

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 25, 2015

1:02 p.m.

MEMBERS PRESENT

Representative Gabrielle LeDoux, Chair
Representative Wes Keller, Vice Chair
Representative Matt Claman
Representative Max Gruenberg
Representative Neal Foster
Representative Bob Lynn

MEMBERS ABSENT

Representative Charisse Millett
Representative Kurt Olson (alternate)

COMMITTEE CALENDAR

HOUSE CONCURRENT RESOLUTION NO. 1

Urging the Governor to acknowledge officially the sovereignty of Alaska tribal governments, to create clear and consistent policies for increased state collaboration and partnership with tribes, and to direct the attorney general to conduct a complete review of the state's litigation against Alaska Native tribes; urging the Governor to acknowledge the inherent criminal jurisdiction of Alaska tribal governments over tribal members within the boundaries of their villages; urging the Governor to cooperate with tribes' efforts to transfer Native land to trust; and urging the Governor to support multilateral negotiations between tribal governments, nontribal municipalities, and the state government to delineate clearly tribal geographical jurisdictions.

- HEARD & HELD

HOUSE JOINT RESOLUTION NO. 3

Urging members of the Alaska delegation to the United States Congress to introduce substantially similar legislation to the Alaska Safe Families and Villages Act of 2013; urging the United States Congress to affirm the criminal jurisdiction of Alaska tribal governments over tribal members within the boundaries of their villages; urging the United States Congress to cooperate with tribes' efforts to transfer Native land to trust; and supporting multilateral negotiations between tribal governments,

nontribal municipalities, and the state and federal governments to delineate clearly tribal geographical jurisdictions.

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HCR 1

SHORT TITLE: GOVERNOR: TRIBAL SOVEREIGNTY AND JURIS.

SPONSOR(S): REPRESENTATIVE(S) EDGMON

01/21/15	(H)	READ THE FIRST TIME - REFERRALS
01/21/15	(H)	CRA, JUD
02/19/15	(H)	CRA AT 8:00 AM BARNES 124
02/19/15	(H)	Heard & Held
02/19/15	(H)	MINUTE(CRA)
02/26/15	(H)	CRA AT 8:00 AM BARNES 124
02/26/15	(H)	Heard & Held
02/26/15	(H)	MINUTE(CRA)
03/10/15	(H)	CRA AT 8:00 AM BARNES 124
03/10/15	(H)	Moved CSHCR 1(CRA) Out of Committee
03/10/15	(H)	MINUTE(CRA)
03/11/15	(H)	CRA RPT CS(CRA) NT 4DP 3NR
03/11/15	(H)	DP: DRUMMOND, NAGEAK, SEATON, ORTIZ
03/11/15	(H)	NR: REINBOLD, HUGHES, TILTON
03/25/15	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HJR 3

SHORT TITLE: CONGRESS: NATIVE TRIBAL JURIS. & AUTHORITY

SPONSOR(S): REPRESENTATIVE(S) EDGMON

01/21/15	(H)	READ THE FIRST TIME - REFERRALS
01/21/15	(H)	CRA, JUD
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02/26/15	(H)	Heard & Held
02/26/15	(H)	MINUTE(CRA)
03/10/15	(H)	CRA AT 8:00 AM BARNES 124
03/10/15	(H)	Moved CSHJR 3(CRA) Out of Committee
03/10/15	(H)	MINUTE(CRA)
03/11/15	(H)	CRA RPT CS(CRA) NT 4DP 3NR
03/11/15	(H)	DP: ORTIZ, SEATON, DRUMMOND, NAGEAK
03/11/15	(H)	NR: HUGHES, REINBOLD, TILTON
03/25/15	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE BRYCE EDGMON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented an overview on HCR 1 and HJR 3, as prime sponsor.

TIM CLARK, Staff
Representative Bryce Edgmon
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing on HCR 1 testified and answered questions.

MARY LUNDQUIST, Senior Assistant Attorney General
Opinions, Appeals & Ethics Section
Civil Division
Department of Law
Fairbanks, Alaska

POSITION STATEMENT: During the hearing on CSHCR 1, answered questions.

MARY BISHOP
Fairbanks, Alaska

POSITION STATEMENT: Presented testimony during the hearing on CSHCR 1.

TIM CLARK, Staff
Representative Bryce Edgmon
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing on HJR 3, testified and answered questions.

RON SUMMERVILLE
Juneau, Alaska

POSITION STATEMENT: During the hearing on HJR 3, offered testimony.

MARY BISHOP
Fairbanks, Alaska

POSITION STATEMENT: During the hearing on HJR 3, offered testimony.

ACTION NARRATIVE

[1:02:54 PM](#)

CHAIR GABRIELLE LEDOUX called the House Judiciary Standing Committee meeting to order at 1:02 p.m. Representatives Keller, Claman, Gruenberg, and LeDoux, were present at the call to order. Representatives Lynn and Foster arrived as the meeting was in progress.

CHAIR LEDOUX advised the two resolutions would be held in committee today.

HCR 1-GOVERNOR: TRIBAL SOVEREIGNTY AND JURIS.
HJR 3-CONGRESS: NATIVE TRIBAL JURIS. & AUTHORITY

[1:04:03 PM](#)

CHAIR LEDOUX announced that the first order of business would be HOUSE CONCURRENT RESOLUTION NO. 1, Urging the Governor to acknowledge officially the sovereignty of Alaska tribal governments, to create clear and consistent policies for increased state collaboration and partnership with tribes, and to direct the attorney general to conduct a complete review of the state's litigation against Alaska Native tribes; urging the Governor to acknowledge the inherent criminal jurisdiction of Alaska tribal governments over tribal members within the boundaries of their villages; urging the Governor to cooperate with tribes' efforts to transfer Native land to trust; and urging the Governor to support multilateral negotiations between tribal governments, nontribal municipalities, and the state government to delineate clearly tribal geographical jurisdictions, and HOUSE JOINT RESOLUTION NO. 3, Urging members of the Alaska delegation to the United States Congress to introduce substantially similar legislation to the Alaska Safe Families and Villages Act of 2013; urging the United States Congress to affirm the criminal jurisdiction of Alaska tribal governments over tribal members within the boundaries of their villages; urging the United States Congress to cooperate with tribes' efforts to transfer Native land to trust; and supporting multilateral negotiations between tribal governments, nontribal municipalities, and the state and federal governments to delineate clearly tribal geographical jurisdictions. [The committee continued its specific discussions on HCR 1 and HJR 3 later in the meeting.]

[1:04:12 PM](#)

REPRESENTATIVE BRYCE EDGMON, Alaska State Legislature, stated that the two resolutions [HCR 1 and HJR 3] before the committee are being put forward in tandem because they essentially are the same vehicles with HCR 1 being delivered to Governor Bill Walker, and HJR 3 being delivered to the United States Congressional Delegation. The intent of the resolutions is to bring attention to the increased role that tribal entities in the State of Alaska can provide in terms of better law enforcements and criminal justice services at the local level, and also to recognize the fact that the current system of highly centralized being provided through state agencies in large measure has in many instances failed to succeed. He pointed out that by recognizing that Alaska tribes can play a greater role in providing criminal justice services in Alaska has merit and deserves the attention of the legislature, executive branch, and Congressional Delegation. He noted that in a number of Alaska communities per se are still facing severe problems related to poverty, alcoholism, drug abuse, domestic violence, sexual assault, suicides and a number of other social ills that in some communities are moving forward at an epidemic level. He opined that these two resolutions, and the fact that Alaskan tribes can play a larger role in committing to criminal justice services fits in that category. He pointed to the State of Texas that has taken a number of measures to instill "smart justice" policies, and in doing so reduced the recidivism rate by 25 percent, save approximately \$3 billion in building new prisons, reduced its prison rates by 10 percent, and crime rate by approximately 20 percent. He said in arguing that Alaska tribes deserve more recognition, clearer and more consistent policies with Alaska State agencies, deserve attention at the Congressional level the Women and Safe Families Act would have provided had it been approved, are very worthy of the legislature's consideration. He pointed out that in the last 25 years there have a number of studies from various commissions, boards, and entities that have all essentially pointed to the same thing - if Alaska had more culturally sensitive law enforcement measures at the village level, that in looking through the eyes of reformative justice created not only just the offenders but also the victims and community itself. In that manner, recidivism could be brought down and reduce the high percentage of young Alaska Native males that enter into Alaska's criminal justice system. He suggested that at the misdemeanor level with minor offenses and then graduate up into felony offenses that end up populating the Department of Corrections (DOC) primarily at the rate of \$158 per day or almost \$60 thousand a year.

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REPRESENTATIVE EDGMON explained that the two resolutions have a lot of merit in promoting criminal justice measures at the tribal level in small Alaskan communities. He further explained that in downsizing state government to offer Alaskan tribes a greater role in misdemeanor cases and minor offenses at the local level, the legislature can reduce the amount of outflow of villages into the criminal justice arena. He noted that at the same time save the State of Alaska money and help to get rural Alaska directly on the pathway to reformative justice. He said it includes rural Alaska and the rest of the state notwithstanding.

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REPRESENTATIVE LYNN asked whether these resolutions relate to two separate systems of justice, one for Alaska Natives and one for everyone else.

REPRESENTATIVE EDGMON responded that the resolutions are non-binding, and that HCR 1 calls for better communication and recognition between the state agencies and the tribal entities that are providing "circle sentencing" or tribal court services at the local tribal community level. He stated that in no manner do the resolutions suggest that tribal court services associate itself with felony offenses, of which are under the purview of the Alaska State Troopers and the law of the land. He suggested that tribes be active in terms of more minor offenses at the community level. He remarked that CSHCR 1, asks that the state take engaging state agencies in working with the tribes on a community-by-community basis to have a better relationship and recognition. Possibly, he related, some of the minor offenses could be dealt with in a culturally sensitive manner in the local village that arrests certain behavior. He used the example of the 14-year old young man in Togiak who shot a dog and was deported almost immediately to the McLaughlin Youth Center Facility. Subsequently, he offered, six weeks later the boy was allowed to go home. Fortunately, that individual did not go down the pathway of the "broken window theory" of engaging in a more serious offenses only to become a felon in the criminal justice system doing no one any good and costing the state a lot of money. He said the two resolutions entertain a better dialogue for better communication between Alaska tribes and state agencies and that possibly at the Congressional level there could be a bill similar to the bill offered a couple of years ago that provided for recognition of

more criminal jurisdiction for Alaska tribes. He said the resolutions are not providing answers or saying that they provide the framework that might be in place between DOC or the Department of Public Safety and a local village. He reiterated that the resolutions encourage the Department of Public Safety to work more closely with local villages to employ measures regarding minor offenses that could be dealt with at the local tribal level.

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REPRESENTATIVE LYNN referred to the sponsor's comments regarding tribal government and asked whether he meant the city councils in various villages.

REPRESENTATIVE EDGMON responded that Alaska has 229 federally recognized tribes which is approximately 40 percent of all of the tribes in the United States. He related that these tribes function at various levels as some have active tribal courts, some are just forming tribal courts, and some have no tribal courts at all. He explained that communities like Kake, and other communities with more active tribal courts, have seen positive results in the engagement of local tribal entities regarding misdemeanor and minor offenses which do not involve felonies.

[1:15:21 PM](#)

REPRESENTATIVE LYNN referred to non-Natives living in primarily Native areas and asked about cultural sensitivity for them. He further asked if non-Natives are subject to the tribal government.

HCR 1-GOVERNOR: TRIBAL SOVEREIGNTY AND JURIS.

[1:15:41 PM](#)

CHAIR LEDOUX directed the committee's attention to HOUSE CONCURRENT RESOLUTION NO. 1, Urging the Governor to acknowledge officially the sovereignty of Alaska tribal governments, to create clear and consistent policies for increased state collaboration and partnership with tribes, and to direct the attorney general to conduct a complete review of the state's litigation against Alaska Native tribes; urging the Governor to acknowledge the inherent criminal jurisdiction of Alaska tribal governments over tribal members within the boundaries of their villages; urging the Governor to cooperate with tribes' efforts

to transfer Native land to trust; and urging the Governor to support multilateral negotiations between tribal governments, nontribal municipalities, and the state government to delineate clearly tribal geographical jurisdictions.

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TIM CLARK, Staff, Representative Bryce Edgmon, Alaska State Legislature, said that everything HCR 1 would ask of the governor would depend upon the state government specifically negotiating agreements with tribes to go over every detail of what the tribal jurisdiction would be, including what crimes. He remarked that most likely these agreements would have an actual laundry list of various misdemeanors and other crimes that the state would agree to for greater tribal authority. Also, he explained, the agreements would include clear statements that the state would retain concurrent jurisdiction.

REPRESENTATIVE LYNN opined that Anchorage is probably the largest Native village in Alaska and questioned how this would affect the Natives living in Anchorage.

MR. CLARK replied that as the sponsor envisions it, the resolution would not have a great effect on the Native population in Anchorage. He pointed out that the resolution is completely focused on Alaska Native villages and remote communities. In those areas, he remarked, the resolution is important regarding increasing their well-being, authority, responsibility, accountability, and capacity. The above would help them in dealing with not only some civil criminal jurisdiction at the local level, but also to have their court systems and institutions brought up to a level that can effectively deal with crime committed within the community borders, he stated.

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REPRESENTATIVE KELLER asked for the definition of the sovereignty of Alaska tribes in the title of the resolution. He pointed out that the dictionary definition is "governing without interference."

MR. CLARK said the resolutions in their current form, having emerged from the House Community and Regional Affairs Standing Committee, no longer touch on specific concepts of tribal sovereignty. He noted that the resolutions simply depend upon the state making very detailed specific agreements with tribal

communities over an increase of their capacity to deliver justice at the local level.

REPRESENTATIVE KELLER surmised that the title is in error.

MR. CLARK responded that the title is an artifact from the first original versions of the [resolution] that did go into matters of tribal sovereignty. In fact, he stated, the sponsor has been in discussions with the Legislative Legal and Research Services attorneys and the Revisor who writes the short titles. He advised that the Revisor cannot change the title to reflect the resolution more accurately until it passes one body of the legislature.

REPRESENTATIVE GRUENBERG asked that Mr. Clark repeat what he said previously.

MR. CLARK reiterated that in discussion with the Revisor it was his view that it was highly unusual to change the short title of the bill before it passed one body of the legislature.

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CHAIR LEDOUX advised the resolutions are not passing out of committee so the issue can be reviewed.

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REPRESENTATIVE KELLER said he would like to build context for his next question and referred to the WHEREAS [on page 1, lines 12-14], in which discusses the crisis at hand in dealing with poverty, lack of economic opportunity, alcoholism, drug abuse, domestic violence, and sexual assault. He opined that he has a hard time understanding how the resolution would address those issues. On the other hand, the message is consistent through the resolution that the answer is in local enforcement and local justice, he pointed out. He offered that local enforcement and local justice is important rather than just to have federal justice and federal enforcement, which would be a terrible situation for Alaskans. He reiterated that he understands the concerns but does not understand how the connection to a tribal government would address the issues any better than ... the constitution and local control is very specific in Article X, Section 2, which read:

Sec. 2. All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

REPRESENTATIVE KELLER continued that he believes in giving some justice responsibility to the boroughs and setting the equivalent of county courts to work on borough enforcement in policing. He questioned whether the sponsor had considered going that route as legislatively it could be accomplished by enhancing borough courts.

MR. CLARK described the resolutions as a more direct approach wherein the issue of attempts to alleviate crime and social ills in remote communities has been discussed for decades. Often, he explained, what has been identified as a contributing factor is a kind of distance delivery of justice to these communities. He said he does not mean only federal law enforcement, but state law enforcement as well. Unfortunately, he stated, the state has struggled to place law enforcement officers actually in remote villages within boroughs, incorporated small cities, and dozens and dozens of villages that exist in the unincorporated borough. He described the resolutions as steps currently within the authority of the administration to turn over certain responsibilities to these local communities when it comes to minor crimes, but serious crimes nonetheless. It could be accomplished in the above manner, rather than looking on the general well-being and peace in their towns through the responsibility of a trooper who might be 200-300 miles away. The communities can look upon themselves and their neighbors to be more engaged in helping to improve community well-being. He noted there have been commissions after commissions assigned to review these issues over the years and almost everyone on those commissions agreed that when greater control is allowed with increased accountability at the local level the results would be a swifter response to violence and criminal activity, increased crime prevention, and increased rehabilitation rather than punitive sentencing models. He expressed that these allowances which could help stop certain individuals from entering into a long career of trouble.

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REPRESENTATIVE KELLER said he is not looking for a response from Mr. Clark but wanted his question clear on the record. He pointed out that all of the reports the legislature has seen enhance and point out the need for local control, quick response, and local enforcement. He stated that his concern is

whether the sponsor has pursued the avenue available under the Alaska Constitution, which is to organize as a borough and municipality and go through the legislature to increase local control that way, rather than coming at it through the resolution.

MR. CLARK answered that the sponsor will look into his suggestion as a possible avenue.

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CHAIR LEDOUX asked for clarification regarding the title and the term sovereignty. She advised that while reviewing HCR 1 she noticed a different title than in CSHCR 1, and pointed out that the new title does not include the term sovereignty.

MR. CLARK said he does not have the short title in front of him, but knows he was able to persuade the Revisor to change one but not the other. The revisor's argument for changing one was that the word sovereignty did not exist in any place in the original resolution.

CHAIR LEDOUX said that issue can be researched.

[1:29:58 PM](#)

REPRESENTATIVE FOSTER asked whether essentially the resolution is adding a tool to the toolbox as it is not mandating that communities accept tribal enforcement. He noted that within his district, there are many communities with city governments and sometimes there are villages that do not hold elections and do not have a city government. He described them as non-functioning possibly because they forgot to have their election. He pointed out that there are situations where tribal communities do have their act together and are functioning and surmised that for the communities desiring tribal enforcement the option is there.

REPRESENTATIVE EDGMON stated that Representative Foster's description is a fair characterization the resolutions. He said he advocates a "go slow" approach, increasing the dialogue between CSHCR 1 and state agencies with the particular communities in question. He surmised the exchange would be on an individual basis, similar to legislation passed last year regarding Village Public Safety Officers (VPSOs), as it is at the discretion of the various parties involved. He agreed that some communities will be better prepared to have tribal court

activities while others may not have a tribal court at all. He offered his understanding that there are approximately 100 tribal courts scattered around the state and some function regularly. He remarked it is important that any increased tribal activity take place clearly, with the best interests of the individual community, and its leadership taking the lead.

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REPRESENTATIVE CLAMAN quiered whether it is the sponsor's general expectation this might strictly relate to members of the tribe that are participating in any kind of a tribal court system. He surmised it would not apply to an individual who was not a member of the tribe. In addition, he noted, even for those that were members of the tribe it would only apply if they had agreed to be subject to that jurisdiction. Essentially, he pointed out, it would not replace state jurisdiction and by voluntary agreement a member of the tribe could agree to proceed before the tribal court through that voluntary agreement.

REPRESENTATIVE EDGMON replied it was a fair way to describe it as there are smaller villages which are comprised of 100 percent tribal members. He further replied there are some medium size villages with a broader mix of tribal and non-tribal members, but the individual circumstances would dictate the relationship between the particular state agency and the individual community.

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MR. CLARK offered that CSHCR 1 makes reference to a civil diversion agreement. He advised that late in Governor Sean Parnell's administration, the Department of Law (DOL) was involved with the negotiation of civil diversion agreements with the Tanana Chiefs Conference as well as other tribal associations and entities. He opined that they never reached an agreement but did go some distance so that someone arrested by an Alaska State Trooper or VPSO would be given the option of his/her situation either diverted to the tribe and their authorities, or to continue through the state criminal justice system. He noted there are all sorts of ways these questions can be addressed, but to date he has not heard that the state is entertaining any requirement that a non-tribal member would be subject to the tribal justice system.

CHAIR LEDOUX reiterated that when a person is not subjected to it unless they agreed. She offered a situation in a small

village where a non-tribal member is living, and questioned why the sponsor would not want to give that person the option of going through the system also.

MR. CLARK answered that a draft diversion agreement he reviewed was in fact that case. Members of the community, both tribal and non-tribal, would have recourse to the tribal justice system if a state agreement were in place and a non-tribal member could also make that choice, he remarked.

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CHAIR LEDOUX stated that the details are not ironed out because as she understands CSHCR 1, it is basically saying that local control is the best way to go. She suggested that local control in many of the communities are tribes, and to let the governor and the tribes work something out.

MR. CLARK responded "That is exactly right." The sponsor is simply advocating for this approach to seek more deliberative justice, more capacity, and institution building and more responsibility, and accountability at the local level.

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MR. CLARK continued with his presentation and stated the resolution is designed to mark the state's willingness to work together with Alaska Native tribes on methods to alleviate crime and social ills in their communities. He described the resolution as encouraging the governor to establish clear policies across state agencies for increased collaboration and partnership with tribes as there is a room for a great deal of improvement in terms of working together on these issues. The resolution encourages the governor to negotiate agreements with Alaska Native tribes that would increase their authority, responsibility, and capacity to enforce laws and deliver justice at the local level. He referred to [page 3, lines 15-17] that ask the governor to conduct a complete review of the state's litigation against tribes, which to some extent is underway. It is the sponsor's feeling that in the event the state does turn in a more collaborative posture with tribes that some of the litigation underway would not be necessary. Similar to the other measures, this could save the state money in times when the treasury is a bit distressed.

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REPRESENTATIVE KELLER said he is interested in what category of litigation would not be pursued with a more collaborative approach. He reiterated Article X of the Alaska State Constitution in which there sections addressing the problem. He pointed out that one of them is the home rule power option where an organized borough can form a home rule charter for a borough under the guidance of law to set that up. He advised this statement is in [Article X], Section 11, which read:

Sec. 11. A home rule borough or city may exercise all legislative powers not prohibited by law or by charter.

REPRESENTATIVE KELLER continued that the section goes a long way toward sovereignty, and noted it is an option. He reiterated whether the sponsor had considered that avenue.

REPRESENTATIVE EDGMON responded that the harsh reality in greater rural Alaska is that in roughly 10 years Alaska has increased state agency spending by 105 percent. He explained that there are 75 communities without VPSOs, and the Alaska State Troopers are stretched far too thin. The Department of Public Safety budget caps the amount of money going into the VPSO program by taking 6 VPSO oversight troopers and exchanging them for general troopers who will provide some of those duties. He expressed that the resources are not there to effectively perform the law enforcement services required. He contemplated that he does not see some of the poor areas forming into a borough as the areas must have the will to become a borough, and have the financial viability to get something through the local boundary commission to actually form a borough. He opined that many small remote communities with infrequent, if not any at all, law enforcement presence are fending for themselves in many respects. He reiterated that both resolutions are discussing minor offenses and in moving forward, he does not see a better solution in the small communities than tribal courts being more present.

[1:44:28 PM](#)

REPRESENTATIVE KELLER pointed out that if a borough incorporates it has the power to tax the borough land. He opined that Representative Edgmon's argument is increased accountability and responsibility for people in a local community and stated that he believes that is the spirit of the Alaska State Constitution and would like the opportunity to purse the options.

[1:45:15 PM](#)

REPRESENTATIVE KELLER asked DOL's general impression of the legislature telling DOL to review its court cases. He further stated that in his dealing with DOL he would think there may be resistance from them and asked if DOL had reviewed court cases and found some to be inappropriate.

[1:45:57 PM](#)

MARY LUNDQUIST, Senior Assistant Attorney General, Opinions, Appeals & Ethics Section, Civil Division, Department of Law, said that currently the attorney general is going through a process of reviewing litigation with tribes and that it is an ongoing process. She stated she does not think the legislature urging the governor and attorney general to engage in that process would be taken the wrong way because it is currently underway.

REPRESENTATIVE KELLER questioned whether during the review process DOL had found certain litigation inappropriate.

MS. LUNDQUIST responded that she is not personally involved in the ongoing review process and may not be the best person to answer the question. She opined that largely the litigation between the tribes and the state is a fundamental dispute about the relative jurisdiction of the state and tribes. The issue of whether some cases may fall to the wayside based on a more collaborative relationship is entirely possible, but she is not aware of any specific cases, she advised.

[1:47:26 PM](#)

CHAIR LEDOUX questioned in the event unorganized boroughs were to get organized whether that would mean they would have a separate system to form courts. She asked what powers boroughs have as far as courts and law enforcement.

MS. LUNQUIST replied that she is not intimately familiar with the workings of municipalities, but opined that the Anchorage Municipality does have a court function. She said she would have to look carefully at that question as they could certainly develop their own ... a city can develop their own enforcement system for their criminal laws. She related that incorporating boroughs would be able to do some of the activities being encouraged by the tribes under the resolution.

1:49:07 PM

REPRESENTATIVE CLAMAN offered that he recognized Representative Edgmon's comments about small size, poverty, and challenges in many of the villages during these budget times. He opined that the reality has been that many villages are too small to have a VPSO, and that he believes the legislature is scaling back the VPSO program further under the current budget. The tribes continue to play a significant role in those communities at levels at which the committee does not fully understand. He noted that the idea of getting more integrated is a positive effort and he does not see this as a challenge to state sovereignty as it is working with the state. He questioned Ms. Lundquist regarding the power of municipal governments to create their own courts, particularly on criminal matters. He then referred to Article IV, Section 1 of the Alaska State Constitution, which read:

Section 1. The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law.

REPRESENTATIVE CLAMAN continued that there is a specific reference that the courts shall constitute a unified judicial system for operation and administration. He opined that within Alaska that part of the unified court system is in order that municipalities to have prosecutorial authority. In that manner, municipalities still have to go to state courts with its cases so there is only one justice in the state. He requested Ms. Lundquist's thoughts regarding municipalities creating its own court system in light of the constitutional provision regarding a unified judicial system.

1:51:09 PM

MS. LUNDQUIST reiterated that she is not intimately familiar with municipal laws and noted the provision in the constitution requiring a unified judicial system. She related that at least some of the prosecutorial authority would lay in municipalities and stated she could research this issue for the committee.

REPRESENTATIVE CLAMAN offered that in the event she has a basis for believing a municipality or city has the authority to create

their own court system separate from the unified court system, he would like to see the research. He reiterated that they can exercise prosecutorial functions, but not court functions.

CHAIR LEDOUX opened public testimony.

[1:52:26 PM](#)

MARY BISHOP, referred to a document entitled What Does Indian Country Really Mean in Alaska, within the committee packets. She said she will support HCR 1 if it is amended, and opposes HJR 3 which puts the legislation into the February realm and she prefers to go slow. She opined that Alaska can through lack of vigilant (indisc.) can unintentionally unravel the Alaska Native Claims Settlement Act (ANCSA) and that fortunately over the last few decades many efforts have been unsuccessful. The first versions of the two resolutions asked for support of moving land into trust status. She noted that many people think that Alaska cannot have Indian Country under the Alaska v. Native Village of Venetie Tribal Government, 522 U.S. 520 (1998), decision in which the United States Supreme Court said no Indian Country existed in Alaska. She stated that it can through a different legal method (indisc.) The state was brought into a lawsuit Akiachak Native Community v. Department of the Interior, No. 1:06-cv-00969 (RC), 2014 WL 2885910 (D.D.C.), which describes its distinct potential for unravelling ANCSA and establishing Indian Country. She said Attorney General Richards received an extension until mid-July to either file the state's brief in opposition, choose the option to drop the case entirely, or address the issue through Congressional action. She explained that the case allows placing Alaskan tribal lands into federal Indian Country status, free of state taxation and regulation.

CHAIR LEDOUX asked whether Ms. Bishop was reviewing version E, as some of Ms. Bishop's comments may be addressed to the original version of the resolution as opposed to version E which is a much more limited form than previously.

[1:57:27 PM](#)

MS. BISHOP said "That's true," and she pointed out that Alaska can still get Indian Country if it is not careful in how the legislature addresses the resolution. For example, she stated, the resolution encourages the committee to look at the reservation, but also includes a RESOLVE that opposes establishment of trust lands in Indian Country. She opined that it should address state action and not federal action regarding

the crucial issues of rural justice. She referred to the [3/13/15 testimony to the House Judiciary Standing Committee] presentation of Sam Gottstein, and was pleased that she did not hear about the need to move tribal lands into federal trust. Instead, she advised, she heard an advocacy to work with methods probably now available in the state, thereby, avoiding the federal government and the United States Department of Interior. She quoted from Mr. Gottstein's paper, "The State of Alaska is better positioned to find a long-term and meaningful solution to Alaska Native tribal jurisdictional issues than Congress."

CHAIR LEDOUX interjected that the committee is in public testimony with respect to CSHCR 1, which does not deal with Congress at all.

[1:59:40 PM](#)

MS. BISHOP said she agrees with Mr. Gottstein in that he emphasized that it can be done through the state and not through the federal government. She stated that is consistent with the press release by former Attorney General Michael Geraghty where he describes an agreement between the state and the tribes allowing, in certain cases, "tribal civil remedies in lieu of state criminal prosecution." She opined this would perhaps meet the concerns expressed by Alaska Supreme Court Chief Justice [Dana Fabe as relayed in the Gottstein paper].

CHAIR LEDOUX advised Ms. Bishop that public testimony is limited to three minutes and her testimony had gone significantly over that limit.

MS. BISHOP reiterated that she encourages the committee to go slow, pass an amendment to HCR 1, and reject HJR 3.

[2:02:01 PM](#)

CHAIR LEDOUX closed public testimony after ascertaining no one further wished to testify.

[2:02:26 PM](#)

REPRESENTATIVE GRUENBERG offered that his questions need not be answered at this time, but noted that the resolution appears to be asking action by the governor and quiered why this method was chosen.

REPRESENTATIVE EDGMON referred to the comment about going slow with the resolutions and opined that these resolutions speak to encouraging a process that is underway as the Alaska Supreme Court is moving forward on a number of items CSHCR 1 would promote. He remarked that the resolution is saying it is appropriate for state agencies now to begin working more directly with tribes on an individual basis. He further remarked that as research continued they did not find any one statute they could put anywhere ... create any kind of iron clad requirements or "must haves" or any requirements that would move this dialogue further along. In that regard, he pointed out that it is more appropriate to have the resolution and receive approval of the legislature and lend gravitas to that discussion that for all intents and purposes is going to take place whether these resolutions get passed or not.

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REPRESENTATIVE GRUENBERG related that other things to consider are whether the current administration would be interested, by executive order, and possibly some departmental realignment to assist in this process.

REPRESENTATIVE EDGMON opined that he can't speak for Governor Bill Walker's administration. He paraphrased what has been described as not only their support, but also for approaching it judiciously in knowing that Alaska tribes are being dealt with involving landscape jurisdictional issues, authority of tribes, and building relationships between the state and tribal entities.

[2:06:19 PM](#)

REPRESENTATIVE GRUENBERG referred to CSHCR 1, page 1, lines 12-14, where suicide was specifically mentioned and asked if the sponsor would consider a friendly amendment to include the word "suicide" within page 1, lines 12-14.

REPRESENTATIVE EDGMON responded that the amendment was an acceptable addition to the resolution.

REPRESENTATIVE GRUENBERG referred to page 2, lines 3-4, and requested the actual figures regarding the words "dramatically higher."

REPRESENTATIVE GRUENBERG then referred in general to "resolves" and mentioned it could be of assistance to ask the governor or

attorney general to report back to the legislature as to whether the sponsor's suggestions were accomplished.

CHAIR LEDOUX advised Representative Gruenberg that she is keeping questions regarding the two resolutions separate.

CHAIR LEDOUX held CSHCR 1 in committee.

HJR 3-CONGRESS: NATIVE TRIBAL JURIS. & AUTHORITY

[2:08:53 PM](#)

CHAIR LEDOUX announced that the final order of business would be HOUSE JOINT RESOLUTION NO. 3, Urging members of the Alaska delegation to the United States Congress to introduce substantially similar legislation to the Alaska Safe Families and Villages Act of 2013; urging the United States Congress to affirm the criminal jurisdiction of Alaska tribal governments over tribal members within the boundaries of their villages; urging the United States Congress to cooperate with tribes' efforts to transfer Native land to trust; and supporting multilateral negotiations between tribal governments, nontribal municipalities, and the state and federal governments to delineate clearly tribal geographical jurisdictions.

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REPRESENTATIVE GRUENBERG asked a threshold question in that HJR 3 appeared to be directed at a particular bill introduced in the last Congress that did not pass, but he did not have a copy.

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TIM CLARK, Staff, Representative Bryce Edgmon, Alaska State Legislature, advised the bill reference in its entirety is part of the bill packet. He advised it is United States Senate Bill 1474.

[2:10:45 PM](#)

MR. CLARK pointed out that the two resolutions before the committee are very closely related as the Preambles are nearly identical. He noted the goals are also closely related in terms of trying to address devastating social strife in rural communities, it is the Resolves that differ. He said HJR 3, is directed toward Congress and asks it to introduce legislation substantially similar to the Alaska Safe Families and Villages

Act of 2013. The federal legislation, he explained, would establish a pilot project of which will provide a number of tribal communities with increased federal funding. He further explained that the federal funding would be for their tribal courts and law enforcement needs, enhanced authority over domestic violence and child abuse neglect, greater local law enforcement responsibilities to combat drug and alcohol abuse, and improve coordination between federal, state, tribal, and local law enforcement agencies. He related that it comes back to the recommendations of a task force and commission after another over a 25-30 year period. Wherein many concluded over and over again that greater control, greater responsibility at the local level would lead to swifter response to violence and criminal activity, increased crime prevention, and sentencing models more culturally appropriate and more rehabilitative as opposed to punitive in some but not all cases, he pointed out.

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CHAIR LEDOUX opened public testimony

[2:13:08 PM](#)

RON SUMMERVILLE, said that Mary Bishop testified to a concern of many people which is the fragmenting of the state's jurisdiction in creating some sort of an anomaly which exists primarily in reservations outside. He remarked that having grown up in a small Native community, he appreciates efforts to bring issues to light as there are serious problems. The problems in the villages are problems the legislature and various communities have and remarked that the question is how much recognition of tribal jurisdiction is the answer. He pointed out that Representative Keller asked whether other options are available and he said he would support obtaining additional jurisdiction to tribal governments if they demonstrate they can handle it. He related that he comes from Craig and that the cities of Craig and Klawock have offered examples of tribal government and courts issuing proclamations. However, he remarked, that the conflict with the Alaska State Constitution is what concerns him when looking at HJR 3 which is asking Congress to pass something to provide more jurisdiction and authority to the tribal courts. He expressed that he lived through D2, subsistence, and the unintended consequences that occurred with the federal government passing legislation that Alaska had no control over. He related that the legislature requires that the State of Alaska must concur in any action by Congress in giving the authority as it must be concurred upon by the state. The

passage of the subsistence provision in federal law was a horrible mistake in many cases, as there is now an unwanted fragmented system in the court systems, however, jurisdiction is given to the tribal courts.

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MARY BISHOP, referred to an article in the committee packets entitled Tribal Jurisdiction in Alaska, and read "In years to come the trend in Alaska appears to be moving toward increased collaboration between the state, tribes, and respective courts. The (indisc.) have much to share with each other. Ultimately, the more access to justice Alaska's tribal members have, especially in the remote villages, the better for our state's health and safety overall." She encouraged the committee to go slow and (indisc.) HJR 3.

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CHAIR LEDOUX closed public testimony after ascertaining no one further wished to testify.

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REPRESENTATIVE GRUENBERG commented that the resolution appears to specifically urge Alaska's delegation to introduce something similar to a federal bill entitled The Alaska Safe Families and Villages Act of 2013. He said apparently the [federal] bill was "reported with an amendment," and asked whether the bill in the packet contains the amendment, or whether it was in the form of a committee substitute, and what happened to the bill.

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MR. CLARK advised that the act was originally introduced in 2011, and by the time it reached the 113th Congress, second session, work had been performed on it. He said he does not know specifically what the changes were going forward.

REPRESENTATIVE GRUENBERG requested the exact text of the bill and the committee report, as those reports often include arguments for the bill, minority views, and the bill's status.

MR. CLARK pointed back to the language of the resolution which requests legislation substantially similar, to what can be interpreted as a bill, including the major provisions. He asked

for clarification as to whether Representative Gruenberg was requesting a more specific definition ...

REPRESENTATIVE GRUENBERG interjected that the lawyers and members on the House Judiciary Standing Committee need to see more specifics.

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MR. CLARK added that some of the public comments had expressed worries that in endorsing federal legislation the state would somehow be run roughshod over it. He pointed to the Alaska Safe Families and Villages Act of 2013, which has provisions that it is a demonstration project being put forward by federal legislation ... conceivably a handful of villages. He offered that every step along the way a village's eligibility would depend upon it having first negotiated an agreement over these exact issues with the State of Alaska. He explained that no village would be eligible for the demonstration project that did not first have an agreement with the State of Alaska, as the state comes first in this legislation. In terms of Mr. Summerville's misgivings over the capacities of these tribal institutions, the federal legislation also addresses each village's eligibility with the capacity of its specific institution, quality and thoroughness of its tribal constitution, quality and thoroughness of its ordinances and laws, and the fact that all of those institutions and capacities would be reviewed by the Department of Justice before allowed into the program.

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REPRESENTATIVE GRUENBERG noted that the key language in HJR 3 is found on page 3, lines 1-12, as regardless of whatever else is in the federal bill, the interests the sponsor has are certain provisions involving the establishment of a demonstration project. He asked if that is all the sponsor is asking the committee to endorse it may be all the information needed in front of the committee. He said that part of the problem, highlighted in Senator Dan Sullivan's address, is that few votes were taken on the Senate floor last year. He opined that the United States Senate is either combining bills or limiting to appropriation, he was not sure.

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REPRESENTATIVE CLAMAN posited that the 2013 act was supported by Senators Lisa Murkowski and Begich.

MR. CLARK answered that the initial bill was amended by Senator Lisa Murkowski on the United States Senate floor to exclude Alaska Natives, but later changed her position and co-sponsored a similar bill with then Senator Begich.

REPRESENTATIVE CLAMAN assumed that Senator Lisa Murkowski would continue to support the bill and asked where Senator Sullivan is on this bill.

MR. CLARK said he does not have any idea as he has not had correspondence with Senator Sullivan. He explained that the jurisdiction issues in general in Congress and treatment of the jurisdictional issues with Alaska tribes has been a struggle. Clearly, he noted that under Venetie, where the United States Supreme Court unanimously said that under ANCSA (1971) it transfers 4-5 million acres and 1 billion dollars to the State of Alaska in exchange for all title and all sovereignty to their land. He noted that the United States Supreme Court said emphatically that Indian Country does not exist in Alaska. The bill Senators Begich and Lisa Murkowski supported attempted to work around that distinction in addressing the epidemic problems of social issues with Alaska Natives, while recognizing that Indian Country largely did not exist in Alaska. He opined that the request for Senators Sullivan and Lisa Murkowski to take additional time to consider the issue is justified as it is a complicated issue from that standpoint.

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CHAIR LEDOUX asked for clarification as to whether there is one place in Alaska where it is Indian Country.

MR. CLARK responded Metlakatla.

CHAIR LEDOUX asked if this idea had been tried in Metlakatla as it seems like a great place to start things out where there wouldn't be the problem with Indian Country versus non-Indian Country.

MR. CLARK responded that the resolution addresses the other 228 or so tribes and their systemic problems with providing criminal justice services and the attendant social problems at epidemic levels. He opined that he does not think Metlakatla experiences

the same level of social disruption and violence as other Alaska villages.

CHAIR LEDOUX held HJR 3 in committee.

[2:32:09 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:32 p.m.