



**ALASKA RURAL JUSTICE AND LAW  
ENFORCEMENT COMMISSION**

**REPORT**

**TO THE UNITED STATES CONGRESS AND THE  
ALASKA STATE LEGISLATURE**

**JANUARY 2012**

## I. INTRODUCTION

The complex issues surrounding the delivery of justice and law enforcement in rural Alaska are profound and acute. They represent multi-dimensional challenges that have stymied rural communities for decades. Residents of these remote communities, the majority of whom are Alaska Native, continue to face high rates of alcohol abuse, juvenile suicide<sup>1</sup> and family violence/sexual assault,<sup>2</sup> often simultaneously struggling to maintain order in their communities without a law enforcement presence physically located in those communities. While Alaska Natives represent only nineteen percent of the total population of the state,<sup>3</sup> they are twice as likely to be represented in the state's juvenile justice and adult correctional systems,<sup>4</sup> and more than three times as likely to be represented in the state's child protection system.<sup>5</sup>

The social consequences of these conditions in rural Alaska are well known. It bears repeating that multitudes of studies have demonstrated the relationship between unemployment, poverty, disenfranchisement and other deprivations suffered under poor economic conditions, and alcohol abuse/addiction, substance abuse, domestic

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<sup>1</sup>See State of Alaska Statewide Suicide Prevention Council, Department of Health and Social Services, *Mending the Net: Suicide Prevention in Alaska Annual Report FY2010* 9 (2010), available at <http://www.hss.state.ak.us/suicideprevention/>.

<sup>2</sup> Of those domestic violence cases reported to law enforcement in Alaska, 70% of the victims were female, and 47 percent of the female victims were Alaska Native women. See Forest Kvasnikoff, with André Rosay and Barbara Armstrong, *Special Report: UAA Justice Center Domestic and Sexual Violence Research Review and Recommendations* 5 (State of Alaska Council on Domestic Violence & Sexual Assault, May 13, 2010), available at <http://dps.alaska.gov/CDVSA/docs/DPS%20Report%20and%20Recommendations.pdf>. Due to the manner in which this data is often collected, the Commission is aware that these statistics do not reflect the totality of these assaults and cannot be precise, as not all entities that provide essential social services relating to domestic violence and/or sexual assault contribute their respective statistics to the database, and not all victims of these assaults report the assaults to any agency.

<sup>3</sup> See 2010 Census Demographic Profile for the State of Alaska, available at <http://labor.alaska.gov/research/>.

<sup>4</sup> Alaska Natives represent 36.76 percent of the criminal institutional population for the State of Alaska. See State of Alaska Department of Corrections, *2010 Offender Profile* 13 (2010). As of December 1, 2010, 41.44 percent of the juvenile offender population was Alaska Native. *Id.* at 38.

<sup>5</sup> Alaska Natives comprise slightly more than sixty two percent of those children who are in the legal custody of the State of Alaska Office of Children's Services and placed in "out of home" placements. Email from Naomi Harris, Community Relations Manager, State of Alaska, Office of Children's Services, to Donna J. Goldsmith, Special Assistant, Alaska Rural Justice and Law Enforcement Commission, (Jan 13, 2012) (on file with Donna J. Goldsmith). According to the State of Alaska Office of Children's Services, in 2008 Alaska Natives/American Indians represent approximately 10.5 percent of the general population in Anchorage, yet just over 55 percent of Anchorage's children in care are. In Juneau, which is the largest community in Southeast Alaska, the Alaska Native/American Indian population is approximately 16.6 percent of the general population, while approximately 73 percent of Juneau's children in care are of Alaska Native and/or American Indian heritage. In the other two services regions in Alaska, numbers of Alaska Native children are over represented as well. See State of Alaska. *Child and Family Services Review Alaska Statewide Assessment*, 6 (Alaska Department of Health & Social Services, Office of Children's Services, July 2008), available at <http://hss.state.ak.us/qcs/Publications/default.htm/>.

violence, child abuse and other crimes.<sup>6</sup> The insidious nature of these social ills serves as an impediment that prevents large numbers of Alaska's residents from contributing as full participants in their communities. They call for immediate, focused attention from communities and political leaders at all levels, and demand honest, practical solutions that are adequately funded.

Since its inception in 2004,<sup>7</sup> the Alaska Rural Justice and Law Enforcement Commission ("Commission") grappled with identifying these much-needed solutions. While funding challenges have prevented the Commission from fully realizing its potential, numerous recommendations have emerged from the fact-finding and deliberative processes in which the Commission has engaged.

Two themes continue to stand out above all others. *First*, increased cooperation, coordination and collaboration between tribal, state and federal courts and agencies, would greatly improve life in rural Alaska and better serve all Alaskans. *Second*, tribal, state, federal and local governments must find a way to *jointly identify and implement* the most effective means by which to prevent alcohol and other illegal substances from reaching rural communities that have chosen to become dry.

## II. CREATION OF THE COMMISSION AND INITIAL EFFORTS

### A. Establishment of Commission

For decades, Alaska Natives, tribal, state and federal governments, and non-profit and for-profit corporations have sought to enhance law enforcement and access to justice in rural Alaska. Following the work of several statewide forums and commissions that examined the delivery of essential governmental services in rural Alaska,<sup>8</sup> the United States Congress created the Alaska Rural Justice and Law Enforcement Commission and directed it to study four broad issues as they relate to rural Alaska: law enforcement; alcohol importation and interdiction; domestic violence and child abuse; and judicial services. The enabling legislation charged the Commission with review of tribal, state, federal and local jurisdiction over civil and criminal matters in Alaska, and directed the Commission to make recommendations to Congress and the Alaska State Legislature regarding how best to improve access to justice and law enforcement in rural Alaska communities.

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<sup>6</sup> See Alaska Rural Justice and Law Enforcement Commission, *Initial Report and Recommendations* 18 (2006)(hereafter "*Initial Report and Recommendations*").

<sup>7</sup> Congress established the Commission within the Consolidated Appropriations Act, 2004, Pub. No. 108-199, §112(a)(2)(A), 118 Stat. 62 (2004).

<sup>8</sup> See, e.g., Alaska Natives Commission, Joint Federal-State Commission on Policies and Programs Affecting Alaska Natives, *Final Report* (1994), available at [http://www.alaskool.org/resources/anc2/anc2\\_toc.html/](http://www.alaskool.org/resources/anc2/anc2_toc.html/). See also Alaska Commission on Rural Governance and Empowerment, *Final Report to the Governor* (State of Alaska Department of Community and Regional Affairs, 1999), available at <http://www.comregaf.state.ak.us/rgc/>.

In 2004, the United States Attorney General formally appointed nine members to the Commission,<sup>9</sup> which included:

- The United States Attorney for the District of Alaska as the federal co-chair
- The Alaska Attorney General as the state co-chair
- The Commissioner of Public Safety for the State of Alaska
- A representative from the Alaska Municipal League
- A representative from an organized borough
- A representative of the Alaska Federation of Natives
- A tribal representative
- A representative from a non-profit Native corporation that operates a Village Public Safety Officer program
- A representative from the Alaska Native Justice Center

In addition, as authorized by the enabling legislation, the chief judge for the Federal District Court for the District of Alaska appointed a representative to provide technical support for the Commission.

## **B. Initial Work**

At its first meeting on October 12<sup>th</sup> and 13<sup>th</sup>, 2004, in Anchorage, the Commission adopted two parallel strategies to achieve its congressionally mandated objectives - public hearings and the formation of subject matter work groups.

The Commission conducted fifteen public hearings in eleven locations throughout the state between October 2004 and June 2005. During the hearings the Commission accepted oral and written testimony from a broad range of individuals with substantial expertise concerning one or more of the four topic areas that Congress directed the Commission to study. Many of those who testified shared significant personal experiences regarding the impact of epidemic rates of domestic violence, sexual assault, child abuse and alcohol abuse on the quality of life in rural Alaska, and the difficulties of trying to address these matters without a law enforcement presence physically located in their communities.

Simultaneously, the Commission established four work groups to assist in fact-finding and deliberations, directing each to address one of the four general topic areas within the Commission's Congressional mandate. Each of the 70 Alaskans who comprised these groups brought substantial expertise to the work group to which the individual was assigned.<sup>10</sup> At the conclusion of an intensive nine-week work period, the groups

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<sup>9</sup> See Appendix A, United States Department of Justice Press Release, September 2, 2004. See also Appendix B for a complete list of the current commissioners and their predecessors.

<sup>10</sup> For a complete list of the members of each of these work groups, see *Initial Report and Recommendations*, *supra*.

collectively presented more than 100 recommendations to the Commission.<sup>11</sup>

### **C. The Commission's Initial Report**

Over the course of the following six months, the Commission reviewed and deliberated over each of the recommended options, giving careful consideration to the many hours of public testimony offered during the 15 hearings. In its *Initial Report and Recommendations*, the Commission adopted a detailed set of specific recommendations organized thematically under nine overarching recommendations, set forth below substantially as adopted.<sup>12</sup>

#### **1. *Engage in More Partnering and Collaboration***

The single most significant outcome of the Commission's work was engendering collaboration and good will among a broad spectrum of stakeholders on the Commission. Given the dearth of resources and daunting nature of the challenges faced by rural Alaskans, the Commission urges more cooperation and collaboration between tribal, state, local and federal governments in Alaska. In particular, the Commission urges joint development of cross-jurisdictional agreements that will enhance coordination and cooperation between tribal, state, local and federal law enforcement and judicial agencies in rural Alaska.

#### **2. *Make Systemic Changes to Improve Rural Law Enforcement***

To improve the availability and accessibility of law enforcement in rural Alaska, the Commission recommends development of a statewide, uniform and tiered system of certification and training for tribal and village police and public safety officers that will offer a reasonable opportunity for advancement that could culminate in the qualifications needed to seek full police certification by the Alaska Police Standards Council. It further recommends expansion of tribal and village police and public safety officer training, changes in state law to help law enforcement reduce the importation of alcohol into dry rural Alaska villages, and a statewide ban on written order sales of alcoholic beverages to "dry" or "damp" communities.

#### **3. *Enlarge the Use of Community-based Solutions***

Public testimony impressed upon the Commission the importance, and success, of *locally driven* approaches that respond to the immediate and cultural needs of communities. To this end, the Commission recommends amending state statutes to allow the Division of Juvenile Justice to delegate authority to tribes to address juvenile matters affecting their youth. This would enable the state to share resources with tribes desiring to respond to

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<sup>11</sup> See *Initial Report and Recommendations* at 32.

<sup>12</sup> See *Initial Report and Recommendations* at 3-4, and 34 - 51.

tribal juvenile offenders. The Commission recommends additional amendments that would authorize tribes to participate in state juvenile proceedings and treatment programs, and expand funding to help non-profit organizations and rural Alaska communities develop locally-driven child abuse and domestic violence prevention, intervention, and treatment programs. In addition, housing Alaska's inmates in out-of-state facilities is a weak point in the state's correctional system, and the Commission recommends that the Department of Corrections explore other options, including working with Native regional corporations, to keep inmates in Alaska. Finally, to help reduce the amount of alcohol reaching dry communities, the Commission recommends the establishment of alcohol distribution centers, in damp hub communities such as the one established in Barrow, restricting alcohol sales to residents of those communities.

#### ***4. Broaden the Use of Prevention Approaches***

Substance abuse prevention approaches currently available throughout most of rural Alaska are insufficient in both number and scope. The Commission recommends expanding the availability of culturally appropriate prevention programs to help reduce the demand for alcohol in rural Alaska. Development of additional culturally relevant approaches should: 1) focus on youth; 2) provide schools with more information; and 3) link youth with adults in healthy activities. There is also a need for more education, prevention and early intervention programs that target domestic violence and child abuse in rural Alaska. In particular, the Commission recommends development of new prevention curricula that help students learn how to establish respect within their interpersonal relationships, how to make healthy lifestyle choices and the importance of remaining substance-free, all of which should be included in curriculum from kindergarten through eighth grade.

#### ***5. Broaden the Use of Therapeutic Approaches***

There are a number of programs in rural Alaska that target the problems of substance abuse, domestic violence, child abuse and neglect and sexual abuse, all of which are routinely tied to the consequences of substance abuse in rural Alaska. There remains, however, a tremendous need to expand the availability of therapeutic approaches to these same concerns. Alcohol and drug abuse treatment programs should be expanded in rural Alaska, and should offer a system of longer-term residential care in hub communities (including programs for women with children) that are matched with a network of aftercare services in rural villages. Agencies should also strengthen the substance abuse, mental health and dual diagnosis treatment options available for youth, as well as therapeutic courts and group homes for children in need of aid who are either not appropriate for, or unable to access, foster care. Finally, the availability of foster care in rural Alaska would expand significantly if the Office of Children's Services were to amend its regulations to allow close relatives who provide foster and adoptive care for children in need of aid to receive the same level of financial reimbursement that non-relative caregivers now receive.

## ***6. Increase Employment of Rural Residents in Law Enforcement and Judicial Services***

Cultural identification and modeling are important components of successful rehabilitation. In the face of significant overrepresentation of Alaska Natives from rural communities who encounter legal problems with law enforcement, and an even greater overrepresentation of Alaska Natives in the state's correctional system, there is a great – and growing – need to recruit and employ Alaska Natives in these systems to ensure cultural identification. The Commission therefore recommends implementation of a focused recruitment effort to bring more Alaska Natives and rural Alaskans into the correctional, law enforcement and public safety workforce. In addition, it recommends increasing the training and utilization of Village Public Safety Officers as state probation officers in the villages, as well as contracting with tribes to oversee community service work. Implementation of these recommendations would increase the availability of supervision for offenders on probation and parole in rural communities.

## ***7. Build Additional Capacity***

The Commission reviewed a multitude of indicators that pointed to the relative lack of infrastructure to support police and public safety functions in rural Alaska, which in turn has a detrimental effect on recruitment and retention of officers. The Commission therefore recommends the improvement and expansion of housing for police and public safety officers, increased availability of appropriate intra-community transportation, more law enforcement officers and holding facilities in rural Alaska, and new and improved law enforcement equipment. The Commission also recommends improved and expanded public safety training, and the development of a standardized statewide data system to document and monitor law enforcement investigations in rural Alaska.

## ***8. Increase Access to Judicial Services***

Residents of rural Alaska do not have access to sufficient civil legal assistance to address legal problems related to domestic violence and child abuse. The Commission recommends enhanced funding, as well as the increased use of tribal courts, to respond to this need. It further recommends ongoing, cross-jurisdictional training and technical assistance for judges and support staff in both the Alaska Court System and the tribal courts, to inform and instruct participants to be aware of, and value, cultural differences between western and tribal judicial systems.

## ***9. Expand the Use of New Technologies***

Alaska enjoys the most sophisticated telehealth system in the world - the Alaska Federal Health Care Access Network (AFHCAN) – that includes broadband telecommunications services in most rural Alaska communities. However, in the hundreds of rural Alaska villages that participate in the AFHCAN, other organizations in those villages are unable to access existing broadband capabilities. To improve communication between the law enforcement and judicial systems in rural Alaska, the Commission recommends

changing current regulations to allow rural police, public safety and judicial officers to utilize this resource. The Commission also recommends that the Department of Corrections explore the use of new electronic monitoring technology, such as the Global Positioning System, for rural Alaskan probationers, and that the Alcohol Beverage Control Board develop a statewide database for all alcohol written orders for the new community distribution centers.

### **III. IMPLEMENTATION OF INITIAL RECOMMENDATIONS**

The Commission presented its initial recommendations to Alaska's Congressional delegation, Alaska's Governor and the Alaska State Legislature. In 2007 and 2008, many of these recommendations led to substantial changes in Alaska law through legislation offered by the Governor and enacted by the Legislature. Among the new legislation's salient features:

- Authorization for communities to establish their own distribution sites to inconvenience alcohol bootleggers
- An amendment that lengthens the time period before a community can vote to change its wet or dry local option status
- A prohibition on shipments of alcohol to residents of dry villages
- A limit on possession of materials used to make home brew in dry communities
- An amendment that adds a rural member to the Alcohol Beverage Control Board
- Creation of a statewide database of the sales of alcohol into local option areas, which allows monitoring what bottles of alcohol go into "damp" communities that might be destined for importation into dry communities
- An amendment to the civil forfeiture statute to resolve timing issues
- An increase on the penalty for bootlegging, with a progressive penalization scheme that is akin to DUI
- Repeal of AS 12.20.010 regarding double jeopardy

The Commission's focus on rural law enforcement was also a catalyst for the state's sustained funding of multiple public safety initiatives:

- The Alaska State Troopers and United States Postal Service agreed to cross



deputize Postal Inspectors, and the Alaska State Troopers have implemented that agreement.

- The Alaska State Troopers created a sub-hub in the Native Village of Selawik, designating an office and residence for use by a roving Alaska State Trooper so that the troopers do not have to rely on the regional hub as a home base.<sup>13</sup>
- The Alaska Department of Public Safety is providing additional funding to non-profit organizations to enhance Village Public Safety Officer<sup>14</sup> (VPSO) salaries and reflect their service in providing probation and parole functions.
- The Alaska State Legislature's VPSO Task Force recommended an increase of 15 VPSO positions for each of the four succeeding years. This goal was accomplished. To further this effort, Governor Sean Parnell has also committed his administration to ensuring that there is a law enforcement presence in every village that desires it, and has promised to expand the VPSO Program by 15 positions per year for 10 years.
- The state pursued funding for cross-training that would integrate Village Police Officers and Tribal Police Officers<sup>15</sup> into the VPSO training program provided by the Alaska State Troopers, which would both eliminate the need for a tiered certification system and increase the level of training and certification achieved by tribal and village police officers. The state has committed substantial resources to fully realize this effort, which is currently in the developmental stages, and is seeking partnerships with both the Bureau of Indian Affairs Office of Justice Services and Bethel-based Yuut Elitnaurviat toward this end.<sup>16</sup>
- The Department of Public Safety has implemented a significant policy change that permits placement of VPSOs in communities that are on the road system,

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<sup>13</sup> While this particular experiment did not succeed because the staffing demands in other areas within the hub were too great, it led to implementation of a new concept to address the same problem. Alaska State Troopers created two new positions dedicated to the Native Village of Selawik and opened a full time Trooper Post. Email from Joseph A. Masters, Commissioner, State of Alaska Department of Public Safety, to Donna J. Goldsmith, Special Assistant to the Alaska Rural Justice and Law Enforcement Commission, December 19, 2011 (on file with Donna J. Goldsmith).

<sup>14</sup> The state implemented the Village Public Safety Officer Program in 1981 to offer remote villages a trained officer who can provide first responder law enforcement, fire fighting, search and rescue, water safety, and emergency medical services. The management authority for the VPSO Program resides in three entities: the village where the VPSO is located; the regional non-profit Native corporation that receives funds from the Department of Public Safety; and the Alaska State Troopers. VPSOs receive training from the Troopers, but are employees of the respective non-profit Native corporation that receives funds for their service. VPSOs do not carry firearms.

<sup>15</sup> VPOs are employees of the village government, and TPOs are tribal employees. Historically, they received their minimal law enforcement training through grants from the United States Department of Justice that were administered by the state, or, infrequently, by the Bureau of Indian Affairs.

<sup>16</sup> Yuut Elitnaurviat is a 501c(3) corporation dedicated to providing training and education opportunities for the people of the Yukon-Kuskokwim Delta Region, offering culturally relevant and regionally responsive training programs.

where previously they were restricted to communities that were not on the road system.

- The Department of Public Safety has also adjusted its policies to permit placement of a second VPSO in communities with populations of sufficient size.
- The Department of Public Safety has requested and received \$1,000,000 per year for the Alaska Housing Finance Corporation to provide funding for dedicated Village Public Safety Officer housing for fiscal years FY2011 and FY2012. Similar funds have been requested for FY2013.

The Commission's focus on the non-criminal aspects of substance abuse was a catalyst for the state's multi-year sustained funding of the Governor's sexual assault/domestic violence initiative, which includes funding for many prevention programs in rural Alaska.<sup>17</sup>

#### IV. ACTIVITIES AND EFFORTS AFTER INITIAL REPORT

After issuing its *Initial Report and Recommendations* in 2006, the Commission embarked upon two parallel endeavors. First, it reconstituted four working groups to concentrate, respectively, on police standards and cross-designation, the Indian Child Welfare Act (ICWA), alcohol interdiction and jurisdiction, and technology. Second, the Commission convened two educational forums involving legislators and policymakers in Alaska. Following are summaries of both efforts.

##### A. Work Groups - Phase Two

The four phase-two work groups were comprised of Alaskans with specific expertise related to each group's respective charge. For the most part, the work groups used as their departure point work that had been completed during the first phase of the Commission's work. While their specific recommendations are included in Appendix C to this report,<sup>18</sup> we offer a brief commentary about the progress of each group.

***Police Standards and Cross-Designation.*** The Commission charged this work group with development of recommendations for a statewide, uniform and tiered system of certification and training for VPSOs, VPOs and other public safety personnel, and for

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<sup>17</sup> Four of the most notable of these multi-year programs serve Dillingham, Bethel, Sitka and Kodiak and surrounding communities. See Rural Community DVSA Pilot Project Grantee List, State of Alaska Department of Health and Social Services Fact Sheet, February 1, 2011, available at <http://hss.state.ak.us/press/2011index.htm/>.

<sup>18</sup> Because the Indian Child Welfare Act Work Group was not able to complete its work, the Commission has not included the draft Memorandum of Understanding in this report.

cross-jurisdictional designation of law enforcement officials by different government agencies. In response to its charge, the group recommended a two-pronged approach. First, it recommended amending Title 29 of the Alaska statutes, to increase the population criteria for the definition of "village." Second, the group recommended that the Alaska Police Standards Council amend its regulations to create and sustain a tiered system of certification and standards for law enforcement personnel that would create three classes of Peace Officer, as well as sub-classes, which would set standards for recruiting, selection and training, as well as provide officers with a clear career path and potential for upward mobility.

***Indian Child Welfare Act.*** The Commission directed this group to develop a template Memorandum of Understanding to be used by the state and any signatory tribes in those cases where the state and the tribe share concurrent jurisdiction over Indian Child Welfare Act proceedings. During the course of those efforts, the Alaska Supreme Court issued its decision in *Native Village of Tanana v. State of Alaska*,<sup>19</sup> holding that the tribes in Alaska share inherent, concurrent sovereignty over child protection cases involving their children. The *Tanana* decision altered the orientation of the work group's effort and instigated significant changes within the state's child protection and judicial systems. The Commission continues to urge the tribes and the state to develop robust protocols regarding the exchange of information in child protection cases.

***Alcohol Interdiction and Jurisdiction.*** The Commission directed this group to develop recommendations regarding increased local control over alcohol and drug interdiction in rural Alaska. It concurred in the work group's conclusion that rural Alaska residents should be able to participate in efforts to stem the unlawful importation of alcohol into their communities.

***Technology.*** The Commission charged this work group to evaluate how to use existing technology in rural Alaska to improve law enforcement and judiciary capabilities in rural Alaska, and asked the group to consider increased collaboration between state and tribal governments, courts and law enforcement agencies, as well as technical issues relating to the use of the Internet and current med-satellite links in rural Alaska. In conjunction with concurrent initiatives instigated by other rural advocacy groups at that time, the Commission supported additional funding from the federal government to assist in implementation of these recommendations.

## **B. Educational Forums**

There is no doubt that the unique geographical, political and economic landscapes that comprise rural Alaska present extreme challenges regarding the delivery of essential government services in rural communities. While tribal governments in Alaska continue to build their capacities to provide critical services that have not otherwise been

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<sup>19</sup> 249 P.3d 734 (Alaska 2011).

available in many rural communities for decades, jurisdictional conflicts continue to arise in a time in history when cross-jurisdictional cooperation offers the most practical, effective and efficient use of governmental resources. Collective expertise and testimony from residents of rural Alaska impressed upon the Commission the notion that enhanced state-tribal relations would vastly improve the quality of life in rural communities.

The Commission was ever mindful, however, that a prerequisite for improved intergovernmental relations between the state and the tribes is a better understanding among state decision-makers, in particular, of the issues and obstacles to cooperation. For that reason, the Commission convened two educational forums<sup>21</sup> to provide an opportunity for tribal leaders and state legislators and policymakers to get to know one another in a facilitated conversation. Participants in these forums explored the unique needs of rural, predominately Alaska Native communities, and the legal and cross-cultural issues that often serve as obstacles to intergovernmental coordination and communication. Following is a summary of what occurred during these forums.

### **1. 2009 Retreat**

In January 2009, the Commission convened a two-day legislative retreat regarding the challenges facing rural Alaska Native communities, the foundation for tribal governmental authority and the jurisdictional conflicts that continue to arise as Alaska Native peoples in rural Alaska address some of the issues affecting their sense of personal safety and wellbeing. The retreat offered a primer on the application of federal Indian law in Alaska, as well as an opportunity for legislators, members of the Commission and six invited experts to discuss how the state and tribal governments might work more cooperatively to better serve rural Alaskans.

The experts offered three observations that participants took to heart:

- Government-to-government issues will never disappear
- Any hope of improving government-to-government relationships will require establishment of some mechanism to address these issues other than through litigation
- It will take an act of pure political will to accomplish anything of lasting importance that will improve inter-governmental relationships and, therefore, improve the lives of all Alaskans

The participants in this forum formulated two proposals that called for the creation of:

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<sup>21</sup> Both meetings took place at the Alyeska Resort in Girdwood, Alaska.

- An Office of Tribal Affairs within the Governor's cabinet, which would coordinate all tribal-state relations and inform the Governor
- An independent, stand-alone Commission on Tribal Affairs created by the Alaska State Legislature, whose goals and activities would be governed by law and not restricted by the views of a particular administration

While the Commission took no formal action on these proposals, both themes provided a backdrop for the Commission's subsequent discussions and deliberations.

## **2. 2011 Tribal-State-Federal Dialogue**

Expanding upon threads from the 2009 forum, the Commission convened a second dialogue between state and tribal leadership in July 2011, facilitating a discussion as to how state, tribal, local and federal governments might work together to maximize their respective resources and improve the delivery of essential services to rural Alaskans.<sup>22</sup> Discussions occurred regarding recent changes in state case law affirming the inherent sovereign authority of the federally-recognized tribes in Alaska over child protection matters involving their children, of the tribes' and the state's concurrent jurisdictional authority over such matters, and the state's dedicated efforts to implement changes in child protection and court practice and procedure to reflect the tribes' concurrent authority.

During this dialogue, the state informed participants about ongoing discussions with one of the tribes regarding implementation of an agreement that would authorize the tribe to address juvenile minor consuming matters that are outside of the jurisdiction of the state's Division of Juvenile Justice. If finalized, this agreement would realize one of the recommendations made by the phase-one alcohol work group.<sup>23</sup>

Participants also heard from two experts who offered their experiences and insights regarding the benefits that can accrue from improved tribal-state relations. While both experts provided detailed information regarding efforts to formalize tribal-state relations in their respective states, the Commission was also struck by the sentiment, expressed by both speakers, that the successes of tribal-state intergovernmental efforts result in both tangible and intangible effects, bringing together stakeholders to talk, instead of litigate, as well as implementing a formalized relationship. Central to their collective experience was an observation that to enhance intergovernmental communication, coordination and cooperation resulted in enduring cross-cultural friendships, which ultimately strengthened the dialogue to the benefit of all concerned.

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<sup>22</sup> The Commission invited six members of the Alaska State Legislature (three each from the Senate and the House of Representatives), six tribal leaders, and six from the state's Executive Branch to participate in this dialogue.

<sup>23</sup> See *Initial Report and Recommendations*, Recommendation 5 (JS-6), at 73.

## V. FINAL RECOMMENDATIONS

The Commission is proud of the work that it has undertaken, and believes that it has, on several fronts, “moved the ball forward.” As it completes its business, the Commission offers two final recommendations to supplement those made in its *Initial Report and Recommendations*.

### A. The Commission’s Work Should Continue.

The Commission’s achievements justify, and the Commission recommends, that the work of the Commission continue. The Commission recommends that the continuing entity, whether it be federal or state, proceed with the same charge, to allow continuation of a robust dialogue among the various stakeholder entities represented on the Commission that is both active, and supported, by the state and tribal governments. While some of the benefits that have accrued as a result of the Commission’s work are somewhat intangible and not readily identified, there is little doubt that the Commission’s work has influenced a variety of accomplishments within state and tribal governments, helping to:

- Facilitate discussions among state, tribal, federal and corporate stakeholders by providing a mechanism and forum through which dialogue could address misconceptions
- Provide a forum for non-adversarial problem solving
- Inform public policy
- Shape Governor Parnell’s Initiative on Domestic Violence and Sexual Assault
- Increase the number of VPSOs and Alaska State Troopers available in rural Alaska communities

Whatever final institutional shape the new deliberative body takes, if it is other than a continuation of the Commission as currently constituted, the Commission urges that it include the same stakeholder groups that comprised the Commission, as well as the Commissioner of the Department of Health and Social Services, a representative of the Alaska State Court System and additional tribal representation to expand upon the tribal perspective.

**B. All Levels of Government Should Aggressively Pursue Alcohol Interdiction.**

*Alcohol abuse is the single most dominant issue to which many deadly social ills in rural Alaska are tied.* The impact of alcohol abuse has an insidious and devastating impact on the health - and future viability of - rural Alaska communities. Any proposed solutions should look to, and rely upon, the detailed toolbox that has resulted from the work product of both of the Commission's work groups, and must maximize the collective roles of tribal, state, local and federal governments. However, any solution must distinguish between the twin goals of punishing alcohol-related criminal behavior and ridding communities of alcohol. Both goals must be accomplished simultaneously, utilizing different mechanisms to accomplish each. Neither criminal sanctions nor interdiction, alone, will rid rural communities of alcohol.

Without doubt, state, tribal, municipal and federal governments should work cooperatively to engage in extensive prevention efforts that include, but should not be limited to, community education. To ensure effectiveness of these efforts, the Commission urges the state and federal governments to consult local communities regarding the cultural relevance of any proposed education effort, and to ensure that local residents are integral participants in these efforts.

Additionally, as Alaskans continue to evaluate how best to address the challenges of substance abuse in rural Alaska, the Commission urges consideration of the full panoply of the as-yet unaddressed recommendations of the Commission's alcohol work group, which follow. The spectrum of approaches are organized into five general categories: 1) prevention; 2) development of local option laws; 3) Alcohol Beverage Control Board action; 4) enforcement; and 5) jurisdiction.<sup>24</sup>

**1. *Prevention***

The Commission is keenly aware that simply reducing the supply of alcohol that flows into rural Alaska will not eliminate alcohol and substance abuse in rural Alaska without simultaneous efforts to reduce the demand for alcohol, educate communities and offer culturally relevant treatment options. With this in mind, the Commission urges full consideration of the wide array of recommendations that follow.

- a. Support alcohol abuse prevention programs geared to help young people make healthy choices.*

State, tribal and federal governments should consider partnering with the private sector

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<sup>24</sup> While the Commission has not formally adopted each of these recommendations, it urges any successor agency to give full consideration to each recommendation.

to support a variety of prevention programs that:

- Help young people learn to make healthy choices
- Link youth and adults in community and cultural activities
- Provide Alcohol/Drug Information Schools for first time misdemeanor alcohol-drug related offenses
- Promote community responsibility for preventing and addressing alcohol related problems.

There is an ever-increasing need to reduce or eliminate communities' tolerance of alcohol abuse, which influences a growing number of young people who emulate their community's tolerance. Implementation of a variety of programs aimed at prevention would reduce the number of young people who abuse alcohol, resulting in a corresponding reduction in alcohol related violence, crime and intentional and unintentional injuries.<sup>26</sup>

*b. State and federal governments should cooperate to create a pro-sobriety public information program.*

The state and federal governments should consider a jointly sponsored two-pronged "pro-sobriety" public information program to heighten community awareness and emphasize the importance of prevention. This program should establish an office that can assemble and make available to rural communities vital information resources, and as well as a system of grants to support local communities or groups wanting to promote sobriety. A cross-jurisdictional "pro-sobriety" public information campaign would heighten community awareness and provide much-needed support for locally driven education efforts regarding the benefits of sobriety.

*c. Create a state liaison to assist tribal courts*

The state should consider designating a state "minor consuming" specialist within the state's Division of Juvenile Justice to serve as liaison between village governments and courts on "minor consuming" cases, and amending state law to provide a mechanism that enables tribal courts to refer to state court those juveniles who fail to respond to tribal intervention efforts.

*d. Find funding for private carrier interdiction*

Absent changes to state or federal law previously recommended by the Commission, consider identifying a private funding source that could provide commercial air

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<sup>26</sup> The phase-one alcohol work group initially offered this recommendation, which the Commission adopted as Recommendation 29 in its *Initial Report and Recommendations*. See *Initial Report and Recommendations* at 83-84. Subsequently, the phase-two alcohol work group concluded that this recommendation deserved emphasis and reiterated it.



enterprises the resources to carry out private screenings of cargo and passenger luggage for alcohol that is transported to dry villages. Private transportation entities can and should do more to interdict the flow of alcohol into dry villages. Neither the Alaska State Constitution's right to privacy or right to be secure from unreasonable search or seizure, nor the Federal Constitution's Fourth Amendment right, prevent *private* searches of this kind.<sup>27</sup> Such efforts could include random or systematic cargo "dog sniffs," and better signage to raise public awareness. Case law permits law enforcement agencies to act upon reports from private searches as long as the searches are not conducted at the behest of a law enforcement agency. Some private carriers have indicated a willingness to assist in private screening efforts that do not present any significant inconvenience to legitimate, non-bootlegging customers.

- e. *Require private carriers to take reasonable steps to check cargo for illegally shipped alcohol.*

The Alaska State Legislature should consider amending state law to require transportation businesses that routinely operate within local option areas to implement reasonable standards for screening cargo and luggage for alcohol. Current law sanctions only the knowing importation of alcohol in violation of a local option. Any newly enacted sanction should include an affirmative defense that the business implemented reasonable measures to screen its shipments for alcohol.<sup>28</sup>

## **2. Local Option Laws**

Communities that are "wet" present significantly greater law enforcement and alcohol remediation costs than dry communities. With this in mind, the work group recommended amending state local options laws to provide local communities with even greater incentives to become "dry." Following is a summary of these recommendations.

- a. *State revenue sharing should provide significant incentives for local communities to become and remain "dry."*

The Alaska State Legislature should consider amending state law to offer communities revenue-sharing financial incentives to become and remain dry, and lesser incentives to become "damp." If revenue sharing is not offered to unincorporated municipalities, the

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<sup>27</sup> The 4<sup>th</sup> Amendment of the United States Constitution protects citizens against federal government abuses, the Alaska Constitutional right to privacy protects citizens against state government abuses and the Indian Civil Rights Act protects citizens against tribal government abuses. *See* U.S. CONST. amend. IV; Alaska Const., art. 1, § 22; and the Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1301-03 (1968).

<sup>28</sup> The work group concluded that even if a state or federal court were to determine that the results of such a search is inadmissible in a criminal prosecution, the interdiction effort would be worthwhile, as it would prevent alcohol from reaching dry villages.

legislature should create an equivalent financial incentive for unincorporated local option communities.

- b. Amend local option laws to enable tribal councils to adopt local options independently.*

Local governing bodies currently have authority under state law to adopt ordinances on a wide variety of subjects without conducting a community plebiscite. The Alaska State Legislature should consider whether local governing bodies, including Alaska Native villages, should have the same authority to regulate alcohol independently without being required to conduct a community plebiscite. This could be accomplished by amending AS 04.11.491(a) to authorize the local governing body of either a municipality or established village to make this change, which change could be repealed by plebiscite under AAS 04.11.495 or changed under AS 04.11.493. A statutory authorization of this kind would decrease existing impediments for communities that are moving toward “dry” status.

- c. Extend local option laws to encompass public intoxication.*

The Alaska State Legislature should consider amending local options laws to include an option that prohibits public intoxication within a local option area. Under current local options law, “possession by consumption,” i.e. being drunk within the village, cannot be proscribed, making rural communities more vulnerable to public intoxication.<sup>29</sup> An amendment of this kind would offer villages increased flexibility for addressing this situation.

### **3. Alcohol Beverage Control Board**

To address the increase in expenditures that would result from implementation of some of its recommendations, the work group recommended two options to increase revenues that are directly related to alcohol consumption, as summarized below.

- a. Adjust licensing fees for inflation*

The Alaska State Legislature should consider amending state law to increase licensing fees, adjusting for increases in the costs of remediating alcohol damages. Consider tying future licensing fee adjustments to future increases in the Consumer Price Index in a manner similar to that used under the Alaska Exemption Act.<sup>30</sup>

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<sup>29</sup> See AS 04.11.501(d).

<sup>30</sup> See AS 09.38.115.

*b. Designate a program receipt for ABC fines*

Consider amending AS 37.05.146(c) to create a statutorily designated program receipt from Alcohol Beverage Control Board fines to tie fines imposed for violations of Alcohol Beverage Control Board regulations to a funding source for programs designed to remediate problems resulting from alcohol abuse throughout the state. Because the Alcohol Beverage Control Board has some discretion over these fines, the receipts should not go directly to the ABC Board, to avoid any appearance of a remunerative interest.

**4. Enforcement**

There is little doubt that existing state and federal law enforcement mechanisms related to alcohol-related criminal activity could be strengthened in a variety of ways to make available additional remedies in the arsenal used to battle alcohol abuse. Community education and prevention efforts, coupled with local options aimed at preventing alcohol from entering the community, cannot, without the support of sanctions, stem the flow of alcohol into rural Alaska. Following is a summary of the work group's recommendations regarding improvements to existing alcohol-related enforcement mechanisms.

*a. Civil Forfeiture*

The federal Drug Enforcement Agency now requires that property to be forfeited pursuant to criminal proceedings *in Alaska* must be in Drug Enforcement Agency control within 30 days of seizure. This has had a chilling effect on the state's referrals to the Drug Enforcement Agency for federal prosecution unless the state is able to surrender the property during the course of its own criminal prosecutions. This requirement has, thus, created roadblocks to federal prosecutions. To expand the range of remedies available against alcohol and drug related criminal activity, the Drug Enforcement Agency should reconsider its policy, eliminate the 30-day rule, and amend any regulations or laws that are necessary to accomplish this change.

*b. Expand use of alcohol bracelets*

The state Division of Juvenile Justice and the Alaska State Court System should consider expanding the use of "alcohol bracelets" to help monitor individual compliance with court-ordered alcohol abstinence. There is a need for development of more efficient ways of monitoring and enforcing these orders, as there are no available resources to monitor individual compliance in rural Alaska. Wider availability of this technology could help reinforce individual willpower.

*c. Create a designated program receipt for civil forfeitures*

The Alaska State Legislature should consider amending AS 04.16.220(k) to create a

statutorily designated program receipt for civil forfeitures. Under current law, while the state may share a portion of the forfeiture proceeds with participating municipal law enforcement agencies, the remaining share is returned to the state's general fund. A designated program receipt would help fund other options and recommendations, and provide additional support for alcohol interdiction efforts.

- d. *Enhance statewide database to restrict residents in dry communities from taking delivery in damp communities*

The Alaska State Legislature should consider amending state law to ban written order sales to residents of dry communities for delivery in damp communities. Currently, residents of dry communities can take delivery of alcohol into damp areas, where it is legal to receive alcohol. The proposed amendment would reduce the ability of bootleggers to buy their legal monthly limit of alcohol in damp communities and then bring this alcohol into dry communities.

- e. *Reintroduce legislation to prevent shipment of alcohol in plastic bottles*

To improve detection of illegal shipments of alcohol to rural Alaska, the Alaska State Legislature should consider reintroducing a legislative ban on shipments of plastic bottles by air, with an exemption for those shipped to community distribution sites. Currently, it is difficult to detect illegal shipments of Alcohol to rural communities, particularly when it is shipped in plastic containers. Glass containers would increase the shipping weight and facilitate detection, improving enforcement mechanisms related to illegal alcohol importation and reducing the availability of illegal alcohol in rural Alaska.

## 5. Jurisdiction

As the Commission's congressional mandate makes clear, the state judicial system does not have a sufficient profile in rural Alaska communities. At the same time, state-tribal jurisdictional conflicts and state policies have often prevented tribal courts from filling this tremendous void. While the Commission did not have sufficient funding or time to address issues surrounding the role of tribal jurisdiction and authority as it relates to alcohol abuse, the alcohol work group made a number of recommendations regarding tribal authority, as summarized below.

- a. *Create village alcohol and controlled substance interdiction zones*

Congress should consider enacting legislation that authorizes Alaska Native villages to establish "Alaska Native Village Alcohol and Controlled Substance Interdiction Zones," creating protection zones within which villages can impose their own culturally appropriate rules. Because tribal government is often the only physical governmental presence in many remote communities throughout the state, it is well situated to enforce

and adjudicate minor alcohol offenses in remote communities, and is able to intervene earlier and more effectively.

*b. Create specialized village circuit courts*

The Alaska State Legislature should consider amending state law that authorizes creation of specialized alcohol courts known as “Village Circuit Courts,” which would enable rural villages that have adopted or may adopt a local option law to exercise greater control over local options, subject to change by local plebiscite. Each village would have its own court with limited subject matter jurisdiction, personal jurisdiction over anyone committing an offense against the local option ordinance, and territorial reach established within state law. A three-judge panel comprised of a state magistrate and two individuals appointed by the tribal council would serve as a Village Circuit Court’s judicial officers. The magistrate would conduct trials and rule on evidence, riding circuit on a regular schedule to serve a group of villages. Tribally appointed judges would be full time village residents, respected by the village community, and would serve a set term subject to dismissal only for cause.<sup>32</sup>

*c. Give full faith and credit to tribal judicial civil judgments*

The Alaska State Legislature should consider enacting a state statute that accords full faith and credit to tribal court civil money judgments in alcohol cases, which would expand the options available for effective enforcement in tribal civil alcohol cases. Tribal remedies would benefit from state assistance regarding enforcement. Current state law allows enforcement of civil money judgments from other jurisdictions – a parallel tribal remedy would enhance individual incentives and emphasize cooperation between state and village governments.

*d. Develop tribal-state cross-jurisdictional compacts*

The Alaska State Legislature should consider amending state law to authorize development and implementation of tribal-state compacts that delineate shared jurisdiction and law enforcement authority in the regulation of alcohol. Current state law does effectively control the illegal importation of alcohol into rural communities. State-tribal cooperative law enforcement efforts would maximize use of respective resources in efforts to curb alcohol abuse in rural Alaska.

## **CONCLUSION**

The Commission remains cognizant that much remains to be done to help the residents of rural Alaska eliminate alcohol and substance abuse from their communities. Alcohol

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<sup>32</sup> For a more detailed description of this recommendation, see Appendix C, Recommendation 23 of the Phase Two Alcohol Work Group.

abuse and its myriad attendant behaviors continue to stymie the efforts of rural Alaskans to participate fully in their communities. To maximize the options available to these residents to address this scourge, and enhance their chances of success, the Commission urges full consideration of all of the recommendations contained in its *Initial Report and Recommendations*, and in this *Final Report*.

In addition, the Commission is fully aware that during its deliberations the playing field has continued to evolve, offering up new data, new information and new approaches to problem solving. Behavioral science has advanced substantially during the past 20 years, with a hope that new behavioral interventions can achieve better results with resolving negative behaviors such as substance abuse, domestic violence and suicide, among others. With this in mind, the Commission strongly encourages expansion of public policy research and discussion of new and innovative methods for combating social problems in rural communities.