

## **A Roadmap for Making Native America Safer Public Safety in Alaska As Seen Through an Independent Lens**

The Indian Law and Order Commission is an independent national advisory commission created in July 2010 when the Tribal Law and Order Act (TLOA) was passed and extended earlier in 2013 by the Violence Against Women Act Reauthorization (VAWA Amendments). The President and the majority and minority leadership of the Congress appointed the nine Commissioners, all of whom have served as volunteers. One of the Commission's charges was to investigate, report on, and make recommendations to improve criminal justice in Native American and Alaska Native communities. The report, *A Roadmap For Making Native America Safer*, assesses the effectiveness of TLOA and makes recommendations for long-term improvements to the structure of the justice system in Indian country.

The Commission notes that problems with safety in Tribal communities are severe across the United States—but they are systemically worst in Alaska. An entire chapter of the Roadmap is dedicated to reforming justice in Alaska due to its vastness, Nativeness, and continued exemption from national policy changes.

*“The public safety issues in Alaska—and the law and policy at the root of those problems—beg to be addressed. These are no longer just Alaska’s issues; they are national issues.”*

### **Findings of the Commission**

Perhaps the most central finding in the Roadmap is that, “State government authority is privileged over all other possibilities.” Moreover, the Commission notes, the model of centralized administration of law enforcement and justice systems simply does not work in Alaska.

Statistics cited by the Commission are all too familiar reminders of the disparity in access to public safety mechanisms and the numerous negative effects for Alaska Natives. A lack of access to police, courts, and related services is common to the majority of rural communities and at least 75 communities lack any law enforcement presence at all.

The Commission unanimously disagrees with Alaska's Attorney General on the view that there is very little Indian country in Alaska and thus, the State's law enforcement authority is exclusive throughout the State because Tribes do not have a land base on which to exercise any inherent criminal jurisdiction.

### **Recommendations of the Commission**

Throughout the findings and expositive sections of the report the Commission notes areas and methods of potential change. Although the five official recommendations are directed at Congress and the President, to fully implement them would require significant buy-in and participation by Alaska Native leadership. Major changes to the status quo are raised and bear serious examination by tribal governments, ANCSA corporations, and all Alaska Natives. Notably, the Commission recommends (re)establishment of Indian Country in Alaska and significant amendments to ANCSA.

## Official Recommendations

**2.1:** Congress should overturn the U.S. Supreme Court's decision in *Alaska v. Native Village of Venetie Tribal Government*, by amending ANCSA to provide that former reservation lands acquired in fee by Alaska Native villages and other lands transferred in fee to Native villages pursuant to ANCSA are Indian country.

**2.2:** Congress and the President should amend the definitions of Indian country to clarify (or affirm) that Native allotments and Native-owned town sites in Alaska are Indian country.

**2.3:** Congress should amend the Alaska Native Claims Settlement Act to allow a transfer of lands from Regional Corporations to Tribal governments; to allow transferred lands to be put into trust and included within the definition of Indian country in the Federal criminal code; to allow Alaska Native Tribes to put tribally owned fee simple land similarly into trust; and to channel more resources directly to Alaska Native Tribal governments for the provision of governmental services in those communities.

**2.4:** Congress should repeal Section 910 of Title IX of the Violence Against Women Reauthorization Act of 2013 (VAWA Amendments), and thereby permit Alaska Native communities and their courts to address domestic violence and sexual assault, committed by Tribal members and non-Natives, the same as now will be done in the lower 48.

**2.5:** Congress should affirm the inherent criminal jurisdiction of Alaska Native Tribal governments over their members within the external boundaries of their villages.

## Additional Recommendations

- Native villages without reasonable access to law enforcement should have that access.
- All village law enforcement officers should have the training and approval to carry firearms subject to standards that accord with all State peace officers.
- Native village residents should be able to participate locally in substance abuse treatment, technology-assisted alternatives to detention, and anger management programs.
- Increased tribal authority over criminal justice via:
  - collaborating with Tribes on other criminal justice issues;
  - deputizing Tribes to provide a wide array of criminal justice services;
  - delegating or deputizing Tribal judges, including the expanded use of circle sentencing and traditional dispute resolution;
  - leveraging the State and Tribal governments' concurrent criminal jurisdiction to develop specific, locally optimal criminal justice approaches;
  - adopting a policy of State deference to Tribal authority in Tribal communities.
- State government can also generate funds for Tribal criminal justice programming by rooting out inefficiencies and wasteful spending in its current organization, taking advantage of cost-savings

from the increased use of alternatives to detention and other innovations in service provision, and moving money out of regional centers when increases in Tribal capacity make the current extent of service provision unnecessary.

- Regional Alaska Native Corporations, the largest beneficiaries from Tribal resources over the last four decades, also should increase their contributions to the governments that justify their existence.

### **AFN Staff Response**

The first three recommendations focus on the (re)establishment of Indian country in Alaska. While the idea has generalized support, opening ANCSA up to significant amendments must be thoroughly examined. If consensus is reached, a strategic plan would need to be developed to ensure other sections of ANCSA are not affected. It should be noted that the third recommendation is to allow for, not to require, the transfer of lands from Regional Corporations to Tribes.

Repeal of Section 910 is a key component of the bipartisan Safe Families and Village Act, S. 1474, as introduced by Alaska Senators Murkowski and Begich. AFN has requested hearings and markup on the bill and will continue to work with member organizations and the appropriate Senate staff to ensure this provision remains while making significant amendments to other sections prior to passage.

Because the final official recommendation, to affirm the inherent criminal jurisdiction, steers clear of amending the definition of Indian Country or ANCSA, it may be the path of least resistance for the Alaska Congressional Delegation and provide temporary relief while consensus is built on other options.

The State of Alaska is currently working with the Tanana Chiefs Conference to develop an agreement that would allow for misdemeanor cases to be handled by tribal courts. If such an agreement is made, it would create an opportunity for other communities to seek similar agreements. In the meantime, the Alaska legislature should hold hearings on the current state of domestic violence and criminal justice in rural Alaska rather than depend entirely upon the Governor's and Attorney General's offices to take action.

An immediate action that can be taken by Native communities, without waiting for outside actions, is building capacity of tribal courts and governments to enact and enforce tribal law. This includes development of tribal codes, courts, training of enforcement officers, and public education. AFN staff will communicate out links to code templates and technical assistance resources.