

Dear Rep. Claman,

Thank you for the invitation to submit written comments to your important bill following my attendance at Friday's meeting. I'd like to preface my specific comments to HB183 with a few general observations:

1. Alaska Natives are chronically under-represented in our criminal justice system, especially in courtrooms – judges, clerks, prosecutors, defense counsel, and juries. On the flip side, Alaska Natives are chronically over-represented in our prisons. In my opinion, there's a causal connection between the two, a view influenced by my conversations with many Alaska Natives, the 1971 opinion of Chief Justice Boney in Alvarado v. State, findings presented by the Alaska Advisory Committee ("AAC") to the U.S. Commission on Civil Rights in 2002, and testimony presented to the Alaska Judicial Commission ("AJC") in November 2020.
2. The criminal activity that Alaskans want the Commission to help prevent is greatly perpetuated by alcoholism, substance abuse and inadequate treatment for those who are often victims themselves. This is especially true in the troublesome areas of domestic violence and sexual assault. Harsher prison sentences in effect since 2006 haven't resolved this plague but have added to state fiscal woes. Harsher prison sentences lead to greater resentment, which may then be unleashed in a drunken rage and put victims at even greater risk. The Commission should be applying significant focus to making recommendations on how counseling and rehabilitation services can be improved and made available. A recent case supporting this view is State v. Skeek, 1JU-18-00071CR, which concerned citizens from Kake asked me to look at. What I found was an inter-family tragedy that underscores our historical failure to resolve the real problems. Mr. Skeek was drunk out of his mind the night of his crime and doesn't remember what happened, but afterwards expressed significant remorse if he did anything. At sentencing the victim and her mother supported the 1 or 2 years previously offered by the State to Mr. Skeek in an earlier plea bargain – a term below the presumptive range. After their win at trial, the State was now pushing for 25 years made possible by presumptive sentencing that brought into play a 2004 DUI by about one month. Not represented at sentencing was Mr. Skeek's immediate family who relied on his financial support and Kake residents who relied on his expertise to help keep heavy equipment running. The disparate perception of justice between the State and everyone else is further harming the victim. According to the prosecutor, some family members have directed hard feelings towards the victim and her immediate family for speaking up and going to the authorities. I watched for 3 and a half hours as legal-trained minds struggled to solve an alcohol problem for which they have not been provided adequate tools by the legislature. All participants including the judge seemed to agree that Mr. Skeek could benefit from effective alcohol counseling. The prosecutor even acknowledged that Mr. Skeek is a former sexual abuse victim who may have never received proper counseling for his own victimization. Alaska's previous emphasis on prison time over effective rehabilitation put the trial court judge in a difficult situation and he eventually punted to a 3 judge panel. Even if that panel takes a middle ground, resentment will undoubtedly grow and find a new outlet. We need to start giving our criminal justice professionals effective tools that can break the vicious cycle.
3. The role of the AJC in assisting the Commission is an area of significant concern. As you are aware, for the past year and a half I have made extensive efforts to get the AJC to include Alaska Native tribes in their judicial surveys and to publish those results. Their steadfast refusal, and the role of their chief justices in that refusal, is troubling and I hope the motives of the AJC will be scrutinized by both the House and Senate Judiciary Committees.
4. The State is known for doing study after study after study about the inadequacies in its criminal justice system. And then doing nothing. This failure was singled out in the AAC's 2002 report, *Racism's Frontier*.

“How many more reports proclaiming this powerlessness, this hopelessness must we publish? How many more commissions, committees, councils do we have to testify to before we see some results?” Ibid., p. 49. Another published comment in the report dates our failure to resolve these issues back 47 years and counting! Einstein defined insanity as doing the same thing over and over again expecting a different result. The State needs to change up its approach and I think your proposed amendments need substantial modification.

Specific comments to HB 183:

1. In line with my first general observation, your proposed amendments dilute Alaska Native representation on the Commission to just 6% while Alaska Native representation in our prisons continues to hover at 40%. It’s unconscionable for the legislature to promote this practice of disparity in a statute designed to bring stakeholders together to evaluate criminal justice practices and make recommendations. The number of Alaska Native representatives on the Commission should be commensurate with the general population. I recommend increasing the Commission membership to approximately 22 and modifying AS 44.19.642(a)(4) to include 4 members of the Alaska Native Community.
  - a. In the same clause, I also have concerns with the power designated to the Alaska Native Justice Center (“ANJC”) for selecting a member[s] of the Commission.
    - i. I think the comments of Rep. Eastman on 1/21/22 pertaining to the statutory empowering of a private entity to make selections have merit. It seems appropriate for the selective power to be held by the federally recognized tribes. For instance, if 4 members of the Alaska Native community are to sit on the board, it might be appropriate for a tribal entity like the Central Council of the Tlingit Haida Indian Tribes of Alaska (“CCTHITA”) to select a representative for SE Alaska. Obviously, input from the tribes on this critical matter must be sought.
    - ii. My notes indicate Rep. Snyder asked if ANJC represented defendants’ rights besides victims’ rights. The responsive testimony from the ANJC rep on the telephone was in the affirmative. I don’t like having to say this, but unfortunately my experience with ANJC has been different. In May of 2020 I submitted an application to ANJC for help in overturning the wrongful conviction and 50 year sentence of Thomas Jack, Jr., an Alaska Native from the village of Hoonah. A staff attorney for ANJC responded that the facts I had laid out “certainly sounds like severe injustice” and “a new court appointed attorney assigned to the case with only a month to prepare is definitely disturbing”. The staff attorney forwarded my materials to “management” which then declined to do anything without any further explanation or discussion.
2. In a similar concern, your amendments eliminate existing statutory language in 44.19.465(c)(5) allowing the Commission to explore working with regional non-profit organizations, including tribes and tribal organizations. This elimination is troubling to me, especially in connection with the AJC’s adamant and concurrent refusal to include the opinions of tribes in their judicial surveys and reporting.
3. The Commission should have more influence from individuals directly involved in daily treatment and rehabilitation of substance and physical abuse. I recommend the HSS Commissioner have the power to appoint a representative from each of the profit and non-profit sectors whose primary mission falls within these parameters. I also recommend the Governor have the power to appoint a representative from a charitable, faith-based organization. I’m familiar with the Salvation Army and Catholic Charities and undoubtedly there are other qualified organizations operating in Alaska that the Governor may have confidence in. These groups have served Alaskans for decades and have a wealth of experience and insight; their voice should be heard and considered by the Commission members.

4. I recommend an advocate for those accused of crimes. Some innocent Alaskans are falsely accused, not afforded their constitutional rights, and wind up in prison. When I became convinced of Mr. Jack's innocence in the summer of 2019 and reached out to the Alaska Innocence Project for help, part of the response was that cases like his are not uncommon throughout Alaska. Other Alaskans take unfair plea bargains because they believe they won't get a fair trial and/or sentencing in court. This is also a common occurrence throughout Alaska according to a trusted source within the Department of Corrections. Citizens who fall into these categories could use a voice at the table along with the voice of victims.
5. In connection with general observation #3, I suggest reducing the influence of the AJC and the chief justice on the Commission. The duty of the Alaska Supreme Court is to uphold the Constitution and laws passed by the people of Alaska, not to have such a heavy influence on public policy. The duty of the AJC is to nominate and later recommend retention of individuals committed to uphold constitutional guarantees to Alaska's citizens. When the AJC fails and then resists resetting that basic principle as a priority, we have Trouble and the Commission should be free from their influence.
  - a. I recommend eliminating the chief justice or his designee as a member of the Commission. I further recommend the two remaining judicial positions on the Commission be designated by a joint agreement of the Department of Law and the Public Defender.
  - b. The Commission should have its own staff consistent with its own objectives, not the AJC's.
  - c. I'm curious what benefit is derived to the State by renaming the ACJC to include the words "Data Analysis"? In response to a question by Rep. Eastman, the Executive Director of the AJC testified that the amount of data and analysis of the Commission would be about the same. I'm concerned the name change generates a perception that reduces the standing of the Commission and promotes an image that its members are primarily analysts. Similar concerns are generated by the elimination of the statutory language in 44.19.645(a)(1) regarding evaluations, recommendations, and reporting mandates.
6. Reporting by various State agencies of racial and gender statistics should be made mandatory, not "as available" in AS 44.19.645(d)(3). Subsection (e) should be amended to require the judiciary to specifically include racial and gender statistics in the composition of juries impaneled to hear cases.
7. A clause should be added requiring transparency in the Commission's data and deliberations. Citizens should not be left in the dark like they are on AJC matters, where all deliberations and decisions take place behind closed doors. Public input should be welcomed and incorporated as it was in the AAC's 2002 study.

I first became aware of HB 183 just a few days ago so my comments are not as thorough as they should be. Please forgive me if I've misread any intent in your amendments. I look forward to your reply and would welcome the opportunity to work with your staff, the other members of the House and Senate Judiciary Committee, and important stakeholders to come up with acceptable language that will generate bipartisan support and hopefully passage of the amended statutes this session.

Please forward my comments to your colleagues on the House Judiciary Committee.

Thank You,

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Public Advocacy And Justice For All Alaskans