

ACJC WORKGROUP ON RURAL CRIMINAL JUSTICE
Staff Notes and Member Assignments (SDD)
From November 24, 2014 Meeting, 10 AM – 2 PM @ CIRI

Commissioners Attending: Michael Geraghty, Quinlan Steiner, Alex Bryner (tel.), Greg Razo (tel.), Terry Vrabec (tel.)

Staff Attending: Susanne DiPietro (SDD), Mary Geddes (MG)

Also Participating: Bryan Brandenburg* (DOC), Bradley Myrstol (UAA Justice Center), Nikole Nelson* and Holly Handler* from Alaska Legal Services Corp.; Carole Brown* (AVCP General Counsel/AFN); Doreen Schenkenberger (Partners for Progress and Anchorage Reentry Coalition); Hon. Michael Jeffery,* Barrow Superior Court; Jay Hochberg, Public Defender

**The next workgroup meeting is: Wednesday, December 10, 10:00-11:30 AM,
Foraker Room, Denali Commission, 510 L Street, Anchorage**

THIS MEETING INCLUDED INVITED COMMENTARY

Bryan Brandenburg, Director of Facilities at the Department of Corrections:

It is DOC's intention as much as possible to use Goose Creek to house rural defendants sentenced to less than a year of imprisonment. DOC is increasing its use of culturally based programs as much as possible and is emphasizing support for offenders' reentry into the community. Community reentry coalitions exist in Dillingham, Fairbanks, Juneau, Anchorage and Kenai but not Bethel. (Reentry coalitions are groups of nonprofits and other community-based providers who work with prisoners and DOC officials immediately before and after release to provide supports such as housing, employment and treatment with the goal of decreasing recidivism). DOC uses, as much as possible, treatment programs that are evidence-based. An exception might be a culturally based program that has not been validated but seems promising (for example, AVCP's Healthy Families class).

Nikole Nelson and Holly Handler, Alaska Legal Services:

ALSC has been providing civil legal access for 45 years to low-income Alaskans. Goals are to stabilize the lives of low-income Alaskans. ALSC recommends eliminating barrier crimes to work and housing through expungement, sealing of court records, and juvenile diversion programs. Particular jobs that ALSC has noticed are out of reach due to criminal records include home health aide and being licensed as a foster care provider. Although waivers are available, people have a hard time understanding all the requirements and the paperwork to obtaining them. Barriers to housing include a lifetime ban from HUD housing for drug-related felonies. Food stamps also come with federal restrictions against people with certain criminal convictions; however, the legislature can opt out of or modify those restrictions.

ALSC also has established a tribal courts team to implement the *Tanana* decision (recognizing tribal court jurisdiction over child welfare cases). In 2012, ALSC released a statewide survey of tribal courts in Alaska. It found that a majority of courts still operate without paid staff. Barriers to increased use of tribal courts include resources (paid staff and office space), and collaboration with the executive branch (to eliminate legal challenges and uncertainties that potentially prevent state courts from enforcing tribal court orders).

Recent ALSC research has found perceptions and attitudes in the state that also potentially inhibit the effectiveness of local tribal authority, for example, the attitude that villages' needs are a drain on state resources. However, ALSC also has found many examples of tribes successfully addressing local problems,

for example, the Emmonak and Togiak elders' panels. Tribal groups wish to intervene in ways that don't need to have a criminal or a civil "label".

Federal funds to sustain tribal court activities are not readily available in Alaska (Alaska receives only about 9% of tribal court grant funds) because those funds typically are directed at reservation-based tribes. Increasing the scope to PL280 and compacting states such as Alaska would increase costs significantly. Information is being gathered about how much funding Alaska's tribal courts need.

Carol Brown, AVCP:

56 tribes in the YK Delta Region (17 of whom compact with AVCP) operating between 16-20 tribal courts (changes based on funding, etc). AVCP has had overlapping federal grants for six years to support tribal court development and operations but those are now ending. Necessary funding includes office space, salary for one judge and one support staff, equipment, furniture and supplies.

AVCP organizes tribal court trainings. In 2012, the conference included representatives from state and tribal systems.

For many residents of the YK Delta, understanding English and understanding legal proceedings are problems. More trained Yupik interpreters are needed, and attention must be paid to local dialects as well.

One model of a tribal solution to a local problem is the development in Mountain Village of a women's circle which monitors curfew violations, often associated with underage drinking.

AVCP sponsors cultural sensitivity training such as Knowing Who You Are and Undoing Racism. Recommend that state employees working in the YK Delta take this training.

Judge Michael Jeffery:

The North Slope Borough funds a certified police officer in every village served by the Barrow court; these police forces answer to the NSB which is a Native-controlled government. This structure may contribute to higher levels of satisfaction with the state justice system than in other villages.

Fetal Alcohol Spectrum Disorder is a disability experienced by many people who come before the Barrow court, although few are formally diagnosed and the occurrence in the general population is unknown. For FASD defendants, using plain written and spoken English, and stating orders in the positive rather than the negative are effective. Defense counsel do not seem to propose the FASD statutory mitigator as often as might be merited; this may reflect a lack of training and experience on the part of defense counsel.

The villages in the Barrow area have not exhibited much interest in tribal courts. However, in Barrow the Native Village of Barrow Tribal Court has exclusive jurisdiction over child protection cases involving children who are members of the NVB. State social workers handle most of the case investigation functions for the tribal court.

Could local tribal organizations or the village council be authorized to supervise felony probationers in the village? Checking in with the local council could be ordered as a condition of probation, but such an initiative would not be undertaken without advocacy and preparation from defense counsel.

Revisions to the bail statute a few years ago created a number of situations in which there is a rebuttable presumption against bail; by and large, defendants who fit into those categories stay in prison for extended periods before conviction. Use of third party custodians is not as common in Barrow as elsewhere – about 10-15% of cases. Barrow and Kotzebue have contract jails where defendants stay for 30 days or less.

The presumptive sentencing ranges for sex offenses are quite high. With the finding of a mitigator, the judge can sentence below the minimum range, but by no more than half. A floor on the presumptive range might be helpful.

DISCUSSION

The group discussed the Department of Law's proposed delegation of authority agreement (the document allows the Department of Law and a tribe to agree to refer certain criminal offenses to the tribe for consideration of civil remedies in lieu of state criminal prosecution). The agreement has not yet been signed by a tribe. According to the ALSC and AVCP representatives, one potential barrier to acceptance by the tribes is the scope of the waiver of sovereign immunity provision, which may be viewed by tribes as overly broad.

The group discussed the need to consider juvenile justice issues since youth who go through that system (and the CINA system) often appear in the adult criminal system. Addressing the statutory auto-waiver might be helpful.

QUESTIONS

- Bail process in rural areas (are there any regional differences in how courts handle bail)?
- Explore further how cooperative agreements between the executive branch and tribes could be implemented to circumvent jurisdictional uncertainties for tribal courts (including further review of the proposed delegation agreement and possible consideration of statutory authorization)
- Could more aggressive alcohol interdiction in dry villages help decrease crime?

RESOLUTIONS

- Review the recommendations of the Title IV workgroup which will be presented to the Alcohol Beverage Control Board

ASSIGNMENTS:

- Quinlan Steiner volunteered the PD, and specifically Jay Hochberg, to poll the state PD's on the differences in regional bail practices. Jay is in Ketchikan but was previously in Kotzebue.
- Continue to review and report on previously assigned rural studies (all)