

KYC Class Manual

Restorative Justice begins by bringing together the community to promote accountability through positive peer pressure.

Ketchikan Youth Court, a Restorative Justice program, is beneficial for **everyone** involved. Clients coming through youth court who have already pleaded guilty get the benefit of "a second chance"; after the successful completion of our sentence requirements, the charges are dismissed from their record. Members receive valuable legal education from attorneys, judges, and legal professionals, participate in real cases, build partnerships and create positive change in our community. Members also gain skills in leadership, public speaking, professional behavior, committee participation, and many other useful skills and knowledge.

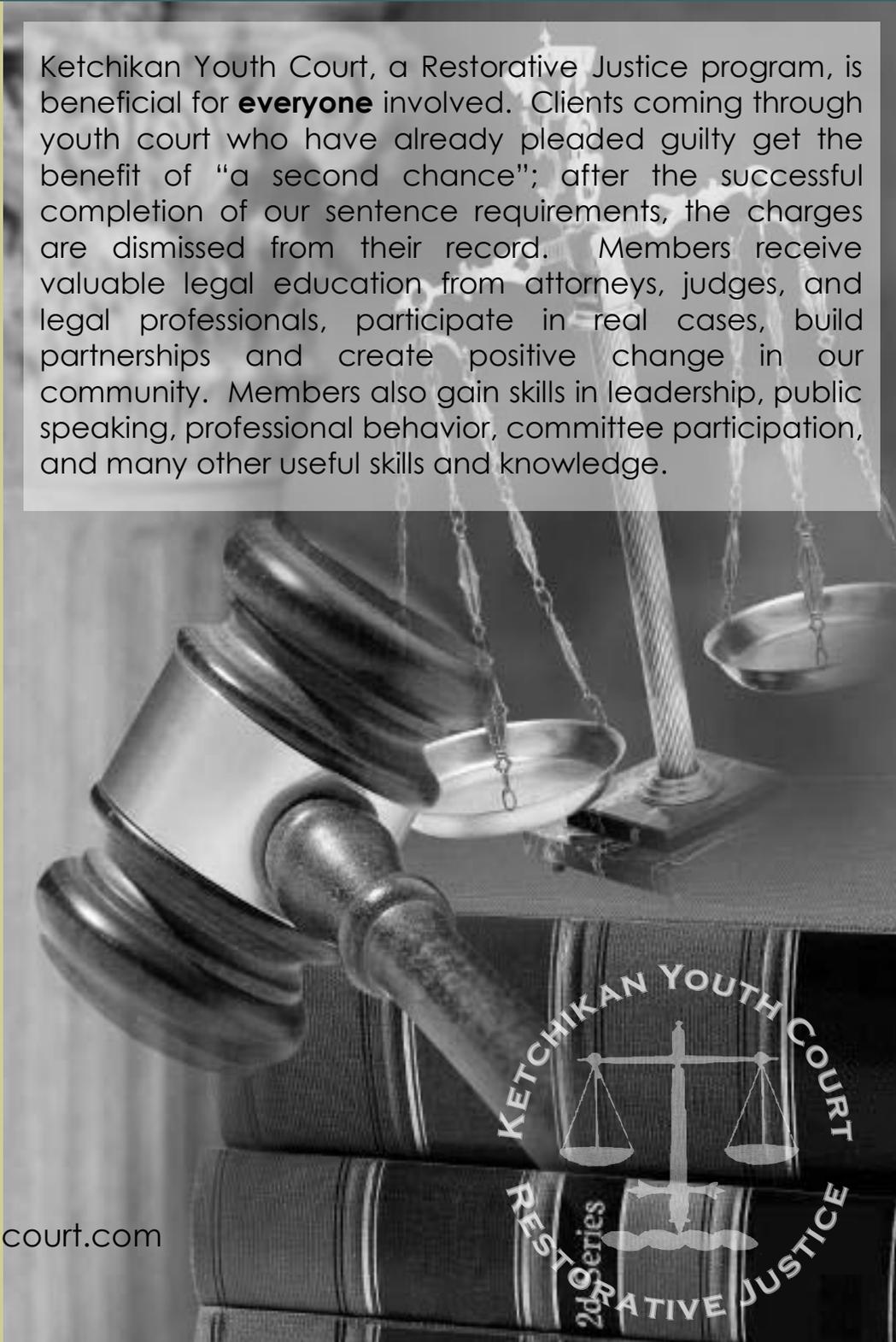
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KYC Class Manual

Important Information

Restorative Justice begins by bringing together the community to promote accountability through positive peer pressure.

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Other Guest Lecturers appear periodically.

ONLINE REFERENCES

Alaska State Statutes
<http://www.legis.state.ak.us/folhome.htm>

Ketchikan Municipal Code (Ordinances)
<http://www.codepublishing.com/AK/Ketchikan/>

Ketchikan Gateway Borough Code
<http://www.codepublishing.com/AK/KetchikanGatewayBorough/>

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Week One

Restorative Justice begins by bringing together the community to promote accountability through positive peer pressure.

The Court System

Where Laws Come From

Adult Court

Juvenile System

Case Referrals

The Court System

The United States **CONSTITUTION**¹ established three branches of government.

The first branch of government is the **LEGISLATIVE BRANCH**. The legislature, or Congress, is made up of the Senate and the House of Representatives. This branch of the government makes the laws.

The second branch of government is the **EXECUTIVE BRANCH**, which includes the President (or on a state level, the Governor), his cabinet and many government agencies. The executive branch of government enforces the laws through the federal marshals, the FBI, officers and park rangers, the ATF and other such entities. In Alaska, the executive branch enforces the laws through the state troopers, the city and borough police forces, the village public safety officers, the university campus police and the state fish and game officers.

The **JUDICIAL BRANCH** of government is the third branch. The U.S. Constitution established a national court system called the federal court. There are three main levels of courts in the federal court system: the District Court or trial court, the **COURT OF APPEALS**, and the **U.S. SUPREME COURT**. There are other federal courts, but they are not important for Youth Court.

Each level of court has a specific function. The trial courts hear the cases, with the **JURY** deciding the questions of fact and the **JUDGE** deciding questions of law (how the law is to be applied).

If one side in a case does not agree with a judge's interpretation of the law, that side can **APPEAL** to the Court of Appeals at the end of the case (or in the middle under some special circumstances.) The Court of Appeals, which is usually a panel of three judges, will decide whether the trial court judge properly ruled on a question of law.

If one of the case participants is still not satisfied, s/he can appeal to the U.S. Supreme Court. However, the U.S. Supreme Court does not have to take every case appealed. It generally chooses to take only those cases in which the ruling will affect a large number of people or will settle new or important legal questions.

Federal courts deal with federal cases. A federal court will deal with **CRIMINAL LAW** and accept criminal cases in which the defendant broke a federal law. For example, criminal cases which the federal court would hear are bank robbery, counterfeiting, or mail bombing. The federal court also hears **CIVIL LAW** cases which deal with federal laws, a violation of the U.S. Constitution, or in which two people have a dispute and are from different states.

Federal judges are appointed by the President and confirmed by the Senate. Once a federal judge has been confirmed, s/he holds that position until s/he retires or is impeached. Federal judges are not elected.

In addition to the national court system, each state has its own court system to hear state cases. The two court systems usually operate independently of each other. The Alaska court system is made up of two different types of trial courts: the District Court, which hears minor cases and the Superior Court, which hears more serious cases. The appeal goes to either the Alaska Court of Appeals or directly to the Alaska **SUPREME COURT**, depending on whether the case is civil or criminal. Criminal cases first go to the Court of Appeals and then, just like the federal system, may be accepted by the Alaska Supreme Court. Civil cases are appealed directly to the Supreme Court.

1. Words which are in all capital letters and in bold print can be found in the glossary in the back.

The Alaska Constitution sets the guidelines for selecting judges in Alaska. Alaska's state court judges are appointed by the Governor of Alaska. However, after the judge has been in office a period of time, the judge must be "retained" by a vote of the people. Thereafter, judges on the Supreme Court, Court of Appeals, Superior Court or District Court are voted on every few years.

The Alaska state courts deal with both civil and criminal cases. Civil cases include lawsuits over money. It is possible for one set of facts to result in both a criminal case and a civil case. For example: If D drinks alcohol and then drives his car, ending up crashing into P's parked car, the State can prosecute D for driving while intoxicated. Also, P can sue D for the money to fix P's car. Criminal cases include any violation of a law, whether it is a small crime, like shoplifting, or a major crime, like murder.

Where Laws Come From

The United States Constitution is the basic framework for the federal government. The U.S. Constitution provides our basic rights. Many of our rights are explicitly outlined in the **BILL OF RIGHTS** made up of a series of **AMENDMENTS** to our constitution. No state constitution or any law made by a federal or state legislature can take away those rights. If a state constitution or a law conflicts with the U.S. Constitution, the court will interpret the law in favor of the U.S. Constitution.

Each state has its own constitution which sets the framework for the state's government. No state or federal law can take away the rights given to a person by a state constitution. A state constitution may give more rights than the U.S. Constitution, but a state constitution may not take away any right given to a person by the U.S. Constitution.

United States **STATUTES**, or **LAWS**, are passed by the Congress and signed into law by the President. An example of a federal law is the law against counterfeiting money. State laws are passed by the state legislature and signed into law by the governor. An example of a state law is the law against shoplifting. Further, each city has its own laws. In Ketchikan, the City Council, made up of seven council members and one mayor, passes "ordinances." An example of a local city ordinance is the curfew law. The laws and Ketchikan City ordinances are written in books and can be looked up in a library.

Ketchikan Municipal Code (Ordinances) may be found at:

www.city.ketchikan.ak.us/departments/clerks/municipal/.htm

Alaska State Statutes may be found at:

www.legis.state.ak.us/fo/home.htm

Adult Court

When a crime is committed and reported to the police, the police investigate and **ARREST** the person they believe committed the crime. The case is then turned over to the prosecuting attorneys, who file a **COMPLAINT**, or **CHARGING DOCUMENT**, with the court.

The defendant is brought before the judge for an **ARRAIGNMENT**. At the arraignment, the defendant is advised of his/her Miranda Rights, as well as the defendant's right to a jury trial. If the defendant has no attorney and can't afford one, the judge has one appointed from

the Public Defender's office. The judge reads the **CHARGES** against the defendant and asks the defendant to enter a **PLEA** of either guilty, not guilty or no contest.

If the defendant pleads **GUILTY** or **NO CONTEST**, the defendant goes to a **SENTENCING HEARING** where the judge will determine his/her **SENTENCE**. It may seem confusing why there are two different answers for the same outcome, but guilty and no contest pleas are different from each other in a very small way. A guilty plea is entered when the defendant is admitting that s/he committed the crime as charged and willing to accept responsibility for his/her actions. A no contest plea means that the defendant is not admitting or denying that s/he committed the crime as charged but is willing to accept responsibility. In either case, the court will find the defendant guilty and treat them as such, but the no contest plea cannot be used against the defendant in civil trial.

Similarly, a defendant can enter into an agreement with the prosecutor to plead guilty to a certain charge, usually a lesser crime than s/he has been charged with, in exchange for a recommendation from the prosecution of a certain sentence. This is called a **PLEA AGREEMENT**.

If the defendant pleads **NOT GUILTY**, a trial date is set. If the defendant chooses, s/he can request an evidentiary hearing. At this **HEARING**, the prosecutor must show the judge that the State has enough evidence against the defendant to go to **TRIAL**. An evidentiary hearing does not prove guilt or innocence. If the judge is convinced that there is enough evidence, the defendant will go to trial.

In a **JURY TRIAL**, there is a six or twelve person jury, depending on whether the crime committed was a misdemeanor or felony. The defendant may also request the absence of a jury in which case a **BENCH TRIAL** is held and the judge decides guilt or innocence. If a defendant wants a jury, the jury decides only the facts of the case. It is the judge's job to decide the law that will be used. A defendant does not always have the right to a jury trial. In the case of a curfew violation, a bench trial would automatically be held.

If the jury (or judge) finds the defendant innocent, the defendant goes free, with no punishment. If the jury finds the defendant guilty, the judge will then determine what sort of a sentence the defendant should have. This is decided at a sentencing hearing. At this hearing, each side presents the sentence they think the defendant should receive, and why. Each side can call witnesses to tell the judge why the defendant should receive a high or low sentence.

Juvenile System

The juvenile justice system emphasizes **REHABILITATION** over punishment. In order to give a juvenile the chance to mend his/her ways, the juvenile's name and any court proceeding (with some new exceptions) are **CONFIDENTIAL**. The system is not as "adversarial", meaning that each case is not automatically fought by prosecution and defense attorneys. The juvenile is not automatically formally prosecuted in court for every crime. Often the juvenile, especially on a first **OFFENSE**, is given some form of informal consequence to educate and **DETER** him/her from re-offending. People get the impression that nothing happens to juveniles who commit crimes, because they do not hear about the consequences. However, action is taken and there are many levels of consequences for juveniles.

The juvenile detention and the Ketchikan Juvenile Intake Probation Officers are part of the State of Alaska, Division of Juvenile Justice in the Department of Health and Social Services. DOJJ handles all juvenile crime except for minor offenses like traffic, curfew, smoking, fish

and game, and parks and recreation, or a very serious crime in which the juvenile may be charged as an adult (e.g. murder).

The juvenile system is different from the adult system in several important ways. When a **JUVENILE**, a person less than 18 years old, is arrested in Ketchikan, she/he is taken to Ketchikan Police Station and released to his/her parents or guardian and given a paper which directs the defendant and his/her parents to contact the Ketchikan Juvenile Probation Office within 10 days. The probation officers talk to the defendant and his/her parents and determine what consequences the defendant will have. The probation officer will investigate the crime and decide if there is enough evidence to prosecute. Like a prosecutor, the probation officer can dismiss charges if there is not enough evidence.

The probation officers first try to impose a consequence which is the least serious. If the defendant gets into trouble numerous times, then the consequences become more serious and restrictive with each offense.

The first time a person breaks the law, the probation officer may simply "adjust" the case. A large portion of juvenile cases are adjusted. Adjustment usually includes actions like issuing warnings, ordering counseling, requiring **RESTITUTION**, or completing a **DIVERSIONARY PROGRAM**. The officer may send the defendant to Ketchikan Youth Court. (KYC does, however, accept cases in which the defendant has a **PRIOR RECORD**.) KYC is considered a "diversionary" program, meaning that it is not part of the formal system. If the defendant successfully completes the KYC program and does not re-offend, the defendant's record for that crime will be kept "informal" and the defendant will not have to declare the crime on college or job applications. One other example of a diversionary program is victim-offender mediation.

The next time the person breaks the law, the probation officer can put the juvenile on informal **PROBATION** for up to 6 months. If the juvenile violates the informal probation, the intake officer will take the juvenile to formal court on the original charges. Part of informal probation may include restitution, counseling, **COMMUNITY WORK SERVICE** or even a diversionary program like KYC.

A probation officer may file in the formal juvenile system for a **PETITION OF DELINQUENCY** and place the defendant on formal probation. Formal probation without custody means that the officer releases the juvenile to his/her parents and dictates what school the person goes to, orders counseling, orders the defendant to write and submit a daily schedule, and makes him/her check in. The probation officer may also do spot visits (unannounced drop-in visits) on the defendant at home.

The petition for delinquency in Ketchikan is normally **PRESIDED** over by a Master, who is appointed by a judge. It's possible that a case may not be pursued, even though it has been brought to the formal juvenile court. The Master may agree to hold the case "in abeyance" for up to one year, which means that the case is suspended on the condition that the juvenile not get into any more trouble.

If the defendant then re-offends, the next step may be probation with custody. The officer gets a petition for delinquency and then places the juvenile in foster care, a group home, or residential care facility. A probation officer (not intake) will monitor the conditions of probation. The court can order the juvenile to take part in a program.

The juvenile could be put into a residential care facility. A residential care facility is used for defendants who are deemed "not fit to perform in society." The facility provides structure, direction and the opportunity to work on personal problems: anger management, group

dynamics, impulse control, and family counseling. The Ketchikan Regional Youth Facility is such a residential care facility and is a locked building. If the person runs away, a warrant can be issued for his/her arrest. A defendant can be held in a facility for six months.

Finally, a person who continually re-offends can be placed into Anchorage's McLaughlin Youth Center for up to 3 years. (A defendant who commits a really serious crime and is not tried as an adult could go straight into McLaughlin on the first offense.) McLaughlin provides school classes, health care, behavior management, substance abuse treatment, counseling, and, sometimes, work for juveniles while they are "institutionalized."

Case Referrals

Cases that are referred to KYC can come from two different **REFERRING AUTHORITIES**. For all offenses that result in a misdemeanor charge (i.e. Theft in the Fourth Degree, a class B misdemeanor), the case is referred by Ketchikan Juvenile Probation. In these cases, the probation officer reviews the case and decides if it is appropriate for referral to KYC. If s/he believes that it is, then all paperwork, including a police report (**see example document 1.01**) (refer to the Table of Contents and look for the "Example Documents" section) detailing the conduct of the defendant, is sent to KYC. The probation officer also informs the defendant that s/he has been referred to KYC.

For all offenses resulting in a charge that cannot be classified as a misdemeanor or felony (i.e. Curfew Violation or Minor Consuming Alcohol), the case is referred by the Ketchikan District Court. This type of charge is known as a violation and sometimes a **MINOR OFFENSE** or **INFRACTION**. They are non-criminal in nature, but still are punishable by **FINES**, community service, and other creative impositions such as an essay. They are not punishable by detention, however. The District Court judge asks the defendant for a plea and if it is either guilty or no contest then the judge also gives the defendant the choice to come through KYC in order to have their conviction set aside. If the defendant chooses to do so, then his/her paperwork including a ticket and court statement (**see example document 1.02**) is printed for pick-up.

Once it has been determined that the defendant will come to KYC, the paperwork is reviewed by the director and youth assistant to determine that the case is appropriate for KYC to handle. An intake interview is set up in which the defendant and his/her parent(s) meet with his/her defense attorneys. If the case was referred by Ketchikan Juvenile Probation, KYC also has to take the defendant's plea at this meeting. S/he is required to sign a Referral Form (**see example document 1.03**) on which the defendant indicates that s/he is entering a guilty or no contest plea. If s/he chooses to contest the charges against him/her, the case is sent back to Ketchikan Juvenile Probation and it is handled through their venue. A defendant referred by District Court must also sign a Referral Form (**see example document 1.04**), but it does not include a section for entering a plea.

Two KYC prosecutors and two defense attorneys are assigned to each case. The attorneys have about a week to work on the case. The defendant is sentenced by a panel of three KYC judges, who must make a unanimous decision. After sentencing, the KYC Director and defense attorneys work with the defendant to help him/her complete the sentence. If the defendant completes the sentence and does not re-offend, then the defendant's record for that crime will remain "informal" and s/he does not have to declare the record when applying for college or for a job. However, if a defendant does not complete his/her sentence, that person is sent back to the referring authority and will have to complete whatever additional consequences that authority deems necessary. In District Court, if the defendant receives another charge of the same type, then the judge may bring the prior

charge onto his/her record officially again. This means that the "informal" record no longer applies, and the defendant now has two charges of the same type officially on his/her record.

ILLUSTRATIONS ON FOLLOWING PAGES

Criminal Procedure

Felony

Misdemeanor

Superior Court

Alaska Court of Appeals

Alaska Supreme Court

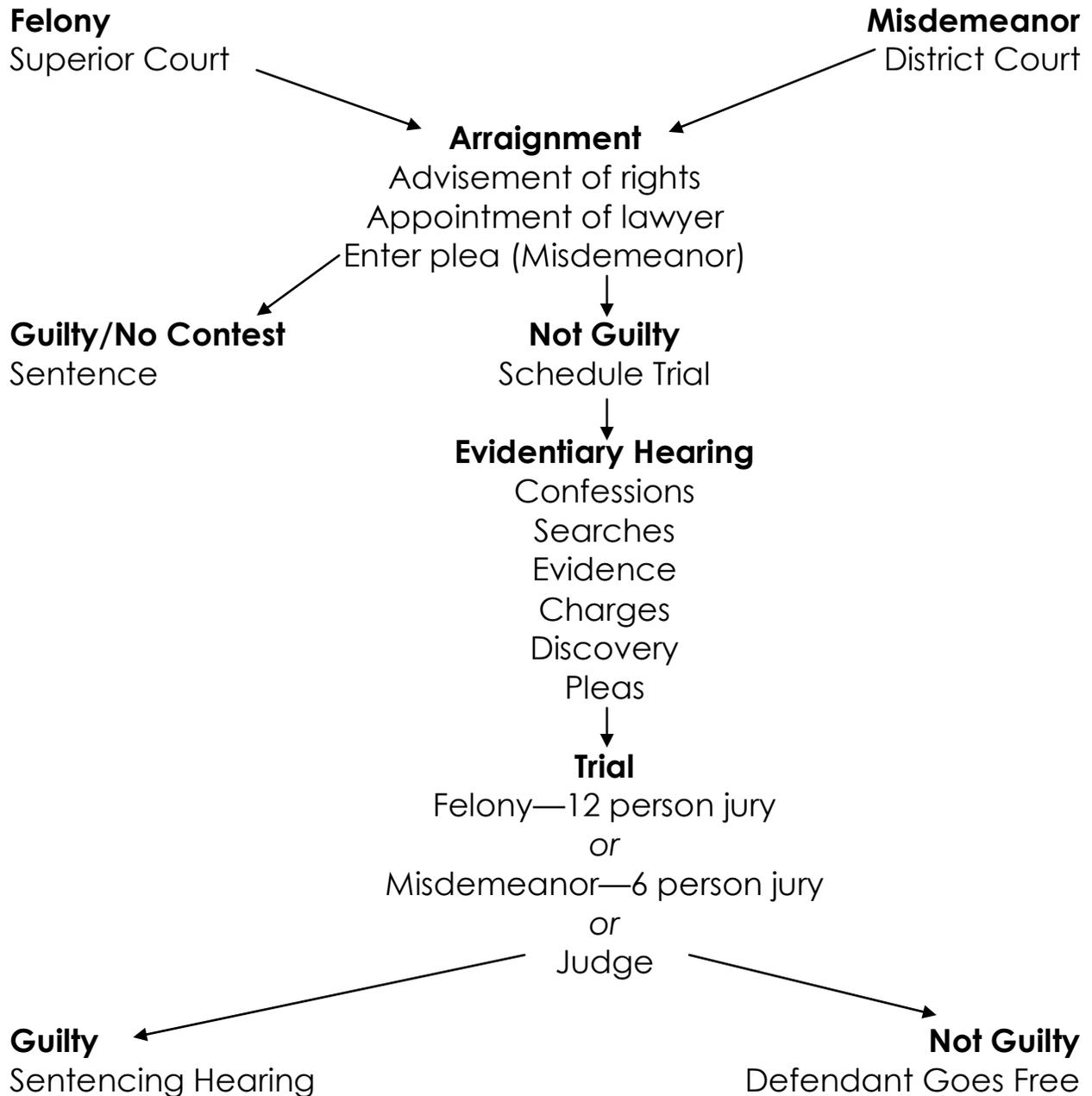
Writ of Habeas Corpus

United State District Court

Ninth Circuit Court of Appeals

United States Supreme Court

Alaska Adult Trial Court System



Week Two

Restorative Justice begins by bringing together the community to promote accountability through positive peer pressure.

Roles of Prosecutor, Defense, and Judge

Juvenile Constitutional Rights

KYC Constitution

Ethics

Roles of Prosecutor, Defense, and Judge

In Ketchikan Youth Court, you may serve as a prosecutor, defense attorney, and eventually a judge. The **PROSECUTOR** is an attorney who works for the state. It is his/her job to prosecute, or in other words, to bring a person **ACCUSED** of committing a crime to trial on criminal charges. Although the crime harmed an individual, the crime also harmed society as a whole. Therefore, the government, not the actual victim, prosecutes a **CRIMINAL**.

Note: Ketchikan Youth Court does not currently hold trials; however, information regarding trials is still presented in this manual for your benefit.

The prosecutor's job at a trial is to prove that the defendant is guilty of the crime. To do this, the prosecutor must prove that the defendant is guilty **BEYOND A REASONABLE DOUBT** before the defendant can be found guilty. This does NOT mean that the prosecutor must prove his/her case beyond ALL DOUBT. It means that if the jury or the judge (if there is not a jury) has a REASONABLE doubt about the defendant's guilt based on the evidence they have heard in the case, they must find the defendant not guilty. The defense attorney does not have to prove the defendant is innocent.

A person who is accused of committing a crime is called the **DEFENDANT**. The defendant is innocent until proven guilty at trial or until s/he pleads guilty before a judge (that is, admits to the judge that s/he did commit the crime). The defendant's **LAWYER** is called the **DEFENSE ATTORNEY**. The defense attorney's job is to ensure that the prosecutor proves his/her case beyond a reasonable doubt and to provide a **DEFENSE** if one is present.

It is very easy to be a good youth court attorney as long as you follow one, short, simple rule. That rule is ALWAYS BE PREPARED. If you follow this rule, three benefits will result: (1) It will be more fun for you to present a case that you have thoroughly prepared, because you will not need to worry, since your presentation will be clear and organized; (2) you will gain the respect of the defendant and other people in the court; and (3) most important, only by being thoroughly prepared can you fulfill your duty as a lawyer.

What is your duty as a lawyer? Your duty as a KYC lawyer will differ depending upon whether you are assigned to a case as a prosecutor or as a defense attorney. In KYC you must know how to do both jobs. Remember, as you take different cases, you will be expected to work at different times as either a prosecutor or as a defense attorney.

If you are the prosecutor, it is your duty to represent the interest of the community. Your client is not the victim. You speak for the State. At a trial, you must prove beyond a reasonable doubt that the defendant is guilty of the crime for which s/he is accused.

If you are the defense attorney, it is your duty to represent the interest of the defendant. A defendant is someone who has allegedly (supposedly) committed a **CRIME**, and who the State wants to convict and punish for the crime at a trial. Under our country's principle of justice that a defendant is "innocent until proven guilty," the crime that your client is charged with is only a set of **ALLEGATIONS** that the prosecution must be able to prove. It is your purpose to make sure that the defendant is not convicted unless the prosecution presents proof of guilt beyond a reasonable doubt. REMEMBER: You do NOT have to prove the defendant innocent because a defendant is INNOCENT UNTIL PROVEN GUILTY.

If you are one of the three judges in KYC, it is your duty to be objective and to rule on **OBJECTIONS**. When an objection is denied, a judge will **OVERRULE** that objection. When an objection is granted, a judge will **SUSTAIN** that objection. You must know how to conduct a

court and offer fair and just decisions while being courteous. At a sentencing hearing, the judges determine the defendant's sentence based on the recommendations of the prosecution and defense teams.

Juvenile Constitutional Rights

Juveniles do have some constitutional rights. Juveniles do not have all of the same constitutional rights that an adult has and at one time juveniles had no constitutional rights.

The Case of Gerald Gault

Gerald Gault, age 15, was taken into custody and accused of making an obscene phone call to a neighbor. At the time Gerald was taken into custody, his parents were at work and the police did not notify them of what had happened to their son. Gerald was placed in a detention center. When his parents finally learned that he was in custody, they were told that there would be a hearing the next day, but they were not told the nature of the complaint against him.

Mrs. Cook, the woman who had complained about the phone call, did not show up at the hearing. Instead, a police officer testified to what he had been told by Mrs. Cook. Gerald blamed the call on a friend and denied making the obscene remarks. No lawyers were present, and no record was made of what was said at the hearing.

Since a jury is not allowed in juvenile court, the hearing was held before a judge, who found by a preponderance of the evidence that Gerald was **DELINQUENT** and ordered him sent to a state reform school until age 21. An adult found guilty of the same crime could have been sent to a county jail for no longer than 60 days.

The United States Supreme Court accepted this case and changed the way that juveniles were treated. The Supreme Court decided in the Gault case that juveniles were entitled to many of the same rights as adults, including the right to an attorney, the right to confront and examine witnesses, the right to remain silent, and the right to have the proceeding tape recorded.

Rights in Ketchikan Youth Court

Juveniles who come to KYC are entitled to many rights, a few of which defendants in the juvenile system are still not afforded.

1. The right to reasonable notice of a hearing.
2. The right to the help of an attorney. In fact, no one may represent him/herself in KYC.
3. The right to confront and cross examine witnesses with an attorney's help. The KYC has, with Ketchikan Juvenile Probation Officer's help, the right to **SUBPOENA** witnesses. A subpoena is an order to appear in court at a certain time and place. If the witness fails to appear, the witness can be forced to appear by an adult court.
4. The right to remain silent. When pleading no contest, the defendant does not have to answer questions about the crime and does not have to take the witness stand to testify at trial or during a sentencing hearing. However, the defendant may testify if s/he wishes.
5. The hearing or trial is tape recorded, so if the defendant wants to appeal, s/he can

prove what happened at the trial court level.

6. At a KYC sentencing hearing, a defendant cannot be ordered to leave his/her home (e.g. foster placement or jail). Sentences include community work service, essays, educational classes, restitution, and viewing adult sentencing.
7. A defendant has the right to appeal to a new panel of three KYC judges if the KYC judges make an error in his/her case.

KYC Bylaws

The KYC Bylaws provide the framework of KYC. The following is a summary of some of the sections found in the bylaws that may be important to you. You should read the following sections and be familiar with them. The entire set of bylaws can be found in the office if you ever want to read them all.

The following set of bylaws was approved by the KYC Board of Directors on February 9, 2006.

Article II, Section 2

The number of members of the Board is (7), (1 youth, 6 adults), or such other number as may be set by amendment to these By-laws, but in any event shall not be less than three (3). Members of the Board shall be residents of the Ketchikan Gateway Borough.

The Ketchikan Youth Court Bar Association shall elect the youth member of the Board. The bar association shall elect up to two alternates. Any active Ketchikan Youth Court Bar member, except an employee of the Ketchikan Youth Court, may be elected to be the youth member of Board.

Article II, Section 6

Youth board members can serve as a youth member until age of eighteen (18), or until the high school term is completed in which he/she turns eighteen (18).

Article III, Section 1

The officers of the Ketchikan Youth Court shall be members of the Board and shall consist of a President, Vice President, Secretary, and Treasurer.

The following set of sections gives an outline of the duties expected of each of the adult Board Members:

Article III, Section 6

The President, subject to the control of the Board, shall have general supervision of the business of the Ketchikan Youth Court with all powers reasonably incident and necessary to carry out the responsibilities conferred by the Board. She/he shall preside at all meetings of the Board and shall discharge the duties of the presiding officer. She/he will present at each annual meeting of the Board a report of the business of the Ketchikan Youth Court for the preceding year and will perform whatever other duties the Board may from time to time direct, in the manner and upon the terms and with the delegation of authority as the Board may from time to time approve. The President may agree upon and execute all bonds, contracts, and other obligations in the name of the corporation.

Article III, Section 7

The Vice President shall perform the duties of the President in the President's absence and shall perform whatever duties the Board and the President may from time to time direct. The Vice President shall attend all Board Meetings.

Article III, Section 8

The Secretary shall attend all meetings of the Board and shall keep or cause to be kept a true and complete record of the proceedings of those meetings. She/he will give, or cause to be given, notice of all meetings of the Board and shall perform whatever additional duties the Board and the President may from time to time direct. She/he will have charge of the books and papers of the Ketchikan Youth Court, all of which records shall be open to inspection by any Board member upon application at the office of the Ketchikan Youth Court during business hours. The Secretary shall perform all duties incident to the office of Secretary subject to control of the Board and the President.

Article III, Section 9

The Treasurer shall have custody of the funds and securities, which come into his/her hands subject to the control of the Board. She/he will be responsible for keeping full and accurate account of receipts and disbursements and will deposit all corporate monies and other valuable effects in the name and to the credit of the corporation in a depository or depositories designated by the Board. Subject to the direction of the Board, she/he will disburse the funds of the Ketchikan Youth Court, will render to the President or to the Board whenever they may require it, an account of his/her transactions as Treasurer and of the financial condition of the Ketchikan Youth Court. The Treasurer may endorse on behalf of the Ketchikan Youth for collection, checks, notes, and other obligations and shall deposit the same to the credit of the Ketchikan Youth Court in the bank or banks. The Treasurer may sign all receipts and vouchers for payment made to the Ketchikan Youth Court, either alone or jointly with any officer that may be designated by the Board. The Treasurer, may sign with the President, in the name of the Ketchikan Youth Court, all contracts of the Ketchikan Youth Court. The Treasurer shall attend all Board Meetings. The above duties may be delegated to the Executive Director or an advisory member selected by the Board.

Article V, Section 1

To qualify as a member of the Ketchikan Youth Court, a person must be enrolled in a grade between 7 and 12 in a public or private school in the Ketchikan Gateway Borough, and must successfully complete a training course and pass a Ketchikan Youth Court Bar examination. In order to qualify as an active member, a member must have attended a majority of Ketchikan Youth Court Bar Association meetings held within the last three months. A member may avoid inactive status, when necessary, by making prior arrangements with the Executive Director for a pending absence. Upon return, the member may re-establish his or her standing by participating in a Youth Court function. All members are subject to the rules and guidelines established by the Ethics Committee.

Article V, Section 2

Nomination for candidacy for elected office shall be made verbally at the Ketchikan Youth Court Bar Association meeting prior to the meeting at which elections are held. In order to become a candidate for office, one must be an active Ketchikan Youth Court Bar Association member.

Article V, Section 3

Members of the Ketchikan Youth Court shall elect from among members nominated pursuant to Article V, Section 2, one Ketchikan Youth Court Bar Association President, one Vice President, and one Secretary. The term of each of these offices shall be one year. Elections shall be held annually in April at a meeting announced two weeks in advance in writing to all Ketchikan Youth Court Bar Association Members. A simple majority of those active members present and voting shall be required for election to any office. Officers will assume positions the first of May, following election.

No one shall hold more than one elected position at any time, with the exception of Board of Director positions. A vacancy of an elected position by the appointment of any active bar member, including members holding elected positions at the time. If any member elected to a position is unable to fill that position, a new vote must be taken as soon as practicable.

Voting shall be by secret, written ballot. Each voter may cast one vote for each position to be elected. All ballots shall be placed by the voter in a sealed ballot box. At the conclusion of voting, the ballot boxes shall be delivered to the graduating seniors, who shall count and tally all ballots under the supervision of the Executive Director and report the results to the membership.

Ethics

The public expects all attorneys to be ethical. KYC attorneys are no exception. An attorney's business concerns a client's greatest secrets and most important matters. Clients and the public have a right to expect attorneys to protect confidences and treat each case seriously.

The **ETHICS** rules for adult attorneys are found in the Rules of Professional Conduct (RPCs). These rules are published in the Alaska Rules of Court. A copy can be found in the State Law Library. The KYC Ethics Rules were taken from the RPCs, simplified, and edited to apply to KYC situations. You should be very familiar with these rules. They may be found at the back of this manual (refer to the Table of Contents). If not, do so. They will always be important while you are a member of KYC.

Confidentiality

The first rule that you should know in Ketchikan Youth Court is that, by law, all information about a defendant is absolutely confidential. This includes the defendant's name and personal information as well as the facts of the case. Regardless of whether you are a **CLERK**, juror, attorney, or judge, you may not talk about the cases you work on with anyone other than the KYC Director, Youth Assistant, and other KYC members who are working on the same case. This means that you may not talk about the case to your family, friends, or other KYC members not assigned to that case. This rule of confidentiality is very important to KYC and to the defendants who go through KYC and is strictly enforced.

Anything a client says to you as a defense attorney that is part of the client's case is privileged and confidential. Privileged means that no one can make you tell them the confidential information, not even the judge. The information the client tells you **MUST** not be disclosed to anyone, unless the client gives you permission. This means that you may not tell anyone, not even your family or friends. This rule is very important. No matter how interesting a case is think carefully before you talk about it to anyone. Not only will you and KYC lose credibility and respect if confidential information becomes local gossip, but KYC may cease to exist!

The only exception to these confidentiality rules is if the defendant tells you that s/he will commit a FUTURE crime, which will harm someone.

You should explain the confidentiality rules carefully at the first interview with your client so that s/he knows s/he can trust you with the true facts of the case. That way, the client will know that you are on his/her side, no matter what.

Zealous Representation

You must have the minimum skills necessary in order to be a KYC attorney, which is the reason you must be able to pass the KYC Bar exam. You must also prepare each case adequately to give your client the best representation possible. If you cannot take the time to handle a case well, do not take the case.

An attorney must consult with his/her client before acting in a case. The attorney must do what is in the best interest of the client, within the bounds of the law, and should tell the client what, in the attorney's opinion, would be the best course of action. However, even if you disagree with your client's position, you must work to present that position as effectively as possible. For example, if you recommend that the defendant plead guilty and the client insists on pleading not guilty despite overwhelming evidence against him/her, you must support your client with the best defense possible within the law. Never do anything to injure your client's interests.

Zealous representation does not mean you should be rude to anyone, not even opposing **COUNSEL**. You should always be courteous and fair, but firm when you represent a client.

Special Duties of a Prosecutor

A prosecutor has certain special duties that a defense counsel does not. Since the prosecutor represents "the people" s/he must not bring a case which s/he knows is not supported by "probable cause." In other words, the prosecutor must believe that there is enough evidence to prove a case before s/he signs a charging document. If there is not enough evidence, the prosecutor should not bring the case. The prosecutor must be sure that the defendant has been appointed counsel.

A prosecutor must disclose to the defense all evidence which might make a jury find him/her not guilty or might provide the defendant with the ability to lessen the charge, with an **ALIBI** or with defenses. The prosecutor may not talk to the defendant without the defense attorney present.

Conduct as an Attorney

You may not talk to a judge about a case unless the attorney for the other side is also present.

You must keep your client informed of what is going on in the case. You must not promise the defendant a certain outcome in a case. You may not help your client do anything illegal.

You may not introduce evidence which you know is false or testimony when you know the witness will lie or is lying. You may not lie to the judges, to opposing counsel, or to anyone connected with the KYC case. If you find out later that something you said to a judge or to opposing counsel was not true, you must correct the mistake.

You may not assert personal knowledge about a case. Avoid using the word "I" when you

are addressing the court. Use “the defense” or “the people/state” when referring to your side. You do not represent your interests in court, but that of your client's. Never tell the court that you think the defendant is guilty or innocent. Never tell the court that you think a witness is honest or is lying. Never tell the court why you think the case is just.

You must not fail to disclose a fact to the court which will prevent a misunderstanding. You must not misquote or fail to tell the court about law which applies to the case, even if that law is not in your favor.

You may not talk to the jurors until after the trial is over and the decision is final. If you find out that someone has talked to a juror improperly, you must tell the judges immediately. You may contact jurors after a trial is completed, but only to ask them to give you a critique about your work on the trial.

If you are the first, or lead, attorney on a case, you are the supervising attorney. As the supervising attorney, you must make reasonable efforts to insure that your co-counsel follows the KYC Ethics Rules. If you find out that your co-counsel has violated an ethics rule, you must take steps to remedy the violation. If the violation cannot be remedied, you must report it.

If you learn about a violation of the ethics rules by any member of the KYC Bar Association, you have a duty to report the violation to the KYC Director.

Crime Committed by a KYC Member

You must not commit a crime while you are a member of the Ketchikan Youth Court. If a crime is committed, the KYC Board of Directors will vote on disciplinary action for the member.

Each person who is elected as a KYC officer, judge, Administrative Board Member, Ethics Board member or who is appointed to chair a committee must sign a Waiver of Confidentiality before taking office. The Waiver gives KYC the right to know if the member commits a crime while serving in his/her elected or committee position at KYC. This information will be kept confidential and only used before the Ethics Board on ethical violation charges.

Members who are neither elected nor serve as committee heads are not required to sign the Waiver. A KYC member may come through KYC as a defendant if s/he commits a crime. However, if KYC accepts the case, that member may also be brought up to the Ethics Board on ethical violation charges.

Withdrawing From A Case

You may withdraw from representing a defendant only for certain reasons. For example, you may not withdraw from a case as defense counsel just because you find out that the defendant is guilty.

First, if you believe that representing a defendant will end in a violation of the ethics rules or the law, you may withdraw. Second, if you believe you are not qualified, you may withdraw. Third, if you are asked to step aside by your client, the court, or by the KYC Director, you must withdraw. Fourth, if you know that your client will lie while under **OATH** you may withdraw if you cannot persuade the client to tell the truth. If you do withdraw, you must be sure that the client has representation.

You may not, as defense counsel, represent defendants in related cases.

Special Ethics Code for Judges

Judges have a special Code of Judicial Conduct which was taken from the adult judge's Code of Judicial Conduct, found in the Alaska Rules of Court. The Code of Conduct requires that a judge be impartial, courteous, competent, and dignified. Judges must maintain control of their courtroom and must require that all persons show respect for the court. Judges must avoid even the appearance that they are biased in any manner. A judge is under the obligation to live his/her whole life under a high standard of conduct, since anything a judge does reflects on his/her role as a judge.

Discipline for Ethics Violations

In order to insure that the KYC Bar members act ethically, KYC has the authority to review the actions of its members for ethical violations. All members are subject to the KYC Ethics Rules and to discipline by the Ethics Board.

Violations of the KYC Ethics Rules are brought to the attention of the KYC Director. All complaints are kept confidential. The staff person then refers the complaint to the Ethics Committee, which appoints a panel of three KYC Bar members to review the case and determine whether there is enough evidence to send the complaint to the Ethics Board. An ethics complaint is a "civil" not criminal matter, so no criminal charges will be filed.

The Ethics Board consists of three elected KYC Bar Members. Three people serve on a panel at each hearing. The KYC member accused of violating the ethics rules is entitled to be represented by counsel and to have his/her parent/guardian present. A KYC member has a right to a hearing. If the Ethics Panel finds that there was a violation, they have authority to impose discipline, including a written reprimand, ordering the Bar member to retake the Bar classes, suspension from the Bar, ordering an elected official to remove him/herself from office, and finally, but rarely, disbarment. All discipline is confidential.

The KYC Bar member has the right to appeal. However, after the appeal, the decision is final.

Ethical Situation Examples

1. You are defending Pat in KYC. Pat, unknown to you, refuses to discuss the case with his best friend, Chris. Chris knows that you are Pat's attorney. Also, you have a big crush on Chris. One day after school, Chris comes to your locker and asks you about Pat's case. What do you say or do?
2. You are talking with some friends in the library and the subject turns to a case which came up recently in KYC. Your friends do not know that you have been assigned to work on the case and that you have had a chance to review the police reports and talk to the defendant. However, the facts are being grossly distorted by your friends and some are just plain wrong. What would you do?
3. John is accused of stealing from the store where he works. He tells you that he did it and that the store has a videotape of the theft. He wants to plead not guilty. He tells you not to worry because he is going to break into the store and steal the tape, so he can't be proven guilty. What should you do?
4. You are excited to be an attorney and want to accept your first case. You have a big science project due soon and just got a new part time job, but figure you could prepare the hour before any hearing. Should you take a case?

5. You are assigned to be the prosecutor in a case. You want to be sure you fulfill all the requirements of a prosecutor. What are they?
6. You commit a crime. How does this affect your Ketchikan Youth Court Bar membership?
7. You represent the defendant in a Ketchikan Youth Court trial. You see one of the trial judges at school and want to tell her that you've decided to add another witness to your list of witnesses. Is this okay?
8. You represent the defendant. You think that the state has a horrible case. Can you tell the defendant she is going to win?
9. You represent the defendant. He tells you he is going to lie while testifying on the stand. What should you do?
10. You represent the defendant. You know about some law that is against your client, but the state's attorney has not found that law. What should you do?
11. You are elected to serve as a judge. Do you still have to follow the ethics rules?
12. You get assigned to a case. You recognize the defendant's name as someone you went to summer camp with this last year. What should you do?

Week Three

Restorative Justice begins by bringing together the community to promote accountability through positive peer pressure.

Prosecution Preparation

Charging Documents

What is a Crime?

Elements of a Crime

Special Considerations

Preparing a Probable Cause Statement

What is Evidence?

Prosecution Preparation

The prosecutor represents the state and therefore must “do justice.” Part of the preparation of your case should focus on serving justice by ensuring that the defendant has been properly charged and ensuring that the defendant receives an adequate sentence. An adequate sentence will both rehabilitate the defendant and repay the community for the crime.

Confidentiality

The rules of confidentiality apply to everyone in Ketchikan Youth Court. Many people mistakenly think that the only confidentiality rule which applies is between the defense attorney and the defendant. However, the facts of the case and especially the name of the defendant are all confidential. State law requires KYC to keep the information confidential. During a case you may make any notes for yourself that you need. Fasten your notes in the case file, and the notes will be destroyed along with the other confidential documents when you complete the case.

Preparing a case

When you are assigned a case, you must come into the office to prepare with a partner assigned to you. For confidentiality reasons, you may not remove the case file from the office. When you come to the office to prepare, you must discuss the case with either the KYC Director or Youth Assistant.

A prosecutor may be asked to take several cases, if those cases are related. KYC tries to assign the same prosecuting attorneys to related cases so that the cases will be handled in a consistent manner. Similarly, KYC tries to assign the same judge panel to hear related cases so that defendants who committed crimes together are sentenced similarly.

Normally there are two prosecuting attorneys appointed to each case. Talk about the facts. Determine whether you need to do any investigation. Discuss the aggravating factors that you believe apply and whether there are likely to be any mitigating factors. Discuss the sentence you will suggest. Decide who will do which part of the case. If you are designated the second attorney, don't assume that the first attorney will do all the work. You are equally responsible for preparing the case. For misdemeanors, a victim impact statement is required to be taken from the victim (**see example document 3.01**). This statement is presented in court to share things that the victim would like to have represented in the courtroom if they cannot attend themselves. In court, generally the speaking parts are split so that one person (usually the less experienced) gives the probable cause statement, and the other (usually the more experienced) gives the aggravating factors and sentencing recommendation. In this chapter, you will learn how to prepare the probable cause statement. We will work on sentencing statements and aggravating and mitigating factors in a later chapter.

Reviewing the case file

When you review the case file, you will see documents on two sides of the file.

On the left side of the file you will find the police report (misdemeanors only) (**see example document 1.01**) or ticket (violations only) (**see example document 1.02**) with the specifics of the case as well as attorneys records (**see example document 3.02**). On the right side of the file, you will find the intake form (**see example document 3.03**) and referral form, any notes that may have been prepared, a list of mitigating factors (**see example document 3.04**), and a list of aggravating factors (**see example document 3.05**).

Investigation

You should read through the file and decide if you need any more information than is provided. In some cases you may not be able to simply read the file and get all the information you need. In those cases, you will have to call the arresting officer, the security officer or a witness. You may need to call a victim in order to find an estimate of how much restitution is necessary or get a receipt for damage caused by the defendant. Investigation of a case is important. Many students are reluctant to make phone calls to adults that they don't know to ask questions. However, this is an important part of being a prosecutor. If you don't know who to call or how to approach them once you do call, you should ask for help. The KYC Director will help you contact the arresting officer or the **JUVENILE INTAKE** officer.

What is a Crime?

To know whether a defendant has been accurately charged, you need to know both the definition of a crime and the **ELEMENTS OF A CRIME**.

One of the purposes of KYC is to provide an opportunity for young people accused of a crime to be judged by their peers. A crime is something that one does or fails to do that violates a law. A criminal has many faces. S/he may be a teenager shoplifting a video game or a career criminal planning a kidnapping. S/he may be the youth who steals a car for a joyride or the member of a car theft ring that takes the car to sell later. When a person commits a crime, s/he does something that is a threat or danger to the community.

Categories of Crimes

Crimes are divided into categories and are defined under Alaska law as follows:

- 1) **FELONY:** A crime for which a sentence of imprisonment for a term of more than one year is authorized. The exact limit for jail time and fine depends on the level of the felony and how many felonies the defendant has committed.
 - a) Felonies are usually the more serious crimes. Examples of felonies include first and second **DEGREE** theft, murder, first and second degree burglary, first and second degree robbery, and possession of drugs at school.
 - b) Felonies are separated from most serious to least serious as murder, unclassified felonies, unclassified sexual offenses, Class A, Class B, and Class C felonies.
 - c) KYC DOES NOT accept felonies.
- 2) **MISDEMEANOR:** Any crime for which a sentence of imprisonment of a year or less and a fine of up to \$1000 may be imposed.
 - a) Examples of misdemeanors include criminal trespass, gambling, cruelty to animals, disorderly conduct and theft in the third and fourth degree.
 - b) Misdemeanors are also separated from most to least serious as Class A and Class B misdemeanors.
 - c) KYC accepts many different types of Class A and Class B misdemeanors.
- 3) **VIOLATION:** A minor infraction which cannot be punished by imprisonment. This type of offense is normally punished by a fine of up to \$300.

- a) Most traffic tickets, minor consuming alcohol, littering, curfew, and smoking violations fall into this category.
- b) KYC will accept these cases (with the exception of traffic tickets).

Elements of a Crime

You need to know the elements of a crime since the KYC prosecutor will tell the judges the elements for each case during a sentencing hearing. Additionally, you need to be able to evaluate the charging document to see if it is correctly drafted.

Every crime includes three elements. A crime cannot be committed unless all of its elements are fulfilled. The three elements are: (1) **CONDUCT**; (2) **STATE OF MIND**; and (3) what class the crime fits.

Conduct

Means either an "**ACT**" or the "failure to act when there is a duty to act." If you shoplift, you have committed the act of going into the store and taking something without paying for it. If you commit child neglect, you are a parent who did not take care of your child, even though you had the duty to take care of him/her.

Conduct is an element required in every crime. There is no law against just thinking criminal thoughts.

Most statutes call for a bad result or a violation, which occurs as the consequence of the defendant's conduct. For example, if the statute defines murder as "causing the death of another person" the bad result or violation would be the death of someone. Again, as a prosecutor you could prove this in any appropriate manner: for example, you could introduce the coroner's report. Another example of a result is in an assault, in which a person must only be afraid of imminent serious bodily harm for an assault to occur. The "result" in that case is the fear.

State of Mind

This defines what the defendant was thinking at the time s/he committed the conduct. There are four kinds of states of mind:

- 1) **INTENT** means wanting something to happen. If A swings at B, and wants to hit him, we say A INTENDED to hit B.
 - a) To prove intent, a person is presumed to intend the consequences of his/her acts. This is because a person usually means to do what s/he does. In order to prove intent, you have to show that someone did an act. The action itself is evidence that the person meant to do the act.
 - b) For example, assume Q throws a rock at B. Q says she only meant to scare B but did actually hit B. Just by showing that Q threw the rock at B, the jury can determine that Q intended to hit B. If you were the prosecutor, you might want to show, in addition, that Q was an excellent shot. Q might take the stand and say that she never meant to hit B. Then it is a question for the jury to decide whether or not to believe Q.
- 2) **KNOWLEDGE** means knowing something will happen as a result of what you do.

- a) To prove knowledge, you prove the surrounding events and argue that given the events, anyone would know that the result that happened would follow.
- b) For example, assume you had to prove the defendant was at a crowded public rock concert in a park and was standing on a bridge. The defendant dropped a rock down into the crowd and hit a man on the top of his head. If you could prove that the defendant picked up a rock and dropped it on the crowd, then you have shown enough to prove he did it "knowingly" even if he did not intend to hit that particular man or even any particular person. This is because everyone knows that a large rock dropped into a crowd of people will hit someone and could hurt at least one person. Therefore the argument is that when the defendant dropped the rock into the crowd, he knew he was going to hurt one person.
- 3) **RECKLESSNESS** means consciously doing something which involves a great risk to oneself or to others.
- a) To prove recklessness, again you would prove the surrounding events to show that the defendant knew of the risk s/he was taking.
- b) For example, F has a new gun. F wants to test the gun so F points the gun across the street and shoots at trees in the park. F is being reckless because she is doing something she knows involves a high risk of danger to others who may pass by or are using the park.
- 4) **NEGLIGENCE** is not as serious as recklessness.
- a) To prove negligence, it is not important to prove what the defendant knew. All you have to do is prove the surrounding events and argue that a person exercising ordinary care would not have done what the defendant did.
- b) For example, M owns a car. M knows that the brakes are weak and that it takes M a long time to stop the car, but M does not have the time right now to take the car into the shop to get it repaired. M drives the car to work and is late. M is driving a little fast. M drives up to an intersection in which a woman is crossing the street. M cannot stop in time and hits the person, injuring her. M's negligent actions caused him to hit the woman.

Practice Examples

The distinction between various states of mind is important. The difference in mental states is significant to the type of sentence a defendant could receive. Try to evaluate the following example situations:

- ✓ Mason walks into the room and yells, "Where is Marshall? I want to hit him for striking my girlfriend!" Mason hits Marshall and seriously hurts him. As a prosecutor, which state of mind could you prove?
- ✓ If Mason walks into the room, brandishing a gun, shoots wildly around Marshall to scare him and accidentally kills him, which state of mind could you prove?
- ✓ If Mason shoots at aluminum cans to show off and accidentally shoots another person, which state of mind could you prove?

What class does the crime fit?

Many crimes are separated into classes. For instance, a theft is separated into classes by the amount of money or the value of the property stolen. If a person shoplifts a CD player worth \$199, that person has committed a class A misdemeanor theft, because theft in the third degree is defined as including those thefts between \$50 and \$500. To prove that the theft fits in that class, you, as a prosecutor, need only tell the judges the value of the item and what the class definition is.

At trial, the prosecutor must be able to prove every element of the crime beyond a reasonable doubt before the defendant can be found guilty. When reviewing a charging document before a sentencing hearing, a prosecutor should look for all three elements to be sure that the crime the defendant is charged with is correct and could be proved, if necessary.

Special Considerations

What if the Defendant has Been Charged Incorrectly?

A KYC prosecutor has certain special duties that a KYC defense counsel does not. Since the prosecutor represents "the people," s/he must not bring a case which s/he knows is not supported by "probable cause." In other words, the prosecutor must believe that there is enough evidence to prove a case before s/he signs a probable cause statement, even in cases in which the defendant has pled no contest before coming to KYC. If the prosecutor finds during his/her investigation of the case that there is not enough evidence, the prosecutor should not bring the case. If you, as a prosecutor, think that a case in KYC does not have sufficient evidence, you must talk to the KYC Director. If the charge against the defendant is not supported by sufficient evidence, it may be possible to change the charge to one of a similar or lower **CLASS**. On rare occasion, KYC may reject a case which does not have sufficient evidence to support the charge. However, a charge will not be changed unless there is sufficient evidence to do so. A charge will not be changed simply based on a conflicting statement from the defendant. (NOTE: only the prosecutor may reduce charges with the approval of the KYC Director. The defense counsel can ask that the prosecutor do so, but has no control over the level of crime the defendant is charged with.)

Similarly, a defendant may have been charged with a higher class of crime than s/he should have been. For example, a person who broke into a store is charged with **BURGLARY** in the first degree. To be properly charged with burglary in the first degree, the person must have entered a residence (house) with the intent to commit a crime inside. But if the person just went inside a store and no one lived in the store, then s/he should have been charged with burglary in the second degree. In that instance, it would be the prosecutor's duty to talk to the KYC Director and get the charge lowered to second degree. Do not promise any change in the charge before consulting with the KYC Director. Often, changes must also be approved by the Juvenile Intake officer.

KYC prosecutors may not add charges or increase the charge even if there has been a mistake for certain cases in which a plea has already been entered by the defendant (anything from District Court).

Legal Counsel for the Defendant

The prosecutor must be sure that the defendant has been appointed counsel. In KYC, no defendant may represent her/himself. The KYC Coordinator will schedule both prosecution and defense attorneys. However, you should double check.

NOTE: The prosecutor may not ever talk to the defendant without his/her lawyer present. That means that you may not phone the defendant for information when preparing your case. You will violate the KYC Rules of Ethics if you talk to a defendant without his/her defense counsel present.

Turning Over Evidence

A prosecutor must always disclose to the defense all evidence which might make a jury find the defendant not guilty or might provide him/her with the ability to lessen the charge with an alibi or with defenses. If the prosecution, in its preparation for the sentencing hearing, discovers new evidence which might benefit the defendant, s/he must tell the defense counsel immediately.

Preparing a Probable Cause Statement

The prosecution counsel must have its statement ready prior to arraignment. At the actual hearing, the KYC judges will call upon the prosecution team to outline the case against the defendant, which is called a probable cause statement (**see example document 3.06**). When preparing the probable cause statement, keep in mind that you need to show the court that you have adequate evidence to proceed and that the court should accept the defendant's plea. The probable cause statement has four parts:

- 1) You should state the facts of the case in your own words. Do not just read the summary written in the charging document. The judges have a copy of that document in their file and will have read it prior to coming into the courtroom. However, this is all the judges know about the case. Therefore, you need to paint a complete picture for them, including anything about the crime which you believe the judges need to know.
 - a) You need to tell the court what the elements of the crime are and then explain what facts support those elements.
- 2) Keep in mind that at a trial, to prove the defendant guilty the prosecutor must prove every element in the statute beyond a reasonable doubt. You must be sure that your probable cause statement addresses all the elements of the crime that you must prove. Look up the applicable statutes or ordinances to determine what must be proved.
- 3) You should then describe who your witnesses are, how each one relates to the case, and a general description of their expected testimony. You do not have to bring the witnesses to the courtroom. When deciding which witnesses to include, think as if you were going to present the case to a jury and decide which witnesses the jury would want to hear. You do not have to tell the exact words a witness is expected to say.
- 4) You should list the physical evidence of the crime. Again, decide what evidence you would want a jury to hear. You will not actually bring the items to the arraignment, but you should say what items you would have introduced and, generally, how each relates to the charge. For example, if there are photographs of the crime scene before and after the offense, that is all you have to say. You do not, at this point, need to bring the photos nor do you have to explain how you would use the photographs.

What is Evidence?

During a sentencing hearing, as part of the probable cause statement, a prosecuting attorney states for the court the evidence that s/he would present to a jury if the case had to go to trial, to convince that jury that the defendant is guilty.

EVIDENCE includes anything brought into court to prove or disprove facts. **TESTIMONIAL EVIDENCE** is a statement made by a witness at trial. **REAL EVIDENCE** is the thing itself. (For example, the gun, the stolen merchandise.) **DEMONSTRATIVE EVIDENCE** is similar to real evidence. However, it is not the thing itself, but a model for the thing. (For example, a toy gun, merchandise that is the same as the merchandise stolen.) **DIRECT EVIDENCE** is evidence that points directly to the defendant's guilt or innocence (for example, the statement of a witness that, "I saw the defendant steal the car.") **CIRCUMSTANTIAL EVIDENCE** only points to the conclusion of whether the defendant is guilty or innocent (for example, the statement of a witness that, "I saw the defendant at the parking lot on the night in question.").

Courts have rules of evidence so that the only evidence that the judge or the jury will hear is that evidence which is "reliable, truthful and relevant." The judge always interprets the rules of evidence to determine whether any evidence will be allowed in court. The judge must make a decision based on the rules of evidence when one lawyer attempts to ask a question or put in some evidence and the other lawyer says, "I object." The lawyer will give his/her reason for objecting to the evidence.

At trial, the prosecuting attorney would present to the jury any relevant evidence which would convince the jury of the defendant's guilt. During a KYC sentencing hearing, a prosecutor does not actually bring to court any evidence. However, describing evidence to the judges is a part of the prosecutor's job. For example, in a burglary case in which the defendant broke into his neighbor's house, you would want to describe the following: the crow bar that the defendant used to pry open the door, fingerprints left on the door, shoe prints in the mud outside the house, the items recovered from the defendant's bedroom which were stolen from the house, and maybe the items of clothing that the person was wearing when s/he broke into the house. You would not want to bring up an overdue library book that the police found in the defendant's closet, which the defendant failed to return to the school library last year. The book is irrelevant to the crime of burglary.

Probable Cause Presentation

Use the following information to write a probable cause statement to present in class. Refer to the prosecution checklist for guidance.

POLICE REPORT: Amanda Bacan walked into Tie-Dye, a local gift shop, and walked directly over to the display of Beanie Babies. Amanda looked at the Beanies, picking up each one and looking at the tags. Finally, Amanda selected an anteater named Ants and, while looking around, unzipped her backpack and put the Beanie inside. Amanda walked straight out the front door, making no attempt to pay for the Beanie.

Carl Darwin, a security guard for Tie-Dye, was watching Amanda. He stopped Amanda outside the store and escorted her back inside. The entire incident was videotaped. The Beanie was valued at \$6.99.

APD was called and Officer Emerson came to the store. Based on the security guard's report, Officer Emerson arrested Amanda. She was released to her mother's custody.

- 1) Summarize the facts of the case in your own words.

- 2) State the elements of the crime, and what facts would prove the elements.
- 3) State who the witnesses would be and what they would testify to.
- 4) State what the evidence is.
- 5) Refer to the Prosecution's Preparation List (**see example document 3.07**). Use this when preparing for a case.

Fast Fact Sheet (States of Mind)

Intentional conduct normally implies specific intent. A person acts intentionally when his or her conscious objective is to cause a result specified by law. *Flink v. State*, 683 P.2d 725 (Alaska App. 1984).

Knowing conduct involves an awareness of the nature of the actor's conduct. A person is aware that his or her conduct is of the nature defined in the offense. For example, a person can "knowingly" maintain a crack-house by letting others use his or her property for drug related activity without actually participating in or seeing crack sales carried out. *Dawson v. State*, 894 P.2d 672 (Alaska App. 1995).

Reckless conduct occurs when a person is aware of and consciously disregards a substantial and unjustifiable risk that a particular result will occur or that dangerous circumstances exist. The risk must be of such a nature and degree that a reasonable person would not normally disregard it. *Flink v. State*, 683 P.2d 725 (Alaska App. 1984). For example, a person who drives or handles a weapon while drunk acts recklessly.

Criminally negligent conduct involves the failure of a person to perceive a substantial and unjustifiable risk that a particular result will occur. The risk may be the same as that involved in reckless conduct, but here the actor fails to appreciate the risk, rather than disregarding it. *Panther v. State*, 780 P.2d 386 (Alaska App. 1989). For example, a contractor was convicted of criminally negligent homicide for the death of a worker who was told to enter a dangerous and un-inspected work site.

Week Four

Restorative Justice begins by bringing together the community to promote accountability through positive peer pressure.

What/Who is a Defense Attorney?

Defense Preparation

Preparing the Defendant for Sentencing

How to Interview Your Client

The Fifth Amendment

What/Who is a Defense Attorney?

Sixth Amendment: Right to Assistance of Counsel

Right to speedy trial, witnesses, etc. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

-- Sixth Amendment to the United States Constitution

The **SIXTH AMENDMENT** to the U.S. Constitution guarantees a defendant the right to the aid of an attorney. The courts have interpreted the sixth amendment language to mean that if the defendant is too poor to afford an attorney, an attorney will be appointed to aid the person. These attorneys are commonly called "public defenders."

The defense attorney represents a person accused of a crime. In KYC, a defendant is entitled to the help of a defense attorney. Normally, two defense attorneys are appointed to each case.

The defense attorney's duties are to represent the person to the best of their ability and get a fair sentence for that person, if the person has pled no contest or is found guilty at trial. A defense attorney's job, at least in Ketchikan Youth Court, is not to do whatever they can to get a person set free, because in most cases the person will have pled no contest to charges already and the defense attorney will be representing the person at the sentencing hearing.

If a case does come to Youth Court for a full trial, the defense counsel must represent the person to the best of their ability. However, the attorneys should look at the case realistically. If the defendant is better served by persuading the prosecutors to agree to a plea bargain, then the defense counsel should do so, with the defendant's permission.

What If My Client Is Guilty?

Many people ask, "How can I represent someone I know is guilty?" A good defense attorney knows that his/her client may very well be guilty. But the attorney's help is necessary to ensure that the prosecution neither convicts an innocent person nor imposes a harsher sentence on a person than s/he deserves.

At trial, a defendant is presumed innocent until proven guilty. A prosecutor must prove a defendant guilty beyond a reasonable doubt or the jury must find the defendant not guilty. The defendant does not normally have to prove anything. However, there are some rare exceptions to that rule, which you will learn if you study trials.

In a KYC sentencing hearing, a defendant has either been found guilty at trial or has pled no contest. A defense attorney's job is to assure that the court hears from the defendant's point of view what sentence should be imposed and why. Often there are facts about either the crime or the defendant which will influence the judges to impose a lighter sentence. It is the defense attorneys' job to bring up those facts and explain why the facts should affect the sentence.

Defense Preparation

Confidentiality

The rules of confidentiality apply to everyone in Ketchikan Youth Court. State law requires KYC to keep the defendant's name and the facts of the case confidential. During a case, you may make any notes for yourself that you need. Keep your notes fastened in the case file and the notes will be destroyed along with the other confidential documents when you complete the case. You may discuss a case only with other members working on the case or with the KYC Director.

Defense counsel has another confidentiality duty which applies to "client confidences". Anything that your client, the defendant, tells you about the case is confidential unless the defendant agrees that you can release the information.

Preparing a Case

When you are assigned a case, you must come into the office to prepare with a partner assigned to you. For confidentiality reasons, you may not remove the case file from the office. When you come to the office to prepare, you must discuss the case with either the KYC Director or Youth Assistant.

A defense attorney may not represent defendants on related cases, nor may a defense counsel take the prosecution role on a related case. Finally, as defense counsel you may not type the charging document for the case, because you cannot charge your own client.

Contacting Co-Counsel

Normally, there are two defense attorneys appointed to each case. Talk about the facts. Determine whether you need to do any investigation. Discuss the mitigating factors that you believe apply and whether there are likely to be any aggravating factors. Discuss the sentence you will suggest. Decide who will do what on the case. If you are designated the second attorney, don't assume that the first attorney will do all of the work. You are equally responsible for preparing the case. In court, generally the speaking parts are split so that one person gives a summary of the defendant's biographical information, how the defendant has learned from the experience, and why s/he will not commit another crime, and the other person gives the sentencing recommendation and the mitigating factors.

In this chapter, you will learn how to interview the defendant, so you can gather all the information you need to present to the court. You will work on sentencing statements and aggravating and mitigating factors in a later chapter.

Reviewing the Case File

When you review the case file, you will see documents on two sides of the file.

On the left side of the file you will find the police report (misdemeanors only) (**see example document 1.01**) or ticket (violations only) (**see example document 1.02**) with the specifics of the case as well as attorneys records (**see example document 3.02**). On the right side of the file, you will find the intake form (**see example document 3.03**) and referral form, any notes that may have been prepared, a list of mitigating factors (**see example document 3.04**), and a list of aggravating factors (**see example document 3.05**).

Contacting the Defendant

Regardless of whether you are first or second "chair" on the case, you must ensure that the defendant is called before the sentencing hearing. What you should tell the defendant is

detailed later in this chapter. The defendant's phone number is in your case file.

Investigation

You should read through the file and decide if you need any more information than is provided. In some cases, you may not be able to simply read the file and get all of the information you need. As defense counsel, your best source of information is the defendant him/herself. During your interview with the defendant, you will read the charging document to the defendant and talk to him/her about the facts of the case.

In some cases you may attempt to call the arresting officer, the security officer or a witness. Be aware that many of those involved in arresting a defendant are reluctant to talk to defense attorneys. But investigation of a case is important. Do not let a possibly uncooperative person keep you from doing your job. If you need help in your investigation, call the KYC Director.

Documents

Refer to the Defense's Preparation List (**see example document 4.01**) and the Defense Intake Interview Questions (**see example document 4.02**). Use these when preparing for a case.

Preparing the Defendant for Sentencing

For a defense attorney, it is vital that you make your client aware of the procedures in the arraignment and what is expected of him/her. Your client probably has no legal training and this will probably be his/her first experience in a courtroom. The client will usually be scared and confused. As counsel, it is your job to make sure that the defendant fully understands what will happen, especially his/her options. The defendant must understand his/her plea on each **COUNT**. Your client should be prepared: s/he should dress appropriately, should understand basic courtroom procedure, should stand when addressing the court, and should know how to address the court.

General Preparation

You need to cover the following information when talking to the defendant:

- ✓ Make sure the defendant knows how to get to the KYC office: 2417 Tongass Avenue Suite 221. Clearly tell the defendant that s/he will come to the KYC office to check in and meet his/her attorneys. They will do an interview and sign appropriate intake paperwork. The attorneys will explain KYC and what will happen at the court house. The sentencing will be done at the 3rd floor of the State Office Building Court Room on Monday afternoons from 3:30-5:00PM.
- ✓ Parents must attend. Siblings may attend with permission from defendant. **Friends are not allowed in court.** The defendant will sit with his/her defense attorneys. Parents and siblings sit in the observation area. (No one may come to watch YOU since the case is confidential, and the court is "closed".)
- ✓ Explain the need for clean, appropriate dress in court. No jeans, t-shirts, sweatshirts, sweats, or tennis shoes in court. If the person does not have appropriate clothes, KYC does have "emergency clothes" for both girls and boys.
- ✓ Advise the defendant:

- a. What day to be there and where the office is.
- b. S/he will need to come to the KYC office approximately three days before the hearing at the courthouse.
- c. S/he will need to consult with you for further preparation.
- d. S/he will need to be at the court house fifteen minutes before the court appearance at the courthouse.
- e. Remind the defendant to keep all information about the case confidential. KYC members cannot talk about the case except with co-counsel or the KYC Director. No one else in the community will know that the defendant committed a crime, unless the defendant him/herself tells someone.

Understanding the Plea

As defense counsel, you must make certain that your client fully understands the no contest plea and how it differs from other pleas. You must make sure that the no contest plea was made of his/her own free will. The defendant had two choices when pleading. The two pleas include:

- ✓ No contest: The defendant refuses to defend him/herself against this offense and a finding will be entered by the court. Though it is treated as a guilty plea by the court, no contest does not include an admission or denial of guilt. In the adult system this is usually used to avoid civil liability, since a guilty plea could be used as evidence in a related lawsuit (e.g. if OJ Simpson had pled guilty to murdering his wife or had been found guilty, her family would not have had to prove in the civil trial that OJ did it, but would only have had to prove how much money he owed them.). In KYC, this is not a problem because KYC procedures are confidential. However, the defendant does have the right to refuse to admit guilt without going through a trial. In KYC, when the defendant pleads no contest, s/he cannot be required by the judges to allocate or tell the facts of the crime before sentencing. Most defendants plead no contest and come to KYC for sentencing.
- ✓ Guilty: An admission or finding of guilt. The defendant admits having committed the criminal act that s/he is charged with or is found guilty by a jury. The defendant then receives a sentence for this offense.

What Happens In Court

As defense counsel, you need to explain to the defendant what goes on during the hearing. You want to describe the process to the defendant so that s/he will not be too anxious before entering the courtroom about what will happen.

1. The clerk begins court by saying "all rise" and the judges enter.
The judges say "be seated," state defendant's name, case number, and ask if the defendant is present in the courtroom.
The defendant and defense counsel rises and answers, "Yes, your honor."
The judges will spell the defendant's name and ask if it is correct.
Each attorney identifies him/herself.
The defendant will be asked to look at a copy of the agreement (in the defense attorney's file) that s/he signed.
The judges will ask whether the defendant read the Agreement before signing it and

- whether she signed the Agreement voluntarily and knowingly. The defendant, remains standing and answers "Yes/No, Your Honors."
 A judge will read the charges against the defendant.
 The prosecution will present a statement about the facts of the case, the witnesses and evidence.
 The defendant will be asked if s/he understands the charge(s) against him/her and if s/he understands the case that the prosecution has against him/her.
2. The prosecution will recommend the sentence they think is appropriate for the defendant.
 The prosecution will bring up aggravating factors. Prosecution may, but need not, bring up mitigating factors.
 The defense will recommend the sentence they feel is appropriate.
 The defense will bring up mitigating factors.
 3. The judges will ask the defendant if s/he would like to make a statement. This is not mandatory. The judges will not hold it against him/her if s/he chooses not to. They then ask if the parent would like to say anything.
 After the statements, the judges will say "court is now in recess" and will go back to determine the sentence.
 Everyone stays in the courtroom until the judges return with the sentence.
 The clerk says "all rise", the judges reenter, read the sentence, and explain their reasoning for the sentence.
 This whole process, from the first "all rise" to "court is now adjourned," lasts about 20-25 minutes.
 4. After sentencing, the defendant has the right to move for reconsideration of the sentence.
 If the defendant chooses to ask for an immediate reconsideration, the defense attorneys will tell the judges why and present the argument in court at that time.
 The prosecution will have a right to respond.
 The judges will then decide whether it is appropriate to change the sentence.
 If the defendant chooses to **WAIVE** this right, court will be adjourned.
 The defendant also has the right to a written motion for reconsideration within three working days.
 The defendant has the right to appeal within five business days.
 An appeal is considered by three new judges.
 5. After court:
 The defendant and parents receive a Sentencing Report (**see example document 4.03**) which is a form with the sentence given to them by the judges.
 The defendant's attorneys will explain the community work service site, education programs, set out guidelines for writing the essay, and the deadline for completing the sentence.
 The youth assistant takes forms and scripts back to KYC office to file.

Letters of Recommendation

Explain to the defendant that s/he can ask for a letter of recommendation from anyone, which you will then present to the court. The letter can be from a boss, co-worker, coach, priest, rabbi or minister, teacher, adult friend, or even a family member. A letter of recommendation shows the judges that someone who has frequent contact with the defendant believes in the defendant and believes that s/he is a good person, capable of

amending his/her ways.

To preserve confidentiality, the letter can be addressed to "To Whom It May Concern", as if it were for a job or college application.

How to Interview Your Client

General Guidelines

As a defense attorney, it is most important when dealing with the defendant that s/he has complete trust in and respect for you. This is important for two reasons: First, if the defendant does not trust you, s/he may tell you an incomplete or untruthful story about the crime and will not be helpful when you are interviewing him/her about his/her biographical data. Second, if the defendant does not respect you, it is unlikely that you will be able to influence the defendant to, in turn, have respect for the law. The following suggestions are set forth to help you, as a defense attorney, set up a good relationship with your client, the defendant.

- ✓ Show a genuine interest in and concern for the defendant.
- ✓ As soon as you are assigned to represent the defendant, inform him/her not to speak to ANYONE about the alleged crime. Anything s/he says about the crime to anyone but you may be repeated. There is an exception to this rule called "privilege." A defendant must be able to speak to certain people in order to get help with his/her problem. The technical, legal "privilege" extends to defense attorneys, a priest/minister/rabbi, and a doctor. The privilege does not include the defendant's parents and friends. (However, a defendant may wish to discuss the case with his/her parents anyway.) Impress on the defendant that KYC members must keep the case confidential and that the defendant should too.
- ✓ Tell the defendant that you will do everything legally possible to represent him/her and that you won't waive any of his/her rights without consent.
- ✓ Ask the defendant to tell you everything about his/her arrest.
- ✓ Do not show the defendant that you disapprove of anything s/he tells you. This would discourage him/her from telling you the complete and true story.
- ✓ Do not ask the defendant questions in such a manner that s/he knows the answer that you are looking for.
- ✓ Write down the answers to all questions in your confidential file. Your notes and all documents with the factual information will be shredded when the case is completed.
- ✓ Be sensitive. Many of the clients KYC defense attorneys work with have other issues in their lives that they may not want broadcasted. Always get a defendant's permission before telling the court about personal information which might be embarrassing.
- ✓ Be respectful. Each KYC defendant is a person with feelings. S/he wants to be treated fairly and justly. If a defendant thinks s/he has not been treated fairly or justly that person is unlikely to have a good impression of the justice system as a whole. However, if the person walks away after court thinking that s/he received a fair and just sentence and was treated with respect, that person is unlikely to commit another crime.

- ✓ Treat the client as a person, not just another KYC case. After handling many cases, court may no longer be a big deal to you. However, it is a big deal for each defendant who comes to KYC. Always remember that you are working on a sentence for a real person. It matters to that person!
- ✓ The proceedings are not about winning or losing, or how well you can impress others by your skills. The proceedings are about getting a fair and just sentence for your client. That should always be your paramount goal.
- ✓ Explain to the defendant as much as you can about what will happen to him/her.
- ✓ Your client should approve the sentence you will recommend to the court. Inform the defendant of all the options and give him/her a realistic estimate of what sentence s/he can expect. DO NOT EVER PROMISE A SPECIFIC SENTENCE.

Biographical Information

One of the defense counsel's jobs is to present your client's biographical information to the court to give the judges a picture of the person your client is. Without a description of all your client's good qualities and characteristics, judges may see your client as just a criminal.

Every defendant who comes through Ketchikan Youth Court has something good about his/her life. However, getting that information from your client may be challenging. Many defendants give short, incomplete, abrupt answers which are not descriptive. You need to get the defendant to trust you and to answer your questions.

After you've gone through the preliminary information with the defendant (when to be here, how to dress and act, what will happen, etc.) tell your client you will need as much information about him/her as possible.

When you begin questioning, start with the facts that you do know to help you get the conversation rolling. For example, often you will know what school the defendant goes to, what grade s/he is in and maybe what his/her grade point average (GPA) is. You may know how many brothers and sisters s/he has and how old they are. You may know if the defendant has a job and a little bit about his/her interests and /or hobbies. Using this information, begin questioning your client about something you know:

1. If your client goes to Ketchikan High school, is in the 10th grade, and has a 2.8 GPA, ask:
 - a) What classes did you take last year?
 - b) What classes are you in this year?
 - c) What was your GPA there?
2. If your client has a younger brother and sister, ask:
 - a) Do you baby-sit your brother and sister?
 - b) Do you do chores around the house?
3. If your client has a job, ask:
 - a) How long have you had the job?
 - b) How many hours a week do you work?
 - c) What type of responsibilities do you have?
 - d) Is this a job you want a career in after you are through with school?
 - e) Have you ever had any other jobs?
4. If your client likes snowboarding, ask:

- a) How often do you snowboard?
- b) When did you start?
- c) Who taught you?
- d) Do you raise the money for the snowboard and tickets yourself?
- e) Do you belong to any snowboarding groups or clubs?
- f) Do you teach snowboarding?
- g) Do you compete?

These questions are just ideas to start with. Depending on the answers you get from your client, you will follow up with others. In addition, you would want to ask a lot of other questions about his/her life.

Use the Defense Intake Interview Questions sheet to record your answers and for more ideas. Do not limit yourself to the suggestions on the sheet. Listen to the answer and follow up.

Be creative. Ask as many questions as you can. Ask the question in four or five different ways. Use your own personal experiences as a base from which to question people. If you know a little bit about art and the person you are talking to says that s/he likes art, ask questions based on your experience. However, be careful not to "show up" your client or make him/her feel dumb because you know more about a subject than s/he does.

Do not stop with the obvious answer. For example, if you have a client who gives little information to start with, you may be excited to finally get him/her to say that s/he likes to skateboard. However, unless you ask follow up questions, you will miss the fact that the person is the president of the local skateboarding association.

When you interview a client in the office, at the end of the interview, if a relative has accompanied your client, ask the family member if there is anything s/he can add. Be sure that you ask your client's permission to use anything a relative tells you about the client. Sometimes a client just does not think of the addition. But sometimes the client doesn't want the information brought up and so does not mention it. Be careful not to address all of your questions to the relative. You represent the juvenile, not his/her parents!

Presenting The Biographical Information

After you have compiled as much information as you can about your client, you need to organize it so that you can present it to the court in a logical, understandable manner. You will need to discuss not only the biographical information, but also address your client's remorse and his/her prospect of never re-offending.

The Fifth Amendment

Rights of accused in criminal proceedings; due process, eminent domain. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without **DUE PROCESS** of law; nor shall private property be taken for public use, without just compensation.

-- **Fifth Amendment to the United States Constitution**

The **FIFTH AMENDMENT** to the U.S. Constitution guarantees every person the right to refuse to

incriminate him/herself at his/her own criminal trial. **SELF-INCRIMINATION** means to answer questions which might be used to prove you are guilty of a crime.

This means, among other things that, during a trial, the prosecutor cannot make the defendant testify on the witness stand. The defendant can choose to testify if s/he wants to. However, if the defendant does not testify, the jury cannot use the fact that the defendant didn't testify as reason to find that person guilty.

The same is true during a KYC sentencing hearing. A defendant does not have to testify during a sentencing hearing, nor does s/he have to say anything on his/her own behalf.

The judges cannot make the defendant recite the facts of the case (allocute) if the defendant has pled no contest.

Defendant Can Address The Court If S/he Wishes

During a sentencing hearing, the defendant is always offered the chance to address the court, but if s/he does not wish to, the judges will not hold his/her refusal against the defendant. The parent of the defendant is also given an opportunity to speak. Neither has to take advantage of the opportunity.

If a defendant does want to speak on his/her own behalf, tell the defendant to say only what s/he really believes. If a defendant stands and mumbles a stock phrase like, "Sorry, it'll never happen again." The judges are not likely to be very impressed. But even if all a defendant says is, "I'm sorry for hurting my family" and s/he means it, the judges will be more inclined to "go easy" on a defendant.

Week Five

Restorative Justice begins by bringing together the community to promote accountability through positive peer pressure.

Diversity

Victim Impact

Interviewing and Preparing Witnesses

Putting a Witness on the Stand

Objections

Diversity

What is diversity? It's variety, mixture, and difference. Ketchikan Youth Court has a large pool of members who are from every conceivable background. Additionally, the defendants who are referred to Ketchikan Youth Court are also from a wide variety of backgrounds. Diversity awareness is an important part of the Ketchikan Youth Court

Can you see the world from another person's perspective?

To see the world from another person's perspective requires self awareness, knowledge, understanding, and communication. Why would you want to be able to understand another person's perspective? How would it benefit you? Would it benefit the other person?

What is a Minority?

It is a "relatively small number of people differing from others in ethnicity, religion, language, political persuasion, etc." Oxford English Dictionary. For example, in the United States, it may be someone:

- ✓ whose skin color is other than white. Almost 1/3 of the people under 18 years old in the United States have non-white skin-color.
- ✓ who practices a religion outside the "majority."
- ✓ who is female, young, old, or visually impaired.
- ✓ who speaks a language other than English, whether or not they also speak English fluently.
- ✓ who is from a "different" region of the United States such as a rural area, or who is poor, uneducated, homeless or from a political group with few members.

Is Everyone Like You?

Do you ever look around and say, "Everyone seems to be just like me?" How would you know if the person who sits next to you has parents who speak a different language at home? Does that person's cultural background dictate strict behavior codes at home which are not "cool" when that person is around his/her peers? How would you know if a person had to divide his/her thinking at home from how s/he needs to think while at school? What would you think if you saw a defendant come into the KYC court room surrounded by a large number of relatives? Would you think that the person was sheltered? That they were a tight family that came in to express family unity? That the person was spoiled and not likely to learn anything from his/her experience? Do you think that everyone from a certain race has the same perspective or point of view? Did you realize that members of every ethnic group differ in their life experiences? Did you ever consider the range of similarities and differences within and among ethnic groups? Do you come from the "majority" culture? Do you expect that everyone should do things the same way as the majority? Would you be in the minority or in the majority in rural Alaska? Do you ever see someone and assume that person is one way or another? What is the first thing you think when you see:

- ✓ someone who can barely speak English?
- ✓ someone with a different skin color?

- ✓ someone blond?
- ✓ a person in a wheelchair?
- ✓ a person not dressed well?

Communication

People from different backgrounds are taught different conversational rules, ways of displaying respect and other patterns of social interaction which may have significant effects on how others perceive them and how they perceive and react to situations.

Consider: The comfort level of different cultural groups with different amounts of conversation. Some talk a lot; some have long periods of silence. In some cultures, individuals who talk a lot are considered smart; in others, they are considered foolish. This affects how much people will speak and how comfortable they are likely to be with a demand to talk.

Example: In the U.S. schools, students are encouraged to ask questions during class and it is normal to do so. However, Japanese students are reluctant to ask questions, because this behavior has negative connotations. It suggests that the student did not work hard enough to understand the material or that s/he is criticizing the teacher's ability to communicate the information.

Consider: Some cultures allow their children and teens to talk as much as they please, others require the child or teen to speak only when spoken to.

Consider: The role and place of interruptions during a conversation vary across cultures. In some, frequent interruptions are expected as part of the conversation. In others, long pauses between a comment/question and an answer are more the norm.

Example: Native Hawaiians are accustomed to overlapping speech (talking while another person is still talking), which is interpreted as showing interest in the conversation. In contrast, some Native Alaskans are accustomed to long wait times between a question and an answer.

Consider: Some teens do not go to school with members of the opposite sex and are therefore uncomfortable interacting.

Consider: Some cultures believe that direct eye contact demonstrates honesty when a person is talking. In other cultures, however, it is a challenge, and disrespectful.

Consider: In some cultures smiling is a reaction to any situation - it makes the person appear "friendly." However, in other cultures, smiling when the situation is serious would peg a person as having a bad attitude. In addition, some people react to stressful situations by smiling or giggling. Which applies, when and how would you know?

Consider: Cultural difference influence how people present themselves, understand the world, and interpret experiences. How would that impact a person's perspective of you?

Prejudice and Bias

The goal of diversity among KYC members and sensitivity to defendants and each other is not to establish one group as any better than the next, but to assist KYC members awareness of and sensitivity to other cultures, practices and beliefs, and to help members examine their

biases and prejudices.

What is a prejudice? It's pre-determined, unfavorable opinion based on misinformation or stemming from a lack of knowledge about the subject. Almost everyone has at least one prejudice. How would prejudice affect your ability to be an effective attorney or judge at KYC? Prejudices can be overcome when you discover just how much you have in common with your peers from every background. Prejudice is a learned behavior. Prejudice is normally born from ignorance about the other person's culture, beliefs, or practices.

What is bias? It is a partiality, an inclination to one side or another, or a predisposition to decide something in a certain way; not an open mind. Almost everyone has some bias. How might bias impact a client when you interview him/her? How might it impact your decisions as an attorney or a judge? How might a bias impact your interaction with other KYC members with whom you are working? Like prejudice, bias can be overcome with education.

Goals and Expectations

Learning to treat everyone equally regardless of ethnicity, religion, gender, etc., should always be a goal and will help any Ketchikan Youth Court member become a better attorney or judge.

Diversity should not be hidden when participating in KYC. Who you are as a unique individual and member of the community should not be left at home. Those things that make each person unique and different are precious assets: they can and should be accepted. Different ways of looking at the world can help not only broaden a person's perspective, but may solve a problem which the "majority" perspective cannot.

Each KYC member should conduct himself/herself at all times in such a way as to gain the respect of the other members and defendants. KYC members do not have to agree with everyone on every view point. What is expected is that all KYC members will practice acceptance and respect. If another person expresses a different opinion or is simply different from that KYC member, the KYC member is expected to remain polite and rational. Acceptance and appreciation of diversity at this stage of life is excellent preparation for life in our society and the working world.

In Class Exercises

- ✓ How are you the same as everyone else in the room? Avoid the obvious physical comparisons such as everyone is human, everyone has two hands, etc.
- ✓ Have you ever been discriminated against? Explain how and what you felt. Respect anyone who tells a story about him/herself regarding whether s/he were actually a victim of discrimination, even if you disagree with their interpretation of the events. Try and understand that person's perspective, because you would appreciate understanding and respect in return.
- ✓ Is it okay to tell a joke which is insensitive if no one protests or if no one from the targeted group is present? If no one objects, how could it be harmful?
- ✓ In what ways will you try and avoid prejudice or bias from creeping into your interactions while at KYC?

Victim Impact

Crimes are committed every day. However, for most of us, we don't expect crime to touch our lives. We think of crime as something that happens to someone else. But what if it does happen? How do victims feel? How do victims deal with crime?

The feelings and fears that victims experience are common to all sorts of violent crimes. Violent crime is not just murder. It includes burglary, assault, and robbery. KYC may occasionally accept an assault or burglary case. Ketchikan Youth Court members need to be sensitive to the victim when working on a case. The victim's feelings in these cases should be respected and should be considered during sentencing.

Victims of crimes may feel varying levels of feelings. Common feelings for a victim to feel are disbelief, shock and numbness, anger and frustration with no outlet, fear and apprehension. They no longer feel safe. Later other feelings may occur, including thoughts of revenge, nightmares or sleeplessness, self-blame, weakness, helplessness and loss of control, isolation from others, and depression. Victims also suffer other consequences such as: physical pain, school or job absences and medical expenses. Nothing can prepare someone for the violation of a home, school, workplace, or neighborhood at the hand of a third party.

The other type of victim is called a "co-victim." These people are the family members, household members, friends, school-mates, neighbors and co-workers of the victim. Co-victims are often also impacted by similar feelings as victims when a crime occurs.

Often people who have never experienced a traumatic event in their lives will tell a victim to "get over it" or "get on with your life." People often diminish the impact on co-victims as well. "Invisible wounds" are those which accompany a crime in which no physical injury occurred. People often misunderstand the impact on a victim and co-victims that burglary and minor assaults have. However, victims and co-victims do not just "get over it." Victims learn to get through it and live with it.

Problems experienced by victims and co-victims are made worse when no defendant is identified. Likewise, it is difficult for a victim not to know what has happened to a defendant as a consequence of his/her actions, as is often the cases with a crime committed by a juvenile, since juvenile cases are not normally public. The victim, under state statute, has the right to be informed of any consequence, but often is not.

In addition to all that a victim or co-victim must endure, society will often blame the victim for the crime, money reimbursed for damages caused by a defendant is slow to make its way through the system, and there are constant delays in getting a defendant to trial or sentenced. These added stresses will make a victim or co-victim's ability to reconstruct a new life more difficult.

Here is a statement from a burglary victim about what s/he felt after the crime:

I'll never forget the feeling of walking into my home and seeing all of my belongings strewn across the floor and the back window broken. At first, I was angry; angry that this person thought they had the right to break into my home and take my personal belongings. Then I felt scared . . . what if I had been home when it happened? What if the burglar comes back? Suddenly, I no longer felt safe in my own home. That led to even more anger: I shouldn't feel scared in my own house. Probably the strongest feeling of all was the feeling of being violated. The thought of some stranger being in my house and going through my things was awful. I felt as if I had been personally assaulted, even though I was not home at the time. I think the hardest part of all was the reaction of my friends and family. They didn't understand why I was having these feelings since I had not even been home when it happened.

Recovery is possible for victims and co-victims. The recovery is challenging and may take a long time. The most important thing a victim can do is get help from those who offer compassion, plus information and education about the traumatic experience and criminal system. Community-based victim service groups like Victims for Justice offer lots of services to victims and co-victims. Services include support in traumatic grief counseling and advocating for the victim in the criminal system which otherwise does not allow a victim any control.

Victims are encouraged to participate in a Ketchikan Youth Court Victim Impact Statement Interview (**see example document 3.01**). Victims are informed of the outcome of the Ketchikan Youth Court sentencing hearing. And finally, Ketchikan Youth Court always tries to recover restitution (money) for damages to be paid directly to the victim.

Interviewing and Preparing Witnesses

Ketchikan Youth Court attorneys put witnesses on the stand during sentencing hearings (very rarely) when there is a person who wants to testify to the defendant's good character, when someone wants to testify to mitigating circumstances, or rarely, when a victim's testimony is necessary to establish the amount of restitution. Normally a victim has a chance to make a written statement.

Whether you are the prosecutor or the defense attorney, prior to asking a **WITNESS** questions in court on the witness stand, you should interview the witness and talk to him/her about what questions you are going to ask. You may talk to a witness about the answers that witness will make, but you may NOT tell the witness what to say.

- ✓ At the beginning of the interview, tell the witness which side you represent and explain the purpose of the interview.
- ✓ Don't just ask the witness for facts; ask the witness HOW and WHY s/he remembers the facts.
- ✓ Always interview each witness separately - never interview witnesses in a group. This will allow each witness to tell you what s/he recalls without influencing other witnesses.
- ✓ Always prepare for an interview in advance. Be familiar with the facts of the case and have your questions written down.
- ✓ Do not ask the witness questions in a way that s/he knows the answer you are looking for.
- ✓ Watch for discrepancies in what a witness says. (That is, does a witness say anything that conflicts with things s/he or someone else has said earlier?) Try to find out why such discrepancies exist.
- ✓ Write down the answers to all questions. Date your notes and mark the time and location of the interview. Keep the notes fastened in your confidential folder.
- ✓ Go over the witness's testimony to make sure s/he is familiar and comfortable with his/her testimony and that s/he will tell it in such a manner that is easy to understand.

When preparing a witness for direct examination:

- ✓ Tell the witness to speak up.
- ✓ Tell the witness to look at the judges when testifying.
- ✓ Tell the witness to answer each question fully and truthfully.
- ✓ Tell the witness not to exaggerate an answer or try to avoid difficult areas.

When preparing a witness for cross examination:

- ✓ Tell the witness to listen to the question.
- ✓ Tell the witness to be sure s/he understands the question before answering.
- ✓ Tell the witness to take all the time s/he needs to answer each question.
- ✓ Tell the witness to answer only the question asked.
- ✓ Tell the witness not to become angry or hostile during cross examination.

When you call a witness to the stand, if s/he is well prepared, you will only need to ask a few brief questions to help the witness tell his/her story. Of course, if your witness is very young or for some other reason you think that s/he will have trouble testifying on the stand, then you will have to prepare many questions to help get the witness's entire story told.

Putting a Witness on the Stand

Examination

DIRECT EXAMINATION allows the witness be the center of attention. You should conduct the examination so you do not distract from the witness.

Fundamentals of Direct Examination

Effective direct examinations have certain characteristics which should be remembered each time you plan a direct examination.

(a) Use simple language

Keep a direct examination simple. Choose simple words and phrases for your questions. Just because you know what a big word means, doesn't mean everyone will. People do not like to feel dumb. Don't talk "down" to the witness or judges, but don't use words that they may not understand either.

Talk like a regular person. Eliminate "police talk" and other jargon from your vocabulary, as well as your witness'. Consider the following:

Example:

When did you exit your vehicle?

vs.

When did you get out of the car?

How long have you been so employed?
vs.
How many years have you been a cook?

Subsequent to your arrest, what happened?
vs.
What happened after you were arrested?

(b) Organize logically

Once you have determined the important points of your direct examination, you must organize those points in a logical order. Usually, but not always, this will result in a chronological presentation of the testimony. Tell the judges what happened, starting from the beginning, just as you would a story.

(c) Do not lead!

Basic to the rules surrounding direct examinations is the general prohibition against "leading" witnesses. "Leading" a witness means to suggest the answer you want in your question. Leading questions mostly require a yes or no answer and are appropriate only on **CROSS-EXAMINATION**. Inexperienced lawyers usually lead too much on direct (and, conversely, too little on cross examination). Although it is a rule of evidence with, of course, certain exceptions, it is also a rule of persuasion. By suggesting an answer in your question, you diminish the impact of having the witness volunteer the facts him/herself. If the witness gives only "yes" and "no" answers, the judges have no adequate way of assessing his/her credibility. A cardinal rule on direct examination is that the lawyer should never do anything that will detract from his/her witness or diminish the impact of the witness's testimony. Leading questions do exactly that.

Examples:

Leading (yes/no answer)
vs.
Not Leading (open question)

The streets at the intersection are both two-lane, aren't they?
vs.
What kind of streets are at the intersection?

Was the man six feet tall and about 25 years old?
vs.
Please describe what the man looked like.

Did the man take the wallet from your purse after committing the robbery?
vs.
What happened after he stole your purse?

Occasionally, an attorney can use leading questions on direct examination. Such exceptions are created when the witness is "hostile" or not inclined to answer questions for the side that is examining. An example of this type of witness might be the defendant's brother, who the prosecution calls as part of its case. The brother would most likely not want to testify for the prosecution and would therefore be "hostile." Another time leading questions can be used is to establish preliminary matters such as name, occupation, and education. Using leading questions for preliminary matters will speed up the time needed for trial. The last time leading questions are allowed is, in certain instances, when a young child is testifying. When using leading questions with either a hostile witness or a young child, the attorney should seek the judge's permission first and establish the need to use leading questions.

(d) Use open-ended questions

Effective direct examination questions are best achieved by using open-ended questions which ask the witness for description. This serves two functions. First, such questions let the witness tell the story and reveal the important evidence her/himself. Second, they minimize the presence of the lawyer. Remember, during direct examination, the witness should be the center of attention. Your questions should just guide the witness from one area to another as s/he testifies and break up the testimony into easily understood segments.

Examples:

What did you see next?

vs.

Did anything happen?

What did you hear next?

vs.

What happened (next)?

What did you do next?

vs.

Then what happened?

(e) Listen to the answers

Listening to the witness' answer is especially important when you have only a short time to prepare a witness before a sentencing hearing. Often, witnesses put on the stand during sentencing want to be helpful, so they give too much detail. If your witness says something which sounds harmful, you may need to help the witness clarify what s/he actually means. You will only catch the problem if you are listening.

To capture the judge's attention, you must appear interested in the witness's answers. You can hardly expect the judges to hang on the witness's words if you look and sound bored. Appearing interested has other inevitable consequences. It carries over to and infects the witness. It eliminates any suggestion that a direct

examination has been set up and practiced in advance. Finally, it helps you avoid making mistakes and makes you alert to the unexpected answers that inevitably appear.

2. Cross Examination

Cross-examination follows direct examination. After a lawyer has called on his/her witness and asks the witness questions, the other attorney has the opportunity to question the witness. This is called cross examination. The purpose of cross examining a witness during a sentencing hearing is to point out weaknesses, inconsistencies, or bias in the testimony. Therefore cross examination questions focus on such things as whether the witness really saw or heard what s/he testified s/he saw or heard, whether s/he really remembers what s/he testified to, whether s/he had any interest in the case that led him/her to testify as s/he did, or anything else that would tend to show the witness is not really believable. Generally, you should try to keep cross examination as short as possible. Helpful hints for cross examination are:

- (a) Keep your cross short.**
- (b) Keep your questions short.**
- (c) Only ask questions that demand "yes" or "no" answers.**
- (d) Never ask a question to which you do not know the answer.**
- (e) Do not just repeat things that were gone over on direct.**
- (f) Never argue with the witness.**
- (g) Do not ask open ended questions, such as those beginning with why, what, how.**
- (h) Do not cross examine just because you think you should.**
- (i) Listen to the witness's answer.**
- (j) Don't let the witness "explain."**

Unlike on direct, you want to be the focus of the jury's attention on cross examination. You can accomplish that by asking questions which suggest only a "yes" or "no" response. That lets the judges hear you do most of the speaking. You do, however, want the judges to see how the witness acts and reacts to the questions you ask. The witness's actions and expressions will help the judges weigh the witness's credibility.

Important Considerations for Cross Examination

Deciding which approach to take in cross examining a witness is a difficult yet critical decision. It is a decision that requires weighing many factors about a particular witness and the case in general. What follows are a few factors that should always be considered. Remember, every witness in every case is different. What is good in one situation may be disastrous in another. Use your judgment.

- (a) Has the witness hurt you?

You will not need to cross examine every witness. Cross examining a witness is not

essential if the points brought up will have little or no impact on the sentence. Sometimes in not cross examining a witness, you signal to the judges that the witness's testimony was unimportant. That unspoken signal can be as effective as if you had cross examined. For example, no cross examination may be necessary when a defense attorney puts a relative of the defendant on the stand to talk about what a great person the defendant is.

(b) Was the witness's testimony credible?

Sometimes a witness will not "come off right" and both the witness and his/her testimony are unbelievable. Other times a witness will be contradicted by other witnesses. Consider the testimony on direct in light of the case and how you think the judges received the testimony. You may want to move in for the kill or leave well enough alone.

(c) Cross examination techniques

Cross examination requires a more "confrontational" or aggressive approach by the lawyer than direct examination. Accordingly, you should try to use the following techniques:

- i. Ask leading questions.
- ii. Make a statement of fact and have the witness agree.
- iii. Use short, clear questions.
- iv. Project a confident, "take charge" attitude.
- v. Maintain poise regardless of the answer.
- vi. Try to use a natural style.
- vii. Always be polite.
- viii. Don't give up just because a witness is difficult. If you really need the information, try several different ways of asking the same question.

(d) Discrediting a witness

Discrediting a witness on cross examination has one basic purpose: to demonstrate or suggest that a witness's testimony is less true than it appeared at the end of direct examination. There is no need (nor is it easy) to "destroy a witness." Rarely will a witness tell a lie on cross examination. Often, however, s/he may exaggerate or distort the truth. Your purpose is to show the judges that certain factors, such as bias or self interest, impact the witness's testimony and make it less believable. Consider the following:

- i. Motive
- ii. Interest, whether personal or money
- iii. Bias and prejudice
- iv. The witness's perception

- v. The witness's memory
- vi. Conduct of witness inconsistent with his/her testimony

This list is by no means exhaustive. Consider the particulars of each witness. Remember, NO witness is immune from being discredited on cross examination.

Objections

In trial and at sentencing hearings, the judges determine whether each piece of evidence will be allowed in court. When one lawyer attempts to ask a question or put in some evidence that you believe should not be allowed, you must stand up immediately and state "I object." You must then give your reason for the objection. It is important to remember that the judge will not make your objections for you. Evidence will be received by the court unless you object to it, even if the evidence is not proper. Therefore, as an attorney, listen carefully to what the other attorney is saying.

1. **Privileged Communication:** **PRIVILEGED** communication is anything that is said between two people in any special relationship of trust. What you say to your doctor, lawyer or priest is privileged and cannot be used as evidence in court against you. Privileged communication is not admissible.
2. **Irrelevant Evidence:** Evidence is **IRRELEVANT** if it doesn't relate to the issues that must be proven at trial or sentencing. If you must prove the defendant was speeding, questions as to what s/he had for breakfast are irrelevant and inadmissible.
3. **Leading Questions:** A **LEADING QUESTION** is a question that is asked in such a way as to suggest the answer that is expected. For example, "You were walking, not running, weren't you?"

A lawyer can only ask leading questions on cross examination of the opposing lawyer's witnesses. A lawyer can ask his/her own witness leading questions during direct examination to establish routine facts such as name and address, or in certain other special situations.

Example:

Q: "Immediately after the robbery, did the victim scream?"

4. **Hearsay:** **HEARSAY** is any written or spoken statement made when the witness is not on the witness stand, which is offered for the truth of its contents. Hearsay is objectionable because the person who actually made the statement is not in court subject to cross examination. Therefore, when an attorney objects to a statement because it is hearsay, the judges decide whether a statement is reliable enough to be admissible. There are a few exceptions to the hearsay rule.

Example:

Q: What did Mr. Doe tell you?

Exception:

A statement made by the defendant may be repeated.

5. **Misleading or Ambiguous:** A question is confusing if it could be interpreted in two or

more possible ways or if it cannot be understood. If a question is unclear, the attorney asking the question should re-state the question in a way which is clear.

6. Speculation: Any question that asks the witness to **SPECULATE** or guess is improper. Guesswork from a witness about what might be the facts and what possibly could have happened has little, if any, value.
7. Compound: A question is compound if it contains two or more questions.

Example:

“What did the defendant say and where was she standing when she said it?”

8. Asked and Answered: The objection attempts to prevent a waste of time by unnecessary repetition and to avoid giving evidence unfair emphasis. It applies if the answer has already been given or if the witness has stated s/he does not know or remember.

Exercises

Activity One

The opposing attorney is questioning a witness on direct examination. Would you object to the following questions? If so, give the reason for your objection. If the question is improper, how could you ask it so that it's not improper?

Consider the following as possible objections: (1) hearsay; (2) irrelevant; (3) ambiguous; (4) speculation; (5) leading questions; (6) compound; or (7) privileged

1. You were at the party on the night of August 16 at approximately 6 p.m., weren't you?
2. Do you think this boy hit his schoolmate hard enough to cause any serious injury?
3. When your son talked to his lawyer, what did he say?
4. What did your neighbor tell you about the burglary?
5. What was the defendant wearing and where was he standing?
6. What did you confess to your priest?
7. Did the man wearing the gray jacket go into the store?
8. When did you go to the lake and where were you standing when you saw the fight?
9. Would you say that when this boy threw the electric switch, it was his action that caused the building to catch fire?
10. Were you there at 6 p.m. wearing a green jacket?
11. What did you hear the victim say about the girl who stole her truck?

Activity Two

The following are fact patterns which you will use direct and cross examination.

1. The defendant, Tristan Easton, is a 17-year-old junior at Ketchikan High School. She has pled no contest to Theft in the Third Degree, a class A misdemeanor. On August 6, 1997, she walked into Walmart and walked out of the store with an iPod that was valued at \$400. She intended to sell it to pay for a dress that she wanted to wear to the prom. The store manager saw Tristan pocket the iPod and watched her as she was leaving the store with the stolen iPod and called the police.

Normally Tristan gets good grades. However, her GPA in the last 6 months has dropped from 3.8 to 3.2. She is active in her school choir and raises money so that the choir can travel. She has an older brother at home. Tristan's mother has imposed severe consequences at home. Normally, Tristan is helpful around the house and follows the house rules. She has never been cited for a curfew violation.

Her mother has written in the Intake Questionnaire that Tristan has experimented with drugs and alcohol in the last six months. Tristan also has begun frequently smoking. About six months ago she began dating a guy named Brock Bullington.

As defense counsel, have Tristan's mother take the stand and testify.

2. James Wah, an 8th grade student at Schoenbar Middle School, is 14 years old. On September 23, 1997, he was caught shoplifting a Sony Walkman from Radio Shack. The Walkman was worth \$32.99. He has pled no contest to Theft in the Fourth Degree, a class B misdemeanor, and to Assault in the Fourth Degree, a class A misdemeanor. The loss prevention officer, Greg Dupree, stopped James outside the store, identified himself, and was in the process of asking James to come back into the store when James tried to run away. Mr. Dupree caught James by the arm and wrestled James to the ground. While swearing vehemently, James kicked and punched Mr. Dupree, blacking Mr. Dupree's eye. Mr. Dupree eventually got handcuffs put on James and brought him to the Police Station. James continued to be verbally abusive. The officer who arrested James looked at Mr. Dupree's injuries. KYC agreed to accept James, and James spent the night in detention at Ketchikan Regional Youth Facility before being released to his parents.

When asked why he fought Mr. Dupree, James' reply was that he knew that if he was caught his father would be very angry. He also said that Mr. Dupree purposely knocked him down and landed hard on top of him, stating that he would "beat the pulp out of him" for stealing. Mr. Dupree denies the statement. James claims that he was defending himself, but pled no contest because he knew that he shouldn't have tried to hurt Mr. Dupree.

As prosecution, have Mr. Dupree take the stand and testify.

3. Isaac Lundberg, a 7th grade student at Revilla, is 14 years old. On October 21, 1997, Isaac and a friend J.P. were playing in Isaac's garage. They found two cans of spray paint. The two boys went down to the next block and, using florescent orange, spray painted racial slurs on a cedar fence. The two boys knew that the family who lived in the house surrounded by the fence was from Iraq. Isaac had recently gotten into a fight with a boy who lived in the house, Mustafa Muhammad. When the family saw the damage, they suspected Isaac. The police questioned Isaac and at first he denied it. However, with prompting from his mother, he eventually confessed and implicated J.P. The cost of repairing the fence was \$420. Isaac was offered the option of going to mediation to settle the problem, but refused. He has pled no contest to **CRIMINAL MISCHIEF** in the Third Degree, a class A misdemeanor.

Isaac's grades are improving. He flunked 7th grade last year at Revilla. He refused to do any work or turn in any papers. Isaac has been diagnosed ADHD. He does well when he takes his medication, but his parents report that he frequently refuses to take it.

As prosecution, call Mr. Muhammad to the stand to testify.

Week Six

Restorative Justice begins by bringing together the community to promote accountability through positive peer pressure.

Overview of the Sentencing Hearing

Sentencing Options

How to Determine Community Work Service Hours

Aggravating and Mitigating Factors

How to Deliver a Sentencing Recommendation

Overview of the Sentencing Hearing

Directly after the arraignment, the sentencing hearing will occur. The hearing is a chance for the prosecution and the defense to make recommendations to the judges about the proper sentence before the judges reach their final decision. The hearing includes the following steps:

1. Prosecution presents its sentencing recommendation and reasoning and evidence for the recommendation.
2. The defense presents its sentencing recommendation, the reasoning and evidence supporting it.
3. The judges ask any questions needed for clarification.
4. The defendant is given an opportunity to speak on his/her own behalf.
5. The defendant's parent is given an opportunity to speak and ask any questions they may have.
6. The judges **ADJOURN** to the chambers and reach a unanimous decision sentencing.
7. The judges complete the Judge's Sentencing Form (**see example document 6.01**).
8. The judges give the sentence and reasons behind it to the defendant and court.
9. Court is adjourned.

During sentencing, the judges assign the defendant to a community work service site. Sites are at non-profit organizations and government agencies. The KYC Director explains the other pieces of the sentence and then tracks the defendant's progress.

Sentencing Options

Ketchikan Youth Court has a wide variety of sentencing options available. The options include community work service, an essay, education classes, monetary restitution, viewing an adult sentencing or arraignment, and apology letters. The following is a description of the types of options available.

Ketchikan Youth Court Sentencing Options

1. Community work service or CWS - mandatory minimum of five hours, whole hour increments.
2. Project - mandatory, every defendant must construct a project (collage, essay, picture book, poem, etc...) with a given topic and size. Topics can include, but are not limited to:
 - ✓ How shoplifting affects a store.
 - ✓ Why the curfew law exist.
 - ✓ Harms of alcohol to the young body.
 - ✓ Special topics can be suggested in appropriate cases.

3. Tour of Ketchikan Correction Facility - defendants can tour it, but their parents/guardian must agree to sign a waiver of liability form.
4. Ketchikan Alcohol Education Programs - mandatory for minor consuming alcohol cases, experience-based drug/alcohol classes (\$100 or more)
5. Restitution to repay lost, stolen, or damaged property or for medical expenses. Optional, must be requested by victim and approved by judge. If no exact amount is known, ask court to leave amount open, to be determined by KYC Director.
6. Viewing adult sentencing or arraignments.
7. Letter of apology to victim - (use sparingly) consider whether it will make matters worse between victim and defendant. Letter will be reviewed by KYC for appropriate content.
8. Letter of apology to family - may be appropriate if family is very embarrassed or upset.
9. KYC classes - if the defendant is interested and classes are available; ask office staff.
10. Victim Offender Mediation Program (VOMP) - For non-parent-child assaults, burglary, or disputed restitution. Structured similar to PAM.
11. Other sentences may be used which are not listed above, depending on the person, the crime and the individual characteristics of the case.

How to Determine Community Work Service Hours

The following guideline explains how to determine community work service hours in each case. These are only guidelines. The attorneys and judges may deviate from the guidelines as the individual case requires.

KYC Sentencing Guideline Procedures

The intent of the KYC guidelines is to establish some degree of uniformity in sentencing offenders who commit similar crimes to similar sentences. However, sentencing must be an individualized process. No two crimes are ever the same. No two offenders are ever the same. The sentencing judges have the ultimate duty to balance the factors, the impact on the victim, the need to express community condemnation, and impose a fair and just sentence. Justice rarely can be achieved by rigid application of mathematical formulae. The intent of these guidelines is to establish a range within which sentencing judges may balance the variables that may be present in a case. The benchmark will be expressed in terms of hours of community work service.

1. Duties of attorneys.

At the sentencing hearing, the prosecution and defense will present their sentencing recommendations to the court, including the amount of community work service (CWS) hours.

The prosecution team must also present to the judges the aggravating factors that it believes apply to the case. (The prosecution team may present mitigating factors that it finds, if it is advantageous to do so.) The defense team must present mitigating factors that it believes apply to the case. The written list of aggravating and

mitigating factors is not an exclusive list. If the attorneys believe that factors which are not listed should be considered, they are free to bring them to the court's attention. The attorneys may present witnesses during the sentencing hearing, if they choose.

Finally, the prosecution and defense teams should present any Ketchikan Juvenile Intake Probation officer recommendations and argue the merits of the recommendations. (Probation officer recommendations are not binding on the court and are not always present).

2. Court Procedures.

The sentencing court shall first determine the applicable benchmark sentence for the given crime by referring to the sentencing matrix. The court shall next determine the number of aggravating and mitigating factors only if they are supported by clear and convincing evidence.

(a) How to Determine Aggravating and Mitigating Factors.

The court shall determine the number of aggravating and mitigating factors which apply to the case by subtracting the mitigating factors from the aggravating factors. Should the result of this subtraction yield a net number of aggravating factors, the court may, but need not, aggravate the sentence by 10% for each net aggravating factor, expressed in number of CWS hours, for each net aggravating factor. Should the result of subtraction yield a net number of mitigating factors, the court may, but need not, mitigate the sentence by 10% for each net mitigating factor. In no case should the sentence be adjusted by more than 50% from the benchmark sentence as a result of aggravating or mitigating factor adjustment.

EXAMPLE: Assume that a defendant is to be sentenced for a crime for which the benchmark is 40 CWS hours. The court finds three aggravating factors and one mitigating factor. The result is two net aggravating factors. The court may, but need not, aggravate the sentence by 20%. Therefore, the court may, but need not, sentence the defendant to a total of 48 hours. However, the precise sentence is within the discretion of the sentencing judges.

In each case, whether to aggravate or mitigate a sentence from the benchmark sentence is within the discretion of the sentencing judges.

In each case, the sentencing judges shall announce whether the sentencing court has found aggravating or mitigating factors and what those factors are. In addition, the court shall announce whether the finding of such factors has provided the court with reason to depart from a benchmark sentence.

The judges may, but need not, subtract hours for classes or court viewing. No hours may be subtracted for an essay or letter of apology. Full monetary restitution must be ordered in all appropriate cases.

(b) More Than One Count.

In the event that the defendant is charged with more than one count, the judges should determine whether the counts are related to the same crime or two or more crimes. If the two counts are related to the same crime, 100% of the CWS

hours for the most serious count are used, and only 50% of the CWS hours for the second and subsequent related counts are used. For example, if a person is charged with a class A misdemeanor and a class B misdemeanor from related crimes, the benchmark would start at 41 for the class A misdemeanor and only 16 for the class B misdemeanor (usually it is counted at 32 hours), making the benchmark 57. If, however, the defendant is charged with two or more counts which are not related, 100% of the hours for each count are used. An example of related crimes would be a vehicle tampering and a theft from the same vehicle, or a burglary of a house and a theft from the same house. It is not a related crime, for example, if the person vandalized more than one car.

(c) Theft of \$15 or Less.

If the crime charged is a theft of \$15 or less, the benchmark used is 12 CWS hours. Theft is defined as a charge of theft in the fourth degree or concealment of merchandise. If it is appropriate, the judges may sentence the defendant to write an apology letter to the defendant's family. When using the 12-hour benchmark, the mitigating factor that "the crime was the least serious in its class" does not apply, since that factor was taken into account when the benchmark was reduced. Mitigating or aggravating factors are calculated as one hour each.

(g) Prior Record

If a defendant has an official prior record as recorded by Juvenile Intake, the community work service base rate will raise in the following manner:

- ✓ One misdemeanor prior add 5 hours of community work service.
- ✓ Each prior recorded by Juvenile Intake will be added separately.

EXAMPLE: A defendant commits a class B misdemeanor, normally 32 hours of community work service. One prior misdemeanor reported by Juvenile Intake will increase the community work service hours by 5 hours. The new benchmark is 37 hours.

The amount of community work service added for each aggravating or mitigating factor will be based on the total amount after the hours for a prior record have been added. The normal 10% for each aggravating and mitigating factor is figured on the new hour number.

These new guidelines DO NOT apply to informal priors. For example: a mother may report that the defendant was suspended from school for fighting or that the defendant was caught shoplifting but was let go with just a warning. Informal priors may still be counted as one aggravating factor separate from the prior record as recorded by Juvenile Intake.

Sentencing Matrix

<u>Offense</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Benchmark</u>
Minor Consuming Violation	20	40	27
Curfew Violation	5	15	7
Tobacco Violation	10	20	15
Class A Misdemeanor	32	50	41
Class B Misdemeanor (i.e. 4th Degree Theft)	24	40	32
Theft Less Than \$15	None	None	12

The Sentencing Worksheet (**see example document 6.02**) is used by judges as a general guideline and contains the matrix above.

Aggravating and Mitigating Factors

When determining the community work service hours, each side should check the aggravating and mitigating factor list. An **AGGRAVATING FACTOR** is a fact about the crime or the defendant which allows the judges to increase the number of community work service hours. A **MITIGATING FACTOR** is a fact about the defendant or the crime which will lower the number of hours. Therefore, the prosecution will focus on the aggravating factors and the defense will focus on the mitigating factors.

In their sentencing argument, the prosecutors can acknowledge any mitigating factors that they wish. Often, doing so will cause the prosecution's recommendation to seem more reasonable.

When arguing a factor, you must describe why it applies. For example, you would not just tell the court that the crime was committed at night, but would also state that the crime occurred at 11 p.m. in June, thereby falling between the hours of 9 p.m. and 6 a.m. in a summer month.

Although the defense attorneys only state the mitigating factors in court, the defense attorney must explain to the defendant prior to entering the court room what aggravating factors the prosecution is likely to bring up so the defendant is not surprised or angry when s/he hears the aggravating factors.

Each side may **REFUTE** (argue against) the other side's factors. Defense may argue during their sentencing recommendation against any aggravating factors they do not believe should apply. Prosecution will be given an opportunity after the defense counsel speaks, if they wish, to refute any mitigating factors that they do not believe are applicable. Unless a factor contains evidence which should not be brought up in court, you should not object to the factor. Rather, formulate a logical argument why the factor should not apply and state your reasons at the proper time.

Aggravating Factors

1. A person suffered physical injury as a result of the defendant's conduct.
2. The defendant was the leader of a group which committed the crime.
3. The defendant possessed a dangerous instrument during the commission of the crime.

4. The defendant committed an assault offense against someone physically weaker.
5. The defendant's conduct created a risk of injury to three or more persons.
6. The defendant has committed an unreported crime (misdemeanor or felony level crime) in the past.
7. The offense has more than one victim. (A company, store, or business only counts as one victim)
8. The conduct was the most serious type of offense within its class, approaching the next most serious class of offense. (ie. Theft of \$49 in merchandise is the most serious in its class, since theft in the fourth degree is defined as theft of less than \$50)
9. The crime was committed against someone:
 - a. Within the defendant's household (someone who regularly resides in the house)
 - b. Who she or he is related to
 - c. Who lives in the same neighborhood
 - d. To whom she or he owes a duty
 - e. Who has a special relationship with the defendant
 - f. Who has specifically entrusted him or her (ie. Robbing a family the defendant baby-sits for)
10. The defendant targeted the victim because of the victim's race, religion, or other discriminatory factor.
11. The defendant was 16 years or older at the time of the crime.
12. The defendant was accompanied by, or influenced, one or more persons younger than she or he during the commission of the crime.
13. If the crime was burglary or criminal trespass, the building was occupied.
14. The crime was committed at night (between sunset and sunrise) or in the summer months between the hours of 9:00 PM and 6:00 AM.
15. The defendant used drugs and/or alcohol before committing the crime (this excludes cases in which the use of drugs or alcohol was the charge), possessed drugs and/or alcohol, committed the crime in order to buy drugs and/or alcohol, or if it is a theft charge, stole something, which was illegal for the defendant to possess. (ie. Cigarettes)

Mitigating Factors

1. The defendant has no prior history of trouble reported or unreported with the authorities or police.
2. The defendant fully admitted upon initial confrontation by police, parents, school, authorities, or anyone the defendant could reasonably anticipate would promptly

- inform the authorities.
3. Another person principally committed the crime.
 5. The defendant was accompanied, influenced, or pressured by an older person to commit the crime.
 6. The defendant was 15 years or younger at the time of the crime.
 7. The conduct was among the least serious in its class. (ie. Theft of \$51 in merchandise is the least serious in its class, since theft in the third degree is defined as a theft between \$50 and \$500)
 8. The defendant made restitution to a victim before the defendant knew the crime had been reported to the authorities.
 9. The defendant assisted authorities to discover the identity and role of others who participated in the crime.

How to Deliver a Sentencing Recommendation

Constructing a Sentencing Recommendation

It is important to make an educated sentencing recommendation, so the judges will accept your argument. The judges always have the final say about what the sentence will be. If you are not ready for sentencing, you will have a difficult time in court. You may appear incompetent and fail to zealously represent your client. Therefore, whether representing the state or the defendant, BE PREPARED.

As prosecutor you will want to show that the defendant is not deserving of leniency and a greater sentence is warranted. As a defense attorney, you will want to show that the defendant is a person who made a stupid mistake and will not commit another crime in the future and therefore a lesser sentence is appropriate. Prepare for this BEFORE the day of the hearing. Even if you enter into a sentencing agreement, the judges do not have to follow it, so you need to be able to argue why the court should accept the sentencing agreement.

In adult court, the laws often set mandatory sentences for defendants. The legislature also requires that adult defendants be sentenced to a longer jail sentence each time an adult commits a crime. These laws ensure that a judge will give a defendant a sentence which reaches a minimum amount of years set by the legislature. KYC has no mandatory sentences. The sentencing guidelines that KYC uses, as set out below, are just that: GUIDELINES. Judges have the discretion to disregard the normal guidelines if the judges believe it will produce a fair sentence.

The Chaney Rules

KYC prosecutors rely on the **CHANNEY RULES** for sentencing, a basic outline patterned after traditional adult sentencing rules. As a prosecutor, when deciding an appropriate sentence to fit the crime committed, the following Chaney Rules should guide your decision making:

1. Does the sentence protect society? You have an obligation to protect society from crimes the defendant has committed.
2. Will the sentence rehabilitate the defendant? Rehabilitation means to change or

- reform a convicted person so s/he will not commit another crime. How easily will the defendant adapt to rehabilitation? Will s/he be easy to rehabilitate or has s/he shown no signs of cooperation and willingness to take responsibility for the crime?
3. Will the sentence deter others? Will the sentence set an example for others?
 4. Will the sentence show community condemnation of the act? It is important to send a message to the community that such a crime will not be tolerated.
 5. How serious was the offense? Evaluate the seriousness of the offense and recommend an appropriate sentence.
 6. Does the sentence reaffirm the social norms? It is your duty to reaffirm the norms of society and make sure that such a crime is not committed again.

NOTE: These rules apply even though all KYC cases are confidential.

Choosing the Appropriate Sentence

Based on the sentencing options, the type of crime committed, the age of the defendant, and numerous other factors, each side must recommend an appropriate sentence. Keep in mind which role you are fulfilling. Prosecution must represent the community and use the Chaney Rules as a guide. The defense must recommend a sentence that is best for his/her client. The defense should never recommend a sentence that the defendant does not agree with.

It is important that defense counsel tell the defendant that while the judges will take the attorneys' recommendations into consideration, the recommendations are not binding.

Probation Officer Recommendation

On occasion, the Ketchikan Youth Court Intake officer will write a statement recommending a certain piece of the defendant's sentence. This recommendation is placed in the attorney files and in the judges' file. However, the judges do not know how to weigh the recommendation or whether it should be applied without input from the prosecution and defense.

Whether you are prosecution or defense, you must acknowledge the recommendation and explain to the court why it should or shouldn't follow the recommendation.

Sentencing Agreement

In a few cases, the opposing sides may wish to come to an agreement before the sentencing hearing: the defense and prosecution agree to both ask for the same sentence. You may enter into a sentencing agreement with the opposing counsel if it will be beneficial to your client (whether your client is the state or the defendant.) There are forms available to fill out. The agreement must be written in ink and signed by the defense and prosecution plus the defendant and approved by the KYC Director. Special considerations of a sentencing agreement are:

1. Defense counsel must have the defendant's consent to enter into the agreement. DO NOT force your client to enter into an agreement s/he does not want.
2. Regardless of which side you represent, do not let the other attorney talk you into a sentence you do not feel comfortable with.

3. Remember that an agreement is not binding on the judges. The agreement must be presented to the court before the arraignment.

Both sides must always come to the hearing fully prepared, even when they have agreed to a sentence. The prosecution must still outline its case and both sides must still give their sentencing arguments. The reason for this is that either side can back out of the sentencing agreement at any time. Also the court is not bound to any sentencing agreement which the parties may present and you do not want the court to reject the agreement. Therefore, each side needs to inform the court why the agreement is reasonable. The prosecution should always support its argument using the Chaney Rules.

If you do not come to an agreement you will simply follow the regular sentencing procedures.

The Defendant's Statement

Although a defendant has a right not to testify according to the 5th Amendment, the defendant also has a right to informally address the court on his/her own behalf if s/he so chooses.

It is defense counsel's job to prepare the defendant to speak. You can give the defendant ideas of what topics the judges like to hear, but do not tell the defendant exactly what to say. The defendant's statement should come from his/her heart. Topics a defendant may wish to cover include:

1. Remorse. "I'm sorry" and "I'll never do it again" are the words most frequently spoken by defendants. But a defendant should say it only if s/he means it.
2. Regret. The defendant should not just be sorry for getting caught. Regret for committing a crime is often expressed as wishing to go back in time and undo an action.
3. Compassion. Acknowledgment of how his/her action has caused embarrassment, pain, and anguish for his/her family and the victim is always appropriate. A defendant who can think about how his/her crime affected others is unlikely to commit another crime.
4. Education. What the defendant has learned from the experience.
5. Prevention. What the defendant will do the next time s/he is confronted with a similar situation.
6. Money. How the defendant intends to raise the money to pay for a class fee, if any, the civil shoplifting fine, if any, and/or restitution.
7. Rebuilding. Steps s/he will take to win back the trust of those affected by the crime, including his/her family.

The defendant may write what s/he will say to the judges if s/he wants to. Because it is the last thing the judges hear before making their final decision, stress to the defendant the importance of his/her statement. If s/he makes a good impression by being prepared, demonstrating remorse, and speaking intelligently, the judges will see that s/he cares about what happens to his/her life and will consider this in their final decision.

Holding the Defendant's Hand

A defendant is often afraid and embarrassed. A defense attorney must have compassion when preparing a defendant for court and also during court.

If a defendant is going to cry during the court proceeding, it is often during his/her own statement. All those present should be sensitive if the defendant cries. Defense attorneys should be prepared and should console the defendant, reassuring him/her that it is understandable to do so and that no one will laugh or think badly of him/her. Often getting arrested and going to court is an emotional trauma for a defendant and his/her family. It is possible that the defendant's family members may also cry. Be sensitive and understanding.

On occasion, a defendant will smile, laugh or joke his/her way through the sentencing hearing. Smiling sometimes is a nervous reaction by defendants, or could be culturally based. You need to determine whether the smile is because the defendant is nervous, the defendant is putting on a 'brave front', it is part of his/her culture, or because s/he is not taking the proceeding seriously. If it is from nerves, you need to do your best to calm the defendant and tell him/her to try and not smile. You may even want to explain to the court that the defendant is nervous.

If the defendant is just trying to put on a brave front, in other words, act like s/he is not afraid by smiling or joking, you may also want to explain to the judges that the defendant is nervous.

If it is cultural, you can ask for a confidential bench conference and quietly explain to the judges that it is the defendant's cultural background to smile in order to please others. A discussion of the issue in open court is not usually appropriate.

If your defendant is not taking the proceeding seriously, you need to try and explain the fact that the judges may raise the sentence if s/he displays an attitude in court.

Proper Courtroom Decorum

Your behavior and attitude before, during and after the court hearing is important. How seriously you treat the proceeding will have great impact on how seriously the defendant treats the proceeding.

It is not proper to laugh, joke and fool around while you are inside the courtroom. You should only speak to opposing counsel to talk about the case. As a defense counsel you don't want the defendant to think you are conspiring with the prosecution on a sentence.

While the judges deliberate the sentence, which sometimes takes quite a while, you may only talk to your co-counsel in a low voice about appropriate subjects. If you are the defense counsel, you may also talk to the defendant.

You may not talk back and forth with opposing counsel or the clerk. The defendant may speak to his/her family during the deliberation.

The clerk may not talk to the attorneys across the room, unless the judges ask him/her to.

As KYC members, you represent KYC while you are in court. Therefore, you should strive to present a professional image to the defendant and his/her family at all times.

Exercises

Read the following fact patterns. Using the Sentencing Guideline Procedure, list the

aggravating factors and the mitigating factors which would apply in each case. Decide how you might argue for each side in a sentencing hearing. Consider as a prosecutor, the points you would bring out against each defendant. Consider as the defense attorney, the points you would bring out for the defendant at the sentencing hearing. As a judge, what would you say to the defendant?

Using the following Fact Patterns, choose four and prepare four sentencing arguments for the prosecution; prepare sentencing arguments for the remaining four as the defense attorney. Be prepared to role-play these in class.

Fact Pattern One

Jessica Bernard

Ketchikan High School

15 years old

3.8 GPA

Cheerleader

Works at Tanning Salon as a clerk for \$7.50/hr. three days a week for four hours per day.

No prior record and no reported trouble at school.

Jessica went with two friends (both 16) to Nordstrom's. Jessica and the two friends each shoplifted some clothes. Jessica was caught with clothes worth \$75. She freely admits what she did and is very sorry. Her parents say that the two friends have been a bad influence on her. Jessica says that it was her friends' idea. The friends both say it was Jessica's idea.

Charged with Theft in the Third Degree, a class A misdemeanor

Fact Pattern Two

Jordan Phillips

Ketchikan High School

15 years old

4.0 GPA

No job

Sings in Swing Choir

Suspended from school last year for fighting. No police record. Mom reports that Jordan has trouble controlling her temper and often flies off the handle at home.

Got into a fight with another girl (age 18) who called her a wimp in gym class, when Jordan couldn't do twenty chin-ups. Gave her a split lip and a bloody nose. No medical expenses. Jordan thinks the kid had it coming, because she is always teasing Jordan about how skinny she is. Jordan admits what she did and says she is sorry about the injuries.

Charged with Assault in the Fourth Degree, a class A misdemeanor

Fact Pattern Three

Anita Wallace

Ketchikan High School

17 years old

3.5 GPA

No job

Honor Society; Chess Club; Spanish Club

No prior offenses and no history of trouble at school.

At 4:45 p.m. Anita and a friend went to the Sullivan Arena, slipped in a side door, and tried to get back to the dressing rooms. The Red Hot Chili Peppers were supposed to play a concert that night and the two girls were going to hide in the back and try to meet the band members. Anita admits what she did and is embarrassed and ashamed.

Charged with Criminal Trespass in the Second Degree, a class B misdemeanor.

Fact Pattern Four

Josh Patterson

Ketchikan High School

15 years old

3.1 GPA

No job

Plays hockey and football

No prior arrests and no history of trouble at school.

Josh and his friend Greg were partying with some friends up at Ward Lake. Greg (who is 16) had just bought a new car, a Geo Tracker. On the way home from the party, at about 1:20 a.m., Josh and Greg passed by the North End Golf Course. They decided to drive across it. While they were on the course, they made several quick turns and tore up the grass in several places. An evening greens keeper saw the boys, wrote down the license plate and called the police. When confronted, Josh admitted that he encouraged Greg to drive on the course. There was \$2,360 damage done to the grass.

Charged with Criminal Mischief in the Third Degree, a class A misdemeanor.

Fact Pattern Five

Ashley Taylor

Schoenbar Middle School

13 years old

2.2 GPA

No job

One prior arrest for shoplifting last year. Attended an anti-shoplifting class.

Ashley stole her aunt's credit card while her aunt was visiting her family. She charged clothes, CD's and food for a total of \$492.67. Her aunt reported the card stolen. While Ashley was in B&B Music she tried to use the card. The clerk called the police when the report showed it was stolen. Ashley admits what she did. She claims, however, that she painted her aunt's garage and tool shed about two months ago and the aunt agreed to pay her \$5/hour. The aunt has not paid her and owes her about \$250.

Charged with Theft in the Third Degree, a class A misdemeanor.

Fact Pattern Six

Heather Brown

Ketchikan High School

15 years old

3.9 GPA

Gymnastics and Computer Club.

No prior arrests and no history of problems at school.

Heather used her home computer to hack into the school system and try to change a "C" grade in English to an "A." The school principal reported the break-in and the police traced it to Heather. When questioned, she admitted what she had done and is very sorry. She has gone to counseling to deal with her stress over her grade.

Criminal Mischief in the Second Degree, a class A misdemeanor. (Ignore any federal crimes she may have committed.)

Fact Pattern Seven

Jon Anderson

Ketchikan High School

17 years old

2.8 GPA

Job as a stock boy at Fred Meyers five days a week; \$5.50/hr.

No priors and no history of trouble at school.

Jon bought a CD player for his car from a friend for \$30. His friend told him that he had stolen the CD player from a BMW last week. The friend was arrested and told the police that he had sold the CD player to Jon. The police confronted Jon and at first he insisted that he had bought the CD player new from the store. However when the police demanded to see his sales receipt, he admitted that he bought the CD player from his friend and that he knew

that it was stolen.

Charged with Theft by Receiving, a class A misdemeanor.

Week Seven

Restorative Justice begins by bringing together the community to promote accountability through positive peer pressure.

KYC Mock Arraignment and Sentencing Hearing

Rules of Conduct:

Ethics Rules

Code of Judicial Conduct

KYC Mock Arraignment and Sentencing

Note: The mock exercise is designed to help you put all of the information you have learned into practice. You will prepare your case and participate in a sentence hearing.

1. Choose roles for the prosecutor, the defense attorney, the defendants and the judges. If there are enough students, assign more than one to each role. You will also need a clerk, a defendant, and one witness for each side.
2. Perform an interview, discuss the court procedure and discuss what a reasonable sentence would be. The defense attorney meets with his/her client to review the case. Since the defendant has pled no contest or guilty, consider whether to propose a sentencing agreement to the prosecutor. If so, discuss what each side is willing to consider as part of the agreement.
3. Using the prosecutor and the defense checklists, prepare for an arraignment. As prosecutor, write out your probable cause statement. These will be presented in court to the judges.
4. As defense attorney and defendant, be prepared to discuss the Agreement and the defendant's plea.
5. The judges review the Judges' Script for the arraignment.
6. The clerk reviews his/her script for bringing court to order and adjourning court.
7. Prepare sentencing arguments. You may add reasonable facts about the crime and about the defendant as necessary.
8. Present one witness for each side. The witness for the prosecution can be the victim or police officer. The witness for the defendant can be Tommy, Cecilia's parents or anyone else who can testify to her character.
9. Judges should decide an appropriate sentence.

The following pages are actual forms used when KYC receives a case. These forms will take you through the whole process from start to finish. Keep these for future reference when you get your first real case.

Ketchikan Youth Court Rules of Conduct

Rules of conduct are written guidelines for attorneys and judges to follow when they conduct themselves on behalf of their clients and the court. Another word which describes the correct conduct of attorneys and judges is ethics. The reason that attorneys and judges frequently come under fire for alleged lack of ethics is that the public expects attorneys and judges to have extremely high ethical standards. The public is correct to have such high expectations because the business of law concerns people's greatest secrets and their most important matters. Clients and the public have the right to expect attorneys and judges to protect their confidences, to be fair and impartial, and to treat every case seriously.

When a KYC attorney or judge is working on a case, certain rules must be observed and followed. The conduct of a KYC attorney is governed by twenty-two KYC Ethics Rules. The conduct of KYC judges is governed by the Code of Judicial Conduct. There are four comprehensive codes of conduct for KYC judges. As a KYC attorney or judge you are required to become familiar with the rules and to follow them. The KYC rules are outlined below. Contact the office if you have any questions or are concerned about an action you want to take or have been asked to take. If you are ever unsure about what action to take, ask the KYC Director for advice.

Chapter 1: Definitions and General Items

1.1.1: Definitions

- a. Committee: the Ethics Committee of The Ketchikan Youth Court Bar Association unless otherwise noted.
- b. Board: The board of directors of the Ketchikan Youth Court
- c. Executive Council: The executive council of the Ketchikan Youth Court Bar Association unless otherwise noted.
- d. Elected Position: The positions of judge, executive council, ethics committee or any other position that an attorney may be elected to by the Bar Association, but does not include the Board.
- e. Infraction: Any behavior classified as a violation in district court, felony or misdemeanor in juvenile probation by the Alaska Statutes even if the behavior occurred outside the State of Alaska.
- f. Attorney: A member of the Ketchikan Youth Court Bar Association.
- g. Youth Court or Court: The Ketchikan Youth Court.
- h. Intent, Knowing, Recklessness, and Negligence: Meanings are given to them under Alaska law.
- i. Mala Per Se Crime: A crime that is inherently evil. Mala per se crimes can usually be identified by the fact that they are nearly universally prohibited.

1.2: Jurisdiction

1.2.1: Authority to Investigate

- a. All attorneys are required to cooperate with investigations by the Committee in to

suspected infractions except that all attorneys are protected from testifying against themselves.

- b. An attorney who fails to make a reasonable effort to cooperate with an investigation is guilty of a class three infraction.

1.2.2: Cooperation with Investigations

- a. All attorneys are required to cooperate with investigations by the Committee in to suspected infractions except that all attorneys are protected from testifying against themselves.
- b. An attorney who fails to make a reasonable effort to cooperate with an investigation is guilty of a class three infraction.

1.3: Liability

1.3.1: Liability for Conduct

- a. An attorney is required to obey Ethics Rules that are in effect at the time.
- b. An Ethics Rule is in effect if the Rule is available in printed form at the office of the Youth Court or available on the internet site of the Youth Court and notice of the most recent update to the Ethics Rules has been printed in the Youth Court Newsletter or announced at a regularly scheduled Bar Association meeting.

1.3.2: Liability for Conduct of Another

An attorney is liable for an Infraction committed by another attorney if;

- a. The attorney solicits the commission of the infraction.
- b. The attorney aids or abets another to engage in conduct constituting an infraction.

Chapter 2: Investigations and Hearings

2.1.1: Investigations

- a. The committee may open an investigation of an attorney on reasonable suspicion that the member has committed an infraction.
- b. The committee must investigate any written complaint submitted by an attorney to the committee. Such complaints are to be submitted on a form to be determined by the committee and shall include a description of the infraction and evidence of the infraction.

2.2.1: Indictment

- a. The committee may indict an attorney upon finding probably cause that the attorney has committed an infraction. At least three committee members must agree to the indictment.
- b. The committee must notify an attorney promptly after indicting that attorney.

2.3.1: Hearings

- a. The committee shall conduct a preliminary hearing as soon as practical after filing an indictment. The accused attorney shall be present at the preliminary hearing. The committee must make sure that the accused attorney understands the charge and the probable cause supporting it. The accused attorney shall have the opportunity to challenge the relevance or validity of the evidence the committee has against the accused attorney. The accused attorney must enter a plea of guilty or not guilty at the preliminary hearing.
- b. Upon finding an attorney guilty or receiving a guilty plea, the committee shall conduct a hearing to determine the appropriate sanctions. The committee shall allow the accused to present information that is relevant to the severity of the infraction and may introduce any relevant information found during the investigation.
- c. The committee shall conduct a hearing to determine if an accused attorney who has pled not guilty is in fact guilty of an infraction. The committee must find that the accused attorney did commit an infraction by clear and convincing evidence.

Chapter 3: Infractions

3.1: Competence

3.1.1: Failure to seek assistance

- a. An attorney must be competent in the law. An attorney who lacks the required competence when working a case must seek assistance.
- b. An attorney commits the infraction of Failure to Seek Assistance if the attorney recklessly disregards his lack of competence and fails to seek the assistance of a legal advisor.
- c. Failure to seek assistance is a class four infraction.

3.2: Scope of Representation

3.2.1: Failure to Abide by Client's Decision

- a. An attorney commits the infraction of Failure to Abide by Client's Decision if the attorney knowingly enters a plea, requests trial by jury or judge, calls or fails to call a defendant to testify, or makes a sentencing recommendation against the decision of a client.
- b. Failure to Abide by Client's Decision is a class four infraction.

3.2.2: Encouraging Criminal Activity

- a. An attorney commits the infraction of Encouraging Criminal Activity if the attorney knowingly encourages a client to commit a crime.
- b. Encouraging Criminal Activity is a class three infraction.

3.3: Diligence

3.3.1: Simple Negligence

- a. An attorney commits the infraction of Simple Negligence if the attorney negligently

fails to file required documents in a timely manner or appear for a meeting with a client, witness, or victim without good reason.

- b. Simple Negligence is a class five Infraction.

3.3.2: Gross Negligence

- a. An attorney commits the infraction of Gross Negligence if the attorney negligently fails to make the reasonable effort to appear for a Court hearing or inform a person required to be at a Court hearing of the date, time, and location of the hearing in a timely manner.
- b. Gross Negligence is a class four infraction.

3.4: Communication

3.4.1: Failure to Communicate with a Client or Victim

- a. An attorney commits the infraction of Failure to Communicate with a Client or Victim if the attorney negligently fails to make a reasonable effort to keep a client or victim informed about a case as required by law.
- b. Failure to Communicate with a Client or Victim s a class 4 infraction.

3.5: Confidentiality

3.5.1: Breach of Confidentiality

An attorney commits the infraction of breach of Confidentiality if the attorney;

- a. Knowingly gives any information received from a client without the permission of the client to any person, except for the information regarding a planned future crime.
- b. Recklessly gives the name of a defendant, victim or witness to any person who is not involved with the case and who is bound by an oath of confidentiality or
- c. Being a member of the Ethics Committee, unnecessarily gives information about the ethics case to a person not involved in the case.
 - 1. Breach of Confidentiality is a class two infraction.

3.5.2: Failure to Prevent a Future Crime

- a. An attorney commits the infraction of Failure to Prevent a Future Crime if the attorney receives information from a client that any person is likely to commit a crime in the future and the attorney negligently fails to make a reasonable effort to prevent or report the crime.
- b. Failure to Prevent a Future Crime is a class two infraction if the crime is a felony crime against a person.
- c. Failure to Prevent a Future Crime is a class three infraction if the crime is a felony crime not against a person, or a misdemeanor crime against a person.
- d. Failure to Prevent a Future Crime is a class four infraction if the crime is a misdemeanor crime not against a person.

3.6: Conflict of Interest

3.6.1: Conflict of Interest

- a. An attorney commits the infraction of Conflict of Interest if the attorney knowingly represents a client with reckless disregard to the fact that that representation may be adverse to another client, or;
- b. The attorney knowingly disregards a personal relationship with any person involved in a case which interferes with that attorney's ability to perform the duties required of the attorney.
- c. Conflict of Interest is a class three infraction.

3.7: Candor Toward the Court

3.7.1: Deceiving the Court

- a. An attorney commits the infraction of Deceiving the Court if the attorney;
 1. Knowingly makes a false statement of fact or law to the Court or,
 2. Knowingly offers false evidence to the court.
- b. Deceiving the Court is a class two infraction if the attorney deceives the Court without intent to affect the outcome of the case.

3.7.2: Failure to Retract False Evidence

- a. An attorney commits the infraction of Failure to Retract False Evidence if the attorney discovers that evidence the attorney knows to be false has been presented to the court and the attorney fails to bring the discovery to the attention of the court.
- b. Failure to Retract False Evidence is a class three infraction.

3.8 Fairness to Opposing Party

3.8.1: Obstructing an Investigation

- a. An attorney commits the infraction of Obstructing an Investigation if the attorney, with intent to interfere with or obstruct the official investigation of a case by another attorney, the attorney obstructs another attorney's access to, alters or destroys an item likely to have value as evidence in a case.
- b. Obstructing an Investigation is a class two infraction.

3.8.2: Filing an Unnecessary Motion

- a. An attorney commits the infraction of Filing an Unnecessary Motion if the attorney files a motion knowing that it is not necessary and with reckless disregard for inconvenience to any person.
- b. Filing and Unnecessary Motion is a class four infraction.

3.9: Impartiality and Decorum of the Tribunal

3.9.1: Improperly Influencing a Judge or Juror

- a. An attorney commits the infraction of Improperly Influencing a Judge or Juror if the attorney communicates with a Judge or Juror about a case outside of court with intent to influence the outcome of the case.
- b. Improperly Influencing a Judge or Juror is a class three infraction.

3.9.2: Disrupting a Court Proceeding

- a. An attorney commits the infraction of Disrupting a Court Proceeding if the attorney engages in conduct that disrupts a court proceeding with intent to disrupt a court proceeding.
- b. Disrupting a Court Proceeding is a class three infraction.

3.10: Responsibilities of the Prosecutor

3.10.1: Malicious Prosecution

- a. An attorney commits the infraction of Malicious Prosecution if the attorney, after conducting a proper and complete investigation, continues to prosecute a case having a reasonable belief that the defendant is not guilty of the crime charged.
- b. Malicious Prosecution is a class two infraction.

3.10.2: Unfounded Prosecution

- a. An attorney commits the infraction of Unfounded Prosecution if the attorney recklessly;
 - 1. Fails to find probable cause before charging a defendant with a crime or,
 - 2. Fails to find evidence that the attorney reasonably believes will cause a judge or jury to find the defendant guilty beyond a reasonable doubt before taking a case to trial.
- b. Unfounded Prosecution is a class three infraction.

3.10.3: Failure to Disclose Exculpatory Evidence

- a. An attorney commits the infraction of Failure to Disclose Exculpatory Evidence if the attorney, while prosecuting a case discovers evidence that may cast doubt on the guilt of a defendant or mitigate an offense and recklessly fails to inform the defendant's attorney of the evidence in a timely manner.
- b. Failure to Disclose Exculpatory Evidence is a class three infraction.

3.10.4: Early Correction as a Defense

- a. It is a defense to infractions under 3.10 that the prosecutor corrected the erroneous charge or disclosed the exculpatory evidence after discovering the error but before any official action involving the charge or evidence was taken.

3.11: Communication with a Person Represented by Counsel

3.11.1: Improper Communication with a Defendant

- a. An attorney commits the infraction of Improper Communication with a Defendant if the attorney, while acting as a prosecutor or judge, intentionally communicates with the defendant which that attorney is prosecuting or judging outside the presence of the defendant's attorney.
- b. Improper Communication with a Defendant is a class four infraction.

3.12: Reporting Ethical Infractions**3.12.1: Failure to Report an Infraction**

- a. An attorney commits the infraction of Failure to Report an Infraction if the attorney learns of an infraction committed by another attorney and negligently fails to make a report to the Committee in a timely manner.
- b. Failure to Report an Infraction is an infraction one class lower than the infraction the attorney fails to report, except that Failure to Report a class five Infraction is a class five infraction.

3.12.2: Making a False Report

- a. An attorney commits the infraction of Making a False Report if the attorney knowingly gives false information to the Committee about an infraction knowing that the information to the Committee about an infraction knowing that the information is likely to mislead the committee.
- b. Making a False Report is a class one infraction.

3.12.3: Making a Frivolous Complaint

- a. An attorney commits the infraction of Making a Frivolous Complaint if the attorney makes a report the Committee that another attorney has committed an infraction and recklessly fails to support the complaint with probable cause.
- b. Making a Frivolous Complaint is an infraction one class higher than the infraction charged in the frivolous complaint, except that Making a Frivolous Complaint of a class one infraction is a class one infraction.

3.13: Standard of Public Conduct**3.13.1: Commission of a Crime**

- a. Commission of a Felony Crime against a person is a class one infraction.
- b. Commission of a Misdemeanor Crime against a person or a Felony Crime other than a Felony Crime against a person is a class two infraction.
- c. Commission of any other crime is a class three infraction.
- d. The Committee may, but is not required to dismiss a case of commission of a Misdemeanor Crime other than a Misdemeanor Crime against a person if the crime is not a mala per se crime.

3.13.2: Conduct Unbecoming an Attorney

- a. An attorney commits the infraction of Conduct Unbecoming an Attorney if the attorney engages in conduct which is a gross deviation from the standard or behavior that a reasonable person would adhere to with reckless disregard to the fact that the conduct is likely to damage the reputation of the Youth Court
- b. Conduct Unbecoming an Attorney is an unclassified infraction.

3.14: Attorney's Oath

3.14.1: Violation of Attorney's Oath

- a. An attorney commits the infraction of Violation of Attorney's oath if the attorney recklessly engages in conduct, which is in violation of the Youth Court Attorney's Oath, and the conduct is not otherwise defined as an infraction.
- b. Violation of Attorney's Oath is an unclassified infraction.

3.15: Attempt and Solicitation

3.15.1: Attempt

- a. An attorney commits the infraction of Attempt if, with intent to commit an Infraction, the attorney engages in conduct constituting a substantial step toward the commission of an Infraction.
- b. Attempt is an infraction one class lower than the Infraction the attorney attempts, except that attempting a class five Infraction is a class five Infraction.

3.15.2: Solicitation

- a. An attorney commits the Infraction of Solicitation if, with intent to cause another person to engage in conduct constituting an Infraction, the attorney solicits another to engage in that conduct.
- b. Solicitation is an Infraction one class lower than the infraction the attorney attempts, except that Soliciting a class five Infraction is a class five Infraction.
- c. It is not a defense that the person the attorney solicits to commit a behavior that would be an Infraction is not an attorney or is not capable of committing the Infraction.

Chapter 4: Sanctions

4.1.1: Classification of Infractions

- a. A class one Infraction is the most serious type of Infraction. This type of Infraction severely damages an attorney's ability to represent the Youth Court.
- b. A class two Infraction is a very serious Infraction, but does not necessarily prevent the attorney from continuing to practice as an attorney.
- c. A class three Infraction is a serious breach of the standard of conduct expected of an attorney.
- d. A class four Infraction is a moderate breach of the standard of conduct expected of an attorney.

- e. A class five infraction is a minor breach of the standard of conduct expected of an attorney.
- f. An unclassified infraction is an infraction that may vary in degree of severity.

4.2.1: Aggravating and Mitigating Factors

- a. When determining sanction to be imposed on a member who has committed an infraction, the committee shall consider all factors affecting the seriousness of the infraction and may increase or decrease the class of the infraction by one if appropriate.

4.3.1: Minimum and Maximum Sanctions

- a. A member found guilty of a class one infraction shall be dismissed from the Youth Court.
- b. A member found guilty of a class two infraction shall be suspended from the Youth Court until all sanctions have been satisfactorily completed. The committee may suspend a member for a longer period or dismiss the member from the Youth Court. Sanctions must address the factors leading to the commission of the infraction. A member shall be assigned at least 20 hours of community work service.
- c. A member found guilty of a class three Infraction may be suspended for an indefinite period until sanctions have been satisfactorily completed. The committee may suspend a member for a definite or indefinite period not to exceed 60 days. Sanctions must address the factors leading to the commission of the infraction. A member shall be assigned community work service between five and 50 hours.
- d. A member found guilty of a class four Infraction may be suspended for a definite or indefinite period not to exceed 30 days. Sanctions must address the factors leading to the commission of the infraction. A member may be assigned community work service not to exceed 20 hours.
- e. A member found guilty of a class five Infraction may not be suspended. A member may be assigned community work service not to exceed 10 hours.

4.4.1: Suspension

- a. An attorney may be suspended from Youth Court by the Committee as a sanction for the commission of an infraction. While suspended, the attorney may not act as an attorney or judge, hold any elected position in the Youth Court or vote in any Youth Court Bar Association meeting.
- b. An attorney suspended for a period of more than 30 days shall be removed from any elected position that attorney held.
- c. An attorney suspended for 30 days or less is not automatically removed from any elected position, but may not act in the official capacity of the position during the period of suspension.

4.5.1: Prohibition from Holding Elected Position

- a. The committee may prohibit an attorney from holding elected positions within the Youth Court for a definite period as a sanction for committing an infraction.

4.6.1: Probation

- a. An attorney may be placed on probation for a definite period of time, which shall not exceed the maximum period of suspension for the infraction committed by the Committee as a sanction for committing an infraction. The Committee may attach specific conditions to the attorney's behavior.
- b. During the period of probation, the Committee may suspend the attorney for any or all of the period of probation upon finding by preponderance of the evidence that the attorney has violated the conditions of probation.
- c. The committee may, at its discretion offer the attorney other sanctions instead of suspension for violations of conditions of probation.

4.7.1: Community Service

- a. The Committee may order community service work as a sanction for the commission of an infraction any may specify specific condition under which the community service is to be performed.
- b. Time spent acting as an attorney or judge, or attending Bar Association meetings may not be counted toward community service assigned as a sanction by the Committee.

4.8.1: Other Sanctions

- a. The Committee is not limited in any way by the specific sanctions listed in the Ethics Rules from imposing other reasonable sanctions for the commission of Infractions.

Code of Judicial Conduct

1. A Judge Should Uphold the Integrity and Independence of the Judiciary.
 - a. A judge should observe a high standard of conduct so that the integrity and independence of the judiciary is preserved.
2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities.
 - a. A judge should respect and comply with the law and conduct him/herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
 - b. A judge should not allow family or other relationships to influence his/her judicial conduct or judgment. He/she should not allow others to believe that they are in a special position to influence his/her.
3. A Judge Should Perform the Duties of Office Impartially and Diligently.
 - a. A judge should maintain professional competence in the law. He/she should not be swayed by political interests, public clamor, or fear of criticism.
 - b. A judge should maintain order and decorum in all court proceedings.
 - c. A judge should be patient, dignified, and courteous to all who stand before the judge and should require similar conduct of lawyers and in-court staff.

- d. A judge should allow every person a right to be heard.
 - e. A judge should act promptly on the case before him/her.
 - f. A judge must abstain from public comment on a case. However, a judge may make a public statement in support of the Ketchikan Youth Court or explain the procedures of the court.
 - g. A judge should take appropriate action against a lawyer for improper courtroom behavior. A judge should report unprofessional conduct by another judge or a lawyer to the ethics board.
 - h. A judge should disqualify him/herself in a case which his/her impartiality might reasonably be questioned.
 - i. A judge shall make time each week to serve in his/her capacity as a judge.
4. A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice.
- a. A judge may speak, write, lecture and teach about the purpose of youth courts and their place in the administration of juvenile justice.
 - b. Ketchikan Youth Court cannot lobby. However, a judge, in his/her personal capacity, may advocate for a change in the law
 - c. A judge may appear publicly in his/her capacity as a judge on behalf of, or in support of, the Ketchikan Youth Court.
 - d. A judge may participate in raising money on behalf of the Ketchikan Youth Court.

Example Documents

Restorative Justice begins by bringing together the community to promote accountability through positive peer pressure.

Document 1.01 Police Report

Document 1.02 Court Statement and Ticket

Document 1.03 Referral Form (Misdemeanor)

Document 1.04 Referral Form (Violation)

Document 3.01 Victim Impact Statement

Document 3.02 Attorney Records

Document 3.03 Intake Form

Document 3.04 Mitigating Factors

Document 3.05 Aggravating Factors

Document 3.06 Probable Cause Statement

Document 3.07 Prosecution's Preparation List

Document 4.01 Defense's Preparation List

Document 4.02 Defense Intake Interview Questions

Document 4.03 Sentencing Report

Document 6.01 Judge's Sentencing Form

Document 6.02 Sentencing Worksheet

Date: 02/16/06
Case: 06-1234

Officer: LT A.W. BENGAARD
Offense: 0631

DEFENDANT: ROBERT H. COMBS Sex/Race: M/W
DOB: 11/04/90 Age: 15 AID# 5437943 SSN: 555-55-5555
Address: 4932 Tongass Avenue Phone: 555-4058
Offense Date: 02/15/06 Arrest Date: 02/15/06 Date Cited: N/A
Refer to: JUVENILE PROBATION ATN: N/A
CHARGE: THEFT IN THE FOURTH DEGREE
Section: AS 11.46.150(a) Class: B Misd Bail: Rel/Parent

OFFICER REPORTS:

On February 15, 2006 at about 1309 hours, I met with Safeway manager JANE DOE and Safeway employee JOHN SOMEBODY in the front office of the store due to them having a shoplifter in custody. The person in custody was identified as ROBERT COMBS.

Ms. Doe and Mr. Somebody told me that Mr. Combs ordered \$21.34 worth of food from the deli and then left the store without paying for it. Mr. Somebody said he was working in the deli when Mr. Combs ordered the food and he offered to ring it up for Mr. Combs at that location. Mr. Somebody said Mr. Combs declined and indicated that he was going to get a soda and would pay at the front register in the store.

Mr. Somebody said a few minutes later he was at the front of the store and saw Mr. Combs exit the store without paying for the items. Mr. Somebody contacted Mr. Combs outside the store and detained him.

Mr. Somebody filled out and signed a citizen's arrest form which is attached to this case. Mr. Combs was arrested for Theft in the fourth Degree, handcuffed, and taken to the police department. Mr. Combs was released to his parent Susan Combs.

NAME: JOHN SOMEBODY DOB: 11/14/65 Sex/Race: M/W
WORK/SCHOOL: SAFEWAY WORK/CELL#: 555-5555

NAME: JANE DOE DOB: 07/23/54 Sex/Race: F/W
WORK/SCHOOL: SAFEWAY WORK/CELL#: 555-5555

NAME: SUSAN COMBS DOB: 08/06/70 Sex/Race: F/W
WORK/SCHOOL: N/A WORK/CELL#: 555-4058

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT KETCHIKAN

STATE OF ALASKA,
Plaintiff,

vs.

JOHN DOE,
Defendant.

Case No.: 1KE-04-131 CR

D.O.B: 2/4/88

Offense Date: 1/26/04

**MINOR CONSUMING/POSSESSION JUDGEMENT
AS 04.16.050(b) [FIRST OFFENSE]**

The defendant offered a plea of **No Contest**

There was a finding of **Guilty**

THE COURT'S JUDGMENT IS AS FOLLOWS:

Imposition of a sentence is suspended until 4/30/2007. The suspended imposition of the sentence requires that you must do the following:

1. Contact **Ketchikan Youth Court at (907) 225-2293** within 3 days and Comply with all their requirements.
2. Enroll in, pay for and complete a state approved alcohol treatment program. You must contact the **Juvenile Alcohol Safety Action Program at (907) 225-8422** to make an appointment within 3 days.
3. Pay a \$10.00 public safety surcharge within 10 days.
4. Comply with probation conditions set out below.

Sentence is imposed as follows:

You must:

1. Pay a fine of \$N/A with \$N/A suspended by . Instead of paying the fine, you may perform community work service (CWS) which will reduce your fine by \$5.00 for every hour of CWS. If you choose to perform CWS, you must do the CWS at one of the approved agencies [Community work service information sheets are available in the clerks office on the 4th floor] and file proof that the work service has been completed on or before the fine due date.. To the extent that you fine exceeds \$200, you may bring in a receipt showing the amount that you paid for an alcohol program and that amount will be deducted from the portion of your fine that exceeds \$200.
2. Pay a \$10.00 public safety surcharge within 10 days.
3. Enroll in, pay for and complete a state approved alcohol treatment program. You must contact the **Juvenile Alcohol Safety Action Program at (907) 225-8422** to make an appointment within 3 days. Treatment may include up to 30 days residential treatment.

4. You are on probation until . The probation conditions are as set out below.

PROBATION CONDITIONS:

1. **You must complete the sentence as ordered;**
2. **You must not violate any city, state or federal laws;**
3. **You must not consume inhalants or possess or consume controlled substances or alcoholic beverages, except as provided in AS 04.16.051(b).**
4. **You must write a one-page (single spaced) apology letter to your parents/guardian and file a copy with the court within ten days.**

Effective 2/3/04

Copies Distributed on _____ to:

Kevin G. Miller
Judge/Magistrate

Deft AST KPD KIC JASAP KGH GHS Records
 DMV ABC DEC Other: _____

By: _____

KETCHIKAN POLICE DEPARTMENT

UNIFORM CITATION

N^o 64831

CITY OF KETCHIKAN, Plaintiff 1KE- _____
334 Front Street, Ketchikan, AK 99901

STATE OF ALASKA, Plaintiff ATN: _____
415 Main Street, Ketchikan, AK 99901 LOG: _____

First Judicial District of Alaska in the District Court at Ketchikan. I, the undersigned officer, state that I have reasonable grounds to believe that the named defendant committed the offense described below:

On _____ at _____ AM/PM

Defendant _____

Address (residence) _____

(mailing) _____ Home Phone _____

City/State _____ Zip _____

Employer _____ Work Phone _____

SSN _____

DOB: _____ Sex _____ Hgt _____ Wgt _____

Driver's License _____ Class _____ State _____

Veh Lic# _____ St _____ Expiration Date ____/____/____

Veh Yr _____ Make _____ Model _____ Color _____

At: _____ ()

EXCEEDED POSTED SPEED LIMIT _____ Miles Per Hour in a _____ MPH Zone in violation of KMC 10.28.020. (RADAR / LIDAR / PACED)

Did unlawfully operate a vehicle in violation of:

Did commit the offense of:

TITLE: _____

SECTION: _____

PROBABLE CAUSE: _____

Offense is: Non-Criminal Criminal

BAIL: _____ SURCHARGE: _____ DUE: _____ POINTS: _____

OPTIONAL COURT APPEARANCE: Respond within five days. See explanation on back.

MANDATORY COURT APPEARANCE: You must appear in court as shown below. If you are under age 18, you must bring your parent or legal guardian.

CORRECTABLE: This citation will be dismissed if you correct the defect and present the vehicle for inspection by _____ at the Ketchikan Police Department, 361 Main Street. If you do not, you must either appear in court or mail in your plea by the above date. See instructions for optional appearance on back.

COURT APPEARANCE: _____ at _____ am/pm

COURT ADDRESS: _____ 415 Main Street, Fourth Floor, Ketchikan, Alaska.

Bring this citation with you to court.

WARNING: If you fail to respond to a criminal charge, a warrant will be issued for your arrest. For non-criminal offenses, see consequences on back.

I certify under penalty of perjury that the foregoing is true to the best of my knowledge and belief.

SIGNED _____ (print) _____ ID# _____

DEFENDANT _____ /Personally Served

Referral Form

Agreement

Parent/Guardian Agreement: I do hereby authorize the exchange of information regarding myself, and my child to Ketchikan Youth Court. I understand that Ketchikan Youth Court needs to exchange information with District Court, Juvenile Probation, and/or other pertinent organizations in regards to this case. I also understand that Ketchikan Youth Court reserves the right to refuse further handling of this case for any reason and that a strict code of confidentiality will be maintained in the handling of my case.

Your child will be given 45 days to complete their sentence given to them by the judges. If you do not comply by that time, we will return the case back to Juvenile Probation and they can then finish handling the case through their venue. Please keep in mind that this means that any of the sentence that had been completed by that time, will not matter when the case is returned to Juvenile Probation and they will require the completion of a different sentence.

Defendant Agreement: I realize that I will be given 45 days to complete the sentence given to me and agree that it is enough time to complete my sentence. I understand the charges against me and agree to plead:

- Guilty; or
- No Contest

to the charges, thereby accepting responsibility for my actions and sentence that will be given to me in court.

Child's Printed Name:
Child's Signature:
Parent/Guardian Printed Name:
Signature of Parent/Guardian:

Referral Form

Agreement

Parent/Guardian Agreement: I do hereby authorize the exchange of information regarding myself, and my child to Ketchikan Youth Court. I understand that Ketchikan Youth Court needs to exchange information with District Court, Juvenile Probation, and/or other pertinent organizations in regards to this case. I also understand that Ketchikan Youth Court reserves the right to refuse further handling of this case for any reason and that a strict code of confidentiality will be maintained in the handling of my case.

Your child will be given 45 days to complete their sentence given to them by the judges. If you do not comply by that time, we will return the case back to District Court and they can then finish handling the case through their venue. Please keep in mind that this means that any of the sentence that had been completed by that time, will not matter when the case is returned to District Court and they will require the completion of a different sentence.

Defendant Agreement: I realize that I will be given 45 days to complete the sentence given to me and agree that it is enough time to complete my sentence.

Child's Printed Name:
Child's Signature:
Parent/Guardian Printed Name:
Signature of Parent/Guardian:

Victim Impact Statement

Directions

The goals of the Ketchikan Youth Court are such that we will assure that a victim is contacted, when identified, in order to establish monetary losses and appropriate restitution due, and offer an opportunity to make a statement to the court. In the event that the victim is a large department store, it is not necessary for the prosecuting attorneys to contact them.

Phone the victim using the phone number given to you in the police report and ask them the following question. **SOME QUESTIONS MAY NOT APPLY** to the case at hand, so be sure to go over the questions before asking them. If the victim is under 18 years of age, please make sure to make contact with a parent/guardian first.

Make sure that you sign the end of this document and date it to show when you took this statement. Afterwards, prepare a statement to be read in court from your interview.

Case Information

State of Alaska vs.	
KYC Case No.	
Charge	
Date of Offense	
Arrestment Date	

Victim Information

Victim Name	
Contact (if business)	
Phone Number	
Mailing Address	

Interview Questions

1. Please describe the circumstance of which you were a victim.
2. Did you incur property loss or damage? If yes, please describe what was lost or damaged and its resale value prior to the loss or damage. Do you have any documentation to support the dollar amount of your loss that you could send to the Ketchikan Youth Court office?
3. Were you physically injured? If yes, please describe the extent of your injuries.
 - a. Was medical treatment required? If yes, please describe the treatment received and its anticipated duration if ongoing.

continued

- b. What are the total medical expenses incurred to date? Are there any anticipated expenses? Do you have any documentation you have to support expenses incurred, such as copies of doctor, dental, hospital bills, etc. that you could send to the Ketchikan Youth Court office?
4. Has this crime affected your ability to earn a living? If yes, please describe your employment and specify how and to what extent your ability to earn a living has been affected, days lost from work, etc.
5. Have you incurred any other financial loss/expense as a result of this crime? If yes, please describe.
6. Did/will insurance cover any of the expenses you have incurred as a result of this crime? If yes, please specify the amount and nature of reimbursement, including deductibles.
7. Please describe what being the victim of a crime has meant to you and your family.
8. The prosecuting attorneys will need to recommend a sentence. Do you have any suggestions for the court of what the sentence should be?
9. Would you like to speak at the hearing? Would you like to submit a written statement to the judge to be read aloud? Would you like to submit a written statement to be read by the judge alone?
10. Are you submitting this statement as a parent or guardian on behalf of a child victim or incapacitated adult? If yes, what is your relationship to the victim?

Case 99-999 Attorney's Records

Directions

For tracking purposes please record how much time you spend working on your case. Include all your meetings, research, writing, reading, etc. Please do not put any marks on this paper, which could potentially be used to identify the defendant in the case you are working on.

Defense Meetings

Defense Attorney 1: Frances Klein

Defense Attorney 2: John Doe

Date	Name	Location	Hours

Prosecution Meetings

Prosecuting Attorney 1: Jane Doe

Prosecuting Attorney 2: Bob Dylan

Date	Name	Location	Hours

Intake Form

In the matter of State of Alaska v. Jonathan Doe
A minor under the age of 18
Tentative Court Date: 4/3/2006

Police Case 06-1234
KYC Case No. 99-999
Charge(s): Theft in the Fourth Degree

General Information

Name of Client (if any corrections to above noted):		
Age:	Gender:	Ethnicity:
Residence: <input type="checkbox"/> City <input type="checkbox"/> Borough	School:	
Mailing Address:		

Parental/Guardian Information

Guardian 1 Name:	Guardian 1 Relation:
Guardian 1 Home Phone:	Guardian 1 Work Phone:
Guardian 1 Cell Phone:	Guardian 1 Email:

Guardian 2 Name:	Guardian 2 Relation:
Guardian 2 Home Phone:	Guardian 2 Work Phone:
Guardian 2 Cell Phone:	Guardian 2 Email:

Signature of Guardian:
Signature of Client:

Mitigating Factors (Defense)

What Fits?

1. The defendant has no prior history of trouble reported or unreported with the authorities or police.
2. The defendant fully admitted upon initial confrontation by police, parents, school, authorities, or anyone the defendant could reasonably anticipate would promptly inform the authorities.
3. Another person principally committed the crime.
4. The defendant was accompanied, influenced, or pressured by an older person to commit the crime.
5. The defendant was 15 years or younger at the time of the crime.
6. The conduct was among the least serious in its class. (ie. Theft of \$51 in merchandise is the least serious in its class, since theft in the third degree is defined as a theft between \$50 and \$500)
7. The defendant made restitution to a victim before the defendant knew the crime had been reported to the authorities.
8. The defendant assisted authorities to discover the identity and role of others who participated in the crime.

Aggravating Factors (Prosecution)

What Fits?

1. A person suffered physical injury as a result of the defendant's conduct.
2. The defendant was the leader of a group which committed the crime.
3. The defendant possessed a dangerous instrument during the commission of the crime.
4. The defendant committed an assault offense against someone physically weaker.
5. The defendant's conduct created a risk of injury to three or more persons.
6. The defendant has committed an unreported crime (misdemeanor or felony level crime) in the past.
7. The offense has more than one victim. (A company, store, or business only counts as one victim)
8. The conduct was the most serious type of offense within its class, approaching the next most serious class of offense. (ie. Theft of \$49 in merchandise is the most serious in its class, since theft in the fourth degree is defined as theft of less than \$50)
9. The crime was committed against someone:
 - a. Within the defendant's household (someone who regularly resides in the house)
 - b. Who she or he is related to
 - c. Who lives in the same neighborhood
 - d. To whom she or he owes a duty
 - e. Who has a special relationship with the defendant
 - f. Who has specifically entrusted him or her (ie. Robbing a family the defendant baby-sits for)
10. The defendant targeted the victim because of the victim's race, religion, or other discriminatory factor.
11. The defendant was **16 years or older** at the time of the crime.
12. The defendant was accompanied by, or influenced, one or more persons younger than she or he during the commission of the crime.
13. If the crime was burglary or criminal trespass, the building was occupied.
14. The crime was committed at night (between sunset and sunrise) or in the summer months between the hours of 9:00 PM and 6:00 AM.
15. The defendant used drugs and/or alcohol before committing the crime (this excludes cases in which the use of drugs or alcohol was the charge), possessed drugs and/or alcohol, committed the crime in order to buy drugs and/or alcohol, or if it is a theft charge, stole something, which was illegal for the defendant to possess. (ie. Cigarettes)

In the Ketchikan Youth Court

In the matter of:) Case No. 99-999
Robert H. Combs) Count(s): Theft in the Fourth Degree
a minor under 18 years) AS 11.46.150 (a)
DOB: 11/4/1990)

THE PROSECUTING ATTORNEYS CHARGE:

Misdemeanor

Theft in the Fourth Degree

AS 11.46.150 (a)

All of which is a misdemeanor being contrary to AS 11.46.150 subsection (a) FIRST OFFENSE and against the peace and dignity of the State of Alaska.

PROBABLE CAUSE STATEMENT

We, the prosecution, state, based upon our review of the Ketchikan Police Report 06-1234, that the following happened:

That on or about Wednesday, February 15, 2006, at 1:09 PM, in the City of Ketchikan, State of Alaska, the defendant Robert Combs was contacted at Safeway. Mr. Combs entered the store and continued to the Deli section. He ordered \$21.34 worth of food and refused an offer by employee John Somebody to pay for it at the nearest counter. He stated that he would pay for it at the front counter after he got a soda. John Somebody then watched him exit the store without paying for anything. He was stopped by Mr. Somebody who filled out a citizen's arrest form. Officer Bengaard cited the defendant who was 15 years of age at the time.

Dated: _____

Signature, KYC Prosecuting Attorney

Dated: _____

Signature, KYC Prosecuting Attorney

Dated: _____

Approved, Legal Advisor

Prosecution's Preparation List

Things to do

1. Read through the entire case file. Be sure that you have a thorough grasp on the facts of the case. Make sure that your partner has read through the case as well.
2. Write up a Probable Cause Statement based on the police statement provided on either the ticket or report. Contact either the Director or the Youth Assistant to get onto a computer to type up the statement. There is a special form that you are to use on the computer, so make sure you find out how to use it.
3. Determine any aggravating factors that you feel exist. Refer to the Aggravating Factors sheet to determine this. Type these up in a separate, blank document.
4. If the case is a misdemeanor, then the victim(s) needs to be contacted if one exists and a Victim Impact Statement needs to be filled out. If it is a store, contact the manager. There is almost always a contactable victim. The only case we have run across so far in which contact was not necessary was in the case of a police set up. This is the chance for the victim to say what s/he feels and a time for them to input into the sentence that you recommend. Ask the Director or the Youth Assistant for a form to fill out.
5. If a statement was made, you need to put that information into a readable paragraph into the same document with the aggravating factors.
6. Determine an appropriate sentence that takes into account any statements made by the victim, requests made by the victim, and your job as a prosecutor to represent "the people."
7. Print the Probable Cause statement and the document with the aggravating factors, victim impact statement, and sentencing recommendation and put them in the case file. Make sure that you have done this as it is important for you to have your notes at the sentencing hearing.
8. You're done!

Defense's Preparation List

Things to do

1. Read through the entire case file before your interview with the client. Be sure that you have a thorough grasp on the facts of the case. Make sure that your partner has read through the case as well.
2. At the interview: Introduce yourself to both the parent and the client as your client's defense attorney. Tell them that the interview is confidential and that if they are uncomfortable having the meeting in the office where people who pass by may see them that the interview could be moved into the back hall. Make sure they sign the Intake and Referral Forms. Explain the courtroom procedure, where they need to be for the sentencing hearing, and when. Tell the parent that at this point in the interview it is preferred that the defense attorneys are able to talk to their client one-on-one and that you ask that the parent not be in the room. However, they may stay if they have a problem with leaving; **THEY ARE NOT REQUIRED TO LEAVE!** Complete the interview and remind them of the time and date that you will be seeing them at the sentencing hearing.
3. Type up a biographical statement using the information that you learning from the intake interview with the client. Make it something that makes your client look good. It is important that you represent your client during the hearing. Type this up in a blank document.
4. Determine any mitigating factors that you feel exist. Refer to the Mitigating Factors sheet to determine this. Type this in the same document.
5. Determine an appropriate sentence that will seem reasonable to the judges but be most beneficial to your client. Remember: you represent your client! Type this in the same document as well.
6. Print your typed notes and put them in the case file. It is important that you have your notes during the sentencing hearing.
7. You're done!

Intake Interview Questions

Directions

One attorney should read the questions trying not to read directly from the sheet, while the other takes notes on what the client says. Remember, the idea is to try and get them to talk, so please do not feel limited by these questions; keep asking further questions if you find that they are really interested in something. LOOK OVER THESE QUESTIONS IN ADVANCE SO YOU ARE NOT DUMBFOUNDED WHEN ASKING THEM TO THE CLIENT.

Questions

Please explain to me what happened and why it happened.

What grade are you in? What school do you go to?

Do you have a job? Where? What do you do? How many hours a week do you work?

Do you do chores around the house? What do you do? Do you baby-sit?

As a result of this, did your parents punish you? How so?

What are your interests? Do you have any hobbies? Do you play any sports?

What is your favorite subject in school? Do you know what you want to study in college?

How do you see yourself in the next 10 years? What career would you like to have or field of study would you like to pursue?

What is your definition of success in life and why do you think that breaking the law or laws can get in the way of that?

Do you realize the benefits of coming through youth court? (answer: **(All)** Upon successful completion of the sentence, this offense can come off of your record giving you a second chance. However, if found guilty of another offense of the same type, this offense will be put back onto your record. **(Minor Consuming)** Instead of paying the minimum \$200 fine or the 40 hours of community service mandated by District Court, you will have less than 40 hours of community service to do. **(Curfew)** Instead of completing many community work service hours, you will have less. **(Misdemeanor)** Instead of being burdened with possibly hundreds of hours of community work service, you will have to complete much less depending on the charge.)

Sentencing Report

In the matter of State of Alaska v. Robert H. Combs
A minor under the age of 18
Court Date: 4/3/2006

Police Report 06-1234
KYC Case No. 99-999
Charge(s): Theft in the Fourth Degree

Sentence (only those that are checked are part of your sentence)

Project:

- A(n) on ""
- A(n) 500 word essay on "How Stealing Affects a Business"
- A(n) 300 word apology letter addressed to the manager of Safeway Jane Doe explaining what you have learned from your actions and through Ketchikan Youth Court

Community Work Service

- 32 hours of service at Residential Youth Care located at 2514 First Avenue. Contact Joe Schmoe within 3 days of receiving this form at 555-8392.

Other

- 12 hour Alcohol Education Class: Kevin at JASAP (415 Main Street Room 305, 225-8422)
- Service Fee to the State of Alaska: \$10.00
- On probation until the age of 21

Date to complete sentence by: Saturday, May 18, 2006.
There are no exceptions unless otherwise setup with the Coordinator.

Judge's Sentencing Form

In the matter of State of Alaska v. Robert H. Combs
A minor under the age of 18
Court Date: 4/3/2006

Police Case 06-1234
KYC Case No. 99-999
Charge(s): Theft in the Fourth Degree

Court Judgment

Prosecution Sentencing Recommendation:

Defense Sentencing Recommendation:

Court Accepts the Following:

Aggravating Factors:

Mitigating Factors:

- Referred By's recommendation considered (if there was one)
- Official Prior(s) _____ Add _____ hours

Signed this: Monday, April 3, 2006

Judge 1 Signature:
Judge 2 Signature:
Judge 3 Signature:

Sentencing Worksheet

CWS Requirements

Offense	Minimum	Maximum	Benchmark
Minor Consuming Violation	20	40	27
Curfew Violation	5	15	7
Tobacco Violation	10	20	15
Class A Misdemeanor	32	50	41
Class B Misdemeanor	24	40	32
Theft Less Than \$15	1	None	12

Add 5 hours for an official prior (documented proof is required)

Sentencing Matrix (only a guideline, not mandatory!)

Calculate the work service using the matrix below:

a) Benchmark (from above):	
b) Number of Aggravating Factors (prosecution):	
c) Number of Mitigating Factors (defense):	
d) Net (b. minus c. – may be a negative number):	
e) Sentence Variance (10% of a. – round– ie. 1.4 becomes 1; 1.6 becomes 2)	
f) Actual Variance (e. multiplied by d.)	
g) CWS Requested (a. plus f.)	
Actual CWS Requested (based upon your own judgment and may differ from above result)	

Reasons for Judgment:

Glossary

Restorative Justice begins by bringing together the community to promote accountability through positive peer pressure.

A

Accused: The defendant who is thought to have committed an act.

Act: (1) Something done voluntarily that may have legal consequences; or (2) a written law that has been passed by Congress.

Adjourn: To end a particular session of court.

Aggravating Factor: A factor that may increase the seriousness of an offense. The presence of these factors may be considered by the judges when sentencing.

Alibi: An argument that the particular crime that the defendant is accused of could not have been carried out by that defendant because his/her location was elsewhere.

Allegations: Accusations that have not been proven. (Also used as alleged or allegedly.)

Amendments: The provisions of the U.S. Constitution enacted since the original Constitution became law.

Appeal: Taking a case to a higher court for a rehearing on a question of law, not fact. In Ketchikan Youth Court, an appeal is to three new KYC judges, who review the decision of the three sentencing judges. An appeal must be made in writing within five business days from the date the judges made their decision.

Arraignment: A court session at which the defendant is charged and enters a plea.

Arrest: Taking a person suspected of committing a crime into custody.

B

Bench Trial: A trial in which there is no jury as the trier of fact. In this type of trial, the judge decides guilt or innocence. Different from a jury trial. (See Jury Trial)

Beyond a Reasonable Doubt: The level of proof required to convict a person of a crime. It does not mean "convinced 100 percent," but does mean there are no reasonable doubts as to guilt.

Bill of Rights: The first ten amendments to the U.S. Constitution that explicitly outline many of our basic rights.

Burglary: First degree: entering a residence (house) with the intent to commit a crime inside; second degree: entering a building with the intent to commit a crime inside.

C

Chaney Rules: A list of five goals that a court should look at when deciding what a sentence should be. The five goals include (1) protecting society; (2) rehabilitating the defendant; (3) deterring the defendant from breaking the law again; (4) deterring others from breaking the law; and (5) a sentence that will send a message to the community showing that it does not agree with the defendant's behavior.

Charges: Formal accusations of a crime or crimes.

Charging Document: A written document prepared by the prosecuting attorney that

describes each offense the defendant will be charged with and outlines the facts of the case.

Circumstantial Evidence: Evidence that only points to a conclusion of whether the defendant is guilty or not.

Civil Law: Law that allows individuals to go to court to protect themselves from harm caused by individuals by making a defendant pay money. Ketchikan Youth Court handles criminal law cases only.

Class: An action which violates the law is divided into either of three categories: a violation, misdemeanor, or felony. There are two levels, or classes, of misdemeanor: A and B. Class A is more serious than B.

Clerk: In KYC, the clerk is responsible for maintaining records of each court proceeding that he or she is appointed to, maintaining the organization of defendant files, and bringing the court to order when the judges enter or exit ("All rise," etc.).

Closed Court: Court proceedings which are open only to the defendant, his/her parents, or guardian and court officials. All KYC cases are closed court proceedings.

Community Work Service: Always a part of the defendant's sentence, which requires the defendant to be present at an assigned place for a specified number of hours, as determined by the judges during sentencing, for the purpose of giving work back to the community at no cost. Work sites include non-profit clubs, organizations, agencies, schools, and other city sites. Also referred to as CWS.

Complaint: A sworn statement regarding the defendant's actions that constitute the crime charged.

Conduct: One the three elements of a crime which a prosecutor must prove beyond a reasonable doubt. It is the act or failure to act, when there is a duty to act.

Confidential: Treated as private. In KYC this means that a case must not be discussed with family, friends or KYC members who are not on your team. When a KYC case is finished, the file must be turned in, including all notes. The file will be destroyed. (See Closed Court.)

Constitution: The U.S. and Alaska Constitutions set the framework for our system of government and establish our basic rights and freedoms.

Counsel: A lawyer; attorney.

Count: Each separate charge included in the charging document, which constitutes an accusation of a separate crime against the defendant.

Court of Appeals: In Alaska, the Court of Appeals hears criminal law cases appealed from the trial level. There are three judges on the Court of Appeals.

Crime: An act or failure to act that violates a law for which a penalty is set.

Criminal Law: Law that allows the State to go to court to protect society from harm caused by a defendant. In adult court, the defendant may pay a fine or go to jail. At Ketchikan Youth Court, community work service, education classes, restitution, and essays are used as consequences.

Criminal Mischief: A crime which includes the destruction of property, riding in a stolen car, and unauthorized accessing of a computer.

Criminal: A person who is guilty of committing a crime.

Cross-Examination: The questioning during a hearing or trial of witnesses for the opposing side.

D

Defendant: The person accused of committing a crime.

Defense Attorney: The attorney who represents the defendant. The attorney, at trial, tries to show that there is not enough proof to find the defendant guilty. The defense attorney represents the defendant during a sentencing hearing and tries to get a fair sentence for the defendant.

Defense: Evidence offered by the accused to defeat a criminal charge. The defendant has the burden of proving his/her defense.

Degree: A method to separate similar crimes into more and less serious classes. For example, theft in the second degree is more serious than theft in the third degree. Similarly, theft in the fourth degree is less serious than theft in the third degree.

Delinquent: A child who has committed an act that, if committed by an adult, would be a crime under federal, state, or local law.

Demonstrative Evidence: Evidence which is not the real item itself, but a model for the item.

Deter or Deterrence: A reason for punishment based on the belief that the punishment will discourage the offender from committing another crime in the future and will serve as an example to keep other people from committing crimes.

Direct Evidence: That which points directly to the defendant's guilt or innocence.

Direct Examination: The questioning of a witness by the side calling the witness to the stand.

Diversionary Program: A program to which Juvenile Probation Intake Officers refer a juvenile to for sentencing and education outside the formal juvenile court system. Anchorage Youth Court is a diversionary program.

Due Process: The idea stated in the Fifth and Fourteenth Amendments of the U.S. Constitution, that every person involved in a legal dispute is entitled to a fair hearing or trial.

E

Elements of a Crime: The conditions that make an act a crime. There are generally three elements to a crime, all of which must be proven beyond a reasonable doubt by the prosecutor. The three elements include (1) conduct; (2) state of mind; and (3) violation of a statute.

Ethics: KYC students are expected to obey rules of conduct set by the KYC members themselves. If a member breaks an ethics rule, s/he may be disciplined. Judges are held to a higher ethical standard than other members.

Evidence: Testimony given or physical objects introduced into court to help prove a defendant's guilt or innocence.

Executive Branch: The administrative branch of government that includes a chief executive (e.g., the president or governor), executive officers, and agencies to carry out the laws.

F

Felony: A serious criminal offense punishable by a prison sentence of more than one year.

Fifth Amendment: An amendment to the U.S. Constitution which guarantees every person the right to refuse to incriminate him or herself (to say anything that might be used to prove one's self guilty).

Fines: A monetary penalty imposed upon someone convicted of an offense. KYC can not impose fines as a part of a defendant's sentence.

G

Guilty: Admitted to the court or found by a jury to have committed a criminal act.

H

Hearing: A proceeding in court at which both prosecution and defense are present to argue their positions.

Hearsay: An out of court statement made by someone other than the witness and used by the witness to prove the truth of the matter asserted. ("Sam told me . . .")

I

Infraction: Another name for a violation. (See Violation)

Intent: One of the four states of mind; means that the defendant wanted something to happen.

Irrelevant: Material brought out in court which has no relation to the case.

J

Judge: The person who presides in court and administers justice. In KYC, three judges listen to each case.

Judicial Branch: The division of government that interprets laws and decides questions of law.

Jury Trial: A trial in which a jury is the trier of fact and decides the defendant's guilt or innocence. Different from a bench trial. (See Bench Trial)

Jury: A group of men and women selected to examine the facts at trial, determine truth, and decide the defendant's guilt or innocence.

Juvenile Intake: The Ketchikan Juvenile probation officers who decide whether and how a complaint against a juvenile should be pursued. The agency which sends cases to KYC;

KYC's "referring authority." (See Referring Authority)

Juvenile: A person not yet considered an adult for the purposes of determining criminal liability; a minor.

K

Knowledge: One of the four states of mind; means knowing something will happen as a result of what one is doing.

L

Laws: Rules established in the interests of society by elected officials.

Lawyer: Someone who practices law; an attorney. In KYC this includes the positions of prosecutor and defense attorney.

Leading Question: A question which tells the witness how to answer. Usually it requires a yes or no answer. Leading questions should not be used on direct examination, except as necessary to develop the witness's testimony. Leading questions are permitted on cross examination.

Legislative Branch: The division of government that passes laws. Includes the House of Representative and the Senate.

M

Minor Offense: Another name for a violation. (See Violation)

Minor: A child; a person who is not yet 18.

Misdemeanor: A criminal offense, less serious than a felony, punishable by a prison sentence of one year or less.

Mitigating Factor: Factor that may lessen the seriousness of an offense. The presence of these factors may be considered by the judges when deciding a sentence for a defendant.

N

Negligence: The least serious of the four states of mind; something an ordinarily careful person would not do.

No Contest: A defendant's plea to criminal charges that does not admit guilt but also does not contest the charges. It is equivalent to a guilty plea, but it cannot be used as evidence in a later civil trial for damages based on the same evidence.

Not Guilty: A defendant's plea to criminal charges that denies guilt and contests the charges; plea of innocence.

O

Oath: A pledge, such as a pledge to tell the truth while testifying.

Objections: The verbal statement of an attorney as a means of bringing to the court's attention that the matter or proceeding objected to is improper or illegal.

Offense: Conduct which is a breach of criminal law and generally implies a felony or misdemeanor and may be punishable under criminal law.

Overrule: Judge's denial of an objection.

P

Petition of Delinquency: Formal petition against a juvenile, which allows the Juvenile Intake probation officer to impose and enforce strong measures against a juvenile.

Plea Agreement: An agreement in which a defendant agrees to plead guilty to a certain charge, usually a lesser crime than s/he has been charged with, in exchange for a recommendation from the prosecution of a certain sentence.

Plea: The defendant's response to a criminal charge.

Presided: Directed court proceedings (by a judge).

Prior Record: A record of crimes a defendant has committed in the past.

Privileged: Statements made to certain people, which are protected from being repeated. The privilege is given to protect special relationships, including attorney-client, husband-wife, doctor-patient, and priest (minister, rabbi, etc.) - confession.

Probation: A system of supervised freedom, usually under a probation officer, for persons convicted of a criminal offense. Typically, a person on probation must agree to certain conditions such as getting a job, avoiding drugs, and not traveling outside a limited area.

Prosecutor: The government's attorney in a criminal case.

R

Real Evidence: The thing itself; the actual object.

Recklessness: One of the four states of mind; means consciously doing something which involves a great risk to oneself or to others.

Referring Authorities: The Ketchikan Juvenile Probation Office intake probation officers and District Court which refer cases to KYC.

Refute: To show or prove to be wrong, false or incorrect; to disprove.

Rehabilitation: An attempt to change or reform a convicted person so that s/he will not commit another criminal act.

Restitution: A part of a defendant's sentence requiring him/her to repay money to the victim for lost, stolen or property damaged, or for medical expenses, because of the criminal actions of the defendant, or work without pay for the community.

S

Self-Incrimination: Giving evidence and answering questions that would tend to subject one

to criminal prosecution.

Sentence: The punishment formally announced by the judges upon the defendant after his/her conviction in a criminal prosecution.

Sentencing Hearing: A proceeding in which the defendant is brought before the judges for a determination of sentence. Before determining sentence, the judges allow counsel an opportunity to speak for the defendant and allow the defendant to speak for him or herself to present any information in mitigation of punishment. The prosecution has an equal opportunity to speak.

Sixth Amendment: The amendment to the U.S. Constitution which guarantees a defendant the right to the assistance of an attorney.

Speculate: To guess or estimate. Not based on actual knowledge.

State of Mind: One of the three elements of a crime which a prosecutor must prove beyond a reasonable doubt. It defines what the defendant must have been thinking at the time s/he committed the conduct. There are four states of mind: (1) intentionally; (2) knowingly; (3) recklessly; and (4) negligently.

Statutes: Laws written by the legislature.

Subpoena: A court order for a witness to appear in court on a specified date and time.

Supreme Court: In Alaska, the Supreme Court hears criminal cases appealed from the Court of Appeals. A criminal defendant does not have a "right" to appeal to the Supreme Court. The Supreme Court may choose to hear those criminal cases which will impact many people, will decide an important issue, or where a clear injustice occurred. There are five members of the Alaska Supreme Court. There are nine members of the U.S. Supreme Court.

Sustain: To allow or grant, as when a judge sustains an objection to testimony or evidence. The judge agrees with the objection and does not allow the evidence or testimony to be presented.

T

Testimonial Evidence: Statements made by a witness at trial.

Trial: Presentation of evidence in a court of law before a jury or judge, which determines if the accused person is guilty or innocent of a criminal act.

U

U.S. Supreme Court: The highest court in the nation. It accepts cases from any of the lower courts and is made up of nine members.

V

Violation: Offenses which are minor consuming, curfew, or tobacco tickets. These must be first time offenses to be referred to KYC.

W

Waive: To give up some right, privilege, or benefit voluntarily.

Witness: A person who gives a statement under oath and whose statement is received as evidence.

This manual has been modeled from the Anchorage Youth Court Edition. Sharon Leon, Director of Anchorage Youth Court, has given KYC permission to model their information. We graciously appreciate the support from Anchorage Youth Court and many others around the state.

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