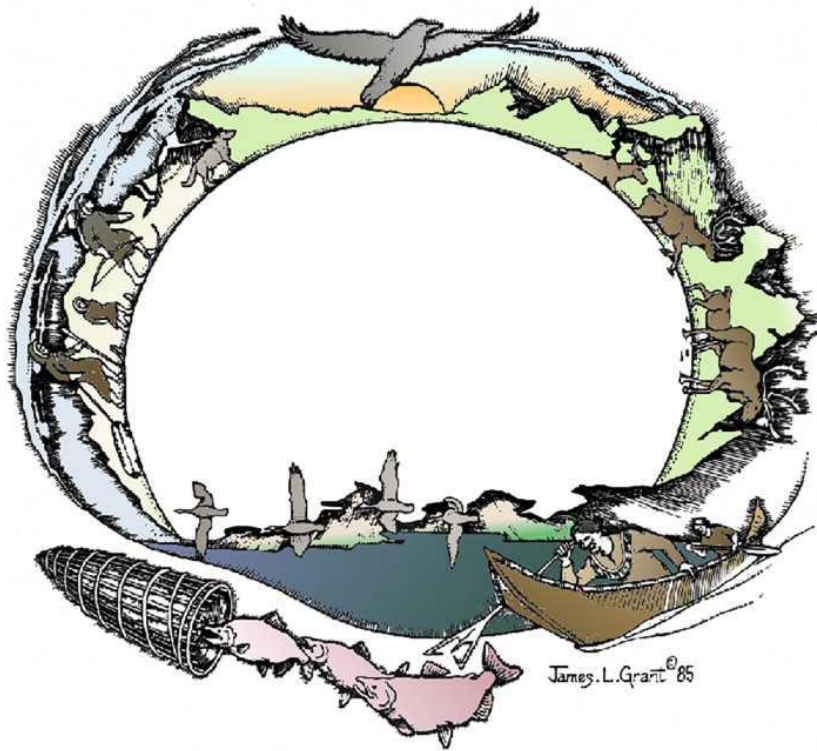


# Opportunities for Tribal – State Collaboration

## Alaska Tribal Court Conference

### Fairbanks 2016



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***“.....Same thing with the tribal court.  
That came in long before white people.  
The court brought everything out in  
the open, before the people. They  
talked to the person making trouble  
right in front of him. They just talk.  
As peaceful as they can. The Indian  
way is to have respect for one  
another.”***



Traditional Chief Peter John  
Minto 1900 - 2003

# Current Picture of Tribal Jurisdiction

- **Clear Jurisdiction: Exclusive**
  - Determining membership/citizenship
  - Internal affairs, determining own form of government, and tribal justice system
- **Becoming more clear: Concurrent**
  - Domestic relations, child protection, adoption, domestic violence when at least one tribal member is involved
- **Less clear: Concurrent**
  - Infractions, status offenses, misdemeanors
  - Enforcing regulatory law....clean air
    - Legal theories for tribal jurisdiction over these are protecting the health and safety of the tribe and tribal members, when necessary to regulate internal affairs, and when parties consent
- **No Tribal Jurisdiction**
  - Over matters outside the village, not involving tribal members or affecting the tribe...or criminal jurisdiction over non-Natives without extended authority

# ***Opportunities for Tribal State Collaboration on Juvenile Justice, State Criminal Cases, and Various Misdemeanor Crimes***

- 1. Memorandum of Understanding between the Department of Health and Social Services, Division of Juvenile Justice and the Tribe**
- 2. Plan adopted by the Tribe and the Alaska Court System for Restorative Justice Referrals under Alaska Criminal Rule 11(i)**
- 3. Civil Diversion Agreement between the State of Alaska and the Tribe. [Negotiations continuing]**
- 4. Working with district attorneys at the plea bargain stages**

# **1. Division of Juvenile Justice, MOU**

- **Diversion program for juveniles who commit offenses in the village**
- **Program intent is to more effectively respond to and rehabilitate juvenile offenders at a local, village level**
- **DJJ reviews all cases for juveniles charged with minor crimes and diverts those they think are appropriate to the Tribe**
- **The Tribe reviews the referral and decides whether or not they wish to take it**



- **DJJ provides information and guidance as needed for each referral**
- **The Tribe provides a village based, restorative justice approach to dealing with the juvenile offender**
- **If the juvenile complies with the Tribe's remedy/sentencing, the juvenile has no record within the state system**
- **If the juvenile does not comply with the Tribe's remedy/sentencing the case may be referred back to DJJ**



## **2. Plan between the Alaska Court System and Tribes**

- The Tribe monitors the state court calendar on the internet and notifies the relevant court that it is interested in a particular criminal case involving a tribal member**
- The state court will send the relevant documents regarding that case to the Tribe**
- The Tribe reviews the paperwork and if it decides whether it wants to get involved in that case**



- **If so, the Tribe notifies the court that it wants to conduct a “proceeding” as to that defendant (It could be a circle, but it could be another process of the tribe’s choosing)**
- **Once the defendant is convicted in state court, the court will refer the matter to the Tribe if the parties agree and will set sentencing out long enough for the Tribe to conduct the proceeding**
- **The Tribe will conduct the proceeding and let the state court know the outcome, which will be a formal recommendation to the court as to the sentencing recommendation**
- **The state court will carefully and respectfully consider the recommendations and impose sentence**





### **3. CIVIL DIVERSION AGREEMENT**

#### **To divert certain misdemeanors from the State to the Tribe**

- **Tanana Chiefs Conference staff and a wide variety of tribes and tribal organizations have been negotiating with the Alaska Attorney General's office for nearly 3 years in shaping a tribal-state agreement template for the purposes of referring certain misdemeanors committed by anyone in the village, by any state or tribal law enforcement officer directly to tribal courts for sentencing.**
- **The agreement would be between the Alaska Department of Law and Alaska tribes that wish to handle these misdemeanors under state law.**



# Optional

- **Offenders (tribal members, village residents, and anyone committing offenses in the village, including people who are not members of the Tribe) would be given the choice of going to state court for criminal prosecution, or agree to go to tribal court for civil remedies (sentencing)**
- **Tribal courts would have the option to take or decline a case referred**



# Sentencing

- **The tribal courts may use culturally based procedures such as Elder panels and sentencing circles, and apply restorative justice sentencing designed to help and heal victims, offenders and the village as a whole.**
- **If an offender does not comply with the tribal sentencing orders, the case could be referred back to the troopers/District Attorney's office for possible prosecution.**



# **Waiver of Sovereign Immunity**

**The main obstacle on this negotiation is the insistence of the state for the tribes to waive their immunity from suit and the level of complexity involved in the limited waiver.**

## **4. Working Directly with District Attorneys**

**Tanana Chiefs recently had success in working with a district attorney at the plea bargain stage of a domestic violence case. The conditions on probation prohibit the offender from returning to the village for 3 years.**

