. Legal Services also is working with a domestic violence task force in the Kotzebue area.¹⁷¹

A Legal Services attorney in the Interior region commented that local efforts at alcohol control have been set back by the *Venetie* tax case because tribal courts and councils are unsure of their jurisdiction over this issue. Fighting with the state over jurisdictional issues has detracted attention from community problems, and the lack of state support has sapped morale. The attorney commented

¹⁶⁹ Alaska Legal Services Corporation is listed in this part of the report for convenience; it is not an Alaska state agency. It is chartered by the national Legal Services Corporation, governed by a local board, and receives a mix of state, federal, and private funds.

¹⁷⁰ For instance, Legal Services represented parties in *John v. Baker* and *Native Village of Venetie IRA Council v. State of Alaska*, 944 F.2d 548, 561-62 (9th Cir. 1991). In the Klukwan artifacts case, Legal Services represented the interests of Chilkat Indian Village. *Chilkat Indian Village v. Johnson*, 870 F.2d 1469 (9th Cir. 1989).

¹⁷¹ As part of the domestic violence project, Legal Services sent out questionnaires to the 226 tribes asking about domestic violence ordinances, procedures, and tribal court handling of these cases. Most of the 90 villages that responded reported no tribal court function and no domestic violence ordinances or procedures. Most of the villages referred serious domestic violence cases to the state and less serious cases to counseling.

that some measure of recognition that tribal courts have a role to play would make tribal courts more effective in dealing with internal matters.

H. Rural Governance Commission

In February 1998, Governor Knowles established the Commission on Rural Governance and Empowerment. The commission consists of 22 members, including many Native leaders from rural areas. The commission is designed to “advance recommendations about the appropriate role of state-authorized local governments and of tribes; maximize local autonomy and control; encourage respect for differing aspirations, traditions and culture; and improve delivery of government services, including public safety, justice, economic development, natural resource management, education and public health.” The commission works from the principle that Alaska tribes have the authority to govern and that state recognition and support is essential to the success of Alaska’s system of governance. It further holds that all rural Alaskans must have governmental tools and resources necessary for self-determination.¹⁷² Commission members traveled the state during 1998 to learn what issues are of greatest concern to rural Alaskans, then broke into work groups to make recommendations in these four issue areas. At this point, the commission has not determined how it will address the jurisdiction of tribal councils and courts and their relations with state government.

¹⁷² COMMISSION ON RURAL GOVERNANCE AND EMPOWERMENT, INTERIM REPORT TO THE GOVERNOR (May 1998).

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- * These reports may be found on the Alaska Judicial Council website at www.ajc.state.ak.us.