

TRIBAL -STATE COLLABORATION

On Cases Relevant
to Restorative Justice and Judicial Practices



THIS SESSION WILL COVER

- Referral of state court cases involving Native people to tribal restorative justice programs in cases where the state retains jurisdiction.
- Criminal cases, sentencing, and probation with a focus on victim impact and restoration, as well as custody and child protection cases.



Meaningful tribal
involvement

Co-management model

All rely on tribal ways of
assigning consequences to
criminal behavior

Protecting victims

Facilitates rehabilitation

UNDERLYING PHILOSOPHY

From the perspective of:

Hon. Eric Smith, Retired Alaska State Court Judge

Hon. Susan Wells, Kenaitze Chief Tribal Court Judge

Mr. Curt Shuey, Kenaitze Ts'ìlq'u Circle Keeper



MAIN TOPICS



- Value of Circles and related practices
- Referral to tribes for sentencing recommendations
- Dual jurisdiction court
- Probation oversight by tribes



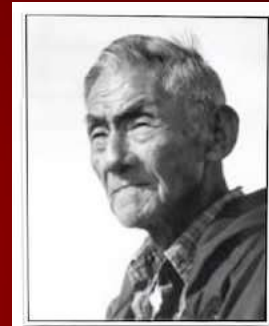
"As one people, with the various chiefs, they agreed on what was best.

...they taught one another whatever they needed to learn.

They visited among all the different villages, and told one another ancient stories. What they learned from the old stories that they heard, they passed on to others for them to make use of it.

...and they trusted one another...."

Peter Kalifornsky, Dena'ina Elder



Peter Kalifornsky
Dena'ina Author
Kenai, Alaska
1911-1993



VALUE OF CIRCLES AND RELATED PRACTICES



TS'ILQ'U CIRCLE

“coming together as one”

- Our lives are a series of challenges; how we face them makes all the difference.
- The Circle offers a way to use difficult times as opportunities to learn and make good choices for our for ourselves and our community, drawing upon the unifying principles of indigenous cultures around the world...talking, listening and learning.



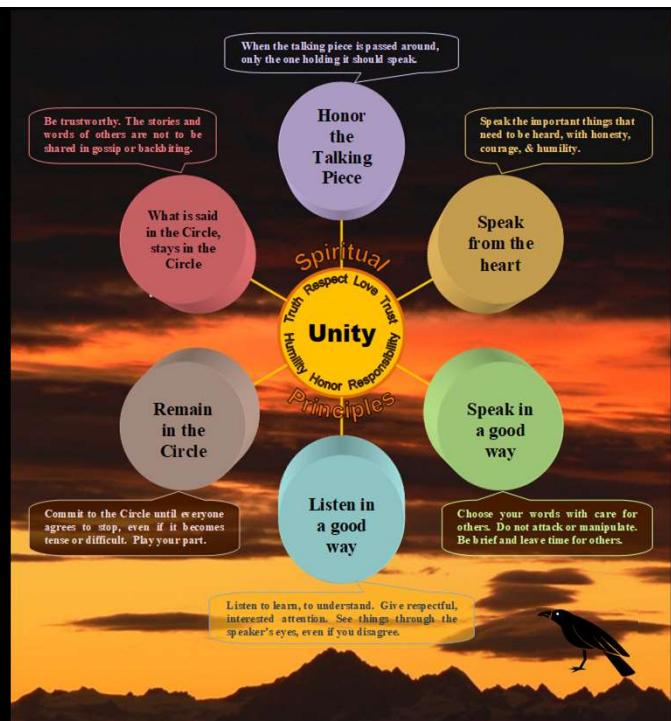
Common wherever
Circles are used

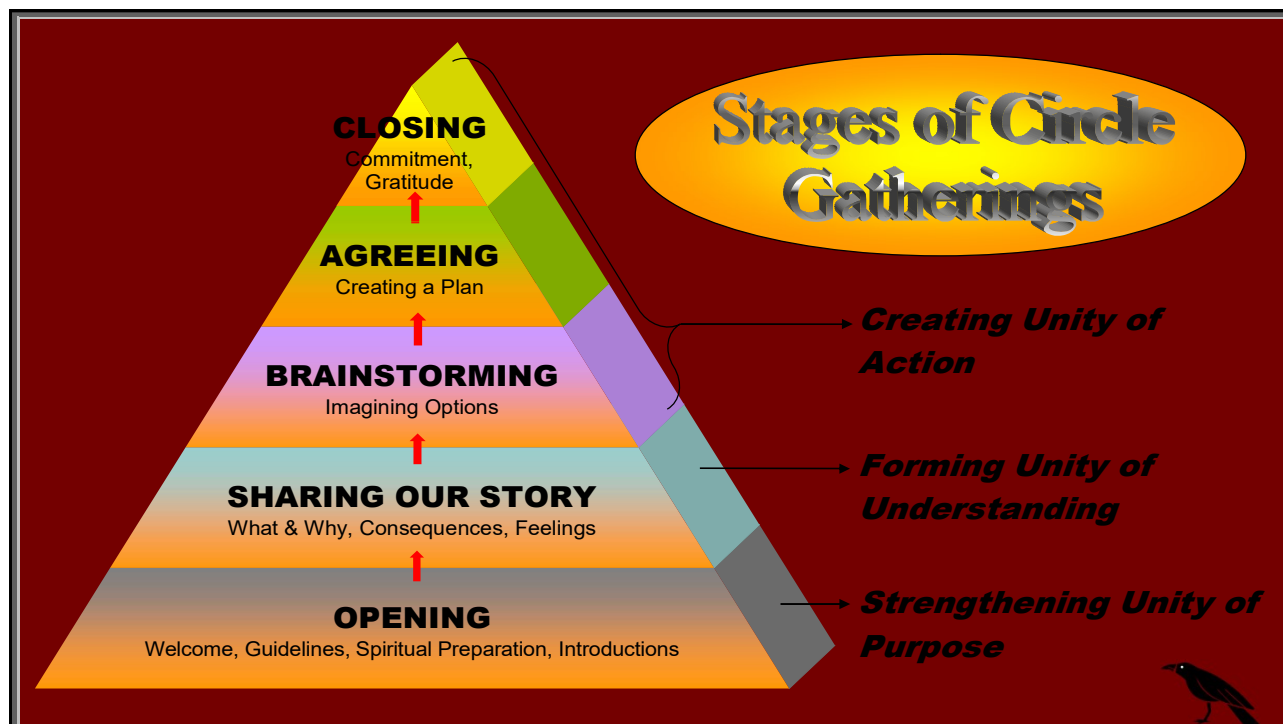
Guidelines, not rules

Questions, changes?

Check for consensus

Self awareness





TS'ILQ'U SERVES ALL UN'INA



- of all ages and backgrounds
- dealing with issues that are important or difficult
- ready to address their issues with others in a way that is thoughtful, creative, and peaceful.

THIS IS HARD!!!

WHY DO IT????

*When these principles
are taken to heart,
plans and decisions
become more:*

Informed—*All relevant information is sought out and considered, without bias.*

Creative—*Participants are freed from protecting limited positions and narrow self-interest.*

Universal—*Everyone is valued and included; there is no “out-group.”*

Effective—*Decisions are fully supported by the decision-makers.*

Developmental—*Plans are readily modified and adapted as new information or changing conditions become known.*

Sustainable



**REFERRAL TO TRIBES
FOR SENTENCING RECOMMENDATIONS**



VALUE IN INTEGRATING TRIBES...

- The Alaska court system has recognized the value of integrating tribes and other groups into the sentencing process.
- Accordingly, promulgated two formal rules authorizing judges to refer cases to tribes and related organizations for recommendations on criminal sentencing.



CRIMINAL RULE 11(i) and DELINQUENCY RULE 23(f)

- Explicitly authorizes state court judges to involve other cultures into state sentencing procedures.
- The rules rely on the judge and the parties to take the initiative in the context of a particular case.
- There is a need for institutional implementation.



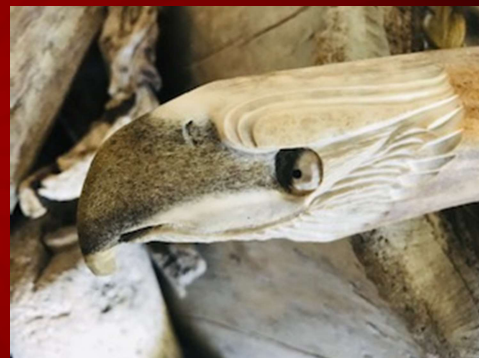
THE PLAN...TO ASSURE THE RULE IS USED EFFECTIVELY

- The Tribe and the State formalize a binding agreement.
- The “Plan” is meant to remain in place permanently, so that the referrals continue to occur notwithstanding turnover in the state judiciary or tribal officials.
- The state court judge has no role in determining how the tribe arrives at its recommendation



- Tribal court monitors the state court calendar, giving notice of its interest in a case
- State sends tribal court the relevant documents; tribal court informs the state if it will take the case
- If the defendant is convicted, the tribal court conducts proceedings in accordance with its cultural practice
- The tribal court then informs the state court of the outcome; a formal recommendation as to the sentence or disposition
- State court carefully and respectfully considers the recommendations and impose a sentence.

THE BASIC MODEL





DUAL JURISDICTION



HENU COMMUNITY WELLNESS COURT

Transforming Lives for a Healthier Community





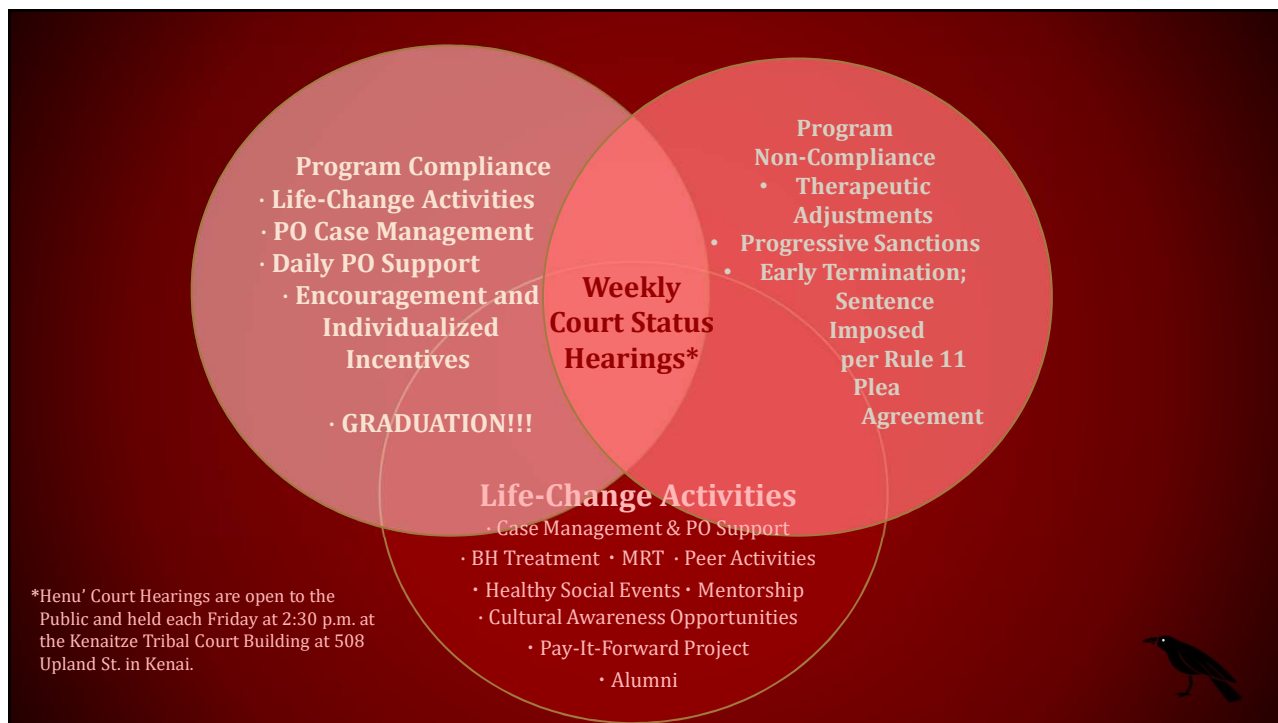
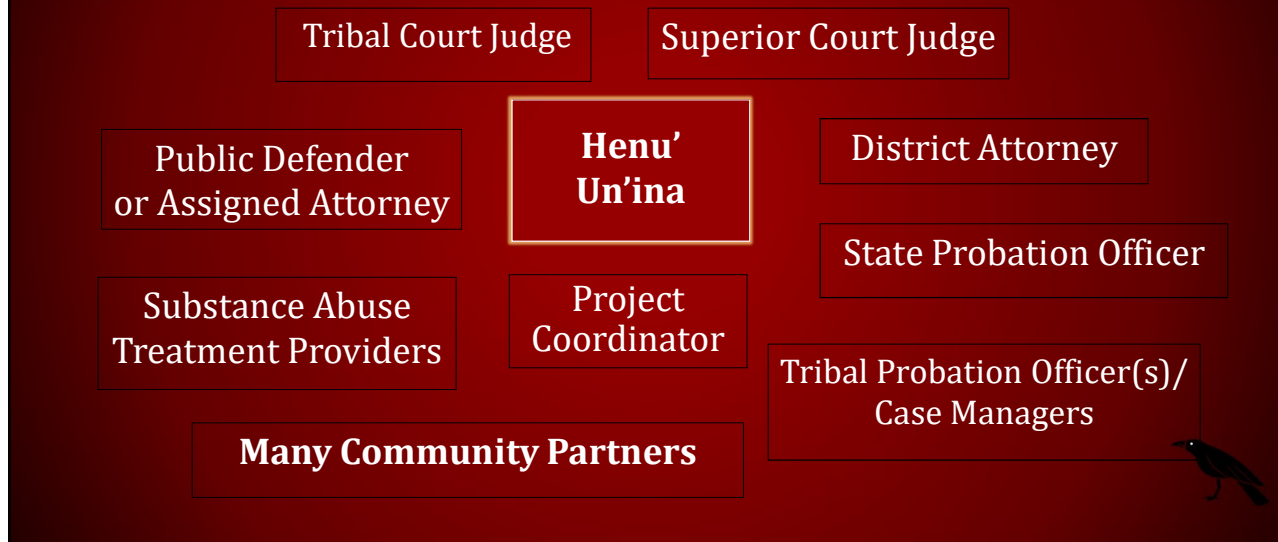
HENU COMMUNITY WELLNESS COURT
Henu is the Dena'ina word for work, job, task



**Kahtnuht'ana
 Dena'ina
 traditional
 cultural values
 are woven into
 the therapeutic
 court process**



HENU' COMMUNITY WELLNESS COURT MULTI-DISCIPLINARY CORE TEAM CONSISTS OF:



TARGET UN'INA

- CINA (child custody) Cases - Families with substance abuse addictions
- Long-Term Jail Sentence with substance addiction issues
- Individuals facing felony convictions with diversion
- Participants cannot have a violent offense, drug dealing charges or sex offenses

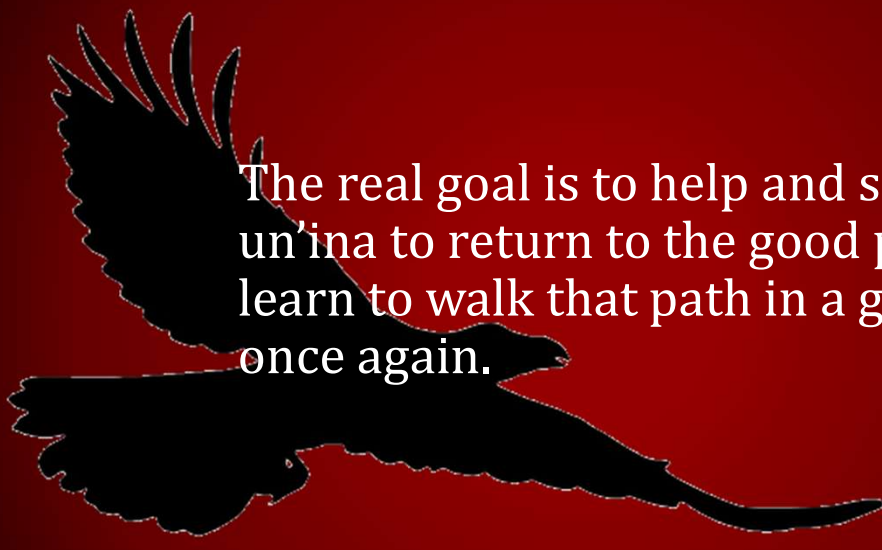




HENU' COMMUNITY WELLNESS COURT GOALS

- Enhance public safety, reduce recidivism, and incarceration rates among participants
- Reduce the costs associated with re-arrest, processing and incarceration of Henu' participants
- Use evidence-based practices to enhance and promote self-sufficiency while participants community and rebuild their lives
- Conduct outreach to inform the public about the therapeutic courts
- Complete and document an annual team review of policies and procedures, contracts and handbooks
- Conduct team trainings to assure best practices are used





The real goal is to help and support our un'ina to return to the good path, and learn to walk that path in a good way once again.

HENU'S FOUR PHASES

Phase 1 – *Naghel'a*

Trust Phase: (just show up and be honest) ~minimum 120 days (includes an Orientation Phase)

Phase 2 – *Daggeyi*

Belonging Phase: education and service planning (learn about issues and opportunities identified in the trust phase) ~minimum 120 days



Phase 3 – *Visha Yaghelisht'a*

Living Well Phase: skill development and feedback (learn new skills and build confidence in yourself) ~minimum 120

Phase 4 – *Yaghelich'*

Restorative Phase: maintenance and transition (maintaining sobriety and transitioning to a truly healthy lifestyle) ~minimum 180 days

GRADUATION CRITERIA



- Complete graduation questionnaire
- Submit a Petition for Graduation
- Have a safety/relapse prevention plan
- Ongoing safe sober housing
- Work, school or service hours
- Pay It Forward Service Project
- 180 days of continued sobriety
- Follow Life Change Plan
- Follow treatment recommendations

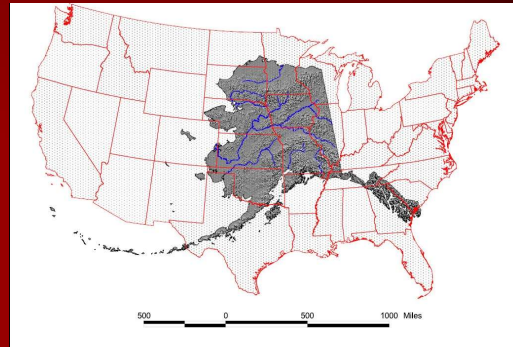
- Fulfill all court obligations



PROBATION



- Many Alaska Native tribes are located in very remote areas with access – the only access is by plane or boat.
- There are no probation officers in remote areas, which means that no effective supervision of people on misdemeanor or felony probation.
- Tribes generally in a good position to monitor people who live in their communities



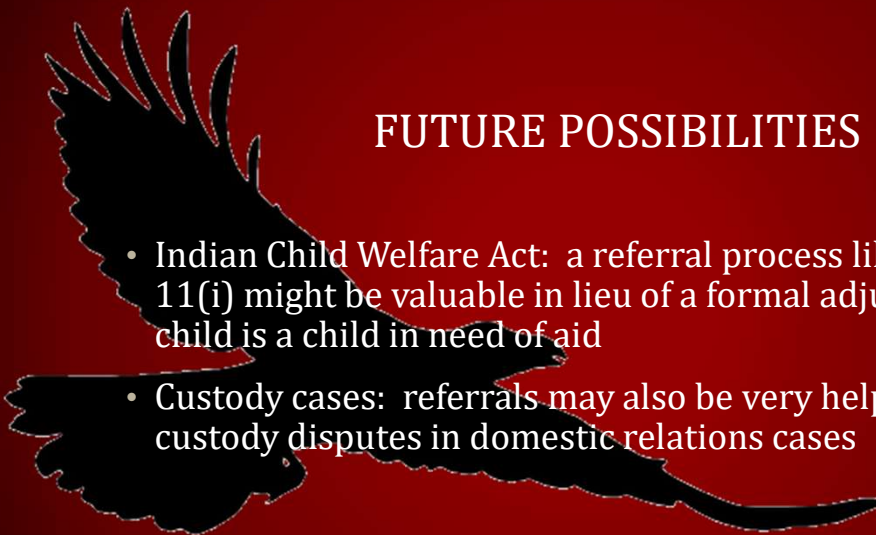
- DOC identifies all on criminal probation living in villages
- Tribes select those they want to supervise and notify the DOC
- DOC notifies the individual; explains program; and gets individual's agreement
- Tribes takes over supervision; including consequences for probation violations
- Violations of tribal requirements after a violation, DOC is notified
- Tribe returns Probation file; DOC revokes probation agreement in state court

THE BASIC MODEL



FUTURE POSSIBILITIES

- Indian Child Welfare Act: a referral process like that of Rule 11(i) might be valuable in lieu of a formal adjudication that a child is a child in need of aid
- Custody cases: referrals may also be very helpful to resolve custody disputes in domestic relations cases





• Questions?

• Gheli jani! Chiqinik!!!