

Summary of How Minor Consuming Alcohol Cases Are Handled in Your Community

by conference participants at the
Minor Consuming Alcohol (MCA) Conference
Anchorage, AK
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Pete Abraham – Tribal Court Judge, Togiak Tribal Court

Togiak Tribal Court (TTC) receives a Complaint or Report from VPO or Community member. If TTC takes the case, parents are notified of a hearing. The parents or designee are required to be at the hearing. Sentencing includes community work service, supervised by the parents and counseling for youth and parents in the Yupiaq context.

L. Diane Casto, MPA – Prevention Manager, DHSS, Behavioral Health

I work at the state, not the community level. Through our office we collaborate and fund many community efforts to reduce and prevent underage alcohol consumption. We coordinate and facilitate the Alaska Committee to Prevent Underage Drinking (ACPUD) and we have developed and distributed “Alaska’s Strategies to Prevent Underage Drinking.”

In addition, I am the Chair of the ABC Board’s Title 4 review, Subcommittee on Underage Drinking, where the issue of MCAs has been a large part of our discussions.

Sara Clark, Program Coordinator, DBH Prevention & Early Intervention Section

I work with urban and rural communities across the State of Alaska. Law enforcement of underage drinking is handled differently in communities, depending on local policy, capacity for enforcement and community attitudes around underage drinking. There has been a lot of research as to what the best approach is to preventing underage drinking. We have learned that this issue takes a firm understanding of local conditions, reducing both retail and social availability of alcohol, comprehensive strategies with evidence of effectiveness, accessible treatment options when needed, and a community culture that promotes healthy (and legal) relationships with alcohol. That is a very basic summary, hopefully some of the resources we provided will be useful. I really look forward to learning more about local challenges and opportunities at this conference!

Note: See the conference webpage for the resources Sara has provided.

Shirley Coté, Director, Alcohol Beverage Control Board

The ABC Board relies on state and local law enforcement in the enforcement of Title IV. Municipalities receive license fee refunds in exchange for enforcement relating to minors consuming.

It is also the responsibility of the ABC Board to enforce Title IV. To prevent alcohol from getting into the hands of underage persons by alcohol retailers the ABC Board has the Compliance Check Program. Underage persons ages 18–20½ are employed and supervised to enter retail establishments and attempt to purchase alcoholic beverages. If the licensee or agent sells, they are issued a citation. Licensees receive administrative sanctions. Retailers fail compliance checks at about 10%.

E. Ingrid Cumberlidge, Chief Judge, Qagan Tayagungin Tribal Court

Minor consuming cases are currently referred to state court. We are currently in a planning grant to develop increased collaboration between agencies to better address the concern of minor consuming in the community. It is the hope of our court that this will develop both into direct transfer of jurisdiction to our tribal court and possibly referral from state court for sentencing healing circles with the intent of developing sentencing recommendations for those cases handed in state court.

Leonard R. Devaney, III, Senior Superior Court Judge, Sitka

Minor consuming violations should be all about rehabilitation. I speak directly with the minor about the effects of underage drinking and how having these violations on their record can affect them in the future. I ask them how old they will be when their brain is fully grown; and do they think it is okay for pregnant women to drink alcohol, and is it okay for teenagers to drink alcohol. I urge them to respect their community, their tribe, their family and themselves by not drinking alcohol at all or at least by waiting until they are of legal age to drink. I also invite their parent(s) to speak.

I have no data supporting what I do at these hearings. All I have are the comments of a few individuals who came up to me later and told me they heard what I said to them at court and stopped drinking. I could tell they were proud of themselves. I am proud of them too.

Department of Juvenile Justice

DJJ receives MCAs referred after the third referral if the minor has two prior convictions (Habitual MCA). We attempt to handle the cases through an informal diversion process or with the intervention of the Children’s Court. Due to federal guidelines, minors only charged with Habitual MCA cannot be detained for violations, so it makes enforcement for juveniles with long-term substance abuse issues and the problems that come with that very complex. We work closely with VOA for assessments and treatment.

Virginia (Ginny) Espenshade, Executive Director, Kenai Peninsula Youth Court

Our Youth Court serves the communities within the jurisdictions of the Kenai and Homer District Courts. Since AS 41.16.050 was amended in 2001 to set up the three tiers of offenses, we have served as a “Community Panel” for diversion of first time offenders 17 or younger.* In our area the diversion is done after a plea of guilty or no contest, in the context of a Suspended Imposition of Sentence. The defendant therefore has a conviction, and even after it is set aside in a year if consequences are completed and no new offenses, the SIS counts against the defendant if they get a subsequent charge of MCA. In Kenai our diversion program is one of two possible referrals, and we partner with the Tribal Circle program with the Kenaitze Indian tribe in explaining and coordinating referrals to our programs. Representatives of our programs are present at the weekly arraignments in Kenai if any cases appear to be eligible for diversion. After the presentation of the rights video, we offer to meet with those who may be eligible for diversion, and provide them with a written handout explaining the process. (We developed the handout in collaboration with the District Court Judges, and periodically review it to make sure it is still accurate.) (See the conference webpage for the handout used by the Kenai Youth Court).

* Prior to 2001, we had a different process set up in Homer per a MOA with Homer Court, District Attorney, Public Defender, Homer Police Department and Alaska State Troopers. That process involved law enforcement allowing offenders a set time period for contacting Youth Court. If offender set up intake with Youth Court, ticket was not filed in District Court.

Pete Esquiro, Chief Judge of the Sitka Tribe of Alaska Tribal Court

Youth who receive a first MCA citation have the option of going through State Court or can be referred to the Sitka Tribe of Alaska TYDE (Tribal Youth Diversion Effort) program where the Tribal Judge sentences the youth to get a SA & A assessment at Sitka Counseling and Prevention Services and is to follow any recommendations by SCPS. In addition to being automatically required to take an ADIS course, the youth is sentenced to Community Work Service, to write a 500-word essay, not use alcohol, drugs or tobacco while on probation and to follow court- ordered requirements. If the youth fails to complete the sentence, he or she will be referred back to the Municipal Attorney’s Office for any further action.

The TYDE program is a joint effort of the City & Borough of Sitka and the Sitka Tribe of Alaska; all youth residing in the City of Sitka are eligible to choose the TYDE program as an alternative to regular sentencing.

Ryan Fortson, Asst. Professor, UAA Justice Center

I study tribal courts in Alaska and am hoping to put together a research project measuring the effectiveness of tribal courts along two measures – recidivism and participant satisfaction with the

process. A literature review I have conducted suggests that there is only anecdotal information on this topic and little by way of empirical research.

Cynthia Franklin, Anchorage Municipal Prosecutor

Under current municipal law, we do not handle minor consuming alcohol cases. However, a penal code revision is being submitted to the Anchorage Assembly for introduction and consideration on March 25, 2014 and public hearing and vote on April 8, 2014. The revision includes a municipal version of AS 04.16.050 which mirrors state statute in its entirety. This will enable the Anchorage Municipal Prosecutor's office to file MCA charges using an ordinance identical to Title IV of state statute. The AMC code revision also includes a civil ordinance directed to underage drinking that is intended to be a one-time civil penalty outside the realm of the Title IV penalties. This civil violation is intended to be an easy and quick ticket for APD to write everyone without having to run APSINs in the field. Attorneys could later determine if a minor had already used their civil penalty — if so, APSIN is used to determine where in the Title IV scheme the offense belongs and file it from there.

Bill Hogan, Dean, College of Health, UAA

MCA cases are not handled consistently. Some communities/individual prosecutors are quite punitive. Others “turn the other way.” MCA cases could be opportunities to intervene early with the kids or family – when there are potentially significant alcohol abuse concerns.

Montean R. Jackson, Director, Discipline & Prevention/Intervention Programs, Fairbanks North Star Borough School District

First offense should involve: substance use screening/assessment, recommendations for appropriate treatment service, assigned community service, collaborative support with school-based prevention staff. Subsequent offenses should involve: step up model to treatment services, legal and community consequences.

Referral to Youth Court: A positive educational intervention approach for first time offenders if assessed at low level of use.

NIDA/SAMSHA Best Practice Principles involve adequate screening/assessing in the identification of level of use and appropriate treatment recommendations. Also, the integration of “wrap around” service and support to assist the individual in the maintenance of a healthy lifestyle, and the ability to sustain social, emotional, psychological and physical wellness.

Robin L. Koutchak, Attorney, City and Borough of Sitka

Barrow DA 2007-2010; handled all MCAs in conjunction with Barrow Tribal Court diversion. Currently (March 2013 to present) City & Borough of Sitka Municipal Attorney – handling all MCAs,

in conjunction with Sitka Tribal Court (TYDE program). I think I have handled hundreds of MCAs. I also taught Juvenile Del. & Criminology Theory at UAA & Mat Su College (1992-2005). I have much to share on what seems to work, what might not work...but want to learn more and listen to others.

Anecia Kritz, Tribal Court Judge, Togiak Tribal Court

Togiak Tribal Court receives a complaint or report from VPO or community members. If TTC takes the case, parents are notified of a hearing. The parents or designee are required to be at the hearing. Sentencing includes community work service supervised by parents and counseling for youth and parents in a Yupiaq context.

Glen Kratochvil, Program Manager, Anchorage JASAP at Volunteers of America

In Anchorage, first offenders are arraigned and assigned to either VOA or ANJC depending on which monitoring agency they choose.

Second offenders (repeat) are required to complete JASAP at VOA and do not have a choice. Third time offenders (habitual) are referred to AASAP Misdemeanor services.

Youth who do not complete the program they are assigned to on a first offense do not have consequences because the District Attorney does not file Petitions to Revoke Probation on them.

Kimberly Martus, J.D., Tribal Justice Programs Manager, Bristol Bay Native Association

Here is a list of current Issues that Alaska Tribes and Tribal Courts are dealing with in resolving conflicts involving substance-abusing and troubled youth:

1. DIVERSION: DJJ developed a new template to implement diversion of appropriate juvenile matters from agencies to tribal courts. Also, of interest is the template(s) being used to divert cases from local governments to tribal court as is done in Sitka.
 - a. One of the questions is whether and how the DJJ template is being developed in collaboration with the AGs template delegating limited criminal jurisdiction to tribal courts to enforce state laws?
 - b. Another new tool that will become effective next month is the new Alaska Supreme Court Order amending Rule 11 and Delinquency Rules which would permit diversion or referral of misdemeanant cases to dispute resolution programs and circle sentencing.
2. FUNDING: Federal agencies pass funds to the state who can in turn can pass on a portion to rural communities to partially support tribes and tribal organizations to develop, implement, evaluate effectiveness of emerging pilot programs.

3. **INTEGRATING CULTURE-BASED AND THERAPEUTIC PRACTICES:** Most tribal court development and enhancement work is focused on incorporating local cultural practices, traditions and values into the tribal court process and codes. In addition to developing and enhancing culturally competent tribal courts, we are also focused on integrating therapeutic court practices which is necessary for intervening with and treating substance-abusing youth offenders. For instance, we work closely with other Tribes Juvenile Wellness Courts that have already modified the drug court model and the 10-Key Components to Native communities and clients.

Michael Moberly, Defendant Attorney, Hozubin & Moberly

As a defense attorney representing minors charged with alcohol-related offenses, I don't try to scare clients or believe that I can convince them not to drink until they are of legal age. I usually encourage them to voluntarily participate in an alcohol education program (e.g., Volunteers of America) regardless of whether I can anticipate dismissal or other resolution of their case such that they will not end up court ordered to such programs. I explain that, even if I get a legally favorable resolution for them (dismissal), that they will have to decide whether they will drink illegally again or not and the alcohol education program will help them in making better, or at least better informed, decisions regarding alcohol in their lives.

To impress upon them why this is of benefit to them, I point out that they are already experiencing negative effects of alcohol in their lives because they are sitting in a lawyer's office, and explain to them the public record that they may now have.

Rebecca Neagle, Project Assistant

Personally I feel a majority isn't handled correctly, professionally, or fairly. Hearing many presentations and feedback from law enforcement, I feel it's all flawed because it is flawed from the start/initial contact. We were told that Nome and Anchorage both only ticket the "problem" offenders, and not all that are involved in many cases. Meaning at a party of 20, maybe 2 are ticketed, and for behaviors beyond MCA charges. In my mind if they're all drinking, they should all be ticketed. No one should be "getting off." Until the start of the reprimanding process is fixed, we will always have a flawed system in my mind.

Liz Pederson, Assistant Public Defender, Bethel Office

Any conviction renders a juvenile ineligible for flight school. We have an active pilot training program in Bethel and foreclosing a career option for a young person is a real concern. We have a treatment court program for MCAs but the program is too long, requires too much from the young people. They do not often succeed. I would like to explore the possibility of perhaps the tribes taking jurisdiction over first-time offenders.

Tony Piper, ASAP Program Manager, DHSS/DBH

We have a special MCA court one time per week. All minors are given the chance for an SIS and elimination of the charge if they complete the treatment or educational recommendations of a treatment provider. Usually a PRIME for Life Class – 12 hours on the first offense but can be OP-Treatment.

Nancy Phillips, Magistrate Judge, St. Marys

Form a Community Diversion Panel or make arrangements to be able to use their community diversion panel as a referral. Visit with schools regarding alcohol consumption. Set up a culture camp to teach different arts and crafts to our young individuals. Learning a trade and also learning to say no to alcohol would be a huge benefit to everyone.

Marny Rivera, Associate Professor, UAA Justice Center

My experience has been as a researcher. I have studied ABC Board compliance check data and compiled indicators of underage drinking for an Anchorage-based environmental strategy to reduce underage access to alcohol (Volunteers of America’s CMCA program). As part of the indicator compilation I obtained and analyzed Alaska Court System data on the number of charges filed and case dispositions for Anchorage and Alaska for (1) minor consuming and (2) licensee sales of alcohol to a minor. The rate of dismissal for both was quite low.

Imari Rene Rouzan, Youth Program Manager, Alaska Native Justice Center

The Alaska Native Justice Center (ANJC) has been working in the Minor Consuming Alcohol (MCA) field as a Community Diversion Panel for the 3rd District Court in Anchorage for over five years. As a Diversion Panel, we receive first time offenders only and have had a total of 1,008 MCA cases to date. Sixty-eight percent of the youth who complete ANJC’s Youth Program do not recidivate. ANJC uses the Motivational Interviewing Model to instill the “ownership of change” to participants served through the program. Another reason for the high rate of success is that ANJC utilizes “role model success” by illustrating to participants how to navigate the social services network in seeking assistance for their commitment to change. Some examples of “role modeling success” include helping participants formulate a plan of success to receive a GED, social security card, driver’s license, getting into job corps and interviewing for a job.

The Alaska Native Justice Center has experience working not only with youth from Anchorage but also from rural communities. This affords the experience of understanding the limitations for treatment compliance in those communities and enables ANJC to participate in advocating for services needed in such rural communities. ANJC travels to various villages across the State of Alaska helping communities develop Community Diversion Panels of their own to monitor tribal court

orders. To date, ANJC has traveled to over 20 communities across the state using the Community Diversion Program as a model. Our power point (on the webpage) illustrates the successes that ANJC's Youth Program has had with the participants and clients served.

Jacqueline Schafer, Assistant Attorney General, Opinions, Appeals & Ethics Section

We are working on collaborative solutions to improve access to restorative justice remedies in tribal communities.

Zara Smelcer, Sentencing Coordinator, Anchorage JASAP at Volunteers of America

In Anchorage, first offenders are arraigned and assigned to either VOA or ANJC depending on which monitoring agency they choose.

Second offenders (repeat) are required to complete JASAP at VOA and do not have a choice. Third time offenders (habitual) are referred to AASAP Misdemeanor services.

Youth who do not complete the program they are assigned to on a first offense do not have consequences because the District Attorney does not file Petitions to Revoke Probation on them.

Ellen Sovalik, Chief Judge, Native Village of Barrow

Petition to transfer MCA case from state court to Native Village of Barrow (NVB) court. Agreement of participation signed by minor and both parents. Weekly court with ALL MCA cases present. Each are required Substance Abuse Assessment including parents and if necessary a Mental Health Assessment. MCA cases can be anywhere between 6 months – 1 year depending on each case and task completed. Panel of judges including an Elder Judge is present to hear every hearing, culturally relevant approach.

Pamela Washington, District Court Judge, Presides over MCA Court

State of Alaska does not offer pre-trial diversions. Defendants enter pleas and are sentenced or set for trial. Mandatory minimum sentences are imposed most often. Treatment monitor agencies present in court. ANJC and VOA. Petitions are filed by State when Tx or CWC not completed. Almost always, defendants are given another chance to comply with Tx or CWS.

Bruce Ward, Magistrate Judge, Bethel

MCA cases in Bethel are largely driven by Rule 11 agreements. A first MCA is deferred for six months. A second MCA is usually an SIS. A third results in fine, probations, etc. Most MCA offenders either come to court once or twice, or become habitual offenders with many cases. I'm not sure I have an approach, I'm looking for anything that might work.