

IN THE TRIAL COURTS FOR THE STATE OF ALASKA

In the Matter of:

**Statewide Restorative Justice Procedures
in Criminal Proceedings**

The Alaska Court System values and seeks to promote culturally appropriate restorative justice approaches. Towards that goal, the Alaska Supreme Court adopted Criminal Rule 11(i) and Delinquency Rule 23(f), which allow referral of criminal and juvenile delinquency cases to local tribes and communities for participation in restorative justice programs.¹

To implement these court rules, the Alaska Court System has entered into restorative justice agreements with tribes and communities across the State. In the context of criminal proceedings, the sentencing recommendations generated from these agreements, integrating local wisdom and cultural norms and providing insight into the community's assessment of the impacts of criminal behavior, provide valuable assistance to sentencing judges in imposing meaningful and relevant judgments.

In order to provide a more uniform and predictable process for the court to administer, and to provide a process for tribal involvement even in locations where no local agreement exists, the Presiding Judges adopt the following statewide restorative justice procedures for criminal cases:

¹ A restorative justice program is a “program using a process in which persons having an interest in a specific offense collectively resolve how to respond to the offense, its aftermath, and its implications for the future. Restorative justice programs include, but are not limited to, circle sentencing, family group conferencing, reparative boards, and victim/offender mediation.” Alaska Criminal Rule 11(i) and Delinquency Rule 23(f).

1. The Alaska Court System publishes a public list of criminal cases filed in the previous seven days at <https://public.courts.alaska.gov/web/scheduled/docs/crchgfiled.pdf>. Interested tribes and programs should monitor the list for cases involving members.
2. A tribe or program may submit a request for a copy of the relevant case documents from the case file (such as the complaint or indictment), using form CR-805, *Request for Documents Pursuant to Restorative Justice Program*. No fee will be charged for this document request.
3. No later than the final pretrial conference, the tribe or program must notify the Court of its desire to have the case referred to a restorative justice program for a sentencing recommendation using form CR-810, *Intent to Conduct Restorative Justice Sentencing Proceeding*. Referral to a restorative justice program requires the affirmative consent of the defendant, the prosecutor, and any victim. Consent for referral to a restorative justice program may be given in writing, orally to the court on the record, or the assigned prosecutor or victim advocate can represent to the court that oral consent has been given to the assigned prosecutor or victim advocate. The court will distribute notice to the case parties; the prosecutor will notify the victim of the request.
4. If the defendant enters a guilty or no contest plea or is found guilty after trial, the assigned trial court judge may refer the case to the tribe or program. The judge's order must set the sentencing at least 60 days after the conviction date and, with the advice of the defendant and the prosecutor, specify any applicable mandatory sentencing provisions.
5. Once referral is made to a tribe or program:

- a. The tribe or program must conduct its restorative justice process within 45 days of referral. The tribe or program will schedule and notify affected individuals of the date of the restorative justice proceeding.
 - b. Sentencing recommendations developed by the tribe or program may include culturally relevant activities, drug and alcohol assessments and treatment, restitution (such as reimbursement for damages or paying for the cost of services for the victim), or other remedies.
 - c. The defendant and prosecutor may include the sentencing recommendations of the restorative justice program in a sentencing agreement subject to the provisions of Criminal Rule 11(e). Any sentencing agreement shall be filed with the court no later than 5 days prior to the sentencing hearing.
 - d. The tribe or program may prepare its sentencing recommendations using form CR-825, which shall be filed with the court no later than 7 days prior to the court sentencing hearing.
6. The sentencing judge will consider the sentencing recommendation submitted by a tribe in weighing the *Chaney* factors, but the judge is not bound by the recommendation.²

² In *State v. Chaney*, 477 P.2d 441 (Alaska 1970), the Alaska Supreme Court first exercised its statutory duty to review trial court sentences. The court concluded that the primary goal of AS 12.55.120 was “to implement Alaska’s constitutional mandate that penal administration shall be based on the principle of reformation and upon the need for protecting the public.” *Chaney*, 477 P.2d at 444 (internal quotations omitted). The court then translated this principle into concrete standards, known as the Chaney factors, to which the sentencing judge should refer when choosing a sanction. *See also* AS 12.55.005.

7. For purposes of this order, the court will complete distribution of all documents filed by a restorative justice program.
8. Tribes or programs may obtain assistance from professionals experienced in developing restorative justice processes.
9. This order does not require restorative justice proceedings to take place in the physical community where an offense occurs if the offense primarily impacts another community. The parties and any victim must consent to the location of the proceeding.
10. This order supersedes all previously adopted administrative restorative justice orders.

The Administrative Office of the Alaska Court System will partner with tribal organizations and community groups to provide training and to promote awareness of this order.

Dated September 7, 2023.

/s/ Amy Mead
Amy Mead
Presiding Judge First Judicial District

/s/ Paul Roetman
Paul A. Roetman
Presiding Judge Second Judicial District

/s/ Thomas Matthews
Thomas Matthews
Presiding Judge Third Judicial District

/s/ Terrence Haas
Terrence Haas
Presiding Judge Fourth Judicial District

Distribution: Chief Justice Peter Maassen; Stacey Marz, Administrative Director; Lesa Robertson, Executive Administrative Assistant; Presiding Judges; Area Court Administrators; Rural Court Administrators; Clerks of Court, All Judges and Magistrates; Court Rules Attorney Stacy Steinberg; Court Forms Attorney; ACS Webmaster Sanjay Kodidine