

HCR

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Sponsor Statement

House Concurrent Resolution 1 Tribal Sovereignty Proclamation

HCR 1 declares the Legislature's support for measures to address persistent, devastating social strife in rural communities. It urges Governor Walker to acknowledge greater jurisdiction and accountability for local tribal authorities, in particular tribal courts.

In matters of tribal sovereignty and the delivery of justice at the local level, the state has too often missed opportunities to better partner with Alaska Native communities. Meanwhile, rates of alcoholism, drug abuse, domestic violence, and sexual assault that are among the highest in the U.S. have continued to shatter communities.

In tandem with House Joint Resolution 3—Congress: Alaska Native Tribal Sovereignty—HCR 1 marks a turning point, demonstrating the state's willingness to work together with Alaska Native tribes to strengthen ways to alleviate crime, social ills, and community distress.

Over the past 25 years, a multitude of state, federal, and joint commissions were created to address these issues. Time and again, they reached similar conclusions and recommendations, and time and again their recommendations were not implemented to the extent necessary to make significant impact.

HCR 1 endorses strengthening the authority, responsibility, and capacity of local tribal governments to administer public safety and justice in their communities. Experts agree that greater control, better defined jurisdiction, and increased accountability at the local level will lead to swifter response to violence and criminal activity, increased crime prevention, and increased rehabilitative, rather than punitive, sentencing models.

In time, more tribal authority and capacity for the local delivery of justice will also help lessen the burden on state law enforcement, court system, and corrections system resources.

For too many decades state policy has had too small an impact on the criminal and social problems in our rural communities. It is time to change our approach and support empowering Alaska Native tribes to make a difference.

HOUSE CONCURRENT RESOLUTION NO. 1
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE EDGMON

Introduced: 1/21/15
Referred:

A RESOLUTION

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

10 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

11 **WHEREAS** the 229 federally recognized tribes in the state represent a vast
12 continuum of cultural legacies enriched by thousands of years of traditions and place-based
13 ways of life; and

1 **WHEREAS** many Alaska tribal communities face severe problems relating to
2 poverty, lack of economic opportunity, alcoholism, drug abuse, domestic violence, and sexual
3 assault; and

4 **WHEREAS** the percentage of Alaska Natives living below the federal poverty
5 guideline is nearly twice the national average; and

6 **WHEREAS** the unemployment rate for Alaska Natives is dramatically higher than the
7 national average; and

8 **WHEREAS** the alcohol-related death rate for Alaska Natives has, in recent years,
9 been more than 16 times higher than the alcohol-related death rate for Caucasians; and

10 **WHEREAS** rural communities in the state have, in recent years, reported alarming
11 opioid, heroin, and methamphetamine abuse; and

12 **WHEREAS** Alaska Native women in rural communities have reported rates of
13 domestic violence multiple times higher than the national average; and

14 **WHEREAS** Alaska Native women suffer the highest rate of sexual assault of any
15 population in the United States, and the rate of sexual assault for Alaska Native children is six
16 times the national average; and

17 **WHEREAS**, while Alaska Natives represent 19 percent of the population of the state,
18 they make up 36 percent of Alaskans in prisons or jails; and

19 **WHEREAS**, in the past 25 years, state, federal, and joint commissions, task forces,
20 and committees established to address those issues have included the Alaska Natives
21 Commission, created in 1990; the Alaska Supreme Court Advisory Committee on Fairness
22 and Access, created in 1995; the Alaska Commission on Rural Governance and
23 Empowerment, created in 1998; the Alaska Rural Justice and Law Enforcement Commission,
24 created in 2004; the Indian Law and Order Commission, created in 2010; and the United
25 States Attorney General's Advisory Committee on American Indian and Alaska Native
26 Children Exposed to Violence, created in 2013; and

27 **WHEREAS** each of those bodies concluded that the strongly centralized law
28 enforcement and justice systems of the state have been inadequate to alleviate crime, social
29 ills, and community distress in rural Alaska; and

30 **WHEREAS** each of those bodies identified the need to strengthen the authority,
31 responsibility, and capacity of local tribal governments to administer public safety and justice

1 in their communities; and

2 **WHEREAS** many experts agree that greater control, better defined jurisdiction, and
3 increased accountability at the local level will lead to swifter response to violence and
4 criminal activity in communities, increased crime prevention, and increased rehabilitative,
5 rather than punitive, sentencing models; and

6 **WHEREAS**, in matters of jurisdiction and the delivery of justice at the local level, the
7 state has too often and for too long been the adversary of Alaska Native tribes; and

8 **WHEREAS** ambiguities in state policy deprive Alaska tribes of jurisdictional tools to
9 make their communities safer and healthier;

10 **BE IT RESOLVED** that the Alaska State Legislature urges the Governor to issue a
11 proclamation officially acknowledging the sovereignty of Alaska tribal governments and
12 detailing clear and consistent policies for increased state agency collaboration and partnership
13 with tribes; and be it

14 **FURTHER RESOLVED** that the Alaska State Legislature urges the Governor to
15 direct the attorney general to conduct a complete review of the state's litigation against Alaska
16 Native tribes; and be it

17 **FURTHER RESOLVED** that the Alaska State Legislature urges the Governor to
18 acknowledge the inherent criminal jurisdiction of Alaska tribal governments over tribal
19 members within the boundaries of their villages, to be defined as an Alaska Native Village
20 Statistical Area delineated for the Director of the United States Census Bureau by officials of
21 a village for the purpose of presenting data for the decennial census conducted under 13
22 U.S.C. 141(a); and be it

23 **FURTHER RESOLVED** that the Alaska State Legislature urges the Governor to
24 cooperate with tribes' efforts to transfer Native land to trust in order to affirm concurrent state
25 and tribal jurisdiction; and be it

26 **FURTHER RESOLVED** that the Alaska State Legislature urges the Governor to
27 support eventual multilateral negotiations between tribal governments, nontribal
28 municipalities, and the state government to delineate clearly tribal geographical jurisdictions.



Explanation of Changes in CSHCR1 (CRA)

CS for House Concurrent Resolution 1 Increasing State Collaboration and Partnership with Alaska Native Tribes

The committee substitute for HCR 1 removes "resolves" relating to a proclamation of tribal sovereignty, inherent criminal jurisdiction within Alaska Native Villages, transfer of land into trust, and the negotiation of tribal geographical jurisdictions.

Revised "resolves" in the CS urge Governor Walker to establish clear and consistent policies across state agencies for increased collaboration and partnership with tribes and encourage the governor to negotiate agreements with Alaska Native tribes that increase their authority, responsibility, and capacity to enforce laws and deliver justice at the local level.

Technically, the changes are as follows:

Page 3, Line 10 through 13:

All material was deleted and replaced with **"BE IT RESOLVED that the Alaska State Legislature urges the Governor to establish clear and consistent policies across all state agencies for increased collaboration and partnership with Alaska tribal governments; and be it**

"FURTHER RESOLVED that the Alaska State Legislature encourages the Governor to negotiate intergovernmental agreements—including civil diversion agreements—with Alaska tribes to increase their authority, responsibility, and capacity for the enforcement of certain state laws and the delivery of justice at the local level; and be it"

Page 3, Lines 17 through 28:

All material was deleted.

The title of the resolution was amended accordingly.

AMENDMENT

OFFERED IN THE HOUSE

TO: HCR 1

1 Page 1, lines 1 - 9:

2 Delete all material and insert:

3 "Urging the Governor to establish clear and consistent policies across all state
4 agencies for increased collaboration and partnership with Alaska tribal governments;
5 encouraging the Governor to negotiate intergovernmental agreements with Alaska
6 Native tribes that increase their authority, responsibility, and capacity to enforce certain
7 state laws and deliver justice at the local level; and urging the Governor to direct the
8 attorney general to conduct a complete review of the state's litigation against Alaska
9 Native tribes."

10

11 Page 3, lines 10 - 13:

12 Delete all material and insert:

13 "BE IT RESOLVED that the Alaska State Legislature urges the Governor to establish
14 clear and consistent policies across all state agencies for increased collaboration and
15 partnership with Alaska tribal governments; and be it

16 FURTHER RESOLVED that the Alaska State Legislature encourages the Governor
17 to negotiate intergovernmental agreements, including civil diversion agreements, with Alaska
18 Native tribes that increase their authority, responsibility, and capacity to enforce certain state
19 laws and deliver justice at the local level; and be it"

20

21 Page 3, line 16:

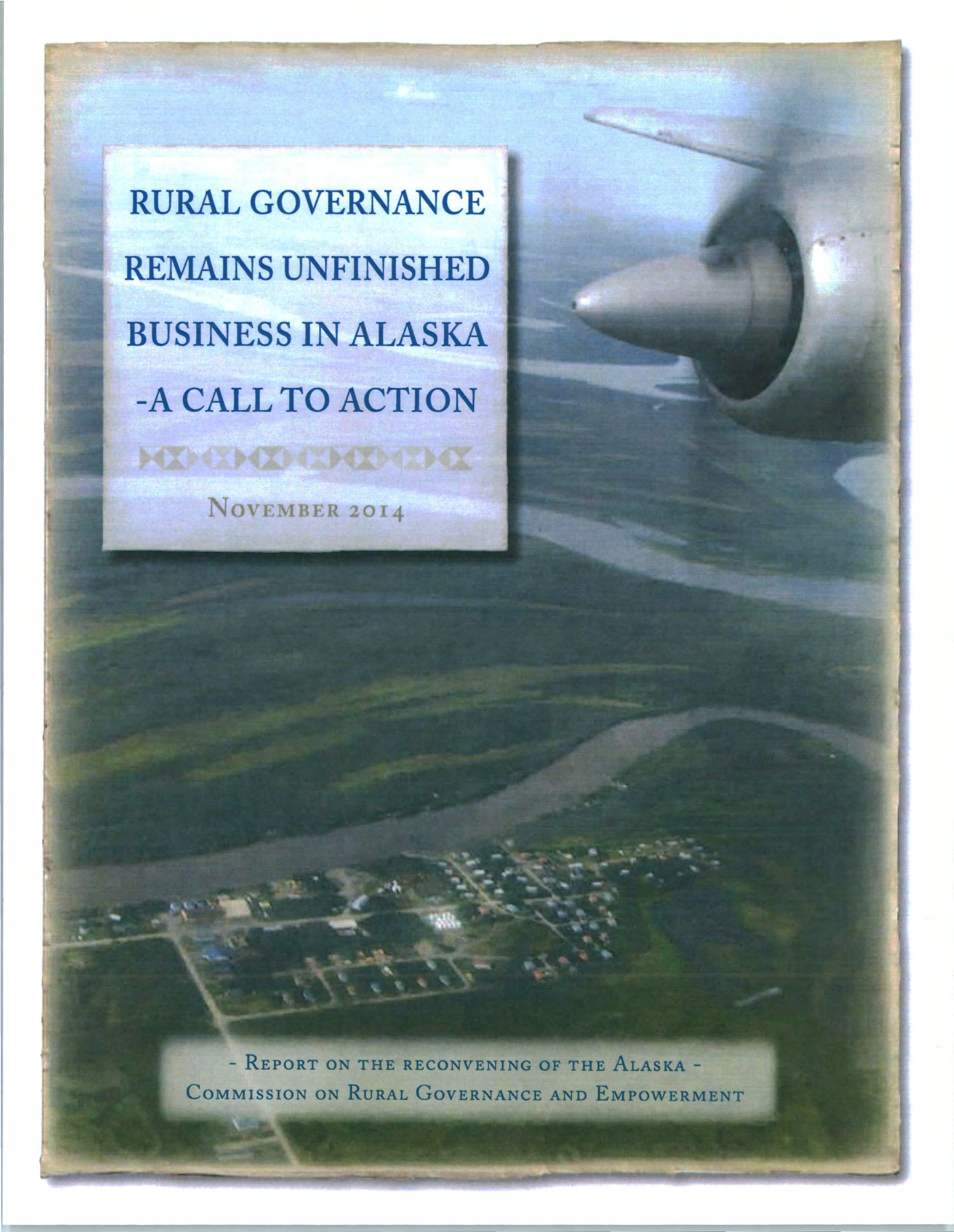
22 Delete "; and be it"

23 Insert "."

1

2 Page 3, lines 17 - 28:

3 Delete all material.



RURAL GOVERNANCE
REMAINS UNFINISHED
BUSINESS IN ALASKA
-A CALL TO ACTION



NOVEMBER 2014

- REPORT ON THE RECONVENING OF THE ALASKA -
COMMISSION ON RURAL GOVERNANCE AND EMPOWERMENT



This project reflects the commitment to strengthen governance in rural Alaska by all who participated and supported this work. The staff of First Alaskans Institute and North Star Group worked in partnership to convene and facilitate the 2013 gathering, and we hope to continue to advance issues of rural governance through fostering statewide dialogue that reflects the spirit of those convened, and the specific recommendations contained herein. We invite you to join us.

First Alaskans  Institute

 **NORTH STAR GROUP**





**A RECONVENING OF THE
COMMISSION ON RURAL GOVERNANCE & EMPOWERMENT**

Executive Summary

Empowering rural people through strengthening rural governance systems – in accordance with the mandate of the Alaska state constitution – was the underlying theme throughout the recommendations of the original Rural Governance and Empowerment Commission (RGC).

Almost all of the RGC's original recommendations remain relevant today. Although the overall issue of rural governance has been discussed in various official capacities and reports over the decades, a true lasting resolution of the rural governance issue has not been achieved. A clear need exists to identify and advance effective solutions to a host of persistent rural concerns.

Whatever their title status under Western law, the lands Native peoples have stewarded and occupied for thousands of years are not currently equitably managed and leveraged to benefit those who call these lands home; instead these lands are systematically (sometimes tacitly or unintentionally) developed to benefit people who live far, far away. Excluding Native and rural people from the management of these lands is a perpetuation of colonial governmental structures. A similar argument was made with regard to the administration of the rural Alaska Native justice system in the Indian Law and Order Commission (ILOC) Congressional report: systematically excluding local people from local law enforcement protections (e.g., through non-local State Troopers, magistrates, jails, etc.), or imposing on local people a legal system set up with no local input, and related rule-from-afar systems, mirrors the governmental structures of the colonial era. It is discriminatory and oppressive, and hurts people in these communities. Promoting local control benefits everyone, saves money, and saves lives. Colonialism is not good for Alaska Natives, and it is not good for Alaska; it should not be perpetuated.

Potential solutions exist. Native and rural Alaskans could effectively administer governance through the borough mechanism offered by the state constitution, local school boards, or by establishing Indian Country status (where a 'Native Country' term of art may need to be adapted for Alaska that is inclusive of Indian Country, trust lands, allotments, Native townships, etc., and ANCSA lands). Where no tools exist, they must be created, such as establishing a mechanism (e.g., legislation, constitutional amendment, etc.) where Alaska tribes – as the sovereign nations they are – negotiate and partner with the state of Alaska on an officially recognized, permanent government-to-government basis. Because no 'formal' form of that relationship currently exists, one would have to be established to ensure that tribes are equitably seated at the table and empowered to coordinate their efforts in good faith with the state government.





With these thoughts in mind, participants in the RGC reconvening identified the following **Strategic Action Areas** as most in need of reform:

- The state needs to formally recognize a Native Ways of Life priority
- Clarify, amend and empower tribal jurisdiction and Indian Country
- Develop natural resources to benefit local people and includes them in decision-making
- Strengthen Native cultures as the key to overcoming challenges faced by rural Alaskans and Alaska Natives no matter where they live
- Work with and for Native cultures, not against them
- Expand tribal compacting
- Accelerate the production of the Alaska Native leadership pool

Rather than pointing out things that “someone” should reform, the reconvening participants closed the dialogue with personal commitments to carry this work forward in whatever capacity best-suited the task. To this end, participants agreed to continue the discussions and the commitment, to press for better communication, and to share knowledge and experience. Additionally, the group identified broad **Arenas of Action** where the work will occur.

- Everyday Life
- Educational Institutions
- Tribal, Federal, State, and Local Governments
- Healthcare and Cultural Wellbeing
- Keeping the Conversation Going

We all have different gifts, communities of support, and spheres of influence. Only by banding together can we effect meaningful reform and a movement towards a true paradigm shift for Alaska. Alaskans, Native and non-Native, rural and urban, can do it, but we must do it together. “Ultimately, what is needed is a change in how the problems in rural Alaska, and their solutions, are thought about, especially by non-rural Alaskans: a paradigm shift that transforms rural empowerment work from isolated activity into collective impact.”





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1998 Original Rural Governance Commission Established

Recognizing that there were numerous unresolved issues impeding rural self-governance and empowerment, especially in state-tribal relationships, and after much advocacy from across the state, in February 1998 the state of Alaska established the Commission on Rural Governance and Empowerment, a 22-member group co-chaired by Robert Keith of Elim and Byron Mallott of Juneau/Yakutat.

The original members of the Rural Governance Commission (RGC) broadly represented the people of Alaska, and included urban and rural residents, Natives and non-Natives, members of state and tribal governments, school board members, mayors, Alaska state constitutional scholars, and even original framers of the state constitution. The commissioners formulated a comprehensive set of recommendations to reform the state government's official policy toward federally recognized tribes in Alaska, and examined more broadly how state, regional, and local governance occurs in Alaska.



Overcoming Challenges to Rural Empowerment and Self-Governance

"The Alaska Commission on Rural Governance and Empowerment affirms the right of all rural Alaskans to maximum local autonomy and the delivery of essential services, and affirms the vitality of their diverse cultures, ways of life and communities."

- Preamble to the 1999 RGC Final Report to the Governor

This vision statement, adopted by the Commission in 1998, remains as true today as it did then, as Alaska has achieved little progress in the 15 years since the commission released its findings and recommendations. Everyone that gathered in December 2013 – predominantly rural residents, people from rural communities, and former Commission members and staff – agreed that the original 1999 RGC Final Report to the Governor could have been drafted 50 years ago, five years ago, or five days ago. Nothing has significantly changed to improve or empower the governance systems of rural Alaska to ensure the maximum benefit for local people. The report could even be drafted the same way five or even 50 years from now if Alaska does not step up to address the disempowerment of Native and rural people. The current systems have no internal motivation to change. Change must be instigated at the tribal, federal, state, borough, municipal, corporate, non-profit, private enterprise, and individual level.

The RGC's recommendations spoke principally to the state government's executive branch, although they also addressed public policy actions under the purview of the legislature and the

1 The full report is accessible online at: <http://www.commerce.state.ak.us/dca/RGC/>





judiciary. In the findings articulated in the original Final Report to the Governor, the Commission affirmed the right of all rural Alaskans to maximum local autonomy and control over the delivery of essential services, analysis, and solutions on specific issues related to government policy and structure, economic development, health, education, public safety, and justice. While most of the recommendations were necessarily broad, the Commission found that a willing and capable citizenry was ready to assist the state government in its efforts. The 1999 RGC Final Report noted that supporting tribal governance does nothing to harm municipal forms of government, and cited numerous examples of innovative governance structures where blended tribal and state systems better serve rural communities than state systems alone; local control is the most responsive and best-suited way to govern rural communities.

In 2013 Rural Governance Commission Reconvened

In December 2013, 11 of the original commissioners met with Alaskans from all parts of the state. While the original Commission and mission was a state-sponsored project convened by then-Governor Tony Knowles, the reconvened Commission was initiated independently by former members and other interested Alaskans, both Native and non-Native. All had the desire to work for Native people across the state, but especially those in rural Alaska, who are most vulnerable to political and other forms of marginalization. During the two-day meeting, the group re-examined the Commission's original findings and recommendations, and then turned its attention to identifying the current state of rural governance and empowerment, charting out a future vision those assembled will work to bring about.



This convening was conceived, planned, and executed through the coordinated effort of two organizations. One was the Alaska Native Policy Center (ANPC) at First Alaskans Institute (FAI), a statewide Native nonprofit organization known for its role as a catalyst and convener of critical community conversations. The other was the North Star Group (NSG), a community and government affairs firm led by Veronica Slajer, former staff director for the original Commission.

FAI facilitated the event, engaging participants to recapture lessons from the first RGC, inspiring interactive and meaningful discourse about the present state of rural governance, and strategizing a collective paradigm shift. Participants were led through a process that tapped their individual expertise and collective knowledge, producing both shared goals and individual





commitments to continue this vital work by advancing the solutions and activities identified in participants' lives, communities, and organizational roles.

NSG and FAI worked to bring everyone together and then assembled the dialogue notes, which FAI drafted into this report; NSG managed the logistics and materials production. The dialogue process, including the invitation, agreements, and daily flow, are included on-line at www.ruralgov.org.



Reforming State-Tribal Relations

The 2013 reconvening continued the original Commission's call for meaningful and innovative partnerships between tribal, state, and municipal governments. This is a crucial goal that cannot be realized unless the state of Alaska eliminates existing constraints to a full and formal relationship with tribal governments.

This begins by clearly, officially, and permanently recognizing Alaska Native tribes as the sovereign governments they are, just as the federal government does. The issues created by the state of Alaska's failure to recognize tribal sovereignty include the inequities in the administration of rural justice described in the Indian Law and Order Commission (ILOC) report, which was published just days before the RGC reconvened.

Alaska needs a call to action to break through the inertia that grips how rural Alaska is treated by the rest of the state, in a debilitating status quo. The group agreed that this reconvening should not result in yet another report making bold recommendations which are never read or implemented. The vision for this dialogue from the very start was to identify the current situation, and flesh out steps the Native and non-Native community can take immediately to shift the tide and make rural governance and empowerment a statewide priority. It was from this starting point – to generate a strength-based call to action – that the conversation began.

Using a process based on Native values and knowledge, FAI hosted the reconvening using indigenous principles, processes, and adaptations of other social technologies to ensure that all who came were able to contribute in an interactive, thoughtful, and empowering manner. The first day started by asking the original Commissioners to reflect on different aspects of the original RGC in a “fish bowl” style dialogue. It was an intimate conversation between the original Commissioners who were present, giving them an opportunity to discuss what they remembered and what their experience had been, and to activate their collective memory about the 1999 RGC.

While they talked, the other participants were able to listen deeply and learn about what had happened in the original RGC, what the aims and objectives were, what had motivated the members,





and how the main issues were addressed as the work was conducted. While there is an official RGC Final Report, everything that went into creating that report wouldn't be accessible to those who did not participate. This conversation gave everyone a chance to learn the inside story and connect with the original members.

After the “fish bowl” concluded, participants formed small groups to reflect on what they heard and how it relates to perspectives on rural governance today, and to identify the biggest unresolved issues facing rural Alaska today at all levels of governance. The original Commissioners spread out among the various small groups.



Paradigm Shift

At the end of the first day, FAI posed the following question to the full group: “While this first day focused on challenges we face in rural Alaska, we want you to focus tomorrow on how to transform those unresolved issues; what are the practical steps we can do now to solve these problems we’ve identified today?” Pondering this question was the group’s homework to prepare them for the second half of the convening.



After the first day closed out, FAI staff and a dedicated volunteer participant analyzed the barriers and biggest unresolved challenges the small groups had identified. The underlying and current issues that are the ultimate source of disharmony, the disruption of Native and rural ways of life, and the impairments to self-government were categorized into thematic groupings of perceived assumptions or ‘paradigms.’ Whether explicitly or tacitly built into state systems, created or believed by non-Natives or urban people, or unconsciously internalized by Native people themselves, these paradigms are the mistaken ideologies that shape how Natives and rural Alaska have been, and continue to be treated. The dominant paradigms – current assumptions about Native and rural Alaskans that shape interactions at every level – shape an unbecoming picture of those who erroneously view Native peoples in these ways.

Upon analysis, six dominant, current paradigms were found: all were flawed, inaccurate, and hurtful representations of Native peoples. Instead of the picture these models paint, there is a deeper reality about Native peoples – the real truth – that needs to be acknowledged and incorporated into everyday life and state systems. Native peoples are capable, important to Alaska, contribute powerfully to our society, and have the skills to resolve the challenges and issues identified as impediments to rural advancement and empowerment. Too often the erroneous paradigms noted below provide ‘cover’ for harmful stereotypes and make it socially acceptable to ignore and perpetuate inequities, prejudice, and ignorance against Alaska Native peoples and rural communities.





The act of articulating and codifying these six paradigms was like driving a dagger into all our hearts, because they are not the truth about Native peoples or our communities. They are, however, ideologies, perceptions or opinions that have shaped and continue to shape the policies that govern Alaska Native peoples' lives. Native and rural social, economic, and cultural struggles are symptoms of these paradigms, not the other way around. Any superficial reforms to policies that do not address these underlying assumptions are only bandages on a festering wound. A paradigm shift is crucial to transform the way Alaska, as a society of people living in this state, embraces its indigenous soul. The relationship between the three sovereigns in Alaska – namely tribal, federal, and state governments – must incorporate this paradigm shift in order to maximize the effective use of human resources in this abundant, unique, and diverse land.

For the final day's discussion, participants identified which of the "perceived paradigms" made them react in some way – sad, angry, or inspired to action – and then discussed them in small groups. They talked about the meaning to each person and to the group collectively, as well as the situation today, and the problems that are created by these paradigms. Then they focused on what needs to happen to change the paradigm in question to the truth. Participants rotated between groups in order to contribute to more than one topic. The following is a chart listing the 'perceived' paradigms felt by participants, contrasted with corresponding truths.

Perceived Paradigms	The Truth
Colonialism is good for Alaska Natives.	Worldwide, colonial policies hurt Native cultures, divided Native peoples, disempowered them, make them fearful and ashamed to be who they are, ashamed to go from the village to the city. But we can fight those tendencies, infuse our governance structures and systems with inclusive values, adapt as we always have, and thrive once again. Decolonizing and making everyone healthy, successful, strong, and proud will benefit everyone in Alaska; colonialism hurts us all.
There are no tribes in Alaska.	There are tribes in Alaska; they are sovereign and self-determining First Nations.
Village and Native Alaska are a drain on the rest of the state.	Rural Alaska and Alaska Natives are assets in terms of people, lands, and resources.
Alaska Natives lack capacity to govern their peoples, lands, and resources.	Self-governance is already occurring, but rural people could do more if they had more resources. It's difficult to access more resources because rural villages lack a tax base comparable to urban communities.





Perceived Paradigms	The Truth
Alaska Native social issues and problems are part of their cultures, and their own fault.	The social dysfunctions that burden Native people today are legacies of oppressive colonial policies, ethnocide (the attempt to kill Native cultures), brutal boarding schools, and other massively traumatic events in Native histories, including devastating plagues. These traumas were inflicted on Native peoples, and while the continuing impacts (both intentional and unintentional) cling to them like parasites, they do not define Native peoples. Our communities can regain what was lost, but it will take tremendous effort, strong leadership, and education. Native people can change these things, but this does not excuse others (e.g., governments, businesses, citizens) from their responsibility to help and support this advancement.
Native people lack the power to change the paradigms.	Natives have successfully fought the system many times before and have won, such as in the Katie John case. But we can't let the courts or the state define who we are; we know who we are.

Strategic Action

What needed to arise from this discussion was a strategy for how to effect the paradigm shift and to make transformational progress happen for Alaska Native people and Alaska as a whole. Participants were asked to talk about practical steps that can move Native people from where they are now to where they want to be – to have healthy, thriving Native peoples, as they had for over 10,000 years before Western colonization.

The ideas presented below are some of the **Strategic Action Areas** the group identified and committed to working towards in some capacity:

- **The state needs to recognize a Native Ways of Life priority**

The state of Alaska, through its courts and officials, has argued and continues to argue that the Alaska state constitution prohibits recognizing a Native subsistence priority (contrary to the federal mandate in ANILCA). The original RGC Commissioners recommended a constitutional amendment that would allow the state of Alaska to finally recognize that the Natives of Alaska have a right to preferential access to the lands and resources they need to sustain their ways of life (commonly misconstrued as bare survival and erroneously called “subsistence”). That has not happened. In the 2013 reconvening, the groups recognized that the need of Native people to access the lands and resources that sustain their ways of life is still a critical issue in urgent need of resolution. Fair access to lands and resources is a crucial component to cultural survival, self-sustaining and healthy communities,





and rural empowerment. The original recommendation for a constitutionally recognized solution is still relevant, timely, and needed. This group will continue to advocate for greater protections under state law for Native customary use of the land and sea.

Fifteen Years Later - The Messages Remain the Same

Protecting subsistence is the top priority of rural Alaskans (1999 Report to Governor on Page 12). The State should resolve the subsistence crisis by adopting a constitutional amendment recognizing a rural subsistence priority that meets the requirements of the Alaska National Interest Lands Conservation Act (ANILCA) ('99 Report to Governor on Pg 17). Subsistence is a way of life in rural Alaska that is vital to the preservation of community, tribal cultures and economies. Subsistence hunting and fishing exist as part of a mixed economy in rural Alaska, where harvest of wild foods and the cash incomes to support harvest activities are both essential ('99 Report to Governor on Pg 69).

- **Clarify, amend and empower tribal jurisdiction and Indian Country**

All assembled agreed that it is critical to affirm that Indian Country exists in Alaska (e.g., allotments and Native townships). Still more importantly, all agreed the Secretary of the Interior must assist interested tribes in creating new Indian Country in Alaska (in accordance with recent Supreme Court decisions, which, unlike the Attorney General of the state of Alaska, agreed with the conclusions of both RGC conventions and the ILOC report). This is within the scope of the Interior Secretary's powers in Alaska, and is a mechanism for, among other things, settling lingering disputes between the state of Alaska and tribes about tribal jurisdiction and enforcement that severely limit access to justice in rural Alaska. The current confusing matrix of laws not only serve to perpetuate unequal colonial practices in Alaska, but present a major handicap to utilizing the strengths of the sovereigns – tribal, federal and state – to improve the lives of all citizens, and implement the necessary protections of lands, properties, and persons. Where appropriate, we will work with tribal leadership to continue to pursue these options.

Fifteen Years Later - The Messages Remain the Same

Tribes exist in Alaska. Tribes have the authority to govern, and they do. The lack of recognized geographic delineation of tribal government jurisdiction complicates tribes' ability to fulfill needed governmental functions in rural Alaska. Tribes respect the rights of non-members (1999 Report to Governor on Page 11). The Commission made the following recommendations: Formally acknowledge and accept Tribes ('99 Report to Governor on Pg 15) and cooperate with tribal efforts to transfer land into trust status ('99 Report to Governor on Pg 17).





- **Develop natural resources to benefit local people**

Most of Alaska's vast resource wealth – minerals, petroleum, timber, the commercial fisheries, etc. – are located in or adjacent to Native and rural Alaska communities. Yet all too often, the economic benefit of developing those resources flows to urban communities or out of state. Local people deserve a share of the wealth generated by these lands and waters, as is done in the case of the federal Community Development Quota (CDQ) fisheries program.

Access to a share of those resources will help build socio-economic capacity in Native communities and promote resilience against the major economic and environmental challenges looming on the horizon, including declining oil revenue and mounting climate change. Besides the CDQ program, the Northwest Arctic Borough offers a model of natural resource extraction, namely the Red Dog Mine, benefitting local people. The borough mechanism could potentially help other regions, but some participants noted problems with implementing that tool, including burdensome state taxes and reporting requirements. We will seek out and pursue additional options to increase local benefits for extracting resources.



"We have an opportunity here to make our state a better place to live. We have all the resources, and the money, and there is no reason why we should have winners and losers in the state." - Mike Williams, Alaska Inter-Tribal Council (1999 Report to Governor on Page 62)

Fifteen Years Later - The Messages Remain the Same

Much of Alaska's resource wealth is located in rural Alaska. The North Slope oil fields, Alaska's rich fisheries, timber, mineral deposits, and visitor attractions are all present in rural Alaska. As a center of commerce for the economic use of these rural resources, urban Alaska benefits greatly from a cooperative relationship with rural Alaska. Successful private developments in rural Alaska must be pursued in partnership with local people and government. Both ongoing local support and publicly funded infrastructure create opportunities for private sector investment and jobs ('99 Report to Governor on Pg 68).

- **Strengthening Native cultures is the key to overcoming the challenges faced by rural Alaskans**

Language, dance, art, and other forms of cultural education are essential for transmitting pride and strength, or attaining educational or academic success, and are powerful tools in combating high rates of suicide and crime. Health care was repeatedly mentioned as an ongoing need in rural Alaska, and reconnecting with cultures is powerful medicine.

One way to promote cultural activity is to facilitate strong inter-tribal and inter-generational connections. Though the chain of knowledge that stretches back 10,000 years has been strained





it is not broken. That chain must be re-forged for Native peoples to be whole again. And, as can be seen today, failure of these connections has dire consequences, not just to Alaska Natives, but to all Alaskans. Advocating and pushing for this cultural empowerment is a commitment we are all willing to support.

Fifteen Years Later - The Messages Remain the Same

Rural Alaskans consistently identify family violence, alcohol and substance abuse and suicide as major problems in their communities (1999 Report to Governor on Page 95). Many villages rely on tribal governments and ancient cultural traditions to meet community needs ('99 Report to Governor on Pg 10). Culturally based and locally administered prevention, intervention, treatment and aftercare programs have proven effective in reducing the incidence of substance abuse and related problems and supporting recovery and healing ('99 Report to Governor on Pg 96).

- **State systems must work with and for Native cultures, not against them**

Holding close to your culture has been demonstrated to be a strong protective factor that mitigates social dysfunction. Alongside hunting, fishing, gathering and harvesting, Native cultural values, philosophies, thinking systems, languages, arts, dancing, and stories are vital components and elemental expressions of a successful life in both rural and urban Alaska. Like all Native ways of life, however, they are besieged by the state educational system, the justice system, the labor/workforce system and so on.

Alaskans require institutions responsive to cultural differences. Schools today may not be as bad as the boarding schools, but painful legacies of those schools and their repercussions remain embedded in our modern educational practices, attitudes, and outcomes. Alaska needs an education system that integrates and promotes Native cultures, history, and values, not one that perpetuates the legacy of marginalizing, shaming, and degrading Native cultures. Local school boards have the authority to implement teacher training, curriculum changes, and other measures to reform rural educational institutions into vehicles for Native empowerment, and to wash away legacies of Native oppression still lingering in Alaska schools. We are committed to ensuring all of Alaska's children, Native and non-Native, have the ability to learn in culturally diverse and culturally responsive schools, acquiring knowledge about the important indigenous backbone of this state.

Fifteen Years Later - The Messages Remain the Same

Native cultures bring a valuable non-Western viewpoint and strength to our society and government (1999 Report to Governor on Page 14). Confusion in state policy [towards tribes] has resulted in inconsistent approaches to working in rural Alaska ('99 Report to Governor on Pg 35).





Fifteen Years Later - The Messages Remain the Same

Collaborative arrangements among municipal, tribal, regional, State and federal governments, institutions and agencies provide the means for strengthened local self-governance. Increased participation in decision-making, more efficient service provision, and more effective management of environmental, land, and fish and game resources are results of cooperative efforts (1999 Report to Governor on Page 10). Expanded use of local alternative [culturally grounded] dispute resolution will require State agencies to be flexible and open to working with a variety of community-based approaches and distinct enforcement methods (1999 Report to Governor on Page 108).

- **Expand tribal compacting**


With the failure of existing state and municipal systems to meet Native and rural peoples' needs, there is a need for more compacting in all areas of tribal governance, similar to other federally obligated services, whereby tribes utilize their self-determination and self-governance to take over service and program design, delivery, and implementation authorized by federal statute and using federal funding. Tribal compacting is how the current Alaska Native health care system operates, and that system is regularly lauded as a flagship of health service delivery across the country and internationally.

We did not identify which areas might be best-suited for this kind of compacting relationship, but two options are education and justice. We acknowledged that getting these kinds of systems off the ground can be a daunting task that will require both creative thinking and diligence. Group members in these fields agreed to help tribal leadership interested in pursuing this kind of compacting in whatever way they can.

Fifteen Years Later - The Messages Remain the Same

The Commission encourages local communities to develop mechanisms (such as agreements, contracts, and guidelines among cities, boroughs, non-profits, corporations, tribal governments and regional organizations) to coordinate resources for all residents. Local communities must work together and develop the means to maximize resources. Communities should demand coordinated assistance from the State. State departments need to initiate and negotiate service delivery and management agreements with appropriate entities in rural Alaska. State agencies should





hance tribal and local governance capacity by: delegating authority to the extent permitted by law, creating service agreements, and allowing tribal governments or appropriate entities to build their capacity to deliver more services in rural Alaska (1999 Report to Governor on Page 64).

- **Native communities must accelerate the production of their own leadership pool**

Although there are changes that need to be implemented within the state governmental systems, it will require more Native people to step up to the plate to advocate for and begin implementing these changes. Native people cannot wait for the state systems to fix themselves or to get permission to begin implementing solutions already available. Some solutions are already within the scope of power and authority Alaska Natives have today, and just need to be realized.

To do that, Alaska Natives need to continue to grow culturally connected, strong, compassionate leaders, as they have for the last 10,000 years. Rural communities and tribes will need to engage residents politically, find committed leaders from both the Native and non-Native population, and work together to face these challenges and amplify the help we give each other across the state.

To effect the changes defined during the reconvening, we recognize the need to see more Native leaders run for and be elected to public office, and the need to nurture and create indigenized institutions of governance that better reflect the cultural values of rural communities. All too often, tribal governments were made to use “boiler plate” constitutions essentially forced upon them by the 1934 Indian Reorganization Act (IRA) and similar laws. These constitutions may not – in fact, rarely ever – reflect the values and styles of governance of the Native society they are supposed to govern. Native systems are legitimate forms of government, and must be fortified as such, especially to bolster the paradigm shift that must occur.

Fifteen Years Later - The Messages Remain the Same

Only as Alaska Natives reassume power and responsibility for themselves and their communities will their suffering diminish and the lives of rural people improve (1999 Report to Governor on Page 23).

Ways of governing existed in Native communities long before Western contact. Councils and chiefs ruled both in settled villages and among migratory peoples, and the concept of respected elders was found in all cultures. Today, these traditional ways have strengthened and have been formalized by, among other things, federal recognition of 227 Native communities as “tribes” under federal law (1999 Report to Governor on Page 24).





Personal Commitments

In addition, participants agreed on the following broad actions:

- **Continue the discussions**

To advance the issues brought up in this meeting, all assembled agreed that additional, as well as regionally based dialogues must be held to address the unique needs of Alaska's differing regions. There are no one-size-fits-all solutions.

- **Continue the commitment**

Acknowledging that no single agency or organization take on these issues alone, we pledged to work together to see these commitments through.

- **Continue to press for better communication**

As in 1999, more effective communication between the state, tribes and communities is key to empowerment.

- **Continue to share**

We agreed that communities would benefit from sharing experiences. One possible way to do this is to develop governance "toolboxes" from the ideas generated in this and other meetings. Among other things, these "tool boxes," grounded in applied governance and written from a Native perspective, could serve as guides for anyone running for elected office. They could also be used to help retool or reimagine tribal constitutions.

To end the second and final day of the reconvening, FAI asked participants "What can you personally commit to in order to effect the changes that we've identified here today as being the most necessary to improve the lives of our Native peoples?" There were a lot of great responses, too many to capture, but here are a few powerful highlights, divided into Arenas of Action that include ideas, specific strategies, outcomes, or activities that the participants committed themselves to (paraphrased as necessary to adhere to non-attribution agreement).





Everyday Life

- Ensuring my kids know who they are from the start and speaking Inuit in the house; encouraging other parents to be healthy; use my lawyerly skills to benefit the movement and using art to bring the message.
- Continue to collect our history and stories to share with the world and each other.
- Won't be afraid to speak truth when I'm talking to others about these issues.
- Young people I work with will know they have the power to be heard and make a difference no matter their station in life or where they're from.



Educational Institutions

- [Within my position in an educational institution] I commit to helping others understand tribal issues in Alaska. I have a lot of personal learning to do yet so I can do better research; I will focus on issues in rural Alaska as the most central issue in the state. Find money for projects to research the issues discussed here.
- Publish peer-reviewed facts to contradict the prevailing, incorrect, hurtful myths that drive public perceptions of rural Alaska.
- Work towards seeing Alaska Native histories taught as a requirement to every student who goes through our university system.
- Use my subsistence experience and legal background to draft an Alaska Native subsistence constitutional amendment that will actually pass.
- Create an authentic “model Arctic Council” similar to “model UN” for high school and college students.



Tribal, Federal, State, and Local Governments

- Get tribal folks to speak at District Attorney conferences.
- Teaching and engaging with federal colleagues about Native issues; empowering Native colleagues working in federal agencies.





Tribal, Federal, State, and Local Governments (cont.)

- Fight to see more Alaska Natives elected to political office to make Alaska a better place for all Alaskans.
- Hold leaders accountable.
- Personally bring state legislators to rural Alaska to educate them about our lives.
- Get my regional corporation and borough to engage more with tribes.

Healthcare and Cultural Wellbeing

- Furthering issues in regional for-profits and in Native healthcare systems, especially historic trauma.
- Decolonization of our own people, becoming comfortable in our own skin, bring our selves everywhere we go, ensuring our songs and dances are part of everything.



Keeping the Conversation Going

- Help raise funds to pay for this reconvening [and future rural empowerment work].
- Continue to work with the organizers of this meeting to broadcast this information and these stories. All participants collaborate on a formalized paradigm shift project: even if we move the pebble just an inch, we've still moved it an inch and it's worth it.

In summary, as in 1999, subsistence protections remain a top priority for Native and rural people, safety and security eludes rural Alaskans, and basic notions of trust and respect appear to be lacking between rural and urban residents, and the state and tribal governments. But the situation does not have to stay this way. Alaskans have the innovation, creativity, and dedication to come together to ensure that Alaska lives up to its promise that all future generations of Alaskans are truly empowered.





Looking – and Moving – Forward

The work did not end when the Commission adjourned. In addition to the personal commitments identified, the Alaska Native Policy Center at First Alaskans Institute has continued to advance various ideas and concepts that were already in progress and align with this work or that flow directly from this gathering. We continue to bolster Alaska Native advancement through the lens that paradigm transformation is a critical component of making Alaska truly successful. Alaska needs its Native peoples in order to remain vital, unique, and innovative. And as Native peoples, we need our cultures – inclusive of knowledge, language, ceremony, practice, clan and social structures, and relationships – in order to be truly healthy, thriving communities. As Native peoples, no matter how strong we are culturally or regionally, we must also remember to foster our statewide connectivity as our diversity is an unparalleled strength, and as a buoy for changes and challenges.

We continue to seek out partnerships and opportunities to support enhanced self-determination, decolonization, revitalization, and empowerment, while at the same time maximizing impact on indigenous empowerment. We invite others to join us in this dialogue and in partnership.

Of special note, and to serve as an invitation to interested parties, the Alaska Native Policy Center will host a collective impact project over the course of the next few years titled “Advancing Alaska Native Dialogues on Racial Equity,” as well as an innovation lock-in on Protecting our Native Ways of Life for the long term. In connection with the lock-in, the ANPC will also host Alaska Native Conversations that Matter to bring people together for more opportunities to discuss where we are, where we want to be, and how to outline and implement strategies to get there.



To walk our talk, FAI is working to advance our peoples and at the same time advance our own transformation as an indigenous organization through time. Decolonizing is not easy work but necessary and goes hand in hand with indigenizing ourselves as a strengthening process. To enact the ideals discussed at this reconvening, we seek to enhance the use of Native based solutions, self-governance, and innovations as a balm for what ails our state and as a catalyzing force for growth in Alaska.





Our Appreciation

A tremendous debt of gratitude and appreciation must be given to all who participated and added their voices, thoughts, and ideas into this interactive dialogue and think tank. It is not often that we have the ability to step out of our day to day routines and step into a place of collective reflection about our future.

RGC Reconvening Participants

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Jennifer Johnston, Alaska Municipal League

Wilson Justin, Cheesh'na Tribal Council

Willie Kasayulie, Calista

Mara Kimmel, North Star Group

Gunnar Knapp, University of Alaska Anchorage/ISER

Tony Knowles, Former Alaska Governor*

Susan LaBelle, University of Alaska Anchorage (retired)

Jim LaBelle, Sr., University of Alaska
– Alaska Native Studies (retired)

Oliver Leavitt, Arctic Slope Regional Corporation (retired)

Maija Lukin, Maniilaq Association

Byron Mallott, Commission on
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Kimberly Martus, Bristol Bay Native Association

Will Mayo, Tanana Chiefs Conference*

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Lee Stephan, Native Village of Eklutna*

Arliss Sturgulewski, Former Senator*

Bernice Tetpon, University of Alaska

Edward K Thomas, Tlingit Haida
Central Council (President Emeritus)

Stephen Trimble, Energy
/ Natural Resource Consultant

Kyle Wark, First Alaskans Institute

Kristina Woolston, Chenega Corp

Tiffany Zulkosky, Nuvista

**Original member/staff of the Commission
on Rural Governance and Empowerment*





Thank You Very Much to all Participants in 20 Alaska Native Languages

Inuit-Yupik-Unangan Language Family **Igamsiqanaghhaalek!** (St. Lawrence Island Yupik / Siberian Yupik) **Qaġaasakung!** (Unangaġ / Aleut) **Quyanaasinaq!** (Sugpiaq / Alutiiq) **Quyana cakneq!** (Yup'ik & Cup'ik) **Quyanaqpak / Ariga taikuu!** (Iñupiaq)

Athabaskan-Eyak-Tlingit Language Family

Chin'an! (Dena'ina) **Dogidinh!** (Deg Xinag / Deg Hitan)

Enaa baasee'! (Denaakk'e / Koyukon) **Hai' / Mahsi' choo'!** (Gwich'in & Hän)

Maasee! (Tanana) **Mosiy' / Tsen'anh!** (Denak'i / Upper Kuskokwim)

Tsen'ii! (Benhti Kenaga' / Upper Tanana) **Tsin'aen!** (Ahtna) **Tsin'eġ!** (Tanacross)

Xasagidaghisdhoot! (Holikachuk)

'Awa'ahdah! (Eyak) **Gunalchéesh hó.hó / Atlein gunalchéesh!** (Tlingit)

Linguistic Isolates

Háw'aa! (Haida) **Nt'oyaxsism / Doykshin!** (Sm'algyax / Coast Tsimshian)

Indo-European Language Family & Other

Máh-sie (Chinook Jargon) **Thank you very much!** (English)





Acknowledgements

Unlike the first Commission, which was State-sponsored, the reconvened Commission was privately funded and self-initiated. In addition to the time and funding provided by First Alaskans Institute and North Star Group, Alaska Municipal League, Bering Straits Native Corporation, Chenega Corporation, Koniag Inc., NANA Regional Corporation, Sealaska and Tanana Chiefs Conference generously helped support this project.

This report offers an opportunity to renew dialogue that advances strategic action areas that will truly empower rural governance in Alaska. Bringing people together from Alaska can be expensive, and consequently financial resources are an ongoing need to maintain an ongoing effort. To support this Rural Governance effort directly, contribute at: www.firstalaskans.org.

Finally, this report wouldn't have been possible without the hard work of the FAI and NSG staff who hosted the event and compiled the report. A special shout out to Drew Cason, Mara Kimmel, Liz Medicine Crow, Karl Ohls, Jorie Paoli, Veronica A. Slajer, and Kyle Wark.

For more information or to access a digital copy of the report, please visit www.ruralgov.org.

To get involved, please contact FAI at anpc@firstalaskans.org or (907) 677-1700, or NSG at info@northstargrp.com or (907) 360-2288.

First Alaskans  Institute

 **NORTH STAR GROUP**





“Ultimately, what is needed is a change in how the problems in rural Alaska, and their solutions, are thought about: a paradigm shift that transforms rural empowerment work from isolated activity into collective impact.”





**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 suicide¹ and family violence/sexual assault,² 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,³ they are twice as likely to be represented in the state's juvenile justice and adult correctional systems,⁴ and more than three times as likely to be represented in the state's child protection system.⁵

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

¹See 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/>.

² 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.

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

⁴ 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.

⁵ 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/ocs/Publications/default.htm/>.

violence, child abuse and other crimes.⁶ 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 2004,⁷ 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,⁸ 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.

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

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

⁸ 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/. 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,⁹ 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 12th and 13th, 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.¹⁰ At the conclusion of an intensive nine-week work period, the groups

⁹ 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.

¹⁰ 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.¹¹

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.¹²

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

¹¹ See *Initial Report and Recommendations* at 32.

¹² 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.¹³
- The Alaska Department of Public Safety is providing additional funding to non-profit organizations to enhance Village Public Safety Officer¹⁴ (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 Officers¹⁵ 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.¹⁶
- The Department of Public Safety has implemented a significant policy change that permits placement of VPSOs in communities that are on the road system,

¹³ 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).

¹⁴ 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.

¹⁵ 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.

¹⁶ Yuut Elitnaurviat is a 501 c(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.¹⁷

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,¹⁸ 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

¹⁷ 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/>.

¹⁸ 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*,¹⁹ 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

¹⁹ 249 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 forums²¹ 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:

²¹ 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.²² 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.²³

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.

²² 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.

²³ 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.²⁴

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

²⁴ 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.²⁶

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

²⁶ 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.²⁷ 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.²⁸

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

²⁷ The 4th 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).

²⁸ 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.²⁹ 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.³⁰

²⁹ See AS 04.11.501(d).

³⁰ 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.³²

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

³² 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.

Calendar No. 534

113TH CONGRESS
2^D SESSION

S. 1474

To encourage the State of Alaska to enter into intergovernmental agreements with Indian tribes in the State relating to the enforcement of certain State laws by Indian tribes, to improve the quality of life in rural Alaska, to reduce alcohol and drug abuse, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 1, 2013

Mr. BEGICH (for himself and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

AUGUST 26, 2014

Reported, under authority of the order of the Senate of August 5 (legislative day, August 1), 2014, by Mr. TESTER, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

A BILL

To encourage the State of Alaska to enter into intergovernmental agreements with Indian tribes in the State relating to the enforcement of certain State laws by Indian tribes, to improve the quality of life in rural Alaska, to reduce alcohol and drug abuse, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Alaska Safe Families
3 and Villages Act of 2013”.

4 **SEC. 2. FINDINGS AND PURPOSES.**

5 (a) **FINDINGS.**—Congress finds that—

6 (1) residents of remote Alaska villages suffer
7 disproportionately from crimes and civil disturbances
8 rooted in alcohol abuse, illicit drug use, suicide, and
9 domestic violence;

10 (2) the alcohol-related suicide rate in remote
11 Alaska villages is 6 times the average in the United
12 States and the alcohol-related mortality rate is 3.5
13 times that of the general population of the United
14 States;

15 (3) Alaska Native women suffer the highest
16 rate of forcible sexual assault in the United States
17 and an Alaska Native woman is sexually assaulted
18 every 18 hours;

19 (4) according to the Alaska Native Tribal
20 Health Consortium, one in two Alaska Native
21 women experience physical or sexual violence;

22 (5) according to the 2006 Initial Report and
23 Recommendations of the Alaska Rural Justice and
24 Law Enforcement Commission, more than 95 per-
25 cent of all crimes committed in rural Alaska can be
26 attributed to alcohol abuse;

1 (6) the cost of drug and alcohol abuse in Alaska
2 is estimated at \$525,000,000 per year;

3 (7) there are more than 200 remote villages in
4 Alaska, which are ancestral homelands to Indian
5 tribes and geographically isolated by rivers, oceans,
6 and mountains making most of those villages acces-
7 sible only by air;

8 (8) small size and remoteness, lack of connec-
9 tion to a road system, and extreme weather condi-
10 tions often prevent or delay travel, including that of
11 law enforcement personnel, into remote villages, re-
12 sulting in challenging law enforcement conditions;

13 (9) less than 1/2 of remote Alaska villages are
14 served by trained State law enforcement entities and
15 several Indian tribes provide peace officers or tribal
16 police without adequate training or equipment;

17 (10) the lack of effective law enforcement enti-
18 ties in remote Alaska villages contributes signifi-
19 cantly to increased crime, alcohol abuse, drug abuse,
20 domestic violence, rates of suicide, poor educational
21 achievement, and lack of economic development;

22 (11) Indian tribes that operate within remote
23 Alaska villages should be empowered to participate
24 in local culturally relevant solutions to effectively

1 provide law enforcement entities in villages and ac-
2 cess to swift judicial proceedings;

3 (12) increasing capacities of local law enforce-
4 ment entities to achieve increased tribal involvement
5 in State law enforcement in remote villages will pro-
6 mote a stronger link between the State and village
7 residents; encourage community involvement; and
8 create greater local accountability with respect to vi-
9 olence and substance abuse; and

10 (13) the United States has a trust responsi-
11 bility to Indian tribes in the State.

12 (b) PURPOSES.—The purposes of this Act are—

13 (1) to improve the delivery of justice in Alaska
14 Native villages by encouraging the State and Indian
15 tribes to enter into intergovernmental agreements
16 relating to the enforcement and adjudication of
17 State laws relating to drug and alcohol offenses; and

18 (2) to enhance coordination and communication
19 among Federal, State, tribal, and local law enforce-
20 ment agencies.

21 **SEC. 3. DEFINITIONS.**

22 In this Act:

23 (1) ATTORNEY GENERAL.—The term “Attorney
24 General” means the Attorney General of the United
25 States.

1 (2) DIRECTOR.—The term “Director” means
2 the Director of the Office of Tribal Justice.

3 (3) INDIAN TRIBE.—The term “Indian tribe”
4 has the meaning given the term in section 102 of the
5 Federally Recognized Indian Tribe List Act of 1994
6 (25 U.S.C. 479a).

7 (4) PARTICIPATING INDIAN TRIBE.—The term
8 “participating Indian tribe” means an Indian tribe
9 selected by the Director to participate in the pro-
10 gram.

11 (5) PROGRAM.—The term “program” means
12 the Alaska Safe Families and Villages Self Govern-
13 ance Program established under this Act.

14 (6) STATE.—The term “State” means the State
15 of Alaska.

16 (7) TRIBAL COURT.—The term “tribal court”
17 means any court, council, or a mechanism of any
18 court or council sanctioned by an Indian tribe for
19 the adjudication of disputes, including the violation
20 of tribal laws, ordinances, and regulations.

21 **SEC. 4. ALASKA SAFE FAMILIES AND VILLAGES SELF GOV-**
22 **ERNANCE PROGRAM.**

23 (a) IN GENERAL.—The Attorney General shall estab-
24 lish a program in the Office of Tribal Justice Programs
25 of the Department of Justice, to be known as the “Alaska

1 Safe Families and Villages Self Governance Program", to
2 make grants to Indian tribes in carrying out intergovern-
3 mental agreements described in subsection (d).

4 (b) ADMINISTRATION.—

5 (1) IN GENERAL.—Each Indian tribe desiring
6 to participate in the program shall submit to the Di-
7 rector an application in accordance with this section.

8 (2) ELIGIBILITY.—To be eligible to participate
9 in the program, an Indian tribe in the State shall—

10 (A) request participation by resolution or
11 other official action from the governing body of
12 the Indian tribe;

13 (B) have for the preceding 3 fiscal years
14 no uncorrected significant and material audit
15 exceptions regarding any Federal contract or
16 grant;

17 (C) demonstrate to the Attorney General
18 sufficient governance capacity to conduct the
19 program, as evidenced by the history of the In-
20 dian tribe in operating government services (in-
21 cluding public utilities, children's courts, law
22 enforcement, social service programs, or other
23 activities);

1 (D) certify that the Indian tribe has en-
2 tered into an intergovernmental agreement with
3 the State described in subsection (d);

4 (E) meet such other criteria as the Attor-
5 ney General may promulgate, after providing
6 public notice and an opportunity to comment;
7 and

8 (F) submit to the Attorney General of the
9 State a copy of the application.

10 (3) PUBLIC COMMENT.—Each application sub-
11 mitted under this subsection shall be subject to pub-
12 lic comment for a period of not less than 30 days
13 after the date on which a notice of the application
14 is published in a newspaper or other publication of
15 general circulation in the vicinity of the Native vil-
16 lage of the Indian tribe.

17 (c) USE OF AMOUNTS.—Each participating Indian
18 tribe shall use amounts—

19 (1) to carry out a planning phase that may in-
20 clude—

21 (A) internal governmental and organiza-
22 tional planning;

23 (B) developing written tribal law or ordi-
24 nances detailing the structure and procedures
25 of the tribal court;

1 (C) developing enforcement mechanisms;
2 and

3 (D) negotiating and finalizing any inter-
4 governmental agreements necessary to carry out
5 this Act; and

6 (2) to carry out activities of the Indian tribe in
7 accordance with an applicable intergovernmental
8 agreement with the State.

9 (d) INTERGOVERNMENTAL AGREEMENTS.—

10 (1) IN GENERAL.—The State (including polit-
11 ical subdivisions of the State) and Indian tribes in
12 the State are encouraged to enter into intergovern-
13 mental agreements relating to the enforcement of
14 certain State laws by the Indian tribe.

15 (2) CONTENTS.—

16 (A) IN GENERAL.—An intergovernmental
17 agreement described in paragraph (1) may de-
18 scribe the duties of the State and the applicable
19 Indian tribe relating to—

20 (i) the employment of law enforcement
21 officers; probation; and parole officers;

22 (ii) the appointment and deputization
23 by the State of tribal law enforcement offi-
24 cers as special officers to aid and assist in

1 the enforcement of the criminal laws of the
2 State;

3 (iii) the enforcement of punishments
4 imposed by the Indian tribe under tribal
5 law;

6 (iv) the transfer of enforcement duties
7 for State drug- and alcohol-related mis-
8 demeanor offenses to the Indian tribe;

9 (v) the adjudication by the Indian
10 tribe of State drug- and alcohol-related
11 misdemeanor offenses;

12 (vi) the transfer of information and
13 evidence between tribal law enforcement
14 entities and the court system of the State;

15 (vii) the detention of offenders;

16 (viii) searches and seizures of alcohol
17 and drugs at municipal and State airports;
18 and

19 (ix) jurisdictional or financial matters.

20 (B) REMEDIES.—Subject to title II of
21 Public Law 90-284 (25 U.S.C. 1301 et seq.)
22 (commonly known as the “Indian Civil Rights
23 Act of 1968”), an intergovernmental agreement
24 described in paragraph (1) may include rem-
25 edies to be imposed by the applicable Indian

1 tribe relating to the enforcement of State law,
2 including—

3 (i) restorative justice, including circle
4 sentencing;

5 (ii) community service;

6 (iii) fines;

7 (iv) forfeitures;

8 (v) commitments for treatment;

9 (vi) restraining orders;

10 (vii) emergency detentions; and

11 (viii) any other remedies agreed to by

12 the State and Indian tribe.

13 (e) ANNUAL REPORT.—

14 (1) IN GENERAL.—Not later than May 1 of
15 each year, the Attorney General shall submit to the
16 Committee on Indian Affairs of the Senate and the
17 Committee on Natural Resources of the House of
18 Representatives an annual report that—

19 (A) describes the grants awarded under
20 the program;

21 (B) assesses the effectiveness of the pro-
22 gram; and

23 (C) includes any recommendations of the
24 Attorney General relating to the program.

1 (2) REQUIREMENTS.—Each report shall be pre-
2 pared in consultation with the government of each
3 participating Indian tribe and the State.

4 (f) NO LIABILITY FOR THE STATE OF ALASKA.—The
5 State, including any political subdivision of the State, shall
6 not be liable for any act or omission of a participating
7 Indian tribe in carrying out this Act, including any act
8 or omission of a participating Indian tribe undertaken
9 pursuant to an intergovernmental agreement described in
10 subsection (d).

11 (g) REGULATIONS.—The Attorney General shall pro-
12 mulgate such regulations as the Attorney General deter-
13 mines are necessary to carry out this Act.

14 (h) ELIGIBILITY FOR FEDERAL PROGRAMS.—

15 (1) IN GENERAL.—Participating Indian tribes
16 shall be eligible for the same tribal court and law en-
17 forcement programs and level of funding from the
18 Bureau of Indian Affairs and the Department of
19 Justice as are available to other Indian tribes.

20 (2) APPLICABILITY IN ALASKA.—Nothing in
21 this Act limits the application in the State of—

22 (A) the Tribal Law and Order Act of 2010
23 (Public Law 111-211, 124 Stat. 2261);

1 (B) the Violence Against Women Reau-
2 thorization Act of 2013 (Public law 113-4; 127
3 Stat. 54); or

4 (C) any amendments made by the Acts re-
5 ferred to in subparagraphs (A) and (B).

6 (i) EFFECT OF ACT.—Nothing in this Act—

7 (1) limits, alters, or diminishes the civil or
8 criminal jurisdiction of the State, any subdivision of
9 the State, or the United States;

10 (2) limits or diminishes the jurisdiction of any
11 Indian tribe in the State, including inherent and
12 statutory authority of the Indian tribe over child
13 protection, child custody, and domestic violence (as
14 in effect on the day before the date of enactment of
15 this Act);

16 (3) creates a territorial basis for the jurisdiction
17 of any Indian tribe in the State or otherwise creates
18 Indian country in any area of the State;

19 (4) confers any criminal jurisdiction on any In-
20 dian tribe in the State;

21 (5) diminishes the trust responsibility of the
22 United States to Indian tribes in the State;

23 (6) abridges or diminishes the sovereign immu-
24 nity of any Indian tribe in the State;

1 (7) alters the criminal or civil jurisdiction of the
2 Metlakatla Indian Community within the Annette Is-
3 lands Reserve (as in effect on the date before the
4 date of enactment of this Act);

5 (8) alters the authority of the State to file, in
6 the discretion of the State, a civil or criminal action
7 for the violation of State law;

8 (9) limits in any manner the eligibility of the
9 State, any political subdivision of the State, or any
10 Indian tribe in the State, for any other Federal as-
11 sistance under any other law; or

12 (10) affects the authority of the United States
13 or any State government that has been delegated au-
14 thority by the United States to investigate and pros-
15 ecute a criminal violation in Indian country, includ-
16 ing under section 1162 of title 18, United States
17 Code.

18 **SEC. 5. FUNDING.**

19 The Attorney General shall use amounts made avail-
20 able to the Attorney General for the Office of Tribal Jus-
21 tice to carry out the program under this Act.

22 **SEC. 6. REPEAL OF SPECIAL RULE FOR STATE OF ALASKA.**

23 Section 910 of the Violence Against Women Reau-
24 thorization Act of 2013 (18 U.S.C. 2265 note; Public Law
25 113-4) is repealed.

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Alaska Safe Families*
3 *and Villages Act of 2014”.*

4 **SEC. 2. FINDINGS AND PURPOSES.**

5 (a) *FINDINGS.—Congress finds that—*

6 (1) *residents of remote Alaska villages suffer dis-*
7 *proportionately from crimes and civil disturbances*
8 *rooted in alcohol abuse, illicit drug use, suicide, and*
9 *domestic violence;*

10 (2) *the alcohol-related suicide rate in remote*
11 *Alaska villages is 6 times the average in the United*
12 *States and the alcohol-related mortality rate is 3.5*
13 *times that of the general population of the United*
14 *States;*

15 (3) *Alaska Native women suffer the highest rate*
16 *of forcible sexual assault in the United States and an*
17 *Alaska Native woman is sexually assaulted every 18*
18 *hours;*

19 (4) *according to the Alaska Native Tribal Health*
20 *Consortium, one in two Alaska Native women experi-*
21 *ence physical or sexual violence;*

22 (5) *according to the 2006 Initial Report and*
23 *Recommendations of the Alaska Rural Justice and*
24 *Law Enforcement Commission, more than 95 percent*
25 *of all crimes committed in rural Alaska can be attrib-*
26 *uted to alcohol abuse;*

1 (6) *the cost of drug and alcohol abuse in Alaska*
2 *is estimated at \$525,000,000 per year;*

3 (7) *there are more than 200 remote villages in*
4 *Alaska, which are ancestral homelands to Indian*
5 *tribes and geographically isolated by rivers, oceans,*
6 *and mountains making most of those villages acces-*
7 *sible only by air;*

8 (8) *small size and remoteness, lack of connection*
9 *to a road system, and extreme weather conditions*
10 *often prevent or delay travel, including that of law*
11 *enforcement personnel, into remote villages, resulting*
12 *in challenging law enforcement conditions and lack of*
13 *ready access to the State judicial system;*

14 (9) *less than 1/2 of remote Alaska villages are*
15 *served by trained State law enforcement entities and*
16 *several Indian tribes provide peace officers or tribal*
17 *police without adequate training or equipment;*

18 (10) *the centralized State judicial system relies*
19 *on general jurisdiction Superior Courts in the re-*
20 *gional hub communities, with only a handful of*
21 *staffed magistrate courts outside of the hub commu-*
22 *nities;*

23 (11) *the lack of effective law enforcement and ac-*
24 *cessible judicial services in remote Alaska villages*
25 *contributes significantly to increased crime, alcohol*

1 *abuse, drug abuse, domestic violence, rates of suicide,*
2 *poor educational achievement, and lack of economic*
3 *development;*

4 *(12) Indian tribes that operate within remote*
5 *Alaska villages should be supported in carrying out*
6 *local culturally relevant solutions to effectively pro-*
7 *vide law enforcement in villages and access to swift*
8 *judicial proceedings;*

9 *(13) increasing capacities of local law enforce-*
10 *ment entities to enforce local tribal laws and to*
11 *achieve increased tribal involvement in State law en-*
12 *forcement in remote villages will promote a stronger*
13 *link between the State and village residents, encour-*
14 *age community involvement, and create greater local*
15 *accountability with respect to violence and substance*
16 *abuse;*

17 *(14) the United States has a trust responsibility*
18 *to Indian tribes in the State;*

19 *(15) the report of the Indian Law and Order*
20 *Commission to the President and Congress entitled “A*
21 *Roadmap to Making Native America Safer” and*
22 *dated November 2013 found that the crisis in crimi-*
23 *nal justice in the State is a national problem and*
24 *urged the Federal Government and the State to*
25 *strengthen tribal sovereignty and self-governance and*

1 for Congress to create a jurisdictional framework to
2 support tribal sovereignty and expand the authority
3 of Indian tribes in the State; and

4 (16) it is necessary to invoke the plenary author-
5 ity of Congress over Indian tribes under article I, sec-
6 tion 8, clause 3 of the Constitution to improve access
7 to judicial systems in remote Alaska Native villages
8 and provide for the presence of trained local law en-
9 forcement.

10 (b) *PURPOSES.*—The purposes of this Act are—

11 (1) to improve the delivery of justice in Alaska
12 Native villages by—

13 (A) encouraging the State and Indian tribes
14 to enter into intergovernmental agreements relat-
15 ing to the enforcement and adjudication of State
16 laws relating to drug and alcohol offenses; and

17 (B) supporting Indian tribes in the State in
18 the enforcement and adjudication of tribal laws
19 relating to child abuse and neglect, domestic vio-
20 lence, and drug and alcohol offenses; and

21 (2) to enhance coordination and communication
22 among Federal, State, tribal, and local law enforce-
23 ment agencies.

24 **SEC. 3. DEFINITIONS.**

25 *In this Act:*

1 (1) *ATTORNEY GENERAL.*—The term “Attorney
2 General” means the Attorney General of the United
3 States.

4 (2) *GRANT PROGRAM.*—The term “grant pro-
5 gram” means the Alaska Safe Families and Villages
6 Self Governance Intergovernmental Grant Program
7 established under section 4.

8 (3) *INDIAN TRIBE.*—The term “Indian tribe” has
9 the meaning given the term in section 102 of the Fed-
10 erally Recognized Indian Tribe List Act of 1994 (25
11 U.S.C. 479a).

12 (4) *PARTICIPATING INDIAN TRIBE.*—The term
13 “participating Indian tribe” means an Indian tribe
14 selected by the Attorney General to participate in the
15 grant program or the tribal law program, as applica-
16 ble.

17 (5) *REMOTE ALASKA VILLAGE.*—The term “re-
18 mote Alaska village” means an Alaska Native Village
19 Statistical Area delineated for the Director of the
20 Census by the officials of the village for the purpose
21 of presenting data for the decennial census conducted
22 under section 141(a) of title 13, United States Code.

23 (6) *STATE.*—The term “State” means the State
24 of Alaska.

1 (7) *TRIBAL COURT.*—*The term “tribal court”*
2 *means any court, council, or a mechanism of any*
3 *court or council sanctioned by an Indian tribe for the*
4 *adjudication of disputes, including the violation of*
5 *tribal laws, ordinances, and regulations.*

6 (8) *TRIBAL LAW PROGRAM.*—*The term “tribal*
7 *law program” means the Alaska Safe Families and*
8 *Villages Tribal Law Program established under sec-*
9 *tion 5.*

10 **SEC. 4. ALASKA SAFE FAMILIES AND VILLAGES SELF GOV-**
11 **ERNANCE INTERGOVERNMENTAL GRANT**
12 **PROGRAM.**

13 (a) *IN GENERAL.*—*The Attorney General shall estab-*
14 *lish a program in the Office of Justice Programs of the De-*
15 *partment of Justice, to be known as the Alaska Safe Fami-*
16 *lies and Villages Self Governance Intergovernmental Grant*
17 *Program, to make grants to Indian tribes acting on behalf*
18 *of 1 or more Indian tribes to assist Indian tribes in plan-*
19 *ning for and carrying out intergovernmental agreements*
20 *described in subsection (d).*

21 (b) *ADMINISTRATION.*—

22 (1) *IN GENERAL.*—*Each Indian tribe desiring to*
23 *participate in the grant program shall submit to the*
24 *Attorney General an application in accordance with*
25 *this section.*

1 (2) *ELIGIBILITY FOR GRANT PROGRAM.*—*To be*
2 *eligible to participate in the grant program, an In-*
3 *Indian tribe in the State shall—*

4 (A) *request participation by resolution or*
5 *other official action by the governing body of the*
6 *Indian tribe;*

7 (B) *have for the preceding 3 fiscal years no*
8 *uncorrected significant and material audit ex-*
9 *ceptions regarding any Federal contract, com-*
10 *pact, or grant;*

11 (C) *demonstrate to the Attorney General*
12 *sufficient governance capacity to conduct the*
13 *grant program, as evidenced by the history of the*
14 *Indian tribe in operating government services*
15 *(including public utilities, children’s courts, law*
16 *enforcement, social service programs, or other ac-*
17 *tivities);*

18 (D) *certify that the Indian tribe has entered*
19 *into, or can evidence intent to enter into negotia-*
20 *tions relating to, an intergovernmental agree-*
21 *ment with the State described in subsection (d);*

22 (E) *meet such other criteria as the Attorney*
23 *General may promulgate, after providing public*
24 *notice and an opportunity to comment; and*

1 (F) submit to the Attorney General of the
2 State a copy of the application.

3 (c) *USE OF AMOUNTS.*—Each participating Indian
4 tribe shall use amounts made available under the grant pro-
5 gram—

6 (1) to carry out a planning phase that may in-
7 clude—

8 (A) internal governmental and organiza-
9 tional planning;

10 (B) developing written tribal law or ordi-
11 nances, including tribal laws and ordinances de-
12 tailing the structure and procedures of the tribal
13 court;

14 (C) developing enforcement mechanisms;
15 and

16 (D) negotiating and finalizing any inter-
17 governmental agreements necessary to carry out
18 this section; and

19 (2) to carry out activities of the Indian tribe in
20 accordance with an applicable intergovernmental
21 agreement with the State.

22 (d) *INTERGOVERNMENTAL AGREEMENTS.*—

23 (1) *IN GENERAL.*—The State (including political
24 subdivisions of the State) and Indian tribes in the
25 State are encouraged to enter into intergovernmental

1 *agreements relating to the enforcement of certain*
2 *State laws by the Indian tribe.*

3 (2) *CONTENTS.—*

4 (A) *IN GENERAL.—An intergovernmental*
5 *agreement described in paragraph (1) may de-*
6 *scribe the duties of the State and the applicable*
7 *Indian tribe relating to—*

8 (i) *the employment of law enforcement*
9 *officers, probation, and parole officers;*

10 (ii) *the appointment and deputization*
11 *by the State of tribal law enforcement offi-*
12 *cers as special officers to aid and assist in*
13 *the enforcement of the criminal laws of the*
14 *State;*

15 (iii) *the enforcement of punishments*
16 *imposed by the Indian tribe under tribal*
17 *law;*

18 (iv) *the transfer of enforcement duties*
19 *for State drug- and alcohol-related mis-*
20 *demeanor offenses to the Indian tribe;*

21 (v) *the adjudication by the Indian*
22 *tribe of State drug- and alcohol-related mis-*
23 *demeanor offenses;*

1 (vi) the transfer of information and
2 evidence between tribal law enforcement en-
3 tities and the court system of the State;

4 (vii) the detention of offenders;

5 (viii) searches and seizures of alcohol
6 and drugs at municipal and State airports;
7 and

8 (ix) jurisdictional or financial matters.

9 (B) REMEDIES.—Subject to title II of Pub-
10 lic Law 90–284 (25 U.S.C. 1301 et seq.) (com-
11 monly known as the “Indian Civil Rights Act of
12 1968”), an intergovernmental agreement de-
13 scribed in paragraph (1) may include remedies
14 to be imposed by the applicable Indian tribe re-
15 lating to the enforcement of State law, includ-
16 ing—

17 (i) restorative justice, including circle
18 sentencing;

19 (ii) community service;

20 (iii) fines;

21 (iv) forfeitures;

22 (v) commitments for treatment;

23 (vi) restraining orders;

24 (vii) emergency detentions; and

1 (viii) any other remedies agreed to by
2 the State and Indian tribe.

3 (e) ANNUAL REPORT.—

4 (1) IN GENERAL.—Not later than May 1 of each
5 year, the Attorney General shall submit to the Com-
6 mittee on Indian Affairs of the Senate and the Com-
7 mittee on Natural Resources of the House of Rep-
8 resentatives an annual report that—

9 (A) describes the grants awarded under the
10 grant program;

11 (B) assesses the effectiveness of the grant
12 program; and

13 (C) includes any recommendations of the
14 Attorney General relating to the grant program.

15 (2) REQUIREMENTS.—Each report shall be pre-
16 pared in consultation with the government of each
17 participating Indian tribe and the State.

18 **SEC. 5. ALASKA SAFE FAMILIES AND VILLAGES SELF GOV-**
19 **ERNANCE TRIBAL LAW PROJECT.**

20 (a) IN GENERAL.—The Attorney General shall estab-
21 lish a project in the Office of Justice Programs of the De-
22 partment of Justice, to be known as the Alaska Safe Fami-
23 lies and Villages Self Governance Tribal Law Project, to
24 make grants to Indian tribes acting on behalf of 1 or more
25 Indian tribes to assist Indian tribes in planning for and

1 *carrying out concurrent jurisdiction activities described in*
2 *subsection (d).*

3 *(b) APPLICATION.—*

4 *(1) IN GENERAL.—Each Indian tribe desiring to*
5 *participate in the tribal law program shall submit to*
6 *the Attorney General an application in accordance*
7 *with this section.*

8 *(2) ELIGIBILITY.—To be eligible to participate*
9 *in the tribal law program, an Indian tribe in the*
10 *State shall—*

11 *(A) request participation by resolution or*
12 *other official action by the governing body of the*
13 *Indian tribe;*

14 *(B) have for the preceding 3 fiscal years no*
15 *uncorrected significant and material audit ex-*
16 *ceptions regarding any Federal contract, com-*
17 *pact, or grant;*

18 *(C) demonstrate to the Attorney General*
19 *sufficient governance capacity to conduct the*
20 *tribal law program, as evidenced by the history*
21 *of the Indian tribe in operating government serv-*
22 *ices (including public utilities, children's courts,*
23 *law enforcement, social service programs, or*
24 *other activities);*

1 (D) meet such other criteria as the Attorney
2 General may promulgate, after providing for
3 public notice; and

4 (E) submit to the Attorney General of the
5 State a copy of the application submitted under
6 this section.

7 (3) *ADDITIONAL SUBMISSIONS.*—On completion
8 of the planning phase described in subsection (c), the
9 Indian tribe shall provide to the Attorney General—

10 (A) the constitution of the Indian tribe or
11 equivalent organic documents showing the struc-
12 ture of the tribal government and the placement
13 and authority of the tribal court within that
14 structure;

15 (B) written tribal laws or ordinances gov-
16 erning tribal court procedures and the regulation
17 and enforcement of child abuse and neglect, do-
18 mestic violence, drugs and alcohol, and related
19 matters; and

20 (C) such other information as the Attorney
21 General may, by public notice, require.

22 (c) *PLANNING PHASE.*—

23 (1) *IN GENERAL.*—Each participating Indian
24 tribe shall complete a planning phase that includes—

1 (A) *internal governmental and organiza-*
2 *tional planning;*

3 (B) *developing written tribal law or ordi-*
4 *nances detailing the structure and procedures of*
5 *the tribal court; and*

6 (C) *enforcement mechanisms.*

7 (2) *CERTIFICATION.—*

8 (A) *IN GENERAL.—Not later than 120 days*
9 *after receiving an application under subsection*
10 *(b), the Attorney General shall certify the com-*
11 *pletion of the planning phase under this section.*

12 (B) *TIMING.—The Attorney General may*
13 *make a certification described in subparagraph*
14 *(A) on the date on which the participating In-*
15 *Indian tribe submits an application under sub-*
16 *section (b) if the Indian tribe demonstrates to the*
17 *Attorney General that the Indian tribe has satis-*
18 *fied the requirements of the planning phase*
19 *under paragraph (1).*

20 (d) *CONCURRENT JURISDICTION.—*

21 (1) *IN GENERAL.—Unless otherwise agreed to by*
22 *the Indian tribe in an intergovernmental agreement,*
23 *beginning 30 days after the date on which the certifi-*
24 *cation described in subsection (c)(2) is made, the par-*
25 *ticipating Indian tribe may exercise civil jurisdic-*

1 *tion, concurrent with the State, in matters relating to*
2 *child abuse and neglect, domestic violence, drug-re-*
3 *lated offenses, and alcohol-related offenses over—*

4 *(A) any member of, or person eligible for*
5 *membership in, the Indian tribe; and*

6 *(B) any nonmember of the Indian tribe, if*
7 *the nonmember resides or is located in the remote*
8 *Alaska Native village in which the Indian tribe*
9 *operates.*

10 *(2) SANCTIONS.—A participating Indian tribe*
11 *exercising jurisdiction under paragraph (1) shall im-*
12 *pose such civil sanctions as the tribal court has deter-*
13 *mined to be appropriate, consistent with title II of*
14 *Public Law 90–284 (25 U.S.C. 1301 et seq.) (com-*
15 *monly known as the “Indian Civil Rights Act of*
16 *1968”) and tribal law, including—*

17 *(A) restorative justice, including commu-*
18 *nity or circle sentencing;*

19 *(B) community service;*

20 *(C) fines;*

21 *(D) forfeitures;*

22 *(E) commitments for treatment;*

23 *(F) restraining orders;*

24 *(G) emergency detentions; and*

1 (H) any other remedies the tribal court de-
2 termines are appropriate.

3 (3) *INCARCERATION.*—A person shall not be in-
4 carcerated by a participating Indian tribe exercising
5 jurisdiction under paragraph (1) except pursuant to
6 an intergovernmental agreement described in section
7 4(d).

8 (4) *EMERGENCY CIRCUMSTANCES.*—Nothing in
9 this subsection prevents a participating Indian tribe
10 exercising jurisdiction under paragraph (1) from—

11 (A) assuming protective custody of a mem-
12 ber of the Indian tribe or otherwise taking action
13 to prevent imminent harm to that member or
14 others; and

15 (B) taking immediate, temporary protective
16 measures to address a situation involving an im-
17 minent threat of harm to a member of the In-
18 dian tribe by a nonmember.

19 (e) *ANNUAL REPORT.*—

20 (1) *IN GENERAL.*—Not later than May 1 of each
21 year, the Attorney General shall submit to the Com-
22 mittee on Indian Affairs of the Senate and the Com-
23 mittee on Natural Resources of the House of Rep-
24 resentatives a brief annual report that—

1 (A) details the activities carried out under
2 the tribal law program; and

3 (B) includes an assessment and any rec-
4 ommendations of the Attorney General relating
5 to the tribal law program.

6 (2) *REQUIREMENTS.*—Each report shall be pre-
7 pared—

8 (A) in consultation with the government of
9 each participating Indian tribe; and

10 (B) after the participating Indian tribe and
11 the State have an opportunity to comment on the
12 report.

13 **SEC. 6. ADMINISTRATION.**

14 (a) *EFFECT OF ACT.*—Nothing in this Act—

15 (1) limits, alters, or diminishes the civil or
16 criminal jurisdiction of the State, any subdivision of
17 the State, or the United States;

18 (2) limits or diminishes the jurisdiction of any
19 Indian tribe in the State, including inherent and
20 statutory authority of the Indian tribe over alcohol,
21 and drug abuse, child protection, child custody, and
22 domestic violence (as in effect on the day before the
23 date of enactment of this Act);

24 (3) creates a territorial basis for the jurisdiction
25 of any Indian tribe in the State (other than as pro-

1 *vided in section 5) or otherwise establishes Indian*
2 *country (as defined in section 1151 of title 18, United*
3 *States Code) in any area of the State;*

4 *(4) confers any criminal jurisdiction on any In-*
5 *Indian tribe in the State unless agreed to in an inter-*
6 *governmental agreement described in section 4(d);*

7 *(5) diminishes the trust responsibility of the*
8 *United States to Indian tribes in the State;*

9 *(6) abridges or diminishes the sovereign immu-*
10 *nity of any Indian tribe in the State;*

11 *(7) alters the criminal or civil jurisdiction of the*
12 *Metlakatla Indian Community within the Annette Is-*
13 *lands Reserve (as in effect on the date before the date*
14 *of enactment of this Act); or*

15 *(8) limits in any manner the eligibility of the*
16 *State, any political subdivision of the State, or any*
17 *Indian tribe in the State, for any other Federal as-*
18 *sistance under any other law.*

19 *(b) NO LIABILITY FOR THE STATE OF ALASKA.—The*
20 *State, including any political subdivision of the State, shall*
21 *not be liable for any act or omission of a participating In-*
22 *dian tribe in carrying out this Act, including any act or*
23 *omission of a participating Indian tribe undertaken pursu-*
24 *ant to an intergovernmental agreement described in section*
25 *4(d).*

1 (c) *REGULATIONS.*—*The Attorney General shall pro-*
2 *mulgate such regulations as the Attorney General deter-*
3 *mines are necessary to carry out this Act.*

4 (d) *ELIGIBILITY FOR FEDERAL PROGRAMS.*—

5 (1) *IN GENERAL.*—*Participating Indian tribes*
6 *shall be eligible for the same tribal court and law en-*
7 *forcement programs and level of funding from the Bu-*
8 *reau of Indian Affairs as are available to other In-*
9 *dian tribes.*

10 (2) *APPLICABILITY IN THE STATE.*—*Nothing in*
11 *this Act limits the application in the State of—*

12 (A) *the Tribal Law and Order Act of 2010*
13 *(Public Law 111–211; 124 Stat. 2261);*

14 (B) *the Violence Against Women Reauthor-*
15 *ization Act of 2013 (Public law 113–4; 127 Stat.*
16 *54); or*

17 (C) *any amendments made by the Acts re-*
18 *ferred to in subparagraphs (A) and (B).*

19 (e) *FULL FAITH AND CREDIT.*—

20 (1) *IN GENERAL.*—*Each of the 50 States shall*
21 *give full faith and credit to all official acts and de-*
22 *crees of the tribal court of a participating Indian*
23 *tribe to the same extent and in the same manner as*
24 *that State accords full faith and credit to the official*
25 *acts and decrees of other States.*

1 (2) *OTHER LAWS.*—*Nothing in this subsection*
2 *impairs the duty of the State to give full faith and*
3 *credit under any other law.*

4 **SEC. 7. TECHNICAL ASSISTANCE.**

5 (a) *IN GENERAL.*—*The Attorney General may enter*
6 *into contracts with Indian tribes in the State to provide—*

7 (1) *training and technical assistance on tribal*
8 *court development to any Indian tribe in the State;*
9 *and*

10 (2) *the training for proper transfer of evidence*
11 *and information—*

12 (A) *between tribal and State law enforce-*
13 *ment entities; and*

14 (B) *between State and tribal court systems.*

15 (b) *COOPERATION.*—*Indian tribes may cooperate with*
16 *other entities for the provision of services under the con-*
17 *tracts described in subsection (a).*

18 **SEC. 8. FUNDING.**

19 *The Attorney General shall use amounts made avail-*
20 *able to the Attorney General for the Office of Justice Pro-*
21 *grams to carry out this Act.*

22 **SEC. 9. REPEAL OF SPECIAL RULE FOR STATE OF ALASKA.**

23 *Section 910 of the Violence Against Women Reauthor-*
24 *ization Act of 2013 (18 U.S.C. 2265 note; Public Law 113-*
25 *4) is repealed.*

Calendar No. 534

113TH CONGRESS
2D SESSION

S. 1474

A BILL

To encourage the State of Alaska to enter into intergovernmental agreements with Indian tribes in the State relating to the enforcement of certain State laws by Indian tribes, to improve the quality of life in rural Alaska, to reduce alcohol and drug abuse, and for other purposes.

AUGUST 26, 2014

Reported with an amendment

TYPES OF TRIBAL COURT JURISDICTION IN ALASKA

TRIBAL COURTS AND THE INDIAN CIVIL RIGHTS ACT

All tribal courts are bound by federal law to comply with the requirements of the Indian Civil Rights Act.⁶⁶ The ICRA places obligations on tribal governments that are parallel to, but not identical to, the rights that all citizens have with respect to state and federal governments under the Bill of Rights. In some respects, ICRA rights are more extensive than those in the Bill of Rights; in addition to barring cruel and unusual punishments, the ICRA bars sentences more than one year and fines of more than \$5,000.⁶⁷ But in other respects, ICRA rights are less extensive than those in the Bill of Rights; defendants are entitled to counsel at their own expense, but not to a free lawyer.

Many of the provisions of the Act apply to criminal and not civil proceedings, but the due process clause applies to both civil and criminal proceedings. As described above, a tribal court that issues a decision without complying with the requirements of due process is likely to find that its decision will not be respected by state or federal courts, or by the parties themselves. ICRA also imposes restrictions on tribal police conducting searches and seizing evidence that are similar to the protections created by the Fourth Amendment to the United States Constitution. However, when tribal police are searching for alcohol in villages for the purpose of destroying it – as opposed to collecting it as evidence for criminal prosecution – there may be few judicial remedies for challenging those searches under ICRA.⁶⁸

TRIBAL COURT JURISDICTION OVER INTER-FAMILY DOMESTIC RELATIONS CASES

Federal law has long recognized tribal jurisdiction in the area of domestic relations. As sovereigns, Indian tribes possess the "inherent power to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members."⁶⁹ "If an Indian tribe has power to regulate the marriage relationships of its members, it necessarily has power to adjudicate, through tribunals established by itself, controversies involving such relationships."⁷⁰ In addition to tribal sovereignty over

⁶⁶ 25 U.S.C. 1301 and following sections.

⁶⁷ Congress created some exceptions to tribal court sentencing limitations in the Tribal Law and Order Act of 2010, Pub. L. No. 111-211, tit. II, 124 Stat. 2261 (codified in scattered sections of the U.S. Code). At this time, however, no Alaska tribes are exercising the enhanced sentencing authority under the Tribal Law and Order Act.

⁶⁸ See, e.g. Pat Hanley, *Warrantless Searches for Alcohol by Native Alaska Villages: A Permissible Exercise of Sovereign Rights or an Assault on Civil Liberties?*, 14 Alaska L. Rev. 471 (1997).

⁶⁹ *Montana v. United States*, 450 U.S. 544, 564 (1981) (emphasis added).

⁷⁰ *Powers of Indian Tribes*, 55 Interior Dec. 14, 56 (1934). See also, *Fisher v. District Court*, 424 U.S. 382 (1976); *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30 (1989); *Sanders v. Robinson*, 864 F.2d 630 (9th Cir. 1988).

marriage and divorce, therefore, courts have recognized tribal sovereignty over custody,⁷¹ paternity,⁷² and child support.⁷³

Under Alaska case law, state and tribal courts share concurrent jurisdiction over domestic relations, so either state or tribal courts may hear cases involving tribal members.⁷⁴ Concurrent jurisdiction is the concept that either court (state or tribal) has the authority to hear and make decisions regarding the same case.

John v. Baker held that sovereign tribes exist in Alaska, and that tribal courts have jurisdiction over their members in a variety of internal domestic issues. *John v. Baker*⁷⁵ involved a challenge to the validity of a tribal court order issued in a custody case between parents. The court reasoned that a tribe's concurrent jurisdiction over child custody matters is grounded in its inherent power as a sovereign entity. As a sovereign entity, the tribe has the authority "to adjudicate internal domestic custody matters" concerning its members.⁷⁶ The court recognized that a tribal court order should be afforded the same recognition as a state court order as a matter of comity (respect for that court's decision-making authority). In *John v. Baker* the court also noted that concurrent jurisdiction was essential to ensure that members of rural villages have meaningful access to a justice system that appropriately addresses cultural differences that exist in Alaska.

John v. Baker gave comity recognition to a tribal court custody order between one parent who was a tribal member and another parent who was not, but who consented to tribal jurisdiction – at least until the tribal court ruled against him. It would therefore be consistent with *John v. Baker* for tribal courts in inter-family cases to have personal jurisdiction over non-members by virtue of the nonmember's consent to jurisdiction.⁷⁷ Non-members choosing to participate in tribal court is relatively common in Alaska.

TRIBAL COURT JURISDICTION OVER ADOPTIONS

Under general federal Indian law, adoptions are a type of domestic relations case and Indian tribes have the power to regulate adoptions of tribal members.⁷⁸ Alaskan tribes also have inherent authority to decide domestic relations cases involving their members.⁷⁹

⁷¹ See, e.g., *John v. Baker*, 982 P.2d at 748.

⁷² See, e.g., *U.S. v. Keys*, 103 F.3d 758, 760 (9th Cir. 1996) (father establishes paternity and obtains legal custody of child in Colorado River tribal court); *Dennis v. State*, 1JU-07-983 CI (Juneau Sup. Ct.)

⁷³ See, e.g., *Jackson County ex rel Smoker v. Smoker*, 459 S.E.2d 789 (N.C. 1995); *CCTHITA v. State*, 1JU-10-376 CI (Juneau. Sup. Ct. 2010).

⁷⁴ See generally, *State v. Native Vill. Of Tanana*, 249 P.3d 734 (Alaska 2011).

⁷⁵ *John v. Baker*, 982 P.2d 738 (Alaska 1999).

⁷⁶ *Id.* at 754.

⁷⁷ In ICWA cases, it is not necessarily the case that a parent must consent to tribal court jurisdiction. This is due to jurisdiction being established through the membership of the child. See 25 U.S.C. § 1911; *John v. Baker*, 982 P.2d at 748; *S.B. v. State, Dep't of Health & Social Serv's, DFYS*, 61 P.3d 6 (Alaska 2002).

⁷⁸ Powers of Indian Tribes, 55 Interior Decisions 14 (October 25, 1934).

⁷⁹ *John v. Baker*, 982 P.2d 738 (Alaska 1999); *Native Village of Venetie v. State of Alaska*, No. F86-0075 CV (HRH) (D. Alaska); see 944 P.2d 548 (9th Cir. 1991).

The Indian Child Welfare Act requires the State to give full faith and credit to tribally-issued adoptions.⁸⁰

Tribal authority over adoptions includes the authority to protect and promote a relationship that in some cases differs from adoptions among non-Native people. Among some Native cultures, adoptions do not end a child's relationship with his or her natural parents; instead, adoption ensures that a child will have several parental figures to look up to.⁸¹ Historically, in times of disease and famine, families have used adoptions to revive family units by making new connections or reinforcing connections that might otherwise have fallen apart.⁸²

There are two primary ways for Tribes to grant adoptions. First, tribal courts may issue adoption orders for children who are members of the Tribe or eligible for membership in the Tribe.⁸³ The tribal court must provide due process to the biological parents and, like state court, attempt to identify unknown fathers to the extent possible. Once the case is final, the tribal court can send a certified copy of the adoption order to the Alaska Bureau of Vital Statistics, complete the required forms, and a new Alaska birth certificate should be issued.

Second, tribal councils may grant cultural adoptions by resolution. These are recognized by the State of Alaska, and the state has specific forms to accomplish this. CSSD has regulations specifying that a cultural adoption, recognized by the tribe and by the Bureau of Vital Statistics, cuts off a natural parent's child support responsibilities.⁸⁴ The Department of Health and Social Services also has regulations that allow it to recognize tribal cultural adoptions and to issue revised birth certificates based on them, when the adoptions are uncontested.⁸⁵ The forms ask a tribal official to certify what has happened, and ask for consents from the mother and from the father, if he is known and can be located.⁸⁶

When an adoption affects who should inherit BIA-restricted property, such as a restricted townsite lot or a restricted Native Allotment, a tribal adoption is supposed to be honored. Under a federal statute,⁸⁷ a BIA probate judge recognizes heirs by adoption when an adoption has been established through a state court order or a tribal court order.⁸⁸

⁸⁰ 25 U.S.C. § 1911(d); .

⁸¹ Ernest S. Burch, Jr., *Eskimo Kinsmen* (1975), pp. 129, 52.

⁸² Burch, p. 166.

⁸³ *Native Village of Venetie v. State*, No. F86-0075 CV (HRH) (Order, September 20, 1995); *Sitka Tribe v. State*, No. 1SI-01-61 CI (Alaska Superior Court, First Judicial District, March 29, 2002); Order, *Kaltag Tribal Council v. Jackson*, Case No. 3:06-cv-211 TMB, at 10 (D. Alaska, February 22, 2008), *aff'd* 344 Fed. Appx. 324 (9th Cir 2009), *cert. denied* (Oct. 4, 2010).

⁸⁴ 15 Alaska Administrative Code sec. 125.845.

⁸⁵ See 7 Alaska Administrative Code sec. 05.700.

⁸⁶ These forms are available on the Internet as an "Adoption Packet" at

<http://www.hss.state.ak.us/dph/bvs/adopt.htm>

⁸⁷ 25 U.S.C. § 372a.

⁸⁸ See *Estate of Jacob William Nicholai*, Dept. of Interior, 29 IBIA 157, 1996 I.D. LEXIS 37 (1996).

There is one situation where a state court will honor a cultural adoption even though the tribe has not recognized it. There is a concept under Alaska state law called "equitable adoption." This principle becomes important when someone who owns ANCSA shares dies without a will, there is a person who had been adopted culturally who may inherit the shares, and the tribe never issued a decision about the adoption. Such an adoption may amount to an "equitable adoption" under state law. This rule comes from *Calista Corporation v. Mann*,⁸⁹ a case involving adopted children of shareholders of three ANCSA corporations.

Calista v. Mann held that equitable adoptions involve implied promises: the adoptive parents promise to raise a child and treat him or her as their own, and the child promises to give "filial affection, devotion, association and obedience" to the parents. This set of mutual promises is enough for courts to treat the surviving child as the deceased adult's child for inheritance purposes. It is not certain that this rule applies to inheritance of property other than ANCSA shares, although it probably does.

TRIBAL COURT JURISDICTION OVER CHILD PROTECTION CASES (ICWA)

Traditionally, tribes throughout Alaska have handled their child protection matters both independently, through their own tribal leaders and (more recently) social service departments and tribal courts, and in cooperation with the state, through the state's Office of Children's Services and state courts. There are three ways in which a tribe may become involved in a child protection or child in need of aid (CINA) matter:

First, tribal courts may (and often do) initiate child protection cases on their own, issuing orders regarding their member children without state assistance or intervention. The *Tanana* case affirms that Alaska Native tribes have retained their inherent sovereignty to initiate ICWA-defined child custody proceedings, both inside and outside of Indian country. Section 1911(d) of ICWA requires the state to give full faith and credit to a tribe's ICWA-defined child custody order, to the same extent as it would give full faith and credit to other states' orders and foreign orders. The full faith and credit requirements of this federal provision obligate a state court to honor the decisions of the tribal court. Under Section 1911(a) of ICWA, tribes can even petition for exclusive child protection jurisdiction, meaning that only the tribe and not the state could take legal custody of children from that tribe.

Second, tribes may become involved in state court cases involving children who are members of or eligible for membership in their tribe by intervening in a state court case, and making recommendations within the state court proceeding. State court cases are governed by ICWA, which defines "child custody proceedings" as foster care placements, termination of parental rights, pre-adoptive placements, and adoptive placements. ICWA promotes tribal integrity by establishing procedural and substantive protections to govern state court child protection matters involving American Indian and Alaska Native children.

⁸⁹ 564 P.2d 53 (Alaska 1977)

Third, tribes that have properly intervened in a state court CINA case may petition the state court to transfer the case to tribal court. Section 1911(b) of the ICWA provides that even if child protection proceedings involving an American Indian or Alaska Native child are initiated in state court, the tribe, the child or the parents may petition the state court to transfer the proceedings to tribal court. The state court must transfer a proceeding to tribal court if petitioned to do so unless a parent objects, the tribe objects, the tribal court declines the case, or good cause exists not to transfer the case. The burden to establish the existence of "good cause" not to transfer jurisdiction falls on the party who opposes the transfer to tribal court. There is a strong presumption in favor of transferring matters to tribal court.

As a general rule, when a tribe exercises jurisdiction over child protection, its subject matter jurisdiction turns on the tribal membership of the child. Congress wrote ICWA to focus on the membership of the child, without exceptions for children with parents from different tribes, or non-Native parents. Typically, when any court acts to protect the welfare of the child, the court has "status jurisdiction" over the parents, even if a parent lives in another jurisdiction. In the *Parks* case pending before the Alaska Supreme Court, a ruling should issue soon on how status jurisdiction applies to tribal courts.

TRIBAL COURT JURISDICTION OVER FAMILY VIOLENCE CASES

Family violence and sexual assault occur too frequently in all communities throughout the state, and the country. In Alaska's rural communities where isolation and the absence of sufficient law enforcement allow abuse to run rampant, vulnerable populations – women, children, the elderly – are regularly preyed upon. Alaska Native women are killed by an intimate partner at a rate 4.5 times greater than the national average.⁹⁰ The Violence Against Women Act of 1994 was enacted by Congress to combat all forms of violence against women.⁹¹

Tribes may have unwritten laws or customs concerning family violence. Many tribes have already passed written domestic violence codes.⁹² Model tribal domestic violence codes are available.⁹³

Family Violence in Domestic Relations

In 2003, it became clear that family violence cases fall within the internal domestic matters over which tribal courts may exercise their inherent authority, as contemplated by the Supreme Court in *John v. Baker*. In a case known as *Native Village of Perryville v.*

⁹⁰ Alaska Network Domestic Violence and Sexual Assault Advocate Curriculum, 2004.

⁹¹ The Violence Against Women Act of 1994, Pub. L.No. 133-322, 108 Stat. 1902.

⁹² Some examples are the Native Villages of Barrow, Chinik and Tetlin, and the Sitka Tribe of Alaska.

⁹³ See, for example, the website <http://www.naicja.org/vawa/sample.htm>. The Tribal Government Specialist at Tanana Chiefs Conference, Inc. has a sample domestic violence ordinance and sample protective order forms.

Tague,⁹⁴ the village had issued an order of banishment against a tribal member for multiple acts of violence. The village filed its order with the state court, giving notice to the individual, and after the individual failed to respond, the state court entered an injunction enforcing the village order. Afterwards, the Attorney General's Office wrote a letter to the state court judge, seeking to persuade the judge that the banishment order could not be enforced by Alaska State Troopers.

Among the concerns that led the Attorney General's Office to write to the state court judge were a mistaken belief that the individual was not a tribal member, and a hypothetical concern that jurisdiction based on tribal membership rather than tribal territory would enable a village to banish an individual from Anchorage or Fairbanks or Seattle. The judge issued an order calling for briefing on the issue; and after reviewing the briefing, the court, citing *John v. Baker*,⁹⁵ declined to dissolve the judgment issued by the Native Village of Perryville. The state court judge noted that the remedy sought by the tribal court was specific and narrow, barring the individual from the Village of Perryville – and nowhere else. Perryville is a remote coastal village accessible only by air or sea, more than 200 miles from the nearest Alaska State Trooper in King Salmon.

Neither the state nor the individual chose to appeal the superior court's ruling. The importance of this ruling for victims of domestic violence in rural villages cannot be overstated. A protective order which leaves the perpetrator in the same isolated village as the victim may be worse than no protective order at all. Thus, this case, which recognizes tribal authority to issue a culturally appropriate order, and the duty of the Alaska State Troopers to help enforce that tribal order, is a very important step toward providing rural domestic violence victims with meaningful protection.

Whether tribes have personal jurisdiction over the parties in a family violence case may depend on the tribal membership status of the parties. If both parties are members, the tribe will have jurisdiction over the parties. If the defendant is a member, and the plaintiff is not a member, the tribe will have personal jurisdiction over the plaintiff who submitted to the tribe's jurisdiction by filing the case in tribal court. If the plaintiff is a member and the defendant is not, the tribe will have jurisdiction if the defendant consents. If not, there may tribal jurisdiction if the violence directly impacts the health or welfare of the tribe.⁹⁶ If neither party is a member, the tribe could have jurisdiction only if the incident has a significant connection to the tribe, for example, if the incident involved a

⁹⁴ *Native Village of Perryville v. Tague*, No. 3AN-00-12445 CI (Order of Nov. 19, 2003). The opinion is available at <http://www.alaskabar.org/opinions/ACFB12.htm>.

⁹⁵ *John v. Baker*, 982 P 2d. at 759.

⁹⁶ The United State Supreme Court has laid out factors, known as the "Montana factors" for determining the bounds of tribal jurisdiction over non-members in certain types of non-family-related civil disputes on reservation lands. *Montana v. United States*, 450 U.S. 54 (1981). There is no clear indication from any Alaska court to date that these factors proscribe the boundaries of tribal jurisdiction over non-members in the context of domestic relations. A recent Ninth Circuit Case appears to limit the application of *Montana* when considering a Tribe's inherent authority to exclude. *Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802, 804–05 (9th Cir. 2011).

tribal child and there is a consensual relationship between the parties and the Tribe, and/or the incident threatens or has a direct effect on the political integrity, the economic security, or the health or welfare of the tribe.⁹⁷

Full Faith and Credit For Protective Orders Under The Violence Against Women Act

In addition to tribes' inherent authority over domestic relations, Congress in the 2000 amendments to the Violence Against Women Act (VAWA) stated that "a tribal court shall have full civil jurisdiction to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising within the authority of the tribe."⁹⁸ Unlike other federal statutes dealing with tribal jurisdiction, the VAWA amendments are not restricted to tribal courts in Indian Country. Rather, VAWA encompasses the tribal courts of all federally-recognized tribes.

One of the most important parts of VAWA is its requirement of full faith and credit for tribal protective orders. Full faith and credit means that a court of one jurisdiction must give the same force and effect to a court judgment by another jurisdiction that the court judgment would have in its own jurisdiction. This means, for example, that a state court must enforce a tribal court protective order as though it were a state-issued protective order. When enforcing another jurisdiction's protective order, the enforcing jurisdiction enforces the terms of the order as written by the other jurisdiction even if the enforcing jurisdiction would not have the authority to order such terms. For instance, if under tribal law, the tribal court may issue a two year protective order, the state court must enforce that order even if under state law that same state court could only issue a one-year protective order.

Under VAWA, any state or tribal protective order issued that meets certain requirements must be given full faith and credit by the court of another state or Indian tribe. Under VAWA, a protective order is an order issued for the purpose of preventing violent or threatening acts of harassment against, or contact or communication with or physical proximity to, another person. The requirements that must be met for a protective order issued by a tribe or state to receive full faith and credit are as follows: first, the state or tribe must have jurisdiction over the parties and matter under the law of the state or tribe; second, reasonable notice and opportunity to be heard must be given to the person against whom the order is sought so that the person's due process rights are protected. For *ex parte* orders, notice and opportunity to be heard must be provided in the time required by state or tribal law, which must be a reasonable amount of time to challenge a temporary order. A Full Faith and Credit Judge's Bench Card is available as a resource.⁹⁹

⁹⁷ *Id.*

⁹⁸ 18 U.S.C. § 2265(e).

⁹⁹ Violence Against Women Online Resources, <http://www.vaw.umn.edu>. Go to the document library, choose "criminal justice." The Full Faith and Credit Judge's Bench Card is the first choice under "criminal justice."

How does this work in practice?

1. The tribal court protective order is brought to a state court clerk.
2. The clerk of court (or magistrate in locations lacking a clerk) accepts foreign orders for filing.
3. When presented with a foreign order, the clerk reviews it to determine that it is a certified copy and that it appears on its face to be unexpired. As a matter of policy, the clerk will not contact the issuing jurisdiction for information about the details of the case, other than verifying that the order submitted is current.
4. The clerk will file stamp the order and assign it an Alaska Court System civil order number.
5. The order will be provided to the appropriate local law agency for service on the respondent and entry into the Central Registry (the same distribution used for Alaska protective orders).
6. The registered order is enforceable in the same manner as a state protective order, and a person violating a registered protective order may be arrested by state law enforcement and charged with the state crime of violating a protective order.

Possible Amendments to VAWA

Congress renewed VAWA in 2005 with little fanfare, authorizing new community programs and building on prior successes under the original version of VAWA. In 2012, there has been a much more public, heated battle over a Senate Bill that offers enhanced protection to immigrating victims of trafficking and violence and LGBT victims, and that recognizes tribal criminal jurisdiction over non-Native domestic violence offenders in Indian Country.¹⁰⁰ The Senate bill includes language intended to make clear that the enhanced criminal jurisdiction provisions do not apply anywhere in Alaska, except Metlakatla. There is concern among some that the extra provisions for Alaska could cause unnecessary confusion about Alaska Native tribes' civil jurisdiction over domestic violence. At the moment, though, the companion bill in the House does not contain any of these additional provisions or any special language regarding Alaska.¹⁰¹ There are no current indications of the impasse between the Senate and the House breaking, and time is running out on this Congress. Failure to pass the reauthorization would leave the current version of VAWA in place *status quo*.

TRIBAL COURT JURISDICTION OVER JUVENILE JUSTICE CASES

Juvenile proceedings, like family violence matters, share some characteristics of criminal law as well as some characteristics of children's cases. As such, tribal jurisdiction over juvenile offenders draws both on the "sovereign power of a tribe to prosecute its

¹⁰⁰ S. 1925, VAWA Reauthorization Act of 2011.

¹⁰¹ H.R. 4970, VAWA Reauthorization Act of 2012

members for tribal offenses"¹⁰² and on the recognition that "there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children."¹⁰³

Still, the distinction between adult and juvenile justice is important in discussing tribal court jurisdiction. Because juvenile justice is civil in nature, tribal court jurisdiction in this area is based on civil law. The reason for the civil classification is based on the doctrine of *parens patriae*: the court acting the part of the child's parent for the child's good. Rehabilitation, rather than punishment, is the goal of juvenile justice.

Tribal court jurisdiction in this area is primarily membership-based, premised on the membership or eligibility for membership of the particular juvenile(s) involved. This jurisdiction is similar to child custody disputes between members, in which the tribal court may exercise jurisdiction over minor children who are members of, or eligible for membership in, the tribe.¹⁰⁴ Although the tribe might, under some circumstances, have jurisdiction over nonmember juveniles,¹⁰⁵ the primary focus of Alaska Native tribes has been, and is likely to continue to be, on juvenile tribal members.

The *parens patriae* interest that a tribe has in its juvenile members is further recognized in the Federal Juvenile Delinquency Act (FJDA).¹⁰⁶ That Act pertains to juvenile proceedings in federal courts rather than tribal courts, but it does recognize the tribes' interests when the juveniles are tribal members. The Act sets a general age limit below which children cannot be prosecuted as adults; but for certain categories of criminal offenses, there is an exception allowing younger-age juveniles to be tried as adults. However, where prosecutions are brought within Indian country, those lower age limits can only apply if the tribe has consented to them. Thus, the tribe can essentially determine whether to give the federal government the option of prosecuting as adults those younger offenders falling within that age bracket. Again, the statute does not recognize tribal court jurisdiction as such, but it does recognize the tribes' interest in juvenile justice matters over its members, implicitly providing support for the tribe's jurisdiction over juvenile offenders based on the tribe's *parens patriae* interest in its juvenile members.

Several federal actions support the exercise of tribal court jurisdiction over Alaska Native juveniles.¹⁰⁷ Strong support comes from the Indian Child Welfare Act (ICWA).¹⁰⁸ Even though the definition of "child custody proceedings" under the Act does "not include a

¹⁰² *United States v. Wheeler*, 435 U.S. 313, 326 (1978)

¹⁰³ 25 U.S.C. 1901(3).

¹⁰⁴ *John v. Baker*, 982 P.2d at 748-49.

¹⁰⁵ It is unsettled whether tribal jurisdiction over non-members in Alaska is limited to the two categories described in *Montana v. United States*, 450 U.S. 544 (1981). If *Montana* is applicable, it could support jurisdiction over juveniles who enter into consensual relations with the tribe or its members, or whose actions have a direct impact on the tribe's political integrity, economic security, or health and welfare.

¹⁰⁶ 18 U.S.C. 5031 and following.

¹⁰⁷ Polashuk, Stacie, Note: *Following the Lead of the Indian Child Welfare Act: Expanding Tribal Court Jurisdiction over Native American Juvenile Delinquents*, 69 So. Cal. L. Rev. 1191 (1996).

¹⁰⁸ 25 U.S.C. 1901 and following.

placement based upon an act which, if committed by an adult, would be deemed a crime,"¹⁰⁹ this might still mean that placements based upon acts which would *not* be deemed a crime if committed by an adult (for example, prohibitions against minors consuming alcohol, or truancy rules) should fall within ICWA's definition. An interesting issue could be presented if a tribe were to file a motion in state court under 1911(b) to transfer to tribal court a "minor consuming" case where placement outside the home is a possibility. Regardless, ICWA unequivocally stands for federal recognition of the tribes' interest in their children, and it has been proposed as a model for structuring tribal court jurisdiction over juvenile cases as well.¹¹⁰

TRIBAL COURT JURISDICTION OVER OFFENDERS

In Alaska, cases typically thought of as criminal cases are actually handled as civil cases (or "quasi-criminal" cases) in tribal court. These may include driving under the influence, alcohol importation, and vandalism.

Although many Alaska tribes have "law and order" codes, they do not formally prosecute and imprison individuals for offenses. The Indian Civil Rights Act sets strict requirements on the length of sentences a tribe can impose, and requires tribes to provide appointed counsel in certain cases. Most tribes lack the resources to consider funding a full western-style system of incarceration, with correctional centers, prosecutors, and public defenders. More importantly, the western system of incarceration and punishment generally does not mesh well with traditional tribal justice. Punishment of offenders has generally not been the primary focus of Alaska tribes establishing tribal courts. Rather, the focus is on healing, and offenders coming before tribal courts face the possibility of only civil penalties, including fines, community service, restitution, and more traditional responses to anti-social behavior.

There are other reasons for Alaska tribes to address offenses through civil rather than criminal proceedings. There is a clear rule from the U.S. Supreme Court that tribal courts cannot exercise criminal jurisdiction over non-Indians, absent specific Congressional authorization.¹¹¹ There may be broader authority for tribal courts to address non-member offenders through civil proceedings. However, there has not yet been a case in Alaska considering the quasi-criminal jurisdiction of Alaska tribes over an individual who is not a tribal member.

Because of the unique conditions in Alaska, Alaska's tribes can and do serve as models for restorative justice and alternative dispute resolution. In some form or other, restorative justice is the most common traditional method of dispute resolution used by indigenous peoples throughout the United States, and by Alaska Native communities in

¹⁰⁹ 25 U.S.C. 1903(1).

¹¹⁰ See Polashuk, *infra* n.108.

¹¹¹ *Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978). Although the Supreme Court held in 1990 that tribes also could not exercise criminal jurisdiction over other non-member Indians, Congress overruled that decision quickly; see discussion in *United States v. Lara*, 124 S.Ct. 1628 (2004).

particular. Historically, community consensus was used in Alaska to address offending behavior. The community and councils openly discussed the offender's behavior, and reached a consensus that resulted in the offender being invited to appear before one of the traditional councils in the community, such as a clan gathering, a tribal council, Elders Council or other group with community significance and respect. Traditional councils focused on healing the offender and identifying a path back into society. The councils typically discussed the offender's positive, respectable qualities and offered support and encouragement to the offender.

Shaming was another form of justice reserved for older offenders and repeat offenders. Shaming was generally conducted in community meetings after more positive methods had failed and a sufficient community consensus had been reached regarding the disrespectful behavior of the offender. Storytelling and other means would be used to demonstrate the broad community displeasure with the offender, and the community would encourage the offender to leave through termination of subsistence sharing, ostracism or banishment.

To varying degrees, traditional councils still address civil matters in many rural Alaska Native villages. Many communities have realized that there are substantial benefits to using traditional tribal justice models that reflect more respectful, healing approaches to behavior modification.

For example, Kake Circle Peacemaking is one traditional model that is based on self-determinative principles, and upon Tlingit traditions that focus on repairing disruptions in community life and assisting individuals in their quest for healing. Circle Peacemaking brings together individuals and groups who rarely come together under the western system: the offender, the victim, families, friends, church representatives, police, substance abuse counselors, and concerned or affected community members.¹¹² These individuals are involved so that sentences will be more meaningful to community members, so that community interests will be protected, and to increase the likelihood that victims and offenders will re-establish positive relationships.¹¹³ Each participant is given several opportunities to speak without interruption, and negative comments are strictly forbidden. Discussions are kept confidential, and circle participants are responsible for ensuring that offenders adhere to the guidelines of their sentences.¹¹⁴

Kake Circle Peacemaking has experienced undeniable success. During the first four years of implementation, only two offenders out of eighty rejected the sentence and went back to the state court for sentencing.¹¹⁵ All of the juveniles charged with underage drinking successfully completed the terms of their sentences.

¹¹² Harvard Kennedy School, ASH Center for Democratic Governance and Innovation, *Kake Circle Peacemaking*, www.innovations.harvard.edu/awards.html?id=6164, (accessed Sept. 15, 2012).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

Additionally, many participants enroll in substance abuse recovery programs or educational programs, or take part in volunteer support circles aimed at prevention. During the initial four year period, Kake Circle Peacemaking experienced a 97.5 percent success rate in sentence fulfillment: in comparison, the Alaska state court system's success rate is 22 percent.¹¹⁶ In 2003, the program received High Honors from the Harvard Kennedy School's ASH Center for Democratic Governance and Innovation.

Perhaps most importantly, Circle Peacemaking promotes the health of Kake's Tlingit people and culture. "The Kake Circle Peacemaking is a revival of something that has lain dormant in the community since people began to try to assimilate to mainstream western ways."¹¹⁷

The overall success of Circle Peacemaking in reducing recidivism and promoting rehabilitation has prompted the Alaska state court system to adopt circle sentencing in some state court criminal cases. For example, Galena Magistrate Chris McLain, in partnership with Tanana Chiefs Conference and individual villages, conducts sentencing circles in juvenile and adult misdemeanor state court cases. These circles take place in the village where the offender is from, and the village acts as host. The District Attorneys and Public Defenders participate in the circles, and advise the state court on whether to accept the circle's sentencing recommendations. The state court judge is then responsible for imposing the sentence.

Circle sentencing is also being used in felony cases.¹¹⁸ Superior Court Judge Douglas Blankenship, the Fourth District's Presiding Judge, commented that "we are taking baby steps, but there is a great potential in taking as much as we can to where defendants reside. The rehabilitative aspects out there are much greater."¹¹⁹ Given this potential, communities are also considering the use of circle peacemaking to address individuals who are incarcerated or who are re-entering the community after incarceration. As these examples suggest, talking circles can be used as a powerful forum to build respect between state agencies and rural village communities.¹²⁰

In years to come, the trend in Alaska appears to be moving toward increased collaboration between the State, tribes, and their respective courts. The two systems 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.

¹¹⁶ *Id.*

¹¹⁷ Reiger, Lisa, *Circle Peacemaking*, Alaska Justice Forum 17(4): 1, 6-7, (Winter 2001) http://justice.uaa.alaska.edu/forum/17/4winter2001/a_circle.html, (accessed Sept. 15, 2012).

¹¹⁸ Austin Baird, *Alaska Courts Take New Approach to Rural Justice*, Anchorage Daily News, (March 17, 2012) <http://www.adn.com/2012/03/17/2377233/alaska-courts-take-new-approach.html>.

¹¹⁹ *Id.*

¹²⁰ Magistrate Christopher McLain, *Circle Sentencing and Community Outreach Efforts* (2012).

Recognition of Tribal Court Orders

Domestic Violence Violence Against Women Act (VAWA)	
All parties are tribal members	Full faith and credit required.
Victim is a non-member Offender is a member	Untested in Alaska. Full faith and credit <i>should</i> be given where victim has filed the petition.
Victim is a member Offender is a non-member	Untested in Alaska. Full faith and credit <i>may</i> be given where violence impacts the tribe.
Neither party is a member	Untested in Alaska. Full faith and credit is unlikely unless there is an exceptional case where the violence has a strong tribal connection (i.e., violence impacting a tribal child).
On tribal land/Indian Country (allotment, townsite, other)	Untested in Alaska.
Community Protection Order (Banishment)	
<p><i>Perryville:</i> Troopers allowed to enforce tribal banishment order because the order was clear as to reason for issuance, offender had notice and an opportunity to be heard <i>before</i> the order was issued, the order was clearly limited to one village, and it had a set expiration date.</p>	

Child Abuse/Neglect (ICWA)

All parties are tribal members	Full faith and credit required.
Child is a member One parent is a non-member	Full faith and credit <i>should</i> be given based on tribal status of child. The AK Supreme Court is considering this now in <i>Simmonds v. Parks</i> , S-14103.
No parties are members	Untested in Alaska. Full faith and credit is unlikely unless there is an exceptional case with proper delegation of authority and consent to jurisdiction.

Adoption (ICWA)

All parties are tribal members	Full faith and credit required.
All parties members except adoptive parents	Full faith and credit required. Petition by adoptive parents shows consent to jurisdiction.
Child is a member Parents rights have been terminated	Full faith and credit should be given unless termination order was issued without jurisdiction and due process.
Child is a member Parents rights have not been terminated Non-member parent objects	Untested in Alaska.

Child Custody (between parents), Divorce, Paternity (John v. Baker)	
All parties are tribal members	Entitled to comity recognition.
One parent is non-member but consents to jurisdiction	Entitled to comity recognition.
One parent is non-member but does not consent to jurisdiction	Untested in Alaska.
<p>Tribal child support orders are recognized through the process outlined in the Uniform Interstate Family Support Act, AS 25.25., rather than the comity process. The Alaska Supreme Court is considering the State's challenge to tribal child support jurisdiction now in <i>State v. Central Council</i>, S-14935.</p>	

Alcohol and Drug Offenses Other Offenses Juvenile Offenses (Comity)	
Offender is a tribal member	Civil (non-jail) penalty or decision should be entitled to comity recognition (e.g. forfeiture of alcohol, fine, traditional resolution)
Offender is a non-member	U.S. Supreme Court (<i>Oliphant</i>): No criminal jurisdiction over non-Indians. Untested for civil jurisdiction. The offender's contacts with the Tribe may be considered

United States Census Bureau: Definition of Alaska Native Village Statistical Area

Alaska Native village statistical areas (ANVSAs) represent the more densely settled portion of Alaska Native villages (ANVs). The ANVs constitute associations, bands, clans, communities, groups, tribes, or villages recognized pursuant to the Alaska Native Claims Settlement Act of 1971 (Public Law 92-203).

Because ANVs do not have boundaries that are easy to locate, the Census Bureau does not delimit ANVs. Instead, the Census Bureau presents statistical data for ANVSAs that represent the settled portion of ANVs. In addition, each ANVSA should include only an area where Alaska Natives, especially members of the defining ANV, represent a substantial proportion of the population during at least one season of the year.

ANVSAs are delineated or reviewed by officials of the ANV or, if no ANV official chose to participate in the delineation process, officials of the Alaska Native Regional Corporation (ANRC) in which the ANV is located.

An ANVSA may not overlap the boundary of another ANVSA or an American Indian reservation.

Each ANVSA is alphabetically assigned a national four-digit census code ranging from 6000 through 7999, an alphabetically assigned state-based five-digit Federal Information Processing Series (FIPS) code, and an eight-digit National Standard (ANSI) code.

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WHAT DOES INDIAN COUNTRY REALLY MEAN FOR ALASKA? (February 26, 1997)

Introduction

The Legislature has recently received a number of questions about the decision of the Ninth Circuit Court of Appeals in the *Native Village of Venetie* case. Among them are: Did the court declare Venetie to be "Indian country?" Did it declare some or all ANCSA land to be Indian country? Did it give governmental powers to Native villages? What is Indian country, and what are the potential impacts for Alaska if many villages or large parcels of land fit in that category? This paper attempts to address these and other frequently asked questions about Indian country in Alaska.

In the end, the *Venetie* case presented more questions than it gave answers. It will take either more litigation or legislation by Congress -- which has plenary authority over Indian matters -- before all the potential problems are resolved. Until then, an analysis of *Venetie* can only evaluate the range of possible impacts this decision may have on Alaska.

Background: General Principles of Indian Law

The rights and prerogatives of Native Americans and their tribes are controlled by *federal* law. That law has been developed over the years by court decisions and by Congressional legislation. It is complex and does not always provide a clear guide to relations between tribes and others. Some general principles can be stated, however:

- Native American tribes are recognized by the federal government as "dependent sovereigns", that is, governmental units which have some of the powers of a sovereign but are also within the authority of the federal government to define and limit those powers. They are not sub-units of state governments, but the federal government sometimes has permitted states limited authority over some tribal activities.
- Not every Native group is a tribe, but the federal government has issued a list of entities which it recognizes as tribes. At various times the federal government has taken contradictory positions on whether Alaska Native villages -- communities with an historic and predominantly Native character -- are tribes. Currently the federal government recognizes over two hundred Native villages in Alaska as tribes.
- Every recognized tribe has certain inherent powers over its own internal affairs, including the right to define its own membership and to conduct its purely internal affairs. The existence of broader powers depends on whether the tribe occupies "Indian country", such as a reservation, or has additional rights defined by federal statutes or by treaties with the federal government.

- "Indian country" is defined in federal statutes to mean reservations, Indian allotments, and "dependent Indian communities." When a tribe occupies Indian country, it generally has powers similar to that of a local government, with some important differences. For example, it does not appear to have authority to bring criminal charges against non-Natives; on the other hand, it is not bound by the same duty as a non-tribal state chartered municipality to accord all citizens their rights under the U.S. Constitution. (These topics will be described more fully later).

The Situation in Alaska

Prior to a string of litigation over the last fifteen years, there was little recognition of tribes or Indian country in Alaska. The federal government did not include Alaskan Native villages on its list of recognized tribes (although Native villages did receive a great deal of federal financial assistance usually reserved for tribes) and neither the federal nor state government recognized Native villages as self-governing enclaves. The sole exception was the Annette Island Reserve of the Metlakatla Indian Community, which has long been recognized as a true reservation with a tribal government. Although there had been other reserves established in Alaska by the federal government, they were all revoked (except Metlakatla) by the Alaska Native Claims Settlement Act in 1971. Since there was no official recognition of Alaskan tribes or Indian country in Alaska, and the State maintained that ANCSA had extinguished claims to Indian country in Alaska, many officials assumed that they did not exist. Thus, the stage was set for the litigation over sovereignty issues which began in the 1980's.

The Venetie Litigation

The village of Venetie and Arctic Village, both predominantly Native villages with historic Athabaskan roots, occupy an area south of the Brooks Range which was once set aside by the federal government as the Chandalar Reserve. The Reserve was revoked by ANCSA and the two villages formed ANCSA corporations which received the land area of the former reserve as their ANCSA entitlement. The corporations then transferred title to this land to the Native Village of Venetie, a council which included both Venetie and Arctic Village.

In the early 1980's Venetie experienced severe financial problems. It had a tribal council organized under the Indian Reorganization Act which acted as recipient for many federal projects. At about the same time, the state appropriated general funds to build a new school in Venetie for the local school district. The council asserted sovereign taxing authority and levied a tax, totaling over \$160,000, against the construction contractor (a joint venture between a private contractor and a Native corporation). The state, believing there was no valid jurisdiction for the tax, brought suit, and the ensuing litigation centered around the issues of whether the council was a tribal organization which occupied Indian country and therefore had the authority of a government to levy a tax against a state-funded contractor. An injunction against the council's tax was issued, pending a final decision on the merits of the case. The litigation went on for years and eventually resulted in a trial court decision that the Native council was a tribe, but that it did not occupy Indian country and so lacked the power to levy a tax. The council appealed and the Court of Appeals recently reversed the trial court, finding that Venetie indeed occupied Indian country.

The Court of Appeals' decision focused on the fact that the Native Village of Venetie -- by then an uncontested tribal organization -- occupied land granted to it by the federal government under ANCSA. It reviewed the judicial tests by which it is determined whether an area is a "dependent Indian community" and hence Indian country, emphasizing the issue of whether the area was "set aside" by Congress for the "use and occupancy of Indians as such." The State argued that ANCSA was not a grant of Indian country lands but that the very terms of ANCSA show an intent

by Congress that it not be considered Indian country. It quoted this language from ANCSA:

...the [land] settlement should be accomplished...without establishing any permanent racially defined institutions, rights, privileges, or obligations, **without creating a reservation system or lengthy wardship or trusteeship**, and without adding to the categories of property and institutions enjoying special tax privileges...[emphasis added]

The State also pointed out that the land was granted, not to tribal organizations, but to state chartered corporations which were subject to state law, and that the land, once developed, would be taxable by the state. None of this, the State argued, was consistent with the notion that Congress intended the ANCSA land grant to be Indian country. The village, on the other hand, argued that the land had been set aside for Natives "as such", that the village was still largely part of a federal system of trusteeship for Natives, and that Congress could not end Indian country status, if it existed, without an explicit declaration of that intent.

The court largely accepted the village's argument. It appeared to rely most heavily on the argument that the village occupied land originally set aside for it by Congress, and that although Congress changed the mechanism for holding title through ANCSA, it still continued that set-aside for the benefit of the Native occupants; so, it found, there was a dependent Indian community and the land was Indian country. The Court of Appeals then sent the case back to the trial court for a decision on whether the village council had the power to levy its tax against the State of Alaska.

State of Alaska's Interest in Pursuing an Appeal

The Legislature supports the State's decision to ask the U.S. Supreme Court to review the *Venetie* decision. We strongly believe the Court of Appeals misinterpreted federal law and that ANCSA is clear evidence of Congressional intent that there be no Indian country in Alaska. The Legislature believes the decision could have dangerous implications for Alaska. As one of the Court of Appeals judges who participated in the *Venetie* decision noted:

We have been asked to blow up a blizzard of litigation throughout the State of Alaska as each and every tribe seeks to test the limits of its power over what it deems to be its Indian country . There are hundreds of tribes, and the litigation permutations are as vast as the capacity of fine human minds can make them. They can include claims to freedom from state taxation and regulation, claims to regulate and tax for tribal purposes, assertions of sovereignty over vast areas of Alaska, and even assertions that tribes can regulate and tax the various corporations created to hold ANCSA land. The latter assertion would give the tribes the power to control, regulate and tax those corporations out of existence and would provide a fruitful area for intertribal conflict. This is no imaginative parade of horrors.
[Judge Fernandez, concurring opinion].

Beyond the massive litigation that will likely result, Alaska's authority over its own land and citizens will shrink substantially. The ability of the state to function effectively as a government is at risk. If the decision of the Court of Appeals is upheld, a complex web of governing units will be spread across the state, resulting in social divisiveness and controversy for all.

The Potential Consequences of Indian Country in Alaska

The following is a brief description of the potential consequences of a broad finding of Indian

country in Alaska. The conclusions are based on precedents from Indian law in the Lower 48. The application of this law to Alaska, however, is uncharted legal territory. Neither the State nor Indian tribes have confronted these issues in Alaska, since the concept of Indian country in Alaska has not been given the force of judicial recognition before the recent ruling. In addition, direct parallels with reservations in the Lower 48 can only be educated predictions, since ANCSA may have changed many of the ground rules potentially applicable to Indian country. ANCSA remains the major Congressional pronouncement on Indian jurisdiction in Alaska, since the court's decision did nothing to invalidate its application, whether ANCSA lands are Indian country or not.

1. Will All 226 Villages with Recognized Tribes Qualify as Having Indian Country?

Quite likely. Since the Court of Appeals established that the test for the existence of Indian country is whether the lands in question were set aside for the use of Alaska Natives, as such, and whether the Alaska Natives occupying these lands are under the superintendence of the United States, it is likely that most Alaska Native Villages will qualify.

The Native villages will have a strong argument that all of the lands they received under ANCSA were set aside for the use of Natives, as such, and that for the reasons set forth in the decision of the Court of Appeals, the Alaska Natives occupying them are under federal superintendence. Accordingly, their lands, they will claim, constitute Indian country.

2. Will All ANCSA Land Become Indian Country?

Possibly. It has been argued that ANCSA *village* corporation land must include a *community*, not merely be owned by shareholders who are tribal members. But no one knows to what extent the legal arguments may be advanced, especially if in the future corporation lands are transferred to tribes. So the State is concerned that large areas of ANCSA lands may become Indian country within the jurisdiction of a tribal government.

3. Does Indian Country Present any Potential Access Problems for Alaska?

Yes. Under ANCSA, some easements are provided across ANCSA lands to public lands, and those easements should continue to exist if the land is transferred to a tribe or becomes recognized as Indian country. However, if the state desires different or broader access, e.g., future road or rail corridors, it would be unable to condemn (take by eminent domain) any Indian country lands owned by a tribe, since the tribe would enjoy sovereign immunity. Thus, the state would be forced to negotiate purchases for whatever land it needed. Due to the location and complexity of ANCSA selected lands, major potential impediments to the creation of transportation corridors could be imminent. [see, e.g., attached maps]

4. Can Tribes be Sued?

No, unless they consent to be sued. Tribes, as sovereign governments, have the same sovereign immunity which states and the federal government possess. Tribes may consent to be sued, and indeed often have given limited waivers of their immunity in order to qualify for state grants and other aid. But generally there is no legal recourse available to private persons and other governments which have a claim against a tribe, and often tribal waivers limit suits to tribal courts.

5. Is the State Facing Unmanageable Litigation After Venetie?

Almost certainly. Judge Fernandez, in his concurring decision in *Venetie*, predicted a "blizzard of litigation." Many other Native villages are now looking at ways to assert tribal authority, and the

state must decide which assertions by tribes -- and which challenges to its own authority -- it will or can afford to litigate. Both the extent of tribal authority and the borders of each parcel of Indian country are largely unsettled. Resolution of the questions left undecided and of the claims of Indian country by other villages is apt to be extremely expensive and time-consuming.

6. *Are All Civil Rights Protected in Indian Country?*

No. The protections in the U.S. Bill of Rights and in the Alaska Constitution do not apply in Indian country. Most, but not all, of the same rights were declared as the law in Indian country by Congress through the Indian Civil Rights Act. Consider, for example, villages which have adopted ordinances excluding non-tribal members from the village for periods longer than 24 hours. The state and federal Equal Protection provisions of the constitution simply do not apply. Nor is a person's Fourth Amendment Constitutional right against unlawful search and seizure applicable in villages that automatically search one's person and luggage. Moreover, under the Indian Civil Rights Act, a person deprived of civil rights must first sue in tribal court, not state or federal court (unless they have been arrested, in which case there is access to the federal district court). Thus, both non-Natives and Natives themselves are deprived of significant judicial recourse in the case of civil rights violations by tribal governments. The state must be watchful that the civil rights of both non-Native and Native Alaskans are not jeopardized by Indian country.

7. *Will There be New Tribal Court Systems in Indian Country? Will They Affect Non-Members?*

Since each tribe is a separate government, it may have the right to operate its own civil and criminal court systems. Many Native villages already have courts, sometimes using the village council itself as a court. Under the Indian Child Welfare Act, even tribes outside of Indian country have a role in children's proceedings, and Alaskan tribes have become increasingly aggressive in asserting this right in their own courts. Some tribes have also adjudicated other internal tribal issues, even in the absence of a finding of Indian country. We can expect more and more tribal court proceedings.

One important question is the extent to which those courts will have jurisdiction over non-members. Tribes in Alaska generally do not have criminal jurisdiction over non-Natives. As to civil matters, however, there may be such jurisdiction if the tribe can assert a significant connection to the tribe's own well-being. Thus, any activities by non-Tribal members that occur on Indian country may be subject to review and ultimate jurisdiction in Tribal court. For example, a privately owned railroad running through Indian country land has been held to be subject to a Tribal court ruling if an accident or use dispute arises there.

Outside of Indian country, tribes probably do not have jurisdiction over non-members unless the non-member has entered into a "consensual relationship" with the tribe, e.g., through a business contact. Note, however, that tribal courts may assert jurisdiction even outside the Indian country boundaries where activities have a substantial impact on Indian country lands. Tribes are expected to move aggressively in this area, and there will probably be a great deal of litigation before the ground rules are clarified.

8. *Will State Fish and Game Management Remain Intact in Indian Country?*

Probably not. There is likely to be a severe loss of state jurisdiction. In the Lower 48, reservation tribes have almost exclusive authority over fish and game on tribally owned land within reservations. States may retain limited authority for conservation purposes, and may exercise some authority over non-tribal members in most instances. But the rules applicable to fish and game management on Indian country in Alaska are not clear. State enforcement, however, in Indian country may not be possible.

We can expect a great deal of confusion if 200+ tribes attempt unilateral control of fish and game management in their own areas of Indian country. Several tribal governments have already announced their intention to assert full fish and game management authority as soon as *Venetie* is resolved. Moreover, with federal takeover of subsistence management on federal lands and navigable waters, it appears likely that Alaska would be headed toward an unmanageable and misguided multi-party management scheme. At the very least Alaska faces a breakdown of areawide management of migratory species which roam across different land and water jurisdictions with significant resource conservation implications. At least one tribe is now attempting to gain *exclusive* rights to fishing in the ocean beyond the 3-mile state waters. If it succeeded it could throw into jeopardy the entire present system of fishing rights regulation and lead to management through litigation. The state must protect area-wide and species-wide management of fish and game. A checkerboard pattern of conflicting management rules, with no practical system for enforcement across jurisdictional boundaries, would severely threaten responsible management.

9. *Are Lands and Activities in Indian Country Taxable by State and Local Governments?*

No. In the Lower 48, tribally owned land and activities within reservations are rarely taxable by the state or local governments. In Alaska, ANCSA lands would be taxable only to the extent that ANCSA itself authorized it. ANCSA does authorize taxation of developed ANCSA lands, but there is a real question whether the lands would remain taxable if they were transferred to a tribe. Tribal members do not have to pay taxes on income earned within Indian country, or pay sales taxes on purchases within Indian country. Taxes would also be banned on sales to tribal members in Indian country. Although theoretically states may tax sales of cigarettes and other items to non-members, enforcement is problematical and has been a significant controversy in the Lower 48 as black market cigarette sales thrive in and around reservations.

10. *Can Tribes Tax ANCSA Lands in Indian Country? Can They Tax Non-ANCSA Lands?*

The answer is unclear. Many believe that the courts will eventually rule that ANCSA corporate lands within Indian country are taxable by the tribe. If ANCSA corporation lands end up being the bulk of Indian country lands, the ANCSA lands may become the main source of tribal tax revenue. As Judge Fernandez noted in his concurring opinion in *Venetie*, tribes may assert the power to "control, regulate, and tax [ANCSA regional] corporations out of existence." Likewise, if non-ANCSA lands fall within Indian country, they may also become taxable by a tribe. Even more disturbing is the possibility that tribal authority to tax lands or economic activity may preclude state taxation. In the past some sovereignty advocates have claimed that large parts of the state -- for example, the entire north slope -- are Indian country. Although this outcome is extremely unlikely, if it happened, state taxation of oil production would be jeopardized, and oil transportation facilities like pipelines could be threatened by tribal taxation. It is in the state's interest to attempt to limit Indian country to areas and to ground rules which do not jeopardize the state's economic viability.

11. *Could it Cost More for the State to Deliver Public Services in Indian country?*

Yes. The state is required by the constitutional requirement of equal protection to provide equal treatment, including services, to all persons even if they live in Indian country. The state may not withhold its services to some citizens simply because they have a tribal government capable of

delivering the same services. But if tribal governments tax the delivery of state services -- as happened in the *Venetie* litigation, when the tribe levied a heavy tax on construction of a new school built by the state -- the state will have to appropriate even more funds to cover any taxes imposed to provide the same level of services in rural areas.

Conclusion

The *Venetie* case is not free from controversy. The District Court found that ANCSA extinguished Indian country in Alaska, and so did one of the three judges on the Ninth Circuit. The evidence in ANCSA that Congress did not recognize Indian country in Alaska is strong. The case could easily have been decided a different way by another panel of the Court of Appeals. Later cases may or may not narrow the application of the *Venetie* decision, both in scope and in the number of Native villages to which it applies. In the meantime, the State cannot rely on future judicial narrowing to protect its interests. It must instead appeal to the highest court in the land to set appropriate precedent for future claims for Indian country in Alaska. If large areas of Indian country are found to exist, it could threaten the state's revenue base, make fish and game management ineffective, and deny Native and non-Native Alaskans the civil rights they enjoy now.* The Legislature is concerned that it may happen, and the possibility that the *Venetie* decision could move Alaska in that direction is too serious for us not to take every available action we can now. It is entirely appropriate for Alaska to ask the U.S. Supreme Court to reverse this decision.

* Please refer to the attached maps for examples of the complexities of land ownership in Alaska. These examples illustrate the areas in question as we address the Indian country issue.