

ALASKA FEDERATION OF NATIVES



MOVING FORWARD IN PARTNERSHIP WITH ALASKA TRIBES TO ADDRESS PUBLIC SAFETY ISSUES IN RURAL ALASKA

Introduction and Background: In November, 2013, the Indian Law and Order Commission presented a comprehensive report to the President and Congress regarding public safety and Alaska Natives/American Indians, titled "*A Roadmap for Making Native America Safer*" (the "ILOC Report"). An entire chapter of the ILOC Report focused on "*Reforming Justice for Alaska Natives: The Time is Now.*" The Commission found that access to public safety and justice in rural Alaska communities is wholly inadequate or non-existent, and made recommendations for improving such access. Just as with previous commissions before it, a main component of the Commission's recommendations is for the State of Alaska to support tribal authority over public safety and justice locally in rural communities instead of actively resisting such efforts.

This Committee held a hearing on March 11, 2014 regarding the ILOC Report, and received an overview of the Commission's findings and recommendations. A second hearing has been scheduled today in order to hear recommendations from the Alaska Federation of Natives (AFN) regarding how the State of Alaska might address issues raised by the ILOC Report. Following are recommendations from AFN for the State of Alaska's consideration:

Overall Recommendation: Partner with Alaska Tribes Moving Forward. Undeniably, there has been a turbulent history between the State of Alaska and tribal governments situated within its borders. Individually, many legislators, administration and agency officials have made great efforts to work with tribes and support tribal authority in rural communities. But overall, the State, and in particular, the State Legislature as a body, has resisted efforts to engage with tribal governments on these issues. If there is one most important recommendation AFN can make to this Committee, it is to ask that the Committee, and the Alaska State Legislature, open itself to the idea that partnering with tribes in the State is not a loss of its own authority, but a gain of untapped resources that has the unique ability to address public safety and justice issues in areas of rural Alaska that the State has not been able to. This is not a zero sum game in which any recognition of tribal authority is a loss of state authority.

The clear message from the ILOC Report is that a sea change is necessary; critical to the improvement of the public safety crisis in rural Alaska is a fundamentally different approach to tribal authority and jurisdiction. We ask that this Committee take the lead in guiding the Alaska State Legislature toward working with tribes as partners -- moving forward as partners to respond to public safety and access to justice issues.



SPECIFIC “NEXT STEPS”

More specific recommendations follow that are not intended to be comprehensive or exhaustive, rather they serve as a starting point for a continuing discussion working together with the Legislature.

- **Review and Adopt Recommendations from Prior Commissions.** Recommended specific actions the State could take in addressing rural justice and public safety in Alaska already exist. Examples include the *Alaska Natives Commission, Final Report, Volumes I-III* (1994) from the Alaska Natives Commission, the *Final Report to the Governor* (1999) from the Alaska Commission on Rural Governance and Empowerment, and most recently, the *Initial Report and Recommendations of the Alaska Rural Justice and Law Enforcement Commission, 2006*, from the Alaska Rural Justice and Law Enforcement Commission (“Rural Justice Commission”).

The Rural Justice Commission was created by Congress to respond to needs related to justice and law enforcement in rural Alaska through Public Law 108-199. It consisted of Federal and State Co-Chairs and commissioners from numerous interests, including tribal authorities. The Rural Justice Commission (and prior Commissions) made numerous findings and recommendations that the State should review and consider implementing. The Rural Justice Commission’s Recommendations included (1) engaging in more partnerships and collaboration with tribes, (2) enlarging the use of community based solutions, (3) building additional capacity, and (4) increasing access to judicial services. In particular, the Rural Justice Commission found that the “State’s resistance to tribal courts” is a barrier to many proposed solutions, and recommended “tribes and the state reach agreement regarding tribal jurisdiction.”

- **Remove Obsolete Impediments to Tribal Authority and Encourage Better Relations with Tribal Governments.** In 2001, the Knowles Administration entered into a “Millennium Agreement” with Alaska tribes. The agreement was meant to be a “framework for the establishment of lasting government-to-government relationships.” In 2002, the State Attorney General’s office issued an opinion recognizing the concurrent jurisdiction of the State of Alaska and Alaska Tribes to initiate child protection proceedings. Two years later, with a new Administration, the Attorney General’s office issued an opinion reversing itself and asserting that tribes only have jurisdiction if a case is transferred under applicable federal Indian Child Welfare Act provisions, from state court. As political winds shift, the Millennium Agreement has since been ignored, and we are left with an AG opinion that has been rendered obsolete in a subsequent Alaska Supreme Court decision which found that the Opinion’s analysis and conclusions regarding tribal jurisdiction are wrong. To clarify the current status, the State should issue a current opinion recognizing tribal jurisdiction, or simply retract the 2004 opinion and leave the 2002 opinion in place. The Millennium Agreement should be resurrected and become an active policy document followed by State agencies. AFN recommends this Committee issue a formal request to the Attorney General for a new opinion in line with *Tanana*, or at a minimum revoke the 2004 Renkes opinion.

- **Support Intergovernmental and Cross-Jurisdictional Agreements Between Tribes and the State.** Currently, Tanana Chiefs Conference and the Department of Law are in discussions regarding an intergovernmental agreement to improve the delivery of justice in rural Alaska. AFN commends the Department of Law for working with TCC to engage in these discussions, and hopes that this is an effort that will result in a partnership between tribes and the State, perhaps as a beginning point. S.1474 the



Alaska Safe Families and Villages Act, includes an “Alaska Safe Families and Villages Self Governance Intergovernmental Grant Program.” This program encourages tribes and the State to enter into intergovernmental agreements relating to the enforcement of certain State laws by the tribes (e.g. misdemeanor alcohol or drug offenses).

In other areas, cross-jurisdictional agreements between Tribes and the State would support enhanced public safety and justice in rural Alaska. S. 1474 with proposed amendments also provides a mechanism for such agreements through the Alaska Safe Families and Villages Tribal Law Project.

- **Increase Efficiency and Provide Clarification Through Amending State Laws.** Alaska Supreme Court decisions have confirmed that Alaska tribes do have jurisdiction to exercise their authority in their communities. S.1474 and other efforts provide further support. The legislature can demonstrate the State’s willingness to partner with Alaska tribes moving forward by establishing clearer pathways in Alaska law for recognition and efficient processing of tribal court decisions. Examples include inclusion of tribal governments in Alaska’s UCCJEA, Uniform Enforcement of Foreign Judgments Act, paternity and vital statistics statutes, and civil and criminal procedure.

- **Enhance Collateral Efforts which support Public Safety and Justice in Rural Areas.** Tribal authority and efforts to address inadequate public safety and access to rural justice in Alaska are inter-connected with treatment programs, law enforcement, and victim assistance programs. A comprehensive approach would address these collateral efforts as well.

Examples:

- The majority of offenses in rural Alaska (criminal offenses, child protection, domestic violence) involve alcohol and drug abuse. Yet the State database does not sufficiently track an offender’s alcohol assessment/screening history. Judges need to know how many prior assessments have been done, and whether the offender is in compliance with any conditions which have been mandated. The criminal history database should be expanded to include assessment and compliance so that judges have a more accurate picture of efforts the offender has made to address alcohol or drug abuse issues.

- VPSOs are often forced to find shelters or “safe houses” for domestic violence victims, and have had to house them in their own homes because villages often have no such facilities. Support domestic violence programs with funding for domestic violence shelters and relocation travel for victims in life-threatening situations.

- **Support Successful Tribal Court Approaches.** There are numerous examples of tribal courts within the State that have successfully demonstrated the ability to deal most effectively with alcohol and drug abuse, child protection, and domestic violence issues locally. The Circle Peacemaking restorative justice approach in Kake, led by Magistrate Mike Jackson, is one such example. At the time of the Rural Justice Commission Report, Circle Peacemaking experienced a 97.5% success rate in sentences fulfillment, compared with the Alaska Court System’s 22% success rate. Tribal Courts within Tanana Chiefs Conference in the Interior routinely take jurisdiction in child protection matters and effectively work with families locally in the villages where they reside. The State should recognize such successes and seek ways in which to support them.



- **Support the Repeal of the Violence Against Women Reauthorization Act of 2013 (VAWA), Section 910.** A provision, Section 910, was inserted into the reauthorization of VAWA which provided a “Special Rule for Alaska” creating confusion around the ability of tribes in Alaska to issue and enforce domestic violence protective orders. S.1474, the Alaska Safe Families and Villages Act, contains a provision repealing Section 910. The State should support repeal of Section 910. There is currently a process in which tribes submit DV protective orders to state courts which are then entered into the state tracking system and enforced by State law enforcement. But Section 910 clouds the issue and is likely to result in attempts by perpetrators to fight violations on jurisdictional grounds. Repeal will remove the unnecessary uncertainty created by Section 910.

- **Support S.1474 the Alaska Safe Families and Villages Act, and AFN’s Proposed Amendments.** Senators Begich and Murkowski have jointly introduced S.1474, the Alaska Safe Families and Village Act. AFN has provided amendments to the legislation to the Senators that would include an “Alaska Safe Families and Villages Self Governance Tribal Law Project” which recognizes the concurrent jurisdiction of tribes exercising jurisdiction over matters relating to child abuse and neglect, domestic violence, drug offenses and, consistent with any local option law in effect in the community, alcohol-related offenses. This legislation if enacted as amended would further support tribal and State efforts to address child abuse and domestic violence, and the underlying drug and alcohol issues, most effectively in local communities.