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EXAMINING THE PREVALENCE OF AND SOLUTIONS TO STOPPING VIOLENCE AGAINST INDIAN WOMEN

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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EXAMINING THE PREVALENCE OF AND SOLUTIONS TO STOPPING VIOLENCE AGAINST INDIAN WOMEN

THURSDAY, SEPTEMBER 27, 2007

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:10 a.m. in room 628, Dirksen Senate Office Building, Hon. Byron L. Dorgan, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

The CHAIRMAN. With respect to the hearing that we are holding today, let me make a couple of comments, because I think it is important to describe what it is we are doing and why.

Today the Committee will hold its third hearing to take a look at tribal justice systems and the growing problem of violent crime in Indian Country. The first two hearings showed that we are facing a severe public safety crisis in Indian Country. And today's hearing will focus specifically on the issue of sexual violence against Indian women.

An April 2007 Amnesty International report found that 34 percent of Indian women will be raped or sexually assaulted during their lifetimes. I commend Amnesty International for bringing added public attention to what I think is a very serious issue. However, as the report notes, this is unfortunately not breaking news to women who live on Indian reservations. The problem has existed for a decade and more.

The title of the Amnesty report is "Maze of Injustice," and it refers to the complexity and the maze of jurisdiction that exists on Indian lands today. However, this was not always the case. Indian tribes historically exercised authority over anyone who entered their lands, regardless of whether the perpetrator was Indian or not.

The confusion that exists today is the result of outdated Federal laws and court decisions that were passed during a time when paternalism was this Nation's Indian policy. These laws directly conflict with the policy of Indian self-determination and they strike at the very heart of tribal sovereignty. As a result, victims in Indian Country rely solely on the Federal Government, specifically the FBI and the United States Attorneys Offices, to investigate and

prosecute sexual violence in Indian Country. It is clear to me that the Federal Government is not meeting its obligation.

For a number of reasons, many victims of sexual violence are unable to bring their attackers to justice or even gain access to the legal system. And that is intolerable. In North and South Dakota, we have four police officers patrolling 2.3 million acres on the Standing Rock Sioux Reservation. Survivors of violent crimes report waiting hours, in some cases days for a police car to respond to an emergency request. When the police do show up, the survivors sometimes have to travel hundreds of miles to receive treatment. In the end, too many women see their cases thrown out of court and worse, they often never get an explanation from the officer or the prosecutor.

This year, NPR ran a series of stories on violence against women in Indian Country. One involved cases on the Standing Rock Reservation. The title of the report was "Rape Cases on Indian Lands Go Uninvestigated." In the report, a retired BIA police officer described the grim situation. He said, "We all knew they only take the cases with a confession. We were forced to triage our cases."

When this type of violence becomes so commonplace the police have to triage rape cases, something is dreadfully wrong and someone needs to take action. Today, we are going to hear first-hand from a courageous young woman about her struggle to obtain justice under this broken system. I hope her story will motivate all of those of us in Congress to fix a system that desperately needs fixing.

The fallout from these heinous crimes is often devastating to the victim. We have seen these crimes against Indian women have a demoralizing and long-term effect on the fabric of an entire community. Tribal leaders have in some cases described reservations as a war zone. There is a growing perception among criminals that Indian lands are a safe haven. I read a report this week of a U.S. Attorney from Colorado, Troy Eid, who was involved in stopping a drug organization that was set up on an Indian reservation. He said "Indian reservations are being used as business development tools by large drug trafficking organizations." It confirms our earlier reports that Indian Country is a target.

Yesterday, I met with Judge Mukasey, the President's nominee for Attorney General. I met with him specifically, I am going to support his nomination, I am going to vote for him, but I asked to meet with him specifically because I wanted to review with him the circumstances on Indian reservations and the difficulties we have in connecting adequate law enforcement between State, local and Federal law enforcement authorities. I wanted his commitment that he was going to understand this and work hard to try to correct it.

So there is much to be concerned about. And I also recognize it is very sensitive to be talking about this. I don't want in some pejorative way to suggest that there is something dreadfully wrong with a group of people in this Country. That is not the case. Indian reservations in many cases are remote areas, they have inadequate law enforcement, in many cases very substantial poverty and other issues. And they have too often, I think, been targeted by criminal enterprises, targeted by drug dealers. We now see report after re-

port that there are very serious sexual crimes and crimes of violence committed, particularly against women, not exclusively, but particularly against Indian women, that often go unreported and in many cases go unpunished. And there is something wrong with that and we intend to find ways to fix it.

Senator Murkowski?

STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman. I appreciate a great deal, in fact, that the Committee is holding this hearing this morning. It is a very important topic, probably one of the most serious problems facing our Indian and Alaska Native communities, and this is the violence against women.

I want to welcome all of the witnesses, but particularly Ms. Tammy Young, who has made a long trip back from Alaska to testify before the Committee today.

Mr. Chairman, you know that we had scheduled a field hearing in Alaska in June to discuss the Amnesty International report on sexual violence. We canceled that hearing at the very last minute out of respect for the passing of our colleague, Senator Craig Thomas. I know it was certainly one of Senator Thomas' priorities to improve law enforcement in Indian Country and in part because of the violence against women and children in our Indian communities. So this Committee taking up this issue today again is certainly most timely.

As so many are aware, Alaska received national and even global attention because of the Amnesty report. And while I have heard from members of the Alaska Native community expressing concerns about what they saw and read in the Amnesty report, I view this report as a wake-up call that the Federal Government has not been listening carefully enough to the advocates for our Native women who experience these despicable acts of violence. And I am deeply troubled when I hear that the Amnesty report was not news, just as you have indicated in your comments.

No one should have to face domestic violence or sexual assault. And yet our Native women are at least two and a half times more likely to be raped or sexually assaulted than their non-Native counterparts. And in too many places, they have nowhere to turn, absolutely nowhere to turn, no one to go to. I am very troubled when I see the faces, listen to the stories, very heart-breaking stories of these women who have experienced the most appalling of assaults, and understanding the obstacles that they face. But I am also very inspired by their strength and by their courage. I too note the great sensitivity of this issue.

But we can't continue to not talk about it. We cannot continue to pretend that these statistics belong to somebody else. Even though it is difficult, we must expose this for what it is.

I am very disturbed to hear of the systemic shortcomings that preclude the successful prosecution of these violent acts. These shortcomings, such as the law enforcement, the inadequacies of the IHS forensic processes needed to support the prosecutions, they contribute to a haven of lawlessness in Native communities. And they have to be addressed. And they can be addressed immediately.

I have hope that this hearing will reveal some solutions to this issue. I am certain that we can do a better job of providing the resources necessary to ensure that Alaska Native and Indian women are safe in their communities. I was a proud sponsor of the Violence Against Women Act of 2005. I look forward to hearing perspectives from the DOJ Tribal Consultation held last week on that.

But I know that government alone can't get rid of the violence that we see within our Native communities. It is going to take a partnership of our Native leaders, of our Native people, of law enforcement agencies, of social service providers, to carry these solutions to fruition.

I note that we have many witnesses here today from different areas, different parts of the Country with different stories. I look forward to hearing form them, from their perspective, but also to understand what they might propose to be some of the solutions to this very, very difficult issue. With that, Mr. Chairman, I thank you.

The CHAIRMAN. Senator Murkowski, thank you very much.

Senator Barrasso?

STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM WYOMING

Senator BARRASSO. Thank you very much, Mr. Chairman. First, I applaud the leadership of the Committee for bringing this hearing on this important topic to us today. I want to thank the incredible individuals who are going to be here today to testify, because it does require courage and strength and fortitude to come and tell these stories. It is remarkable.

As an orthopedic surgeon, I take care of women who have been the subject of crimes of violence, and it is difficult as a treating physician and it is difficult for the families, it is difficult for the women. I think it is wonderful that we are doing this, Mr. Chairman.

I need to apologize in advance, I have another committee that is starting soon where I need to be. But I want to carefully watch and listen to what has been said and will read all the testimony.

We have a current vacancy, Mr. Chairman, in our U.S. Attorney in Wyoming. Our last U.S. Attorney prosecuted an incredible drug ring on our Indian reservation and has done some significant work to help the other people who are living there in this time of crime. We need to have that vacancy filled so we can help with prosecutions there of horrible crimes and violent acts like we are going to hear about today. So any help that I could get from other members of the Committee in getting that U.S. Attorney position filled in Wyoming would be helpful to all of the people of Wyoming, and specifically on our Indian reservations.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Barrasso, thank you very much.

I must say, our Committee is excited to be rejoined by Senator Johnson. Senator Johnson has long been a very important part of the Indian Affairs Committee and an unbelievable champion of the issues that really matter. So Senator Johnson, glad to see you back. Do you have an opening comment?

STATEMENT OF HON. TIM JOHNSON,
U.S. SENATOR FROM SOUTH DAKOTA

Senator JOHNSON. Thank you, Chairman Dorgan, Vice Chair Murkowski. I thank you for holding this hearing.

I particularly want to thank Karen Artichoker for her presence today, her insights on the circumstances facing the Oglala Sioux Tribe and for her testimony today and her leadership on the issue. Thank you.

The CHAIRMAN. Senator Johnson, thank you very much.

Before I call the five witnesses, I want to make one additional comment. There is a chart up here that quotes Ron His Horse Is Thunder, who is chairman of the Standing Rock Sioux Tribe. That is an Indian reservation that Senator Johnson's State and my State share on both sides of the border. He says, "As long as the Tribe must depend on the Federal Government to police and prosecute people on their own land, anyone who comes here may well be able to rape or assault women, like Leslie Iron Road, and get away with it." He was making those comments in a story that was published. But this is from a chairman of a tribe, a very astute, really a terrific chairman. We have worked long with Ron His Horse Is Thunder. And that is a startling statement but one that I respect him making.

I want to make one other point. I referred to Troy Eid, the U.S. Attorney in Colorado. I want to tell you fully what he said. He said, "Indian reservations are being used as business development tools by the large drug trafficking organizations." In a drug bust in Wyoming's Wind River Indian Reservation, occupied by Northern Arapaho and Eastern Shoshone Tribes, U.S. Attorney Eid talked about a business plan seized by authorities that outlined how the drug organization wanted to replace alcohol abuse with meth abuse. It described in graphic terms how they planned to establish romantic relationships with women, get them hooked and get them to deal. Establishing relationships with them was designed to gain access into the Indian community.

That is frightening stuff. I appreciate the work that U.S. Attorney Eid has done. He has some very terrific, really competent work. We really appreciate that work.

So let me call forward the witnesses, and as I do, thank them very much for being willing to appear today.

Ms. Alexandra Arriaga is the Director of Government Relations for Amnesty International in Washington, D.C. Ms. Jami Rozell, Educator and a Survivor in Oklahoma. Tammy Young, Co-Director, Alaska Native Women's Coalition Against Domestic Violence and Sexual Assault in Sitka, Alaska. Ms. Karen Artichoker, the Director of the Sacred Circle in Rapid City, South Dakota. And Riyaz Kanji, Kanji and Katzen, in Ann Arbor, Michigan.

I want to thank all of you for being willing to come and testify. As Senator Murkowski and I have both indicated, this is a very sensitive topic. I recall the first acquaintance with violence on Indian reservations, sitting with a young girl named Tamara and her grandfather, Reginald. I went to see them because I read about something that had happened to this little girl. Her nose was broken, her arm was broken, her hair pulled out at the roots. She was placed in a foster home as a young child without anyone checking

whether the foster home was safe. In a drunken party, this girl was savagely abused. She will have those scars for her life, I supposed, her entire life.

But it reminds me that this subject is not about some ethereal debate. It is about real people's lives, and about a law enforcement system that is now not working and as a result, violence against women and abuse of women exists that ought to be obliterated. We hope through this hearing and through your testimony and through other approaches that we can work together to achieve, we hope to make some significant progress. So let me thank all of you.

Alexandra Arriaga, one of the, not the only, but one of the things that prompted us to hold a hearing was a number of articles including the study that was released by Amnesty International. We appreciate your being here, and you may proceed. The entire statements made by all of you will be made a part of the permanent record and you are welcome to summarize your testimony.

STATEMENT OF ALEXANDRIA ARRIAGA, DIRECTOR OF GOVERNMENT RELATIONS, AMNESTY INTERNATIONAL U.S.A.

Ms. ARRIAGA. Thank you very much, Mr. Chairman, thank you, Madam Vice Chairman and Senator Johnson, it is very good to see you here. Thank you.

I am honored to be here to speak about the issue today. Amnesty International, as you know, is a worldwide human rights organization. We have $2.2 million people around the world who are supporters in 150 countries and territories. We learned about the startling statistics of the sexual violence that is plaguing Indian Country and that is victimizing and creating survivors, very courageous women as well, among Native American and Alaska Native women.

Amnesty, as you said, has recently released a report entitled "Maze of Injustice: the Failure to Protect Indigenous Women from Sexual Violence in the United States." It focuses on this crisis, but as you have stated, Mr. Chairman and Madam Vice Chair, this is simply a report that has added public attention and has served as a wake-up call. This is a report that has really simply brought attention to an issue that has been occurring for a very long time and that Native advocates have been speaking about for decades.

We launched this investigation after learning of a U.S. Department of Justice's own statistics that are quite shocking. As many of you may have heard, the DOJ suggests that Native women are more than two and a half times more likely than other women in the United States to be raped; that more than one in three Native American and Alaska Native women is likely to be raped in her lifetime; and that 86 percent of the perpetrators of these crimes are non-Native men. These statistics are shocking and yet Amnesty International believes that they severely underestimate the crisis.

In preparing this report, Amnesty International worked closely with Native American and Alaska Native individuals and organizations, with law enforcement and health service personnel, with Government officials. We conducted detailed research into specifically three locations that have very different jurisdictional considerations. One was the Standing Rock Reservation in North and South Dakota. another was the State of Oklahoma and then also the State of Alaska. Many courageous women came forward to

share their stories. As you have said, Mr. Chairman, this is about real people's lives.

I would like to just begin in order to bring that home, as you have, to tell very briefly one of the stories that we heard. Della Brown, a 33 year old Alaska Native woman, was raped, mutilated and murdered. Her body was discovered in an abandoned shed in Anchorage, and that was in September 2000. Her skull was so pulverized the coroner compared her head to a bag of ice. Reportedly a number of people walked through the shed lighting matches in order to view her battered remains, but did not report the murder to the Anchorage police. To date, no one has been brought to justice for the rape and murder of Della Brown.

This is one of countless stories, and I know that you have heard many more.

Amnesty International found what Native women have already known and said for decades: many survivors of attacks may never get a police response, they may never have access to a sexual assault forensic examination and they may never see their case prosecuted. Barriers include jurisdictional maze and a chronic lack of resources for law enforcement and health services.

Perpetrators of sexual violence are rarely being brought to justice. Prosecutions for crimes of sexual violence against indigenous women are rare in Federal, State and tribal courts. The high levels of impunity can become an incentive for perpetrators to commit further crimes. As one interviewee told Amnesty, it feels as though the reservation has become lawless.

Several factors contribute to this crisis. More data is urgently needed. Available data underestimates the rates of violence. Many women in the Standing Rock Reservation, for example, said they could not think of a single woman who had not suffered some form of sexual violence.

No official statistics exist specifically on sexual violence in Indian Country or Alaska villages. That needs to change.

Amnesty International received numerous reports that complicated jurisdictional issues significantly delay and prolong the process of investigating and prosecuting crimes of sexual violence. As you are aware, three main factors determine where jurisdictional authorities lies: whether the victim is a member of a federally recognized Indian tribe or not; whether the accused is a member of a federally recognized Indian tribe or not; and whether the alleged offense took place on tribal land or not.

The answers to these questions are quite complicated and not always self-evident. Some tribal, State and Federal law enforcement agencies have addressed these jurisdictional complexities by entering into cooperation agreements. The experience here is quite mixed, but it is something to explore. Chronic under-funding also contributes to the inadequate law enforcement response. According to the Department of Justice, tribes only have between 55 and 75 percent of the law enforcement resources available comparable to non-Native rural communities. There are many places where there is no accessible road and no law enforcement process at all, such as you know, Senator, is the case in some locations in Alaska.

Training, communication and plans of action are necessary. It is essential that training occur in order to have better understanding

of the surrounding jurisdictional issues, but also knowledge of the cultural norms and practices. And these must be determined in conjunction with Native advocates. It has to be developed in consultation. There should also be plans of action that are developed with advocates in order to be able to address these issues preventably as well.

I will touch quickly on just a few other areas. Forensic examinations, as you have already noted, is a very important area. The forensic exams are essential to ensuring the possibility of adequate treatment but also prosecutions. There are severe limitations right now with the IHS facilities and their contract facilities. This is an area perhaps we can explore further in the Q&A.

One important area here is the need for standardized protocols. Also the need for sexual assault nurse examiners. And also the need to clarify who covers the cost and expense of the exams and the transportation. Certainly the victim should not be covering these real costs. That does occur.

There is also an issue of law enforcement agencies that lack sufficient funds to ensure the timely processing of evidence, and this is due to cuts in funding that have happened at the Federal level.

Resourcing for the programs that are run by Native women is also critically important, especially under such dire circumstances. Very quickly, the barriers that exist in Federal law that prevent the tribal nations from being able to carry out justice are severe. As citizens of particular tribal nations, the welfare and safety of American Indian and Alaska Native women is directly linked to the authority and capacity of their nations to address such violence. A series of U.S. Federal laws and Supreme Court decisions have had a devastating impact. In particular, the Major Crimes Act, Public Law 280, the Indian Civil Rights Act, and of course, the case of Oliphant. Among the egregious consequences of these laws and court decisions, the tribes are limited to handing down custodial sentencing to only 1 year per offense, and tribal courts are prohibited from prosecuting non-Indian suspects.

At the Federal and State level there is a failure to pursue cases of sexual violence against indigenous women. The extent to which these cases are dropped before they even reach a Federal court is difficult to quantify, as the U.S. Attorney's office appears not to compile statistics. When Federal prosecutors decline to prosecute cases involving non-Native perpetrators, there is no further recourse for indigenous survivors under criminal law within the United States.

Tribal courts are the most appropriate for adjudicating these cases that arise on tribal land. Despite severe restrictions and obstacles and severe under-funding, the tribal systems have been addressing some of these cases for decades. Some tribal courts seek to overcome these limitations by handing down sequential sentences on a variety of crimes, for example.

International law is clear: sexual violence against women is not a criminal act or social issue alone, it is a human rights abuse. The United States has ratified many international treaties that address this, but has yet to ratify the treaty for the rights of women which can help discrimination and violence against women worldwide.

The next steps Congress takes must be determined in close consultation and cooperation with indigenous leaders. But all women have the right to be safe and free from violence. Thank you very much.

[The prepared statement of Ms. Arriaga follows:]

PREPARED STATEMENT OF ALEXANDRA ARRIAGA, DIRECTOR OF GOVERNMENT RELATIONS, AMNESTY INTERNATIONAL U.S.A.

Della Brown, a 33-year-old Alaska Native woman was raped, mutilated and murdered. Her body was discovered in an abandoned shed in Anchorage in September 2000. Her skull was so pulverized the coroner compared her head to a "bag of ice". Reportedly, a number of people walked through the shed, lighting matches in order to view her battered remains, but did not report the murder to the Anchorage police. To date, no-one has been brought to justice for the rape and murder of Della Brown.

Introduction

Mr. Chairman and members of the Committee, thank you for inviting Amnesty International to testify on an issue that significantly impacts the human rights of American Indian and Alaska Native women. Amnesty is a worldwide human rights movement with more than 2.2 million members. Our mission is to conduct research and take action to prevent and end grave abuses of all human rights. I will focus my remarks on the findings of Amnesty's recent report "Maze of Injustice: The failure to protect Indigenous women from sexual violence in the USA."

Amnesty International is a worldwide human rights movement with more than 2.2 million members and supporters in more than 150 countries and territories. Amnesty International's vision is for every person to enjoy all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. Amnesty International's mission is to conduct research and take action to prevent and end grave abuses of all human rights. Amnesty International is independent of any government, political ideology, economic interest or religion. The organization is funded by individual members; no funds are sought or accepted from governments for investigating and campaigning against human rights abuses.

"Maze of Injustice" Report

On April 24, 2007, Amnesty International released the findings of over 2 years of investigation into the problem of sexual violence against Native American and Alaska Native Women. The report is part of a worldwide campaign to Stop Violence Against Women launched by Amnesty International in March 2004. Since then AI has published reports on aspects of violence against women in 40 countries.

Amnesty International launched an investigation after learning that U.S. Department of Justice's own statistics indicate that Native American and Alaska Native women are more than 2.5 times more likely than other women in the U.S. to be raped. According to Department of Justice statistics, more than 1 in 3 Native American and Alaska Native women will be raped at some point during their lives and 86 percent of perpetrators of these crimes are non-Native men.

Amnesty International's report examines some of the reasons why Indigenous women in the U.S. are at such risk of sexual violence and why survivors are so frequently denied justice. The report is based on research carried out during 2005 and 2006 in consultation with Native American and Alaska Native individuals and organizations. In the course of this research, Amnesty International's interviewed survivors of sexual violence and their families, activists, support workers, service providers, and health workers. Amnesty International also interviewed officials across the U.S., including tribal, state and Federal law enforcement officials and prosecutors, as well as tribal judges. Amnesty International also met representatives from the Federal agencies which share responsibility with tribal authorities for addressing or responding to crimes in Indian Country.

Amnesty International conducted detailed research in three locations with different policing and judicial arrangements: the Standing Rock Reservation in North and South Dakota, the State of Oklahoma, and the State of Alaska. While this report presents a national overview of sexual violence against Indigenous women, it primarily presents our specific findings in these key areas of research.

Each location was selected for its specific jurisdictional characteristics. The Standing Rock Reservation illustrates the challenges involved in policing a vast, rural res-

ervation where tribal and Federal authorities have jurisdiction. Oklahoma is composed for the most part of parcels of tribal lands intersected by state land where tribal, state or Federal authorities may have jurisdiction. In Alaska, Federal authorities have transferred their jurisdiction to state authorities so that only tribal and state authorities have jurisdiction.

This report attempts to represent the stories of survivors of sexual violence as many survivors courageously came forward to share their stories. For example:

> *One Native American woman living on the Standing Rock Reservation told Amnesty that in 2005 her partner raped her and beat her so severely that she had to be hospitalized. An arrest warrant was issued after he failed to appear in court but he was not arrested. One morning she woke up to find him standing by her couch looking at her.*

The perspectives of survivors, as well as the Native women at the forefront of efforts to protect Indigenous women must inform all actions taken to end sexual violence.

Amnesty International is indebted to all the survivors of sexual violence who courageously came forward to share their stories and to those who provided support to survivors before and after they spoke with Amnesty International and to the Native American and Alaska Native organizations, experts and individuals who provided advice and guidance on research methodology and on the report itself. Amnesty International hopes that "Maze of Injustice" can contribute to and support the work of the many Native American and Alaska Native women's organizations and activists who have been at the forefront of efforts to protect and serve women.

Amnesty International's research confirmed what Native American and Alaska Native advocates have long known: that sexual violence against women from Indian nations is at epidemic proportions and that Indian women face considerable barriers to accessing justice. Native American and Alaska Native women may never get a police response, may never have access to a sexual assault forensic examination and, even if they do, they may never see their case prosecuted. As a result of barriers, including a complex jurisdictional maze and a chronic lack of resources for law enforcement and health services, perpetrators of sexual violence are not being brought to justice.

High Levels of Sexual Violence

Amnesty International's interviews suggest that available statistics on sexual violence greatly underestimate the severity of the problem and fail to paint a comprehensive picture of the abuses. No statistics exist specifically on sexual violence in Indian Country or Alaska Native villages; more data is urgently needed to establish the prevalence of violence against Indigenous women. In the Standing Rock Sioux Reservation, for example, many of the women who agreed to be interviewed could not think of any Native women within their community who had not been subjected to sexual violence.

Issues of Jurisdiction

> *Support workers told Amnesty International about the rapes of two Native American women in 2005 in Oklahoma. In both cases the women were raped by three non-Native men. Other similarities between the crimes were reported: the alleged perpetrators, who wore condoms, blindfolded the victims and made them take a bath. Because the women were blindfolded, support workers were concerned that the women would be unable to say whether the rapes took place on Federal, state or tribal land. There was concern that, because of the jurisdictional complexities in Oklahoma, uncertainty about exactly where these crimes took place might affect the ability of these women to obtain justice.*
>
> Interviews with support workers (details withheld), May 2005

Amnesty International received numerous reports that complicated jurisdictional issues can significantly delay and prolong the process of investigating and prosecuting crimes of sexual violence.

Three main factors determine where jurisdictional authority lies: whether the victim is a member of a federally recognized Indian tribe or not; whether the accused is a member of a federally recognized Indian tribe or not; and whether the alleged offense took place on tribal land or not. The answers to these questions are often not self-evident. However, they determine whether a crime should be investigated by tribal, Federal or state police, whether it should be prosecuted by a tribal prosecutor, a state prosecutor (District Attorney) or a Federal prosecutor (U.S. Attorney) and whether it should be tried at tribal, state or Federal level. Last, this determination dictates the body of law to be applied to the case: tribal, Federal or state.

The jurisdiction of these different authorities often overlaps, resulting in confusion and uncertainty. In many areas there may be dual jurisdiction. The end result can sometimes be so confusing that no one intervenes, leaving victims without legal protection or redress and resulting in impunity for the perpetrators, especially non-Native offenders who commit crimes on tribal land.

As citizens of particular tribal nations, the welfare and safety of American Indian and Alaska Native women are directly linked to the authority and capacity of their nations to address such violence. A series of Federal laws and U.S. Supreme Court decisions over the years have increasingly restricted the authority of American Indian and Alaska Native Nations to exercise jurisdiction over crimes committed on tribal land. The undermining of tribal authority has occurred over time and in many ways. However, four laws have had a particularly significant impact: the Major Crimes Act, Public Law 280, and the Indian Civil Rights Act along with the case law of *Oliphant v Suquamish.*

- The Major Crimes Act (1885) granted the Federal authorities jurisdiction over certain serious crimes committed by Indian perpetrators, including rape and murder, committed in Indian Country. There has been a widespread misconception that under the Act only the Federal authorities have the authority to prosecute major crimes. In fact, tribal authorities retain concurrent jurisdiction over perpetrators that are Indian. Nevertheless, the impact of the Act in practice has been that fewer major crimes have been pursued through the tribal justice systems.
- State authorities do not generally have the authority to exercise criminal jurisdiction over American Indians/Alaska Natives on tribal land. Public Law 280 (1953), however, transferred Federal criminal jurisdiction over many offenses involving members of federally recognized Indian tribes on designated tribal lands to state governments in some states. The U.S. Congress gave six states—California, Minnesota, Nebraska, Oregon, Wisconsin and Alaska upon statehood—extensive criminal and civil jurisdiction over Indian Country. Public Law 280 also permitted additional states-currently exercised in varying degrees by Arizona, Florida, Idaho, Iowa, Montana, Nevada, North Dakota, South Dakota, Utah and Washington—to acquire jurisdiction if they wished, and while a number of states originally opted to do so, currently only Florida exercises full Public Law 280 jurisdiction. Where Public Law 280 is applied, both tribal and state authorities have concurrent jurisdiction over crimes committed on tribal land by American Indians or Alaska Natives. Public Law 280 is seen by many Indigenous peoples as an affront to tribal sovereignty, not least because states have the option to assume and to relinquish jurisdiction, a power not extended to the tribal governments affected. In addition, Congress failed to provide additional funds to Public Law 280 states to support the law enforcement activities they had assumed. The BIA, however, reduced funding to tribal authorities as a result of the shift in jurisdiction. This has led to a situation where tribal and state authorities have not received sufficient funds to assume their respective law enforcement responsibilities, resulting in a perception of "lawlessness" in some communities and difficult relations between tribal and state officials.
- The Indian Civil Rights Act (1968) limited the criminal sentence which can be imposed by tribal courts for any offence—including murder or rape—to a maximum of 1 year's imprisonment and a U.S. $5,000 fine. No such limits exist for tribal civil jurisdiction. The message sent by this law is that, in practice, tribal justice systems are only equipped to handle less serious crimes. While this limitation on the custodial sentencing powers of tribes (and resource limitations) substantially limits the ability of tribal justice systems to hold offenders accountable, an increasing number of tribal courts are prosecuting sexual assault cases due to the inadequate rate of Federal and state prosecutions of sexual assault cases.

In 1978, the Supreme Court ruled that tribal courts could not exercise criminal jurisdiction over non-Indian U.S. citizens. This ruling in the case of *Oliphant v. Suquamish* effectively strips tribal authorities of the power to prosecute crimes committed by non-Indian perpetrators on tribal land. This situation is of particular concern given the number of reported crimes of sexual violence against American Indian women involving non-Indian men. In such situations, either Federal or state authorities have the authority to intervene. Reportedly, the apparent gap in jurisdiction or enforcement has encouraged non-Indian individuals to pursue criminal activities of various kinds in Indian Country. Tribal police do have limited powers of arrest over non-Indian suspects in some states and they also retain the power to detain non-Indian suspects in Indian Country in order to transfer them to either

Federal or state authorities, but this is not generally understood by state or Federal officials.

Each location Amnesty International selected has specific jurisdictional characteristics. Tribal and Federal authorities have concurrent jurisdiction on all Standing Rock Reservation lands over crimes where the suspected perpetrator is American Indian. In instances in which the suspected perpetrator is non-Indian, Federal officials have exclusive jurisdiction. Neither North nor South Dakota state police have jurisdiction over sexual violence against Native American women on the Standing Rock Reservation. State police do however have jurisdiction over crimes of sexual violence committed on tribal land in instances where the victim and the perpetrator are both non-Indian. Amnesty International received reports that perpetrators seek to evade law enforcement by fleeing to another jurisdiction. According to a state prosecutor in South Dakota, the confusing and complicated jurisdiction over crime on and around reservations in South Dakota, means that some crimes just "fall through the cracks."

> *"[N]on-Native perpetrators often seek out a reservation place because they know they can inflict violence without much happening to them."*
>
> Andrea Smith, University of Michigan, Assistant Professor of Native Studies

Amnesty International found that jurisdictional issues in Oklahoma are a constant concern since police officers responding to a crime have difficulties determining whether or not the land in question is state, tribal or Federal. Oklahoma is a geographical patchwork where non-contiguous parcels of tribal land are often intersected by state land. Both Indian and non-Indian people frequently cross between different jurisdictions several times a day. One support worker told AI that, in responding to an emergency call, arguments over jurisdiction between tribal and state police are not always resolved, resulting in inadequate investigation and evidence collection.

In Alaska, the Alaska Rural Justice and Law Enforcement Commission (2006) found that "There is no doubt that reduction in state/tribal conflict over jurisdictional issues, and increased cooperation, coordination and collaboration between state and tribal courts and agencies, would greatly improve life in rural Alaska and better serve all Alaskans."

Jurisdictional authority has been the subject of considerable debate in Alaska. Upon statehood, Alaska was included as one of the original states in which Public Law 280 applied, giving the state (in place of Federal authorities) concurrent criminal jurisdiction with tribes to prosecute crimes committed by and against Alaska Native peoples on tribal land throughout much of Alaska. The state of Alaska, however, took the position that statehood had extinguished the Alaska Native village's criminal law enforcement authority and reportedly threatened councils with criminal prosecution "should they attempt to enforce their village laws."

The situation in Alaska is further complicated because of issues around how tribal lands are designated. A combination of Federal legislation and U.S. Supreme Court decisions about the definition and status of tribal lands has resulted in considerable confusion and debate over jurisdiction within the state. This debate arises from the unique way in which Indigenous land claims in Alaska were settled. Following the Alaska Native Claims Settlement Act (ANCSA), passed by the U.S. Congress in 1971, there has been considerable debate about whether the land to which Alaska Native title was recognized qualifies as Indian Country. In 1998 the Supreme Court ruled that ANCSA lands were not Indian Country. It is important to note that the Court also found that ANCSA did not intend to terminate tribal sovereignty, but that it left Alaska tribes "sovereigns without territorial reach." This issue is important because criminal jurisdiction normally has a territorial element.

> *"Federally recognized tribes have a local government presence but have disputed jurisdiction. The state has jurisdiction, but often lacks an effective local government presence. The result is a gap that leaves many villages without effective law enforcement."*
>
> Initial Report and Recommendations of the Alaska Rural Justice and Law Enforcement Commission (2006).

While the State has sought to limit the exercise of tribal authority and traditional justice methods for keeping the peace in villages, it has at the same time failed to provide state law enforcement services. The result is that many villages have been left without law enforcement protection. It is important to note that it was never the intent of the Federal Government for Public Law 280 to extinguish tribal jurisdiction over criminal offenses. Furthermore, over 200 Alaska Native entities remain federally recognized governmental bodies.

Amnesty International is concerned that jurisdictional issues not only cause confusion and uncertainty for survivors of sexual violence, but also result in uneven and inconsistent access to justice and accountability. This leaves victims without legal protection or redress and allows impunity for the perpetrators, especially non-Indian offenders who commit crimes on tribal land.

Inter-agency Cooperation

> *"It's only about a mile from town to the bridge. Once they cross the bridge [to the Standing Rock Sioux Reservation], there's not much we can do. We've had people actually stop after they've crossed and laugh at us. We couldn't do anything."*
>
> Walworth County Sheriff Duane Mohr, The Rapid City Journal, December 21, 2005.

Some tribal, state and Federal law enforcement agencies address the jurisdictional complexities by entering into cooperation agreements. These may take the form of cross-deputization agreements, which allow law enforcement officials to respond to crimes that would otherwise be outside their jurisdiction. A second form of agreement addresses extradition in situations in which a perpetrator seeks to escape prosecution by fleeing to another jurisdiction. Across the U.S., experiences of such inter-agency cooperation agreements vary greatly. Where they are entered into on the basis of mutual respect, cooperation agreements can have the potential to smooth jurisdictional uncertainties and allow improved access to justice for victims of sexual violence.

Problems of Policing

Amnesty International found that police response to sexual violence against American Indian and Alaska Native women at all levels is inadequate. Although jurisdictional issues present some of the biggest problems in law enforcement response, other factors also have a significant impact including lack of resources.

Lack of Resources: Delays and Failure to Respond

> *In an Alaska Native village in 2005, an Alaska Native man became violent, beating his wife with a shotgun and attempting to fire it at her; he then barricaded himself in a house with four children. As the village had no law enforcement presence, residents called State Troopers 150 miles away. It took the troopers more than 4 hours to reach the village and, in that time period, the man had raped a 13-year-old Alaska Native girl on a bed, with an infant crying beside her, as her 5-year-old brother and 7-year-old cousin watched helplessly.*

Law enforcement in Indian Country and Alaska Native villages is chronically underfunded. The U.S. Departments of Justice and Interior have both confirmed that there is inadequate law enforcement in Indian Country and identified underfunding as a central cause. According to the U.S. Department of Justice, tribes only have between 55 and 75 percent of the law enforcement resources available to comparable non-Native rural communities. AI also found that a very small number of officers usually cover large territories and face difficult decisions about how to prioritize their initial responses.

The Standing Rock Police Department in February 2006 consisted of six or seven patrol officers to patrol 2.3 million acres of land, with only two officers usually on duty during the day. Amnesty International documented lengthy delays in responding to reports of sexual violence against Indigenous women. Women on the reservation who report sexual violence often have to wait for hours or even days before receiving a response from the police department, if they receive a response at all.

> *"It feels as though the reservation has become lawless."*
>
> Roundtable interview, Standing Rock Reservation (name withheld) February 22, 2006.

Sometimes suspects are not arrested for weeks or months after an arrest warrant has been issued. Amnesty International was told that on the Standing Rock Reservation there are on average 600–700 outstanding tribal court warrants for arrest of individuals charged with criminal offenses. Failure to apprehend suspects in cases of sexual violence can put survivors at risk, especially where the alleged perpetrator is an acquaintance or intimate partner and there is a threat of retaliation.

In Alaska the low numbers of officers in rural outposts, combined with the vast expanses and the harsh weather, present major barriers to prompt responses by police to reports of sexual violence. Law enforcement services in Alaska range from the larger, municipal police departments found in cities such as Anchorage, to the State Troopers (state police officers), who police the outlying rural areas, to Village

Public Safety Officers (VPSO) and Village Police Officers (VPO), which often consist of one or two individuals working in smaller villages. Neither VPSOs nor VPOs are "certified" by the Alaska Police Standard Council because they do not meet training and qualification requirements. Over 80 percent of those in Alaska who are not afforded trained and certified law enforcement protection are Alaska Native. At least one-third of all Alaska Native villages that are not accessible by road have no law enforcement presence at all.

Those living in rural villages that do not have local or city police departments may receive law enforcement services from the state's 240 State Troopers. In more inaccessible communities, State Troopers tend to respond only to more serious crimes. It can take State Troopers from 1 day to 6 weeks to respond to crimes including sexual violence in villages, if they respond at all. Because of delays in response by State Troopers, VPSOs and VPOs are often the first to respond to reports of crimes, including crimes of sexual violence. VPSOs are relatively few in number and have additional responsibilities outside of law enforcement, for example they may act as harbor masters. Although they may be the first or only officers to respond, VPSOs cannot serve arrest warrants or investigate serious crimes such as rape without the approval of State Troopers.

> *"Most [VPOs and VPSOs] are ill-equipped. Many have to use their home for office space as well as a holding facility for detainees, and must walk or run to the scene of a crime because they lack essential transportation such as snow-machines, four-wheelers and boats, as well as essential equipment such as rape kits [for evidence collection]."*
>
> Complaint for Declaratory and Injunctive Relief, Alaska Inter-Tribal Council, et al., v State, et al, 25th October 1999.

Amnesty International found that in cases where both tribal and Federal authorities have jurisdiction, FBI involvement in investigations of reports of sexual violence against Indigenous women is rare and even in those cases that are pursued by the FBI, there can be lengthy delays before investigations start.

Amnesty International's research also revealed a worrying lack of communication by all levels of law enforcement with survivors. In a number of cases, survivors were not informed about the status of investigations, the results of sexual assault forensic examinations, the arrest or failure to arrest the suspect, or the status of the case before tribal, Federal or state courts.

Detention in Indian Country

Another issue that must be considered is the detention needs in Indian Country. The Department of Interior Inspector General found in its 2004 report, "Neither Safe nor Secure" that there has been a failure to provide safe and secure detention facilities throughout Indian Country. Funding for detention in Indian Country has been inconsistent and inadequate. For example, the Department of Justice Office of Justice Programs provided $44 million for incarceration on tribal lands in 2002 and only $14 million in 2006.

Training

AI is concerned that Federal, state and tribal training programs for law enforcement officials are not equipping officers to respond adequately and appropriately to crimes of rape and other forms of sexual violence against Indigenous women. Basic training of law enforcement officers varies from agency to agency. For example, an officer in the Standing Rock Police Department reported that training on interviewing survivors of sexual violence is not available unless it is hosted or paid for by another organization. He noted that, given the limited number of officers on the force, the Standing Rock Police Department cannot provide them all with training opportunities.

Officers need training on cultural norms and practices to enable them to respond appropriately, taking into account differences between tribes. This may have implications for how police approach and speak to victims, witnesses and suspects, including, for example, greater awareness of potential language barriers.

Training on jurisdiction also appears to be inadequate. For example, law enforcement officials in Oklahoma face a jurisdictional maze of different tribal, Federal and state areas of authority, yet the Council on Law Enforcement Education and Training reportedly provides state police officers with almost no training on jurisdiction.

Inadequate Forensic Examinations and Related Health Services

> *Every effort should be made to facilitate treatment and evidence collection (if the patient agrees), regardless of whether the decision to report has been made at the time of the exam."*

U.S. National Protocol for Sexual Assault Forensic Examinations.

Another factor that Amnesty found significantly impacts law enforcement and access to justice is the lack of access to forensic exams—critical evidence in a prosecution—often due to the severe underfunding of the IHS. If the authorities fail to provide the examination, this can jeopardize prosecutions and result in those responsible for rape not being brought to justice.

The examination, which is performed by a health professional, involves the collection of physical evidence and an examination of any injuries. Samples collected in the evidence kit include vaginal, anal and oral swabs, finger-nail clippings, clothing and hair. Reports to AI indicate that many IHS facilities lack personnel to provide examinations, haven't prioritized development of sexual assault nurse examiner programs and lack protocols for treating victims of sexual violence.

A 2005 survey conducted by the Native American Women's Health Education Resource Center found that 44 percent of Indian Health Service facilities lacked personnel trained to provide emergency services in the event of sexual violence. More specifically, there is generally a severe lack of available Sexual Assault Nurse Examiners (SANEs), registered nurses with advanced education and clinical preparation in forensic examination of victims of sexual violence. Amnesty International understands that there may be challenges to fully staffing all facilities with SANE personnel, but we are concerned that the IHS has not prioritized the implementation of SANE programs throughout its facilities.

Amnesty International is also concerned that IHS facilities lack clear and standardized protocols for treating victims of sexual violence. A 2005 survey conducted by the Native American Women's Health Education Resource Center of IHS facilities found that 30 percent of responding facilities did not have a protocol in place for emergency services in cases of sexual violence. The standardized protocols are essential to help ensure adequate treatment of women who have suffered sexual assault. The National Congress of American Indians (NCAI) is the oldest and largest national organization of American Indian and Alaska Native tribal governments passed a resolution in 2005 that the NCAI "will urge the adoption and implementation of [a] national policy and protocols on rape and sexual assault within the Indian Health Service Unit emergency rooms and Contract Health Care facilities/providers."

The person who carries out the sexual assault forensic examination may later be called upon to testify in court during a prosecution. A high turnover of staff, many of whom are on short-term contracts, means that it may be difficult to locate the person who performed the examination when they are needed to provide testimony. Furthermore, Amnesty International understands that Federal, tribal and state prosecutors face significant challenges in ensuring that the IHS personnel who were responsible for the collection of the forensic evidence testify in court. Amnesty International strongly encourages efforts to eliminate bureaucratic obstacles and facilitate participation by local personnel so that valuable evidence of sexual assault can be submitted successfully in court.

> *Jami Rozell, a Cherokee woman living in Tahlequah, Oklahoma, told AI that she decided to seek prosecution 5 months after she was raped in 2003. She attended a preliminary hearing, but her sexual assault forensic examination—which had been performed immediately after the rape and included the sexual assault nurse examiner's report, photographs, and the clothing she had been wearing—had been destroyed. She was told by the police department that as she had not pressed charges at the time, the evidence had been destroyed as a routine part of cleaning their evidence storage room. Because the evidence had been destroyed, the District Attorney advised her to drop the complaint.*

Furthermore, as the first to respond to reports of sexual assault, law enforcement officials have a critical role to play in ensuring that women can get to a hospital or clinic where their injuries can be assessed and the forensic examination can be done. This is particularly important where women have to travel long distances to access a medical facility and may not have any way of getting there themselves. AI received reports of confusion and disagreements over who should pay for examinations or transport costs—the IHS, other medical providers, law enforcement agencies or the survivors themselves. Amnesty International believes that costs relating to sexual assault forensic examinations should be the responsibility of law enforcement agencies since the evidence gathered is an essential part of an investigation into a report of sexual violence. In any event, survivors should not have to pay the costs themselves.

It is important to ensure that evidence collected during a forensic examination is processed. On or about June of 2000, the FBI partnered with the State of Arizona

Laboratory to process evidence from Indian Country crimes, by allocating $450,000 a year to the State laboratory. This program was the result of a realization that crimes in Indian Country needed timely evidence processing, and the FBI lab was overwhelmed. Support from the State lab was a logical and cost effective answer.

Amnesty International recently received a report from a tribal law enforcement officer/Director of Public Safety for the Tohono O'odham Nation that, in October of 2005 the FBI discontinued this vital program. The result is a delay and on occasion dismissal of cases because of the lack of evidence analysis, this is particularly critical in sexual assault crimes. This has severely impacted Tribal Police's ability to ensure the processing of forensic examination in cases of rape and sexual assault.

All survivors of sexual violence should be offered a forensic examination, without charge, regardless of whether or not they have decided to report the case to the police. Indigenous women in the USA are being effectively denied access to these examinations either because there is no facility nearby equipped to carry them out, the facility is understaffed by individuals trained in the forensic exams or because staff are not adequately trained on how to respond to survivors of sexual violence and how to do so in a culturally appropriate manner.

Prosecutions

> *"In Oklahoma, prosecution of sexual assault is last, least and left behind."*
>
> Jennifer McLaughlin, Sexual Assault Specialist, Oklahoma Coalition Against Domestic Violence and Sexual Assault, September 2005.
>
> *"To a sexual predator, the failure to prosecute sex crimes against American Indian women is an invitation to prey with impunity."*
>
> Dr. David Lisak, Associate Professor of Psychology, University of Massachusetts, 29 September 2003.

A key contributory factor identified in AI's research for the continuing high levels of violence is that all too often those responsible are able to get away with it. Survivors of sexual abuse, activists, support workers and officials told AI that prosecutions for crimes of sexual violence against Indigenous women are rare in Federal, state and tribal courts. For example, a health official responsible for carrying out sexual assault forensic examinations reported that in about 90 percent of cases, she is not contacted again by police or prosecutors about examinations she has performed, although she is available as an expert witness for trials.

Sexual violence against Native American or Alaska Native women can be prosecuted by tribal, Federal or state authorities, or a combination of these. The U.S. Federal Government has created a complex interrelation between these three jurisdictions that often allows perpetrators to evade justice.

The perpetrator of sexual violence is the person liable under criminal law for this act and should be brought to justice. However, the state also bears a responsibility if it fails to prevent or investigate and address the crime appropriately. U.S. authorities are failing to exercise due diligence when it comes to sexual violence against Native American and Alaska Native women.

Tribal Courts

Tribal courts vary greatly both in the statutes and criminal codes which they enforce and their procedures. A common factor, however, is that they face a number of limitations imposed at Federal level that interfere with their ability to provide justice for Native American and Alaska Native survivors of sexual violence. For example, Federal law prevents tribal courts from prosecuting non-Indian or non-Alaska Native offenders or imposing a custodial sentence of more than 1 year for each offense.

Federal funding of tribal courts is inadequate. The U.S. Commission on Civil Rights stated in 2003 that tribal courts have been under funded for decades. Inadequate funding by the Federal authorities affects many aspects of the functioning of tribal courts, including the ability to proceed with prosecutions promptly. Nevertheless, prosecutions for sexual violence do occur in tribal courts and some courts are able to overcome limitations on the sentences they can hand down by imposing consecutive sentences for several offenses. Some tribal courts also work with sanctions other than imprisonment, including restitution, community service and probation.

Tribal prosecutors sometimes decline to prosecute crimes of sexual violence because they expect that Federal prosecutors will do so. Although some tribal prosecutors may choose to take up a case if it is declined for Federal prosecution, as often happens, this can result in delays of up to a year and sometimes even longer. Often the net result is that perpetrators are not prosecuted at either level.

Federal Courts

There is a failure at Federal level to pursue cases of sexual violence against Indigenous women. The extent to which cases involving American Indian women are dropped before they even reach a Federal court is difficult to quantify as the U.S. Attorney's Office does not compile such statistics. However, the evidence gathered by AI suggests that in a considerable number of instances the authorities decide not to prosecute reported cases of sexual violence against Native women.

Federal prosecutors have broad discretion in deciding which cases to prosecute, and decisions not to prosecute are rarely reviewed. AI is concerned that the difficulties involved in prosecuting rape cases, combined with the particular jurisdictional and practical challenges of pursuing cases where the crime took place on tribal land, can deter Federal prosecutors from taking the case. When Federal prosecutors decline to prosecute cases involving non-Native perpetrators, there is no further recourse for Indigenous survivors under criminal law within the USA.

State Courts

In some states, such as Alaska, state rather than Federal prosecutors have jurisdiction. However, the same pattern of failing to pursue cases of sexual violence against Indigenous women emerged. Health workers in Alaska told AI that there is no prosecution in approximately 90 percent of cases where Indigenous women undergo a sexual assault forensic examination in Anchorage.

In addition, Native American and Alaska Native survivors of sexual violence often face prejudice and discrimination at all stages and levels of Federal and state prosecution.

> *Amnesty International learned of the case of a Native American woman who in 2003 accepted a ride home from two white men who raped and beat her and then threw her off a bridge. A support worker for victims of sexual violence described how, "People said she was asking for it because she was hitchhiking late at night." The case went to trial in a state court, but the jurors were unable to agree on whether the suspects were guilty. A juror who was asked why replied: "She was just another drunk Indian." Because the jury failed to reach a verdict, the case was retried. The second trial resulted in custodial sentence for both perpetrators.*

Communicating With Survivors

Amnesty International received a number of reports that prosecutors at all levels fail to provide information consistently to Indigenous victims of sexual violence about the progress of their cases. Survivors are frequently not informed whether their cases will proceed to trial or not.

> *"One [Native American] woman I work with told me that she reported her sexual assault 2 years ago and that she didn't know if the case had been investigated or prosecuted. I researched the case and discovered it had been declined [for prosecution], but no one had told the woman."*
>
> Support worker for Native American survivors of sexual violence (identity withheld), January 2006.

Inadequate Resources for Indigenous Support Initiatives

Programs run by Native American and Alaska Native women are vital in ensuring the protection and long-term support of Indigenous women who have experienced sexual violence. However, lack of funding is a widespread problem. Programs run by Indigenous women often operate with a mix of Federal, state, and tribal funds, as well as private donations. However such funding in often limited.

In 2005, the non-governmental organization South Dakota Coalition against Domestic Violence and Sexual Assault contributed to the founding of Pretty Bird Woman House, a domestic violence program on the Standing Rock Reservation. The program, which is named after Ivy Archambault (Pretty Bird Woman), a Standing Rock woman who was raped and murdered in 2001, operates a shelter in a temporary location and at the time of Amnesty International's report in April 2007 did not have funding for direct services for its clients, but helps women to access services off the Reservation. Given the rates of violence against women on the Standing Rock Reservation, it is imperative that the Reservation have its own permanent shelter.

International Law

Sexual violence against women is not only a criminal or social issue; it is a human rights abuse. While the perpetrator is ultimately responsible for his crime, authori-

ties also bear a legal responsibility to ensure protection of the rights and well-being of American Indian and Alaska Native peoples. They are responsible as well if they fail to prevent, investigate and address the crime appropriately.

The United States has ratified many of the key international human rights treaties that guarantee Indigenous women's protection against such abuses, including the right not to be tortured or ill-treated; the right to liberty and security of the person; and the right to the highest attainable standard of physical and mental health. The United States should ratify the Treaty for the Rights of Women (CEDAW) which can help end discrimination and violence against women worldwide. The next steps Congress takes must be determined in close consultation and cooperation with Indigenous leaders. All women have the right to be safe and free from violence.

International law is clear: governments are obliged not only to ensure that their own officials comply with human rights standards, but also to adopt effective measures to guard against acts by private individuals that result in human rights abuses. This duty-often termed "due diligence"—means that states must take reasonable steps to prevent human rights violations and, when they occur, use the means at their disposal to carry out effective investigations, identify and bring to justice those responsible, and ensure that the victim receives adequate reparation. Amnesty International's research shows that the United States is currently failing to act with due diligence to prevent, investigate and punish sexual violence against Native American and Alaska Native women. The erosion of tribal governmental authority and resources to protect Indigenous women from crimes of sexual violence is inconsistent with international standards on the rights of Indigenous peoples.

The U.N. Declaration on the Rights of Indigenous Peoples, adopted by the U.N. Human Rights Council in June 2006, elaborates minimum standards for the recognition and protection of the rights of Indigenous peoples in diverse contexts around the world. Provisions of the Declaration include that Indigenous peoples have the right of self determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development (Article 3); that States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women. enjoy the full protection and guarantees against all forms of violence and discrimination. (Article 22(2)); and the right of Indigenous peoples "to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, where they exist, juridical systems or customs, in accordance with international human rights standards" (Article 34).

Key Recommendations

Amnesty International wants to highlight that on September 13th, 2007 the U.N. General Assembly adopted the U.N. Declaration on the Rights of Indigenous Peoples which calls on states to "consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them." (Article 19)

We respectfully refer you to "Maze of Injustice: The failure to protect Indigenous women from sexual violence in the USA" for more detailed information and recommendations, briefly however the following steps need to be taken:

Develop Comprehensive Plans of Action to Stop Violence Against Indigenous Women

- Federal and state governments should consult and cooperate with Indigenous nations and Indigenous women to institute plans of action to stop violence against Indigenous women.

  For instance, the Safety for Indian Women Demonstration Initiative is an effort by the U.S. Department of Justice Office on Violence Against Women (OVW) to enhance the response of tribal and Federal agencies to the high rates of sexual assault committed against Native American women. Under the initiative, OVW awarded over $900,000 to four tribes to achieve such goals as: enhance the response of tribal and Federal agencies to sexual assault of Native American women; build upon an existing coordinated community response to sexual assault of Native American women; strengthen the capacity of tribal justice systems to respond to sexual assault of Native American women; enhance and increase advocacy and services for Native American victims of sexual assault; strengthen coordination between tribal and Federal agencies responding to crimes of sexual assault against Native American women; and expand current responses to crimes of sexual assault against Native American women. Adequate and consistent funding should be provided for such initiatives. At present,

AI has been unable to establish whether or not this initiative continues to be funded.

- Federal, state and tribal authorities should, in consultation with Indigenous peoples, collect and publish detailed and comprehensive data on rape and other sexual violence that shows the Indigenous or other status of victims and perpetrators and the localities where such offenses take place, the number of cases referred for prosecution, the number declined by prosecutors and the reasons why.

Ensure Appropriate, Effective Policing

- Congress and Federal authorities must take urgent steps to make available adequate resources to police forces in Indian and Alaska Native villages. Particular attention should be paid to improving coverage in rural areas with poor transport and communications infrastructure.
- All law enforcement officials should respond promptly to reports of sexual violence, take effective steps to protect survivors from further abuse, and undertake thorough investigations.
- Law enforcement agencies should recognize in policy and practice that all police officers have the authority to take action in response to reports of sexual violence, including rape, within their jurisdiction and to apprehend the alleged perpetrators in order to transfer them to the appropriate authorities for investigation and prosecution. In particular, where sexual violence in committed in Indian Country and in Alaska Native villages, tribal law enforcement officials must be recognized as having authority to apprehend both Native and non-Native suspects.
- All law enforcement agencies should cooperate with, and expect cooperation from, neighboring law enforcement bodies on the basis of mutual respect and genuine collaboration to ensure protection of survivors and those at risk of sexual violence, including rape, and to ensure that perpetrators are brought to justice. These may take the form of:
  - —Cross-deputization agreements, which allow law enforcement officials to respond to crimes that would otherwise be outside their jurisdiction. In addition authorities.
  - —Extradition agreements address situations in which a perpetrator seeks to escape prosecution by fleeing to another jurisdiction. Tribal and state authorities may enter into extradition agreements, in which each agrees to allow the other to return fleeing perpetrators to the jurisdiction of the crime.
- In states where criminal jurisdiction on tribal land has been transferred from Federal to state authorities (including Public Law 280 states), Congress should ensure that tribal governments, like state governments, have the option to transfer jurisdiction back from the state to the Federal authorities.
- In order to fulfil their responsibilities effectively, all police forces should work closely with Indigenous women's organizations to develop and implement appropriate investigation protocols for dealing with cases of sexual violence.

Ensure Access to Sexual Assault Forensic Examinations

- Law enforcement agencies and health service providers should ensure that all Indigenous women survivors of sexual violence have access to adequate and timely sexual assault forensic examinations without charge to the survivor and at a facility within a reasonable distance.
- Congress and the Federal Government should permanently increase funding for the Indian Health Service to improve and further develop facilities and services, and increase permanent staffing in both urban and rural areas in order ensure adequate levels of medical attention.
- The Indian Health Service and other health service providers should develop standardized policies and protocols, which are made publicly available and posted within health facilities in view of the public, on responding to reports of sexual violence.
- The Indian Health Service and other health service providers should prioritize the creation of sexual assault nurse examiner programs and explore other ways of addressing the shortage and retention of qualified Sexual Assault Nurse Examiners.
- The Indian Health Service and other health service providers should facilitate the availability at trial of forensic evidence of sexual assault by eliminating bu-

reaucratic obstacles and encouraging participation of appropriate medical personnel.

Law enforcement agencies in Indian Country should receive sufficient funding to ensure the timely processing of evidence collected from sexual assault forensic examinations.

Ensure That Prosecution and Judicial Practices Deliver Justice

- Congress should recognize the concurrent jurisdiction of tribal courts (meaning that tribal courts, and/or the state or Federal courts, could try suspects) regardless of the Indigenous or other identity of the accused.
- Congress should amend the Indian Civil Rights Act to recognize the authority of tribal courts to impose penalties proportionate to the offences they try.
- Prosecutors should vigorously prosecute cases of sexual violence against Indigenous women and should be sufficiently resourced to ensure that the cases are treated with the appropriate priority and processes without undue delay. Any decision not to proceed with a case, together with the rationale for the decision, should be promptly communicated to the survivor of sexual violence and any other prosecutor with jurisdiction.
- All U.S. Attorneys should begin immediately to collect and publish publicly data on the number of cases of sexual violence of Native American and Alaska Native women referred for Federal prosecution, the number declined and reasons for decline.
- Congress should recognize that tribal authorities have jurisdiction over all offenders who commit crimes on tribal land, regardless of their Indigenous or other identity and the authority to impose sentences commensurate with the crime that are consistent with international human rights standards.
- Congress and Federal authorities should make available the necessary funding and resources to tribal governments to develop and maintain tribal courts and legal systems which comply with international human rights standards, while also reflecting the cultural and social norms of their peoples.

Ensure Availability of Support Services for Survivors

- All governments should support and ensure adequate funding for support services, including shelters, for American Indian and Alaska Native survivors of sexual violence.

Additional Recommendations

- Congress should fully fund and implement the Violence Against Women Act—and in particular Tribal Title (Title IX), the first-ever effort within VAWA to fight violence against Native American and Alaska Native women. This includes a national baseline study on sexual violence against Native women, a study on the incidence of injury from sexual violence against Native women and a Tribal Registry to track sex offenders and orders of protection.
- The Senate should ratify the Treaty for the Rights of Women, officially the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Although the United States played a key role in drafting this treaty, it remains one of eight countries yet to ratify. This treaty can help end discrimination and violence against women worldwide.
- The next steps Congress takes must be determined in close consultation and cooperation with Indigenous leaders.

Thank you for the opportunity to testify on this important human rights topic.

The CHAIRMAN. Ms. Arriaga, thank you very much for being here, and thank you for the work that Amnesty International has done.

Next we will hear from Ms. Jami Rozell, who is an educator from Oklahoma. Ms. Rozell.

STATEMENT OF JAMI ROZELL, EDUCATOR, CHEROKEE NATION, OKLAHOMA

Ms. ROZELL. Mr. Chairman and members of the Committee, thank you for inviting me to testify today. I would like to submit my full testimony for the record.

My name is Jami Rozell, and I am a member of the Cherokee Nation and a school teacher from Oklahoma. I will always remember the date, Friday, May 9th, 2003, I was 21 years old in my home town of Tahlequah, Oklahoma and raped by a non-Native man I have known since junior high. I was accompanied that same night to the Indian Health Services hospital at Hastings by my brother, who called the city police. The Hastings hospital was not equipped to do rape exams, so we were taken then to the Tahlequah City Hospital next door.

At the city hospital, we waited a couple of hours for the sexual assault nurse examiner to arrive. The hospital had called an advocate from the local sexual assault service provider, Help in Crisis, to be there with me during the exam. The nurse finally arrived and so did the rest of my family. I know that I was fortunate to have my family and an advocate with me at this difficult and scary time. This is not the case for all Native American women going through an exam or police questioning.

It was horribly uncomfortable to have a camera inside of me, and I was grateful to have my family with me at the hospital. The nurse took photos of all the bruises, blisters and abrasions inside of me and kept my underwear as evidence. My mom asked the nurse if she could clearly tell that I had been raped, and she told my mom that I had definitely been raped. I bled for the next 3 days.

At the hospital, there had been a detective, a man that I had known my entire life, through my family. He told me that I had up to 7 years to decide if I wanted to press charges, because the city police had their own full police report, the nurse's exam with photos and all the evidence. The detective told my dad that if his own daughter had been raped, he wouldn't press charges. The detective said that he would just deal with it and move on because it wouldn't get anywhere. The detective told me to think about it.

Soon after, I rejected a meeting that our church attempted between me and the man who raped me and grew depressed. I was also scared that this man would stalk me around town in an attempt to intimidate me. My dad spoke with a friend of the family who is still a defense attorney in town, and he told my dad not to go through with pressing charges. The attorney said that I had already been raped once and the State court system would just rape me again.

With everyone I respected and trusted telling me not to press charges, I decided to wait. By October, 5 months had passed and I was no longer feeling scared. I decided to move ahead with the charges in March 2004. I was subpoenaed to State court for the preliminary hearing. I was the one that had to sit up on the witness stand for two and a half hours, while the defense attorney questioned me and my character. It was me up there on the stand and not the man who raped me. That was yet again another horrible ordeal in this whole experience. It was a courtroom full of my

family and his, and once again, a bunch of people from my town that I had known my whole life, and I was the one made to feel ashamed.

During the trial I had to sit, and we had to make sure that it was on State land, we had to determine for a fact that it was State land and not tribal land, because in Oklahoma there is no reservation. So you could be, one side of the street is State land and the other side is tribal land, so the jurisdiction was an issue that we had to determine before the case could even begin.

A few weeks after the preliminary hearing I was contacted for a meeting with the district attorney's office. They told me that in a routine State police cleanup, all of my evidence had been destroyed, so it was now a he said/she said case, and they were advising me to drop the charges. I asked them what happened, since they told me that I had up to 7 years to change my mind. The district attorney said that because I had initially decided not to press charges, everything had been destroyed.

I have not been able to stand up for myself until now. Amnesty International has given me support and the opportunity to speak up, not only for myself but also in some way for many Native American sexual assault survivors who cannot be here today to share their stories. There are many discriminatory and jurisdictional barriers to effective law enforcement response, getting rape kits and prosecution in Oklahoma. My story is just one of many.

I urge you to learn more about stopping sexual assault against Native American women. Thank you.

[The prepared statement of Ms. Rozell follows:]

PREPARED STATEMENT OF JAMI ROZELL, EDUCATOR, CHEROKEE NATION, OKLAHOMA

Mr. Chairman and members of the Committee, thank you for inviting me to testify today. I would like to submit my full testimony for the record.

My name is Jami Rozell and I am a Cherokee school teacher from Oklahoma.

I will always remember the date, Friday May 9th, 2003. I was twenty-one years old, in my hometown of Tahlequah Oklahoma and raped by a non Native man I had known since junior high.

I was accompanied that same night to the Indian Health Service hospital in Hastings, Oklahoma by my brother, who had called the city police. The Hastings hospital was not equipped to do rape exams, so we were then taken to the Tahlequah City hospital next door.

At the Tahlequah City hospital we waited a couple of hours for the Sexual Assault Nurse Examiner to arrive. The hospital had called an advocate from the local sexual assault service provider, Help-In-Crisis, to be there with me during the exam. The nurse finally arrived and so did the rest of my family. I know that I was fortunate to have my family and an advocate with me at this difficult and scary time. This is not the case for all Native American women going through an exam or police questioning. It was horribly uncomfortable to have a camera inside of me and I was grateful to have my family with me at the hospital. The nurse took photos of all the bruises, blisters and abrasions inside of me and kept my underwear as evidence. My mom asked the nurse if she could clearly tell that I had been raped and she told my mom I had definitely been raped. I bled for the next 3 days.

At the hospital, there had been a detective, a man that I had known my entire life through my family. He told me that I had up to 7 years to decide if I wanted to press charges because the city police had their own full police report, the nurse's exam with the photos and all the evidence. The detective told my dad that if his own daughter had been raped, he wouldn't press charges. The detective said that he would just deal with it and move on because it wouldn't get anywhere. The detective told me to think about it.

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A few weeks after the preliminary hearing, I was contacted for a meeting at the District Attorney's office. They told me that in a routine state police clean-up, all of my evidence had been destroyed so it was now a he-said, she-said case and they were advising me to drop the charges. I asked them what had happened since they told me that I had up to 7 years to change my mind. The District Attorney said that because I had initially decided not to press charges, everything had been destroyed.

I have not been able to stand up for myself-until now. Amnesty International has given me support and the opportunity to speak up not only for myself but also in some way for many Native American sexual assault survivors, who can not be here today to share their stories. There are many discriminatory and jurisdictional barriers to effective law enforcement response, getting rape kits and prosecution in Oklahoma. My story is just one of many. I urge you to learn more about stopping sexual assault against Native American women.

Thank you.

The CHAIRMAN. Ms. Rozell, thank you very much. That is not easy testimony to offer, but our Committee deeply appreciates your being here and participating in this important discussion about a very serious issue.

Next we will hear from Ms. Tammy Young, Co-Director of the Alaska Native Women's Coalition Against Domestic Violence and Sexual Assault. Ms. Young, thank you. You have traveled a long way and we very much appreciate your being here.

Senator Murkowski, would you like to say a word about Ms. Young?

Senator MURKOWSKI. I would join in the welcome of Ms. Young, and note that when it comes to community advocates that are making a difference, we are very proud of the efforts that Tammy has made in her community and working with so many of the women and families that have been afflicted with some very horrible incidents in their lives. I appreciate all that you do, Tammy. Thank you, and we are glad that you are here.

The CHAIRMAN. Ms. Young, you may proceed.

STATEMENT OF TAMMY M. YOUNG, DIRECTOR, ALASKA NATIVE WOMEN'S COALITION

Ms. YOUNG. Thank you. I am very happy to be here this morning. Thank you for inviting me.

I have submitted written testimony and I just would like to summarize for you. I work with the Alaska Native Women's Coalition. We came into existence in 2001. Since we have been in existence, we have been gathering many Alaska Native people and service providers all across the State of Alaska. We have had the good fortune to take part in some of the studies that have taken place in Alaska, one of them being the Rural Justice and Law Enforcement

Commission, then later taking part in the Domestic Violence Summit that was held in Anchorage.

Through many of these meetings we have been able to have the dialogue to get to what is important to us, those of us that live in the very small, rural communities. We have had the good fortune of working with the Alaska Naive Justice Center, and Tribal Law and Policy Institute in Anchorage to reach into some of those areas of concern for us. We have looked at how forensic evidence is gathered, both in hub communities and some of the attempts in village communities.

We would offer as a suggestion to the Committee that there is technology available to us now on a more far-reaching range than previously the tele-medicine project. In some communities, they are using this for mental health concerns. When you have a women or a child that is affected by sexual violence, these are long-term medical issues. So we are very interested in seeking solutions that address not only the immediate concern, the medical concerns such as emergency contraceptives, screening for sexually transmitted diseases, but we are also interested in seeking solutions for the long-term health care that is needed.

We also feel that this would be an avenue that we could help our men, possibly through the Batterers Reeducation Program. Many people in small communities don't have access to the Batterers Reeducation. In our view, in our customary and traditional ways, we are hoping that all of our family members will have the opportunity to be provided services. This is what in some ways sets us apart from non-Native agencies or non-Native communities.

We are not necessarily seeking that our tribal members be cast off into jail or places like that, although there are some tribes that are seeking banishment as an option. What we are hoping for is healing, because we believe that domestic violence and sexual assault came into our communities as an effective of colonization and oppression.

When you look at our very small communities, they are still very dependent on subsistence. It is very much a part of our lifestyle to gather and be close to the earth. But we also are faced with the challenges of not being able to receive the transportation needed to go in for exams. Oftentimes the weather will keep law enforcement from responding to very critical situations. As part of our testimony, we did submit all of the newspaper articles for the last several years that document who our perpetrators are. In many instances they are the very people that we are told to call upon for help.

Not too long ago, a young woman was shot in the back of her head up in the Nome area. It later turned out that she was shot by an Alaska State trooper. Many of our women are dependent upon their very small community response that could happen. Sometimes this does involve going to clergy. And if you review these articles, you will see that in many situations clergy have been a part of the problem as well.

The Alaska Native Women's Coalition has been trying to meet with tribal leaders to discuss further options. Many times they are suggesting to us that not only law enforcement, to be able to come out, but also they are talking about solutions through tribal court.

In our small villages, tribal court sometimes consists of our tribal councils. In other situations, it is just a small body of elders.

So these are some of the areas that we are looking to for solutions. Thank you.

[The prepared statement of Ms. Young follows:]

PREPARED STATEMENT OF TAMMY M. YOUNG, DIRECTOR, ALASKA NATIVE WOMEN'S COALITION

On behalf of Alaska Native Women and children that are in need of safety, we would like to thank you for your leadership in the reauthorization of the Violence Against Women Act (VAWA). We believe that it is imperative that the implementation of VAWA is achieved specifically, we seek your full support and advocacy for the Tribal Title IX—Safety for Indian Women.

The Alaska Native Women's Coalition (ANWC) is a statewide non-profit grassroots coalition whose goal is to provide a unified voice for Alaskan Natives against domestic violence, sexual assault and stalking. Our membership is comprised of Alaska Native women who are both survivors of violence and advocates for safety from such violence. The coalition members include men and women from around the state in rural communities—we are first responders, health care workers, tribal chiefs and administrators, shelter workers, and other concerned community members. ANWC provides direct victim services, court advocacy, shelter services, and training for tribal specific issues, among other things. Over the last several years the Alaska Native Women's Coalition has worked to increase the safety of Alaska Native women through gatherings on the regional and statewide level, including local resources and state resources to dialog potential solutions and enhance current systemic responses.

The danger Alaska Native women face is disproportionately higher than any other population in the United States.

STATISTICS

- Alaska reported 83.5 rapes per 100,000 females compared to a U.S. average of 31.7 rapes per 100,000.
- Reported cases of domestic violence in Anchorage alone increased by 120 percent.
- Alaska Natives make up 8 percent of the total population of Anchorage yet the percentage of Alaska Native victims was 24 percent.
- Alaska has one of the highest per capita rates of physical and sexual abuse in the Nation.
- In an informal poll taken in one of the off road communities, 100 percent of the women there are or have been a victim of domestic violence, sexual assault, or stalking.

The underlying issues for this rate of victimization are extremely complex. In light of this we greatly appreciate your concern for and support of Alaska Native Women.

The VAWA 1994 and 2000 recognized the importance of addressing the unique circumstances of Native women. This historic legislation has not only saved lives but has restored hope for hundreds of our Sisters seeking safety from perpetrators of domestic violence, sexual assault, and stalking. Unfortunately, we also must face the reality that many women lost their lives to such violence over the last several years. *The 2005 VAWA legislation contained specific sections addressing the safety of American Indian and Alaska Native women primarily providing a tribal set aside. The Tribal Title addresses specific issues impacting the safety of Native women. Each component represents an essential step forward in enhancing the safety of American Indian and Alaska Native Women.*

In reviewing the Bureau of Justice Statistics report titled "American Indians and Crime 1992–2002" the findings reveal a disturbing picture of the victimization of American Indians and Alaska Natives. The rate of violent crime estimated from self reported victimizations for American Indians is well above that of other U.S. racial or ethnic groups and is more than twice the national average. This disparity in the rates of exposure to violence affecting American Indians occurs across age groups, housing locations, and by gender. American Indians are more likely than people of other races to experience violence at the hands of someone of a different race, and the criminal victimizer is more likely to have consumed alcohol preceding the offense. Among American Indian vic-

tims of violence, the offender was more likely to be a stranger than an intimate partner, family member, or acquaintance. Strangers committed 42 percent of the violent crimes against American Indians during 1992–2001. An acquaintance committed about 1 in 3 of the violent victimizations against American Indians. About 1 in 5 violent victimizations among American Indians involved an offender who was an intimate or family member of the victim.[1]

- Rates of violent victimization for both males and females were higher for American Indians than for all races.
- American Indian females were less likely to be victims compared to American Indian males.
- The rate of violent victimization among American Indian women was more than double that among all women.
- American Indians were more likely to be victims of assault and rape/sexual assault committed by a stranger or acquaintance rather than an intimate partner or family member.
- Approximately 60 percent of American Indian victims of violence, about the same percentage as of all victims of violence, described the offender as white.

Under Title II, Improving Services for Victims of Domestic Violence, Sexual Assault and Stalking, there are new opportunities through the Sexual Assault Services Program that ANWC is in full support of. These new provisions will improve the lives of women and children across the nation, and create new opportunities for women to access services. Because of the rates of rape and sexual assault in Alaska these services are essential from a health care perspective.

There are many obstacles that we face in our attempts to create a coordinated community response (CCR) that is Alaskan Native specific. The primary obstacle is the lack of resources at the village level. While our Lower '48 and urban counterparts are considering non-profit victim advocacy agencies, health care, social services, and criminal justice systems in their development of a CCR, most Native Alaskan communities do not have the luxury of these resources. In many villages to have a health aide practitioner and the tribal councils who act as the tribal court, are the community resources, additionally 75 of the 229 villages have an on-site Village Public Safety Officer or Village Peace Officer. The Village Public Safety Officer (VPSO) has limited authority and no place for detention of perpetrators in most situations. Approximately 40 percent of these 229 villages have no form of local law enforcement present in their community. The challenge for these communities lies in getting together a team of people who can be as impartial as possible while dealing with relatives, friends, and acquaintances in incidents of violence against women and children. Community members need to set the standard of behavior and create community based solutions that restore their customary and traditional means of living in non-violence.

Violence against women and children are being perpetuated in communities where there exists no form of law enforcement and no local infrastructure to address these incidents. These facts create the dangerous reality that frequently the only people standing between women in need of protection from a batterer or rapist is the local community. Consequently, the life of a woman depends largely on the local community's ability to provide immediate assistance. Given the extreme danger created by such abusers and the remote isolation of women, communities must develop their own village specific program utilizing their existing local resources. The development of this local response is the only assurance that women and often times their children in rural Alaska are provided with the basic human right to safety.

Although reporting has increased, victim safety, batterer accountability and stalking still remains a big problem. Just last year in one of our smaller villages where there exists no form of law enforcement and where there exists no infrastructure to provide for the basic safety of women and children, a woman was shot and killed by her partner in a domestic abuse incident. In yet another incident in yet another off road community, a woman was shot and killed while her children stood helplessly by and watched. This is becoming an all too common scenario for rural Alaska.

When an incident is reported and no one responds, this sends a clear message to the perpetrator and the community that violence against women is both tolerated and accepted. While there can be many reasons that law enforcement doesn't respond, such as weather, funding, man power and other reasons, the bottom line for

[1] Bureau of Justice Statistics—"American Indians and Crime 1992–2002."

women and children in rural Alaska is they are not safe in their own homes and communities.

ANWC have been hosting conferences, meetings and teleconferencing through which we have had many conversations with villages on what challenges and issues they perceive as being prevalent. Through these consistent dialogues we have ascertained that the unique issues encountered in rural Native villages in Alaska are not being addressed. Amongst the key challenges are the fact that ninety of the 229 communities across the state are without any form of law enforcement and no basic infrastructure to address the incidents of violence that is happening in their community. When there has been a perpetrator that has been through the legal justice system in the community this creates other, as of yet unresolved issues that overflow, into the community. Perpetrators that are directed to Batterer's Re-Education as a part of their sentence, often in rural communities don't have a program available to them and the costs of living in another community and maintaining their home and family, result in many non-compliant offenders. ANWC is working toward several distance delivery methods and hope to be a part of the solution for access to services for our rural communities.

Victims are being re victimized at an alarming rate mostly due to the fact that Native women from remote Alaskan villages have no knowledge of the westernized judiciary system. They are losing their children, their jobs, their homes, and forced to leave their villages and culture due to the fact that they choose to leave an abusive relationship or because they are in one.

We are aware of how much time and effort has gone into each of the sections of the reauthorization language and rather than try to seek specific sections that we support, we choose to limit our comments because each section will improve areas of need for different parts of the U.S., including Indian Country. We do have a couple of comments that we hope will contribute further to improvements for Alaska Native victims of domestic violence and sexual assault. Emergency services are only one area of need.

1. Title VI—Housing Opportunities and Safety for Battered Women and Children.

Title VI, Sec. 602. Request for more shelters for Alaska Native victims of domestic violence and sexual assault.

While the rate of victimization is higher than any other population of women in the United States, funding for essential life saving services are inadequate. One example of this is the lack of crisis services, such as shelters and rape crisis services which serve the disproportionately large population of Alaska Native women victimized (see statistics above.) And, there are only two Native run shelter programs within the State of Alaska-one in Emmonak and ANWC's Interior Alaska based shelter, "Denaa Tsoo Yuh" (Koyukon Athabascan for Our Grandma's House), opened in January 2005.

Very few rape crisis/sexual assault services programs operate to serve specifically Alaska Native women. Culturally specific services are essential because we know that generally Alaska Native women prefer and frequently will not use services that are not designed to address their beliefs, customs and traditions.

2. Title I—Enhancing Judicial and Law Enforcement Tools to Combat Violence Against Women.

ANWC fully supports Title I, Sec. 101 (f)(i)(2), ensuring that training and technical assistance will be developed and provided by entities having expertise in tribal law and culture. This same message was echoed at our Statewide conference in Anchorage May 24–26, 2005 and again in June of 2006. Such grassroots participation is what makes a community's efforts successful and ultimately protects women and children from domestic violence and sexual assault.

We request your full support for the provision of technical assistance, as mentioned throughout the Bill, and ask that the technical assistance be provided by those with culturally specific knowledge. There are many excellent additions to the reauthorization of VAWA 2005 that will benefit women across the country. ANWC fully supports the Tribal Title IX, which includes vital provisions that will ensure that all perpetrators of violent crimes committed against Indian women are held accountable for their crimes; increase research on violence against Indian women; and establishes a national tribal sex offender registry, as well as ensuring that tribes have an opportunity to address violence in their communities through the 10 percent tribal set aside. In order to continue the progress of the past thirteen years since the initial passage of VAWA, we must continue to dedicate our resources to addressing the issues, most especially for those that are still affected by violence each day. We appreciate that the Tribal Title IX—Safety for Indian Women was in-

cluded in the reauthorization of VAWA. For small communities to have access to Federal funding is imperative to providing for all women and children to have the basic human right to safety. Thank you for all your support and dedication to seek resources and resolutions for the "Backbone of our Nations" our women.

Please feel free to contact Tammy Young, Director if the Alaska Native Women's Coalition can be of any assistance.

Attachments

Thank you for the opportunity to offer comments on the work being accomplished by tribes across the country. The Native Village of Anvik has throughout the years been responsibly addressing issues that are of concern for many villages and tribes including the safety and wellbeing of our women and children. We are a village of approximately 800 with only a small handful (25) from outside, but coexisting within the confines of village life. We live on the Yukon River, which is our main source of food and transportation to other villages. Our nearest village is blank miles, with such and so services. We are neighbors with blank villages and rely on each other in times of need. Village life is cyclical in tune with nature; we survive in the ways of our ancestors, from generation to generation. We can trace back in history and pinpoint the intrusion of violence into our communities and the methods that have held strong to facilitate the ongoing destruction of healthy lives and families. We are part of a much larger picture as well, below you will see that there are many other villages and urban relatives that need time and attention for their unique needs and barriers. Alaska covers an area of 586,412 square miles in the northern part of the United States. The total population of the state is 622,000 of which approximately 98,043 are Alaska Natives living in either the urban areas or the in the 229 tribal communities across the state. In the most recent studies conducted by service providers in Alaska, violence against women and children ranked amongst the highest in the social problems that currently plagues our native communities. Alaska has the highest rates of sexual abuse nationally and one of the highest per capita rates of physical abuse in the nation. In Anchorage alone from 1989 to 1998, reported cases of domestic violence increased by 120 percent. The percentage of Alaska Native victims in Anchorage was 24 percent, which is extremely high when one takes into consideration that Alaska Natives comprise only 8 percent of the Anchorage population. Alaska is home to 229 tribes. Of these 229 tribes, 165 are off road communities meaning that the only way in and out is by air. Ninety-five of these off road communities also do not have any form of law enforcement. Violence against women and children are being perpetuated in communities where there exists no form of law enforcement and no local infrastructure to address these incidents. These facts create the dangerous reality that frequently the only people standing between women in need of protection from a batterer or rapist is the local community. Consequently, the life of a woman depends largely on the local communities ability to provide immediate assistance. Given the extreme danger created by such abusers and the remote isolation of women, communities must develop their own village specific program utilizing their existing local resources. The development of this local response is the only assurance that women and often times their children in rural Alaska are provided with the basic human right to safety.

Although reporting has increased, victim safety, batterer accountability and stalking still remains a big problem. This same time last year in one of our smaller villages where there exists no form of law enforcement and where there is no infrastructure on site to provide for the basic safety of women and children, a woman was shot and killed by her partner in a domestic violence incident. This is becoming an all too common scenario for rural Alaska. Murder and Suicide are very serious situations that any prevention efforts would undoubtably save lives. When an incident is reported and no one responds, this sends a clear message to the perpetrator and the community that violence against women is both tolerated and accepted.

> 1 of 3 American Indian and Alaskan Native women are raped in their lifetime, and American Indian and Alaska Native women experience 7 sexual assaults per 1,000 compared to 4 per 1,000 among Black Americans, 3 per 1,000 among Caucasians, 2 per 1,000 among Hispanic women and 1 per 1,000 among Asian Americans.
>
> According to the November 2000 National Institute of Justice Report.
>
> About 8 in 10 American Indian and Alaska Native victims of rape or sexual assault were estimated to have assailants who were White or Black.
>
> According to the U.S. Department of Justice—American Indians and Crime Report from 1999.

The Village of Anvik is thankful for the unique legal relationship between the U.S. and Indian Tribes and trusts that the federal trust responsibility to safeguard the lives of American Indian and Alaska Native women through collaborative efforts between the Federal Government and small tribes like Anvik will continue. That continued support of sovereign efforts to provide for the basic necessity of safety for women fleeing life threatening situations through grants will be a continued effort of safeguarding the future of Indigenous nations.

Anvik will continue to build their capacity to preserve the safety, integrity, and well being of its members, especially the sacred status of our women to live in an environment free of violence and sexual assault.

SURVIVOR STORIES FROM ALASKA LOCATED IN TRIBAL COMMUNITIES—PRESENTED AS ORAL TESTIMONY TO THE SENATE COMMITTEE ON INDIAN AFFAIRS—SEPTEMBER 25, 2007

Two adult tribal women, who wish to remain anonymous, have agreed to share their experiences with the understanding that their locations and identities will be kept confidential. Each live in one of the 95 villages in Alaska that have no immediate form of law enforcement. These women have entrusted their stories here for the benefit of understanding the level of danger and the circumstances that exists. Surviving the event with minimal support from outside of their village. These women entrusted the telling of their reality, with Tami Jerue of Alaska Native Women's Coalition.

The first woman is married with several children between the ages of 5 and 13; she was visiting in a nearby community from her home. She was asleep, when the perpetrator broke into her family's home. She knew this person; he raped her and threatened her family if she did not keep quiet. After a few days she told her husband and other family members. They told her to call the Troopers. There is a Trooper post some 100 to 200 air miles away from the village. She did call and reported this incident, in detail also told Troopers who had attacked her. They did not come out to interview her, and there has been no follow up. The perpetrator is still walking around in the village. This incident happened over one year ago.

The second woman, had been drinking in her home with her partner, there were other people drinking with them. She passed out, and woke up to find one of the men who had been drinking in the house with them, was trying to take down her pants. She jumped up and started screaming, she then woke up her partner, who refused or was incapable of doing anything to respond. She called someone she considered to be safe that was in the community to help her. She was picked up and taken to that person's house. They called the Troopers, again in a hub community a few hundred miles away to report the incident. This perpetrator has been known to do this type of thing around the community, however has never been convicted. Troopers did not come to investigate and the perpetrator still walks around free.

The woman now says "why bother to call, nothing ever happens."

In the following statement from a mental health professional in rural Alaska.

A number of studies regarding sexual assault in the United Sates indicate that one in three females and one in five males are sexual assaulted before they are eighteen years of age. Although generally not identified as such this rate of sexual assault has serious and long lasting mental and physical health ramifications.

A recent report by the Alaska Council on Domestic Violence and Sexual Assault indicates that the Alaska rate of sexual abuse of children is six times that of the lower forty-eight, a statistic which should receive the alarming attention of both governmental and health officials because of its epidemic proportions.

I have been a mental health professional in rural Alaska for more than five years. Personal observations and discussions with various clinicians around the State of Alaska has led me to believe that many of the serious issues put forth in the Amnesty International report have actually been minimized. From my own experience the response time of the State Troopers or even OCS to an incident of reported child abuse, domestic violence and sexual assault has been slow or in some cases nonexistent.

I have witnessed a judicial system order more time in jail for burglary than the rape of a young girl over a four year period. Because of these types of incidents trust in the system at large is minimal by community members in much of rural Alaska. The result of this lack of trust leads to frustration and to gross underreporting of incidents of domestic violence and sexual assault. In the community I work in I would estimate that ninety per-cent of the domestic violence and sexual assault goes unreported to law enforcement.

Although this information only touches the surface of the problem of sexual assault in rural Alaska it is my hope that it provides at least some incentive for governmental, law enforcement and health officials to act in a responsible manner to guarantee the safety and welfare of Native women and children throughout this state.

Name withheld by request due to the confidential nature of some of the above information.

ARTIST SUES POLICE OVER RAPE CASE

SILOOK: WOMAN SAYS NOT EVEN TOKEN ATTEMPT' MADE TO FIND RAPIST.

ANCHORAGE DAILY NEWS (PUBLISHED: NOVEMBER 8, 2001)

By Sheila Toomey And Lisa Demer

A well-known local artist says police officers who took her into protective custody while she was in an alcoholic blackout failed to notice she had been raped because they are prejudiced against intoxicated Alaska Native women.

In a lawsuit filed two years after the September 1999 incident, Susie Silook says once the assault on her was medically confirmed, the Anchorage Police Department failed to seriously investigate it.

Silook is asking for monetary damages and an order directing the city to train its personnel to deal with such situations.

Police spokesman Ron McGee said Wednesday that the department never comments on pending litigation. In court papers, the city's legal staff has asked that the suit be dismissed on a number of grounds, but has not given its version of events. Municipal Attorney Bill Greene said the case is in early stages and comment on the facts would be inappropriate.

According to Silook's complaint, and police reports she provided to reporters, she had been drinking at a number of downtown bars and a restaurant on September 19, 1999, and doesn't remember how she ended up at Chilkoot Charlie's in Spenard.

Sometime that night, she was raped, the suit says. But Silook had no memory of it and did not report it to anyone that night.

At some point, Chilkoot's called the police to remove her, apparently because she was being disruptive. Silook was taken to jail, not under arrest, just to sober up. When she arrived, she had bruises on her arms and blood in the crotch area of her pants.

It is unclear if she told police and corrections officers that she had her period, or if they assumed that. Either way, it was "deliberately indifferent" and "reckless" of city officials not to seek a medical evaluation of possible injuries, the suit says.

Two days later, after she had bathed and thrown away the bloody clothes, a doctor determined that Silook had been raped with an object. The bleeding was caused by a tear in her vagina, the suit says.

At that point, police initiated a rape investigation, but failed to do all they could to identify her assailant, the suit says.

Police reports indicate an investigator subpoenaed security tapes from Chilkoot's and interviewed several people, including Silook's boyfriend, about events that night.

The attitude of police toward Native women who become crime victims while drunk has been publicly questioned by activist groups over the past year, following a series of unsolved homicides of minority women and the capture of a serial rapist whose victims were mostly Native.

Police have responded that criminals seek out vulnerable victims and that rape cases where a victim does not remember the attack or attacker, or where there is no physical evidence, are very difficult to solve and prosecute. Investigators do the best they can, police have said.

In an interview earlier this week, Silook said police, jail officials and staff at Chilkoot Charlie's all should have noticed and investigated the source of blood visible on her blue jeans that night. Police should have immediately interviewed everyone they could find from Chilkoot's as soon as they knew they were dealing with a rape.

"I understand these cases are difficult," Silook said. "But I don't think they are impossible. There wasn't even a token attempt, I feel, to find out what happened to me."

In May, Silook gathered her anger and images documenting her rape experience into a multimedia art exhibition, called "Protective Custody."

"I did that show hoping to get more police involvement in the cases of rapes and murders of Native women," she said. This week she is in Indianapolis at an exhibition of her work and that of other Native American artists, part of a fellowship that also includes a $20,000 award.

Silook said the rape and its aftermath occurred while she was still drinking. She has been sober for more than a year, she said.

RAPIST DEALT 30 YEARS

DEAL JURY TRIAL FOR MAN WHO RAPED FIVE NATIVE WOMEN WOULD HAVE BEEN TOO RISKY, JUDGE SAYS.

ANCHORAGE DAILY NEWS (PUBLISHED: FEBRUARY 9, 2002)

By Sheila Toomey

Serial rapist Gregory Poindexter was sentenced Friday to 30 years in prison after a Superior Court judge decided a deal with the state was in the best interests of his victims and the community.

In a packed, silent courtroom filled with supporters of the five Native victims, Judge Elaine Andrews took nearly an hour to explain why she was accepting a deal that many in the audience were opposed to.

If jurors had convicted Poindexter of all 18 original charges, Andrews said she might have been able to give him 40 years without risking reversal on appeal. But guilty verdicts are not a sure thing, she said, and the state isn't sure the victims or the evidence could withstand the pressure of multiple trials with aggressive cross-examination.

Accepting Poindexter's plea in return for a 30-year cap on his sentence ends the risk that he might be back on the street in a few years.

"I have the perhaps unfortunate job to weigh evil," Andrews said.

Poindexter, 31, is a tall, beefy man, his physique suggesting a football player going soft. In court Friday he wore jailhouse "reds," which are reserved for troublemakers, instead of the usual blue uniform. He sat unmoving in his chair for most of the hearing, shackled hand and foot, eyes forward and mostly shut, not looking as two of his victims took turns at a podium and told Andrews about the rapes and beatings.

The only word he spoke was "no," when Andrews asked if he wanted to say anything.

The five women were raped between August 2000 and January 2001 in a series of attacks that escalated in violence. Poindexter began by offering victims rides, then began "scooping them" into his car and beating as well as raping them, Andrews said. One woman said her face was so damaged she still has double vision and needs more surgery.

"I felt every negative emotion a person can feel," she told the judge. "I wanted this so much to be a bad dream I wake up from."

"This man tortured me for three hours," said another victim. "I have terrible nightmares and flashbacks. . . . This evil man hurt us all." She asked Andrews to sentence Poindexter to "a hundred years and one day."

Originally indicted on 18 charges, Poindexter pleaded no contest in September to one count of sexual assault of five women, and one count of kidnapping three of the women.

Assistant district attorney Rachel Gernat and defense attorney Craig Howard both urged Andrews to accept the 30-year deal.

The prosecution has problems with some of the cases, Gernat said. There is some evidence to support each charge, but perhaps not enough to convince a jury beyond a reasonable doubt, she said.

If the state could try the cases all at once, jurors could probably "put the puzzle together," Gernat said. But the defense would fight to have at least two trials, one for cases that include a kidnapping charge and one for cases that don't.

The rapes are "a horrifying event that still haunts" the victims, Gernat said. They told their stories to a grand jury, and the state doesn't want to make them testify again to another room full of strangers.

Howard pointed out that most of the victims were drunk and had trouble identifying their attacker. If the cases go to trial, it "would be a battle royale . . . these women would have to be subject to vigorous cross-examination" on issues like identity and consent. Given their intoxication at the time, they probably wouldn't be very good witnesses, Howard said.

"I'm not inexperienced in court. If I have to, I will use whatever abilities I have to acquit Mr. Poindexter."

Howard also challenged anyone who suggested 30 years was a light sentence. Gesturing to the spectators, he said, "I know the people behind me think he's getting some kind of sweetheart deal. He's not."

In addition to 30 years to serve, Andrews sentenced Poindexter to an additional 35 years of suspended time and 10 years' probation after he gets out of prison. He can be forced to serve the suspended time if he violates probation.

Unlike most criminals who come before her, Andrews said, nothing in Poindexter's past suggested he would turn out to be a serial rapist. He has a domestic violence conviction and committed a burglary that involved taking a can of coins from a friend's house.

She ordered him to complete sex offender treatment while in prison and warned he could lose his "good time" of about 10 years if he doesn't.

After Poindexter was taken away, many spectators gathered downstairs in the foyer of the courthouse for a drumming and chanting circle, dedicated to Poindexter's victims and to a group of Anchorage Native women whose murders remain unsolved, said Denise Morris, head of the Alaska Native Justice Center, who helped organize the turnout.

Ida Nelson, one of the drummers and a friend of some victims, laced into Howard's remarks, calling them racist. "I think Poindexter targeted Native women because he knew no one would stand up for them," Nelson said.

Despite the wish that Poindexter would be sentenced more harshly, the victims and their friends seemed relieved the case was finished and the culprit punished. Morris commended Andrews for taking the time to explain "the reasons and rationale for the sentence. I felt it was probably reasonable based on the information she gave," Morris said.

INDIAN HEALTH SERVICE DOCTORS DISCIPLINED FOR SEXUAL MISCONDUCT

AP, THE ASSOCIATED PRESS

By Matt Kelley, Associated Press Writer

Washington (AP)— Dr. Thomas W. Michaelis spent two months in an Ohio prison in 1991 for trying to molest four teen-age girls.

He then worked for eight years as an obstetrician-gynecologist in an Indian Health Service hospital in Arizona, paid $101,000 a year by the government despite a law barring the hiring of sex offenders in agencies serving American Indians.

IHS officials fired Michaelis last year. By then, he had examined hundreds of women at the Phoenix Indian Medical Center after registering with local authorities as a sex offender.

Michaelis said he told IHS officials about his convictions for attempted molestation, but the agency hired him in 1993 anyway.

"They knew about it up front," Michaelis said. "I guess they needed a doctor eight years ago."

At least 21 doctors who worked for the IHS between 1996 and 2001 have been punished or denied licenses by state medical boards for offenses ranging from abusing drugs to neglecting patients who later died, an Associated Press review of disciplinary records found.

Dr. Richard Chilian, a surgeon, had his North Dakota license suspended in 1997 and then reinstated with restrictions after he took 20 tablets of the anti-depressant Wellbutrin and became so disoriented he couldn't complete a surgery, according to North Dakota medical board records.

Chilian now makes $90,549 at the Phoenix Indian Medical Center. He said the North Dakota incident resulted from depression and IHS officials knew that.

"They knew all about it, 100 percent," Chilian said. "There was never any attempt to cover things up."

Officials at IHS, the federal agency charged with providing care to 1.5 million American Indians, acknowledge that background checks on their doctors are often inadequate. It's just one of many problems they blame on a lack of money.

"In general, there is no secretarial staff to support the medical staff activities," said Dr. Craig Vanderwagen, the agency's chief medical officer.

"Many of our people are seeing 40 patients a day or so. Then, your attention to take care of that (background check) paperwork goes right out the window," he said.

Several sanctioned doctors told AP that IHS officials knew about their backgrounds before they were hired. Documents from the State Medical Board of Ohio show IHS requested, and Ohio sent, records detailing Michaelis' crimes.

IHS officials rejected a Freedom of Information Act request from AP for records detailing what they knew before Michaelis was hired. Likewise, IHS officials declined to discuss any specific disciplined doctors, citing privacy concerns.

IHS managers have the power to hire doctors despite past troubles as they try to fill vacancies that include more than 10 percent of their physician jobs.

Vanderwagen said recruiting IHS doctors is often difficult, especially for relatively low-paying jobs on the most remote, poverty-ravaged Indian reservations.

Records show about 2.6 percent of IHS doctors have been punished by state boards—a rate more than four times the average for all government doctors and the highest of any federal agency.

In contrast, just 0.5 percent of doctors who provide care to military veterans at Department of Veterans Affairs hospitals have ever been disciplined.

The IHS discipline rate is about the same as the national average for all doctors. But critics say the federal agency has an obligation to do better—especially because Indians have suffered from substandard health care for more than a century and are vulnerable.

"There are perpetrators out there who tend to look for the state or county or federal systems that have loopholes," said Yvette Joseph-Fox, executive director of the National Indian Health Board, which represents tribal health officials.

"We've been haunted by these problems for more than a hundred years . . . and for some strange reason, the perpetrators know that," she said.

AP identified 21 disciplined IHS doctors through state medical board files and a database of punished doctors compiled by the consumer watchdog group Public Citizen.

IHS doctors need only be licensed to practice medicine in one state, not the one where they work.

For instance, Michaelis relied on his Ohio medical license even though Arizona rejected his application. That means the only place Michaelis could practice in Arizona was a federal facility like an IHS hospital.

Dr. Michael D. Cerny's medical licenses have been revoked, denied or suspended in Pennsylvania, Ohio, Iowa and Illinois for drug problems and for tearing a woman's bladder during a hysterectomy, according to records from the states' medical boards.

Cerny now practices at the IHS hospital in Pine Ridge, S.D., earning more than $103,000 a year. He holds a valid medical license in Georgia.

Cerny did not return repeated calls to his office and home seeking comment. Neither did Pine Ridge hospital administrator Vern Donnell.

Dr. Paula J. Colescott surrendered her Colorado medical license in 1995 after she admitted having sex with a 19-year-old patient, according to Colorado State Board of Medical Examiners records. She also was reprimanded in 1991 for a similar sexual relationship with another patient, medical board records show.

Colescott, who now makes $98,310 a year at the Alaska Native Medical Center in Anchorage, said she was upset by news coverage of the 1995 case.

"So you're going to publish again, and publicly humiliate me again?" Colescott said when interviewed. "You never let it die, do you guys? No, I am not willing to comment."

In a written statement, Paul Sherry, chief executive of the tribal consortium that runs the Alaska hospital, said Colescott "meets all of the requirements of the Medical Bylaws and Rules and Regulations to practice as a licensed physician."

Several other submitted articles have been retained in Committee files and can be found at:

http://www.tribalnews.com/

http://www.adn.com/alaska/story/1702898p-1819699c.html

http://IndianCountry.com/?1054649768

http://www.adn.com/front/story/4325477p-4335352c.html

http://www.uaa.alaska.edu/just/rlinks/natives/index.html

http://www.adn.com/alaska/v-printer/story/4341644p-4350579c.html

http://www.adn.com/alaska/v-printer/story/4346810p-4355897c.html

http://www.adn.com/front/v-printer/story/4416837p-4409063c.html

http://www.adn.com/alaska/v-printer/story/4715310p-4665337c.html

http://www.indianz.com/News/archives/003731.asp

http://www.adn.com/alaska__ap/story/4820606p-4760255c.html

http://nativetimes.com/index.asp?action=displayarticle&article__id=4016

http://www.adn.com/alaska/story/4982516p-4910648c.html
http://www.adn.com/alaska__ap/story/5081646p-5009291c.html
http://justice.uaa.alaska.edu/forum/f204wi04/a__rapes.html
http://www.adn.com/front/v-printer/story/5791918p-5725475c.html
http://www.adn.com/alaska/v-printer/story/6038774p-5928127c.html
http://www.adn.com/news/alaska/v-printer/story/6203267p-6077492c.html
http://www.adn.com/news/alaska/v-printer/story/6222713p-6097351c.html
http://www.adn.com/news/alaska/story/6335640p-6212250c.html
http://www.adn.com/news/alaska/story/6563826p-6446635c.html
http://www.sitnews.us/0805news/082405/082405__sentenced.html
http://www.sitnews.us/0805news/082405/082405__sentenced.html
http://www.adn.com/news/alaska/story/7130591p-7039083c.html
http://www.adn.com/front/story/7176631p-7086347c.html
http://www.adn.com/news/alaska/story/7202199p-7113837c.html
http://www.latimes.com/news/local/la-me-alaskaside19nov19,1,7797805.story?coll=la-headlines-california&ctrack=1&cset=true
http://www.adn.com/news/alaska/ap__alaska/story/7617975p-7529778c.html
http://www.adn.com/news/alaska/crime/story/7638373p-7549948c.html
http://www.indianz.com/News/2006/014829.asp
http://www.ncjrs.gov/pdffiles1/nij/grants/215350.pdf
http://www.adn.com/news/alaska/crime/story/8218160p-8115089c.html
http://www.homernews.com/stories/012307/news__1001.shtml
http://www.adn.com/news/alaska/ap__alaska/story/8686257p-8583319c.html

Submitted copies of the Alaska Justice Forum (Vol. 24, No. 1) and the Alaska Rural Justice and Law Enforcement Commission 2006 Initial Report and Recommendations are printed in the appendix.

The CHAIRMAN. Ms. Young, thank you very much for being with us today.

Next we will hear from Ms. Karen Artichoker, who comes to us from Rapid City, South Dakota, Director of the Sacred Circle, Inc. Ms. Artichoker, thank you very much. You may proceed.

STATEMENT OF KAREN ARTICHOKER, DIRECTOR, SACRED CIRCLE NATIONAL RESOURCE CENTER TO END VIOLENCE AGAINST NATIVE WOMEN

Ms. ARTICHOKER. Good morning. I would like to extend a heartfelt handshake to each of you, and especially to Senator Johnson. Many prayers were said for you and it is good to see you looking so well.

I am the Director of Sacred Circle, which is a national resource center to end violence against Native women, funded through the Violence Against Women Act. But I also am a Management Team Director for Cangleska, Inc. on the Pine Ridge Indian Reservation, home of the Oglala Sioux Tribe, and we are a private, non-profit organization.

I am so pleased that obviously you all are becoming more and more educated about this issue and I agree that it is the rare Indian woman who has escaped some form of sexual violence in her life. We believe the statistics are low, very low, and do not reflect the reality of the average Native woman.

I want to talk some about our local program and what we have encountered, and in the way of our people, say it is not our intention to offend anyone. I think we are aware that there are some

big problems here. And when we look at the processes, and I am so pleased that we are looking at the processes, because some of these things I am wondering could possibly be changed quite simply, with some simple, simple adjustments. And one of those I believe needs to be attitude and priority.

In working with Federal officials, we have encountered an attitude that often alcohol is involved and so that seems to diminish and negate the seriousness of the crime and the potential for prosecution. So when we look at sexual violence, then, for us as local women, we are looking at how do we work with the Federal system and create reforms in that system, look at law enforcement response throughout the woman's experience dealing with local, tribal, police officer, BIA criminal investigator at the Federal Bureau of Investigation, and of course the U.S. Attorney's Office. It brings to my mind Victoria Eagleman, on the Lower Brule Reservation, who was murdered. And the family reported her missing, while the Federal officials did not get involved because she was not officially, there was no crime that had been committed.

So no Federal people were involved, the local police were looking for her, the family started talking to the Bureau, criminal investigators. They said, oh, you know, here's alcohol, she drinks, she probably just took off with some guy. She probably just headed out and she will be back. The FBI kept saying, there is no evidence of a crime.

Well, finally, the community rallied and they searched, horseback, ATVs, boats, because they are water people, the community found her, 28 days later, her nude body stuffed in a culvert a few miles out of town. The family of course devastated, known all along that something bad had happened, and her body, this is the particularly egregious part for me, her body was sent to Sturgis for autopsy, the FBI accompanied her because she was evidence. But once the autopsy was performed, and the evidence was obtained, then they were out of it. And the family was responsible, and they were unable to bring her body back. So they agreed to cremation and she was sent home via U.S. Postal Service, which was very, very counter to our culture and respect for our family members who have passed on.

So for us, we are looking at, we would like to build the capacity of our local communities and our local response. We don't believe our tribal criminal justice system is broken, it never worked in the first place. It has never had the opportunity to work. We are interested in talking about Federal reforms and how we can build the capacity of our local communities and develop community-based solutions, so that maybe we can prevent State and Federal interventions.

Thank you.

[The prepared statement of Ms. Artichoker follows:]

PREPARED STATEMENT OF KAREN ARTICHOKER, DIRECTOR, SACRED CIRCLE NATIONAL RESOURCE CENTER TO END VIOLENCE AGAINST NATIVE WOMEN

I. Sacred Circle, National Resource Center to End Violence Against Native Women, provides training, consultation and technical assistance to Indian Nations, tribal organizations, law enforcement agencies, prosecutors and courts to address the safety needs of Native women who are battered, raped and stalked.

For over a decade, Sacred Circle has advocated for the safety of American Indian and Alaska Native women, by providing training, consultation and technical assistance on how to better respond to crimes of violence against Indian women, particularly domestic violence, sexual assault and stalking. Sacred Circle submits this testimony to provide written documentation to the U.S. Senate Committee on Indian Affairs' Oversight Hearing on the prevalence of violence against Indian women, and to provide recommendations on how to better safeguard the lives of Indian women.

Our experience and national work with Indian women gives us the necessary expertise to provide an accurate overview of some of the successes and problem areas in addressing violence against American Indian and Alaska Native women throughout the United States. Sacred Circle is a member of numerous Federal inter-governmental committees and various national task forces established to address violence against women.[1] On a tribal level, Cangleska, Inc., the mother agency of Sacred Circle, provides advocacy to approximately 3,000 women and children each year and approximately 2,400 men who are on domestic violence probation as ordered by the Oglala Sioux tribal courts.

Our testimony today offers concrete recommendations to strengthen the response of the Federal and tribal systems to increase safety for Indian women in the context of the Violence Against Women Act of 2005. Given the prevalence of violence against Indian women, immediate action by the Federal Government in coordination and consultation with Indian tribes is required to enhance the safety of Indian women and save lives.

II. American Indian and Alaska Native women are disproportionately victimized by violence in America due to jurisdictional gaps in Federal law.

Over the past 10 years, Sacred Circe has learned many things about the state of peril confronting Indian women. Indian women are battered, raped and stalked at far greater rates than any other group of women in the United States. This means that from the oldest to the youngest, Indian women are being disrespected in life, and sadly many are dying without justice or the knowledge that their granddaughters may 1 day live free of the violence they experienced. Because Indian women are the backbone of our societies, this violence not only destroys the quality of life of Indian women, but it also threatens the safety and stability of their families, communities and tribal governments.

The Department of Justice estimates that:

- more than 1 out of 3 American Indian and Alaska Native women (34.1 percent) will be raped in her lifetime and 3 out of 4 will be physically assaulted;[2]
- about 9 in 10 American Indian victims of rape or sexual assault were estimated to have assailants who were white or black;[3] and
- 17 percent of American Indian women, at least twice that of other populations are stalked each year.[4]

These statistics reflect the horrific levels of violence committed on a daily basis against Indian women. During a single weekend at one Indian Health Service emergency room, located at Pine Ridge, seventy women were treated for rape trauma. It is important to note that many victims often do not seek medical treatment, so

[1] National Task Force to End Sexual and Domestic Violence Against Women; National Congress of American Indians Task Force to End Violence Against Native Women; U.S. Department Of Justice Global Advisory Committee; U.S. Department Of Justice Working Group on Federal Tribal Sexual Assault Response; Full Faith and Credit Project; Federal Law Enforcement Training Center Curriculum Working Group; American Probation and Parole Association Model Protocol Working Group; International Forensic Nurse Examiner's DNA Curriculum Development Working Group.

[2] Patricia Tjaden & Nancy Thoennes, U.S. Dep't. of Justice, *Full Report on the Prevalence, Incidence, and Consequences of Violence Against Women* (2000).

[3] Lawrence A. Greenfeld & Steven K. Smith, U.S. Dep't. of Justice, *American Indians and Crime* (1999).

[4] *Stalking and Domestic Violence,* May 2001 Report to Congress, U.S. Dep't of Justice, Office of Justice Programs, NCJ 186157.

the instances of violence may in fact be higher than what the statistics show. It is also important to note that violence against Indian women occurs on a continuum of violence from simple assault to murder.

In fact, murder is the third cause of death for America Indian women.[5] Further, the increased number of Indian women reported missing raises the concern that such cases should be investigated as homicide cases until the woman is located. The systemic response to a "missing person report" is frequently a "cold case file".

Our experiences providing services to women show that the high levels of violence against Indian women is linked to the particular vulnerabilities of Indian women as a population and is compounded by the social realties facing most Indian communities in the United States. The gaps in Federal law and inadequate resources to support tribal justice systems allow perpetrators to commit acts of violence again and again with little or no accountability for their crimes. People often say that the justice system is broken. Indian women seeking safety understand this reality. Today it is more dangerous to report incidents of domestic violence and rape because of the retaliatory violence that often results due to the lack of an appropriate justice system response.

The lack of jurisdiction of Indian nations over non-Indian perpetrators and the sentencing limitations placed upon Indian tribes by Congress enhances the vulnerability of Indian women and the ability of predators to target Indian women as a population. The Department of Justice estimation that 75 percent of sexual assaults committed against Indian women are by perpetrators of a different race[6] indicates that perpetrators of such violence are aware of this jurisdictional void. To make matters worse, this jurisdictional void furthers the public perception that Indian women are not entitled to the same protections as non-Indian women. The prevalence and severity of violence would be treated as an emergency if committed against any other population of women.

We appreciate this Committee's decision to hold oversight hearings on this important matter. We hope that this is merely a first step and that the Federal Government's interest and concern will not end with the end of this hearing. The staggering statistics of violence against Indian women requires that the highest levels of government—Federal, state and tribal—act in coordination to address the escalating crisis in the lives of Indian women.

III. VAWA 2006 law enforcement provisions can enhance the ability of Indian tribes to respond to crimes of violence against Indian women.

The unique legal relationship of the United States to Indian tribes creates a Federal responsibility to assist tribal governments in safeguarding the lives of Indian women. On January 5, 2006, President Bush signed and reauthorized the Violence Against Women Act of 2005 ("VAWA 2005"). VAWA 2005 represents landmark legislation that aims to protect victims of domestic violence, dating violence, sexual assault, and stalking. Contained in VAWA 2005 is the historic Title IX, Safety for Indian Women Act. Unfortunately, 1 year and 8 months after the reauthorization, many of the life-saving law enforcement provisions enacted by Congress have not been acted upon.

Section 903 of Title IX provides the opportunity for consistent consultation on a government-to-government basis between the Department of Justice and Indian Nations. The first consultation was held at Mystic Lake, Minnesota on September 19, 2006. The second annual consultation was held 1 year later, this past week, on September 19, 2007 at Sandia Pueblo, New Mexico. At this most recent consultation, Indian tribes in their comments consistently raised the concern that little, if no, action had been taken on the questions and recommendations from the previous year's consultation. Further, a consistent concern raised by tribal leadership, including the Great Plains Tribal Chairman's Association, was that the law enforcement reform sections of VAWA 2006 have not been implemented. Attached is a list of tribal recommendations made during the 2007 consultation. (Attachment A). We concur with these recommendations, and we would like to highlight the following issues:

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[5] I.j.d. Wallace, A.D. Calhoun, K.E. Powell, J. O'Neill, & S.P. James, Homicide and Suicide Among Native Americans, 1979–1992, Violence Surveillance Summary Series, No. 2, Atlanta, GA; Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 1996.

[6] *Id.* at 3.

a) Title IX, § 905 (a). Tracking of Violence Against Indian Women.

Section 905(a) amends the Federal code[7] to require the Attorney General to permit Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into, and obtain information from, Federal criminal information databases.

This amendment addresses a tremendous gap that has up to now acted to reduce the ability of tribal law enforcement to adequately respond to domestic violence and sexual assault. Prior to the amendment, tribal law enforcement access to the Federal criminal databases was dependent upon access granted or denied by the state agency. The ability of Indian tribes to enter information regarding order of protections and convicted sex offenders, and the resulting accessibility of that information to tribal, state and Federal law enforcement agencies, is a matter of life and death. This is particularly true for Indian women who have obtained an order of protection or cooperated with prosecuting their rapist. Access to the Federal databases is also an officer safety issue and essential to the day-to-day services provided to tribal communities.

Although we applaud this amendment, we are concerned that it has not been properly implemented yet. Proper implementation of this provision requires the Department of Justice to issue guidelines and a directive to the personnel to allow tribal law enforcement to access the Federal criminal justice databases.

§ 905(a) Tracking of Violence Against Indian Women Recommendations:

- Identify which component of DOJ is responsible for implementation of Section 905(a) and provide Indian tribes contact information for the component;
- Develop DOJ guidelines for the implementation of Section 905(a), in consultation with Indian tribes, and provide the guidelines to Indian tribes;
- Issue a statement to Indian tribes that the system is now available for tribal law enforcement to access and enter information into the Federal databases under Section 905(b).

b) Title IX. § 908. Enhanced Criminal Law Resources.

Section 908(a) amends the Federal criminal code[8] to expand the Firearms Possession Prohibition to include convictions in tribal court. It amends the Federal criminal code to include under the term "misdemeanor crime of domestic violence" any offense that is a misdemeanor under tribal law.

Prior to passage of this amendment, perpetrators of domestic violence convicted in tribal court could continue to possess firearms. This important amendment by Congress recognized the danger that Indian women faced because of this legal loophole. Unfortunately, no training or guidelines have been issued by the Department of Justice for implementation of this life-saving provision.

§ 908(a) Enhanced Criminal Law Resources Recommendations:

- Identify which component of DOJ is responsible for developing implementation prosecutorial guidelines for Section 908(a) and provide Indian tribes contact information for the component;
- Develop implementation guidelines on Section 908(a) in consultation with Indian tribes;
- Develop and provide training on the guidelines for the implementation of Section 908(a) to Indian tribes;
- Issue a press release at the time of the first prosecution of Section 908(a).

c) Title IX. § 909. Domestic Assault by an Habitual Offender.

Section 909 amends the Federal criminal code[9] to create a new Federal felony for habitual offenders of domestic violence and sexual assault. It imposes criminal penalties upon any person who: (1) commits a domestic assault within the special maritime and territorial jurisdiction of the United States or Indian country; and (2) has a final conviction on at least two separate prior occasions in Federal, state, or tribal court for offenses that would be, if subject to Federal jurisdiction, an assault, sexual abuse, or serious violent felony against a spouse or intimate partner, or a domestic violence offense.

Section 909 was enacted by Congress to address the reality that domestic violence is a pattern of violence that is repeated over time. Domestic violence increases in

[7] Section 905(a) amends 28 U.S.C. § 534, Access to Federal Criminal Information Data bases.
[8] Section 908(a) amends 18 U.S.C. § 921(33)(a0(1), Firearms Possession Prohibition, and 25 U.S.C. § 2803(3), Law Enforcement Authority.
[9] Section 909 amends Title 18, Chapter 17.

frequency and also in the severity of the violence committed. The pattern of domestic violence might begin at a misdemeanor level and escalate to a felony level of violence. Tribal law enforcement agencies report that domestic violence is one of the largest categories of crime within tribal jurisdiction. Domestic violence, however, is rarely prosecuted by the United States Attorneys' Offices. One reason for the lack of prosecution is that a single incident of domestic violence often does not rise to the requirements of a Federal felony, and the Major Crimes Act does not include the crime of domestic violence. The amendment at Section 909 addresses this gap between tribal and Federal law. This new law will allow United States Attorneys to prosecute perpetrators of misdemeanor domestic violence that are repeat offenders and have two prior convictions in tribal court. It addresses an outstanding concern of tribal law enforcement, prosecutors and courts that domestic violence perpetrators are not being held accountable for violence committed against Indian women.

Coordination of investigation efforts between tribal and Federal law enforcement will be essential to the successful prosecution of cases under this Section. Unfortunately, no training or guidelines have been issued by the Department of Justice on implementation of this very important Section that directly impacts the safety of Indian women.

§ 909 Domestic Assault by an Habitual Offender Recommendations:

- Develop in consultation with Indian tribes guidelines for the implementation of Section 909 Domestic Assault by an Habitual Offender;
- Conduct cross training for Assistant United States Attorneys and tribal prosecutors for the investigation, charging and prosecution of cases under Section 909;
- Inform Indian tribes of the progress and steps made toward implementation of Section 909.

IV. Research is necessary to understand the prevalence, unique particularities and estimated cost of crimes of domestic violence, sexual assault, dating violence and stalking occurring against Indian women.

The Department of Justice has issued several reports on violence against women mandated by the Acts of 1994 and 2000. Within these reports, crimes of violence against American Indian and Alaska Native women are given limited attention. Previous research mandated under VAWA did not require in depth research on violence against Indian women.

Section 904 mandates for the first time in United States history a national baseline study reviewing the crimes of domestic violence, dating violence, sexual assault, stalking, and murder committed against Indian women. Such a study is essential to analyzing and creating safety in the lives of Indian women.

Of critical importance is the establishment of a task force, as provided by Section 903(A), to include representatives from national domestic violence and sexual assault tribal organizations that have decades of experience in assisting Indian women. Such a task force must also include Indian Nations, as the governments primarily responsible for providing emergency responses to such crimes, for providing daily assistance to Indian women, and for monitoring offenders. Indian tribes after tens of thousands of years maintain their inherent sovereignty with the authority and responsibility to protect the safety of their Indian women and the stability of their citizenry. The presence of these representatives on such a task force will ensure the expertise necessary to properly implement the baseline study required by Section 904.

The following recommendations are offered to maximize the opportunity provided by Section 904:

- Immediately establish, as provided by Section 904(a)(3), the tribal task force to develop and guide implementation of the study;
- Recognize that American Indian and Alaska Native women experience multiple incidents of violence over a lifetime and addressing such violence requires an array of services beyond crisis intervention;
- Recognize that the failure of Federal justice systems, and state systems where state jurisdiction has been established, to adequately respond to violence against Native women is demonstrated in the distinction between the number of hospital emergency trauma center visits and the number of cases reported, charged and ultimately convicted.

V. The new position of Deputy Director for Tribal Affairs within the Office on Violence Against Women is a first step toward increasing the ability of the Department of Justice to effectively coordinate on a governmental basis with Indian Nations and improve the response of tribal law enforcement agencies to crimes of domestic violence and sexual assault.

The unique governmental relationship between Indian tribes and the United States is long established by the inherent sovereignty of Indian nations as governments that pre-existed the United States, and is recognized in the U.S. Constitution, Supreme Court cases, acts of Congress and Executives Orders of the President. Congress again recognized this unique governmental relationship within the Violence Against Women Act by statutorily including Indian tribes within various provisions and defining Indian Tribes as eligible applicants for certain programs under the Act from the Violence Against Women Office within the Department of Justice. The administration of Federal programs to tribal governments must comply with this legal context. As such, the development of policies and grant program guidelines according to state-based models is not only inappropriate, but also ineffective in the creation and implementation of an effective response to domestic violence, sexual assault and stalking against Native women. Furthermore, in order to properly administer tribal set-aside funds, it is necessary to keep in mind the special relationship between Indian tribes and the Federal Government, and the confusing jurisdictional realities in Indian country. This is also essential in the development of appropriate model codes, protocols, public education awareness materials, research, and training.

Increasing the response of Indian tribes and tribal law enforcement to domestic violence and sexual assault requires understanding the complexity of the jurisdictional maze created by Federal Indian law, the appropriate protocol for implementing government-to-government programmatic and administrative matters, and the management of funds set aside for Indian Nations. The new statutorily created Deputy Director for Tribal Affairs must be involved with any initiatives to address and enhance the response of tribal law enforcement to domestic violence and sexual assault. The authorities, responsibilities and expertise of the Deputy Director will be essential to the success of any initiative to increase the safety of Indian women and respond to such crimes. However, we want to stress that the Department of Justice's responsibilities should not end with the creation of this office. This is merely an important first step among many that need to be taken to adequately address the horrific levels of violence perpetrated against Indian women.

VI. Conclusion.

In 1994, Congress enacted the Violence Against Women Act recognizing the extent and severity of violence against women. Over the last eleven years, the Act has significantly increased the ability of Indian Nations, tribal law enforcement agencies, and advocacy organizations to assist Indian women and hold perpetrators of domestic violence, sexual assault, and stalking accountable for their crimes.

VAWA 2005, specifically Title IX, represents a historic turning point in United States history in the recognition by the United States of its unique legal responsibility to assist Indian tribes in safeguarding the lives of Indian women. Addressing the needs and challenges confronting Indian tribes and tribal law enforcement in adequately responding to crimes of violence against Indian women under VAWA 2005 requires the full involvement of all agencies in the coordinated governmental implementation of the Act.

Given the crisis in the lives of Indian women and the present lack of adequate resources to properly safeguard Indian women,[10] it is clear that more must be done at every level, from increasing funding through the Office on Violence Against Women, to better coordinating the handling of cases by the FBI and United States Attorneys, to addressing the problematic release of perpetrators by the Bureau of Prisons. If action is taken at every level, we can improve efforts to create a more responsive Federal criminal justice system, and we can enhance tribes' ability to safeguard their citizens and communities. In conclusion, Federal agencies must work on a government-to-government basis with Indian Nations, specifically tribal law enforcement, prosecutors and courts to hold perpetrators of such crimes accountable.

The advances made under VAWA 2005 have the potential to further the progress made toward a time when the honored status of Indian women is restored and all women will live free of violence.

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[10] *See A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country,* U.S. Comm. On Civ. Rights, available at *http://www.usccr.gov/pubs/na0703/na0204.pdf.*

The CHAIRMAN. Ms. Artichoker, thank you very much. We appreciate your testimony.

Finally, Mr. Riyaz Kanji, from Ann Arbor, Michigan. Mr. Kanji, you may proceed.

STATEMENT OF RIYAZ A. KANJI, KANJI AND KATZEN

Mr. KANJI. Thank you, Chairman Dorgan. I very much appreciate the invitation to appear before the Committee this morning. By way of a very brief background, I clerked for Justice David Souter on the U.S. Supreme Court in the October Term, 1994. And I have practiced and taught in the field of Federal Indian law ever since. Much of my work focuses on the Supreme Court's Indian law jurisprudence.

The other witnesses before this Committee this morning have testified I think in very eloquent terms about the tremendous problems that arise from the fact that tribes presently do not enjoy criminal jurisdiction over non-Indians. I am here to address the question whether this Congress has the constitutional authority to take meaningful action in the face of those problems by restoring to tribes the sovereign power to exercise criminal jurisdiction over non-Indians. I think the answer to that question, as the Supreme Court made clear in its recent decision in the *United States v. Lara* case is an emphatic yes. Lara reaffirmed several fundamental tenets of Federal Indian law. First, that Congress has very broad powers to legislate with respect to Indian affairs. Those powers are grounded in what is known as the Indian Commerce Clause, which is found in Article I, Section 8 of the Constitution. And the Court has long described those powers as being plenary and exclusive. Second, the Court observed that Congress has historically exercised those powers both to restrict and in turn to relax those restrictions on the tribe's sovereign authority. Neither Congress nor the Court has viewed Congress' plenary powers as being a one-way ratchet. Those powers may be used both to expand and to contract tribal sovereignty. And indeed, there exist no textual limitations in the Constitution on Congress' power to restore sovereign powers to the tribes.

Third, the Court held that the ability of tribes to control events taking place in their own territories, including through the maintenance of the criminal justice system, is an inherent attribute of tribal sovereignty, such that there is nothing unconstitutional or remarkable about Congressional action designed to restore to tribes the ability to do just that.

I think the history behind the Lara decision is instructive. The limitations in the modern era on the tribes' criminal powers have stemmed in significant part from two Supreme Court decisions that predated Lara. The first of these was the 1978 decision in *Oliphant v. Suquamish Tribe,* where the Court examined an array of statutes, treaties and other legal materials and concluded that, taken together, those legislative and executive branch actions had operated to divest tribes of their criminal jurisdiction over non-Indians.

In the 1990 case of *Duro v. Reina,* the Court likewise concluded that the tribes had been divested of jurisdiction to prosecute Indians who are not members of the prosecuting tribe. The Duro decision prompted an immediate response from Congress, which within

a year enacted legislation that came to be known as the Duro fix. That legislation provided that the tribes' powers of self-government include the inherent power to exercise criminal jurisdiction over all Indians. That legislation in turn was challenged by criminal defendants who argued that both Oliphant and Duro were constitutional decisions that were not subject to modification by Congress.

In its 2004 decision in Lara, the Court emphatically rejected that argument. After reaffirming the plenary powers of Congress, the Court stated in no uncertain terms that both Oliphant and Duro are in the Court's words, Federal common law decisions that are subject to Congressional modification. As the Court said, those decisions simply "reflect the Court's view of the tribes' retained sovereign status at the time the Court made them. They did not set forth constitutional limits that prohibit Congress from taking actions that modify or adjust the tribe's status." I think it bears mention that the Lara majority was joined by then Chief Justice Rehnquist, who had authored the Oliphant decision.

Lara is subject to one very important caveat. The Court reserved the question whether Congress can authorize tribes to prosecute either non-Indians or non-member Indians absent the full panoply of due process protections that apply in Federal and State courts. Most of those protections already apply in tribal court as well by virtue of the Indian Civil Rights Act. But there are exceptions, most notably the right of indigent defendants to counsel.

It is my strong view that any Congressional legislation restoring to the tribes criminal jurisdiction over non-Indians should include the full panoply of due process protections. Otherwise, I think there is a strong chance that the present Court would strike down the legislation.

Lara is an extremely important decision. A Court that is widely viewed as being highly jealous of its own prerogatives reaffirmed the notion that Congress has the ultimate authority over Indian affairs, and Lara, I think, is the right decision. The field of Federal, State, tribal relations is far too complicated and nuanced to be ultimately controlled by the inevitable constraints that exist on judicial decisionmaking. The Oliphant decision, as we have heard, has contributed to disastrous results in Indian Country. But in Lara, at least the Court made it clear that Congress has the power to act to improve the situation.

Thank you again for the opportunity to appear here this morning.

[The prepared statement of Mr. Kanji follows:]

PREPARED STATEMENT OF RIYAZ A. KANJI, KANJI AND KATZEN

I very much appreciate the invitation to appear before the Committee today.

By way of brief background, I graduated from the Yale Law School in 1991, served as a law clerk to Justice David Souter of the United States Supreme Court in the October Term 1994, and have practiced and taught in the field of federal Indian law ever since. Much of my work has focused on the Supreme Court's Indian law jurisprudence.

The rules governing criminal jurisdiction in Indian country are exceedingly complex and have aptly been described as a "jurisdictional maze."[1] These rules – the cumulative product of over 200 years of Congressional legislation and Supreme Court decisionmaking – embody the erratic and often ambivalent evolution of the federal government's view of the place of Indian tribes within the American legal system. As recent hearings before this Committee have shown, the current state of criminal jurisdiction in Indian country, far from facilitating the fair and effective administration of justice, too often serves to thwart it, with grave practical consequences for the people and the communities involved. Only Congress has the authority to take the comprehensive action necessary to improve the administration of criminal justice in Indian country.

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[1] *See* Robert N. Clinton, *Criminal Jurisdiction Over Indian Lands: A Journey Through a Jurisdictional Maze*, 18 ARIZ. L. REV. 503, 508-13 (1976).

In this testimony, I will first try to outline the rules governing criminal jurisdiction in Indian country as clearly as I can. I will then turn to a discussion of the grave shortcomings in the existing jurisdictional structure. Finally, I will provide some recommendations as to the steps that Congress can take to ensure that the criminal justice system functions in practice to safeguard the safety and welfare of those residing in Indian country.

Federal Jurisdiction in Indian Country:
The Indian Country Crimes Act and the Major Crimes Act

Currently, one or more of three separate sovereigns (federal, tribal and state) may, in any given case, possess authority to act in criminal matters, or alternatively may utterly lack such authority, depending on an array of factors including the nature of the crime, its location, and the Indian or non-Indian status of the perpetrator and/or victim. Jurisdiction is allocated primarily by three federal statutes and the body of Supreme Court decisions interpreting them. These statutes are the Indian Country Crimes Act, 18 U.S.C. § 1152, the Major Crimes Act, 18 U.S.C. § 1153, and Public Law 280, 18 U.S.C. § 1162. The first two of these statutes establish the basis of federal criminal jurisdiction in Indian country.

In the colonial era, Indian tribes possessed exclusive criminal jurisdiction over all persons in Indian country, Indian and non-Indian alike.[2] In 1817, Congress enacted a statute – 3 Stat. 383 (1817) – extending federal jurisdiction over all persons committing crimes in Indian country in an attempt to maintain peace between Indian and non-Indian populations.[3] Crimes committed by Indians against other Indians were excepted from federal jurisdiction under the 1817 statute as being of purely tribal concern.[4]

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[2] *See* WILLIAM C. CANBY, JR., AMERICAN INDIAN LAW, 4th ed., at 133 (Thomson-West 2004).
[3] *Id.*
[4] *Id.*

That 1817 statute was the predecessor to the Indian Country Crimes Act ("ICCA"), which was enacted by Congress in 1875 and is still in force today. *See* 18 U.S.C. § 1152.[5] The ICCA extends to Indian country the same body of federal criminal law that applies to federal enclaves such as post offices, national parks and military bases. This body of law encompasses offenses such as arson, assault, domestic violence, larceny, receiving stolen property, murder, manslaughter, kidnapping, robbery, and sexual abuse.[6]

The ICCA retained the 1817 statute's exemption for crimes committed by Indians against other Indians. And though the ICCA does not expressly withhold federal jurisdiction over crimes committed by non-Indians against non-Indians, the Supreme Court has held that such crimes fall, as a matter of federalism, within the exclusive jurisdiction of the state in which the Indian land is located. *See Draper v. U.S.*, 164 U.S. 240 (1896); *U.S. v. McBratney*, 104 U.S. 621, 624 (1881). This apparently includes "victimless" crimes by non-Indians including many drug and traffic offenses. *See Solem v. Bartlett*, 465 U.S. 463, 465 n.2 (1984) (dicta).

Thus, under the ICCA the federal government has jurisdiction in Indian country over crimes committed by Indians against non-Indians, or by non-Indians against Indians. There are two important caveats. First, for offenses committed by an Indian against a non-Indian, tribes retain jurisdiction concurrently with the federal government. Second, federal jurisdiction is preempted in such cases where a tribe has already prosecuted and punished the Indian defendant. However, under the Indian Civil Rights Act of 1968 ("ICRA"), tribal courts may not impose on anyone a criminal punishment greater than one year of imprisonment, a $5,000 fine, or both. 25 U.S.C. § 1302(7).

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[5] The ICCA is also referred to as the General Crimes Act.

[6] Because the body of federal criminal law is not a comprehensive criminal code, the Assimilative Crimes Act ("ACA"), 18 U.S.C. § 13, provides for the incorporation of state law where federal law does not define a particular offense. The ACA applies via the ICCA in Indian Country. *See Williams v. United States*, 327 U.S. 711 (1946).

In 1883, the Supreme Court confirmed that the ICCA's exclusion from federal jurisdiction of crimes committed by Indians against Indians extended to major crimes such as murder. *See Ex parte Crow Dog*, 109 U.S. 556 (1883). However, Congress viewed existing tribal remedies as "either nonexistent or incompatible with principles that Congress thought should be controlling" in such cases. *Keeble v. U.S.*, 412 U.S. 205, 210 (1973). It responded to *Crow Dog* by enacting the Major Crimes Act ("MCA"), 18 U.S.C. § 1153, which established federal jurisdiction in any case involving an Indian defendant – *i.e.*, including Indian-against-Indian crimes otherwise exempted from federal jurisdiction under the ICCA – for a list of enumerated "major crimes" included within the body of federal criminal law applicable under the ICCA.[7]

Federal jurisdiction under the MCA is not exclusive, but rather is concurrent with tribal jurisdiction. However, due to the penalty caps imposed by ICRA, tribal jurisdiction to prosecute offenses covered by the MCA is severely hampered. Under the MCA, federal jurisdiction is not preempted by tribal prosecution for the same offense. Nor is it barred by the double jeopardy clause, which prohibits second proceedings only by arms of the same sovereign. *See U.S. v. Wheeler*, 435 U.S. 313 (1978).

State Jurisdiction in Indian Country: Public Law 280

States generally lack criminal jurisdiction over Indians within Indian country. However, in 1953 Congress enacted Public Law 280 ("P.L. 280"), 18 U.S.C. § 1162, delegating to five states – California, Minnesota, Nebraska, Oregon and Wisconsin, with the Alaska Territory added in 1958 – jurisdiction over most crimes throughout most of the Indian country within their

[7] These offenses are: murder, manslaughter, kidnapping, maiming, felony sexual abuse, incest, assault with intent to murder, assault with a dangerous weapon, assault resulting in serious bodily injury, assault against a person under 16 years of age, felony child abuse or neglect, arson, burglary, robbery, embezzlement and theft. *See* 18 U.S.C. § 1153(a). Burglary and incest are not defined by federal law, so are defined and punished under the MCA according to the relevant state law. *Id.* at (b).

borders. Ten additional states have since assumed some degree of jurisdiction over Indian country under an optional provision of P.L. 280. Public Law 280 "reflected congressional concern over law-and-order problems on Indian reservations and the financial burdens of continued federal jurisdictional responsibilities on Indian lands." *Washington v. Confederated Bands and Tribes of Yakima Nation*, 439 U.S. 463, 488 (1979).

For the original six states, P.L. 280 expressly extinguished the federal jurisdiction specifically conferred by the MCA and ICCA. In its place, states assumed the same power to enforce their criminal laws inside Indian country as they had always exercised outside of it. Thus, while states already possessed full criminal jurisdiction over wholly non-Indian crimes in Indian country, *McBratney*, 104 U.S. 621, P.L. 280 extended that jurisdiction to crimes "by or against Indians." *See* 18 U.S.C. § 1162(a).

For the "optional" states, P.L. 280 did not expressly repeal the MCA and ICCA. Instead, in those states, state criminal jurisdiction (for conduct covered by the MCA or the ICCA and in violation of state law) presumably exists concurrently with federal jurisdiction. *Cf. Negonsott v. Samuels*, 507 U.S. 99 (1993). This is not entirely clear, however, and "courts trying to solve the puzzle of federal criminal jurisdiction in optional Public Law 280 states have floundered."[8]

Nor did P.L. 280 expressly extinguish tribal jurisdiction where it existed (*i.e.*, over violations of tribal law by Indians). Thus, where tribal jurisdiction was concurrent with federal jurisdiction under the MCA and ICCA, it has remained so vis-à-vis state jurisdiction under P.L. 280.[9]

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[8] COHEN'S HANDBOOK OF FEDERAL INDIAN LAW (LexisNexis 2005 Ed.) § 604[3][d].
[9] COHEN, *supra* note 8 at § 6.04[3][c]; *see also, e.g.*, *Walker v. Rushing*, 898 F.2d 672, 675 (8th Cir. 1990).

Tribal Jurisdiction in Indian Country

In non-P.L. 280 states, Tribes possess criminal jurisdiction over all crimes committed in Indian country by Indians against Indians. This jurisdiction is exclusive, except for the crimes covered by the MCA, over which federal and tribal jurisdiction are concurrent. In P.L. 280 states, tribal jurisdiction is concurrent with state jurisdiction (and with federal jurisdiction as well in optional P.L. 280 states) for offenses committed by Indians that violate both state and tribal law. However, as noted, tribal jurisdiction in all instances is qualified by the one-year/$5,000 fine penalty caps imposed by ICRA.

For crimes committed by non-Indians against Indians, neither the ICCA nor the MCA expressly divested tribes of that jurisdiction. Tribes, however, had generally stopped asserting such jurisdiction after the federal government assumed it under the ICCA and MCA. By the 1970's, dissatisfied with the effectiveness of federal and state law enforcement against non-Indians in Indian country, tribes began anew to assert criminal jurisdiction over non-Indians.[10] In 1978 the Supreme Court rejected that assertion in the case of *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978). Thus, Indian tribes presently have no jurisdiction to prosecute non-Indians committing crimes in Indian country.

The Impact of the Jurisdictional Maze on Law Enforcement in Indian Country

The complexity of the above-described rules creates significant impediments to law enforcement in Indian country. Every criminal investigation potentially involves a cumbersome procedure to establish who has jurisdiction over the case according to the nature of the offense, the identities of the offender and victim, and whether the crime actually took place on land with

[10] Canby, *supra* note 2 at 136-37.

the legal status of "Indian country."[11] These determinations are often not straightforward or easy, yet they dictate which of three sovereigns can investigate, prosecute and try a matter. One well-respected former United States Attorney, Thomas Heffelfinger, described issues of jurisdiction as an "incredible distraction and delay factor" in the ability of federal officials to respond to crime in Indian country.[12] He testified to this Committee in 2002 that:

> There is much confusion concerning jurisdiction over crimes committed in Indian country. Unlike jurisdiction over most state and federal criminal offenses, in which jurisdiction and/or venue is determined by the geographical location of the crime scene, . . . criminal jurisdiction in Indian country [is determined] through a complex analysis of sometimes amorphous factors. Police, prosecutors, defense attorneys, and judges must deal with this jurisdictional maze in cases ranging from littering to homicide. This confusion has made the investigation and prosecution of criminal conduct in Indian country much more difficult. A clarification of this confusion is needed.[13]

Despite the complex "maze" of criminal jurisdiction in Indian country, two facts are fundamentally clear. First, under *Oliphant*, tribes have no power to prosecute non-Indians for any criminal offense. Second, due to the penalty caps imposed by ICRA, tribes lack sufficient authority to properly prosecute crimes of violence or other felonies committed *by anyone*, Indians and non-Indians alike. In essence, Indian tribes today have meaningful authority only to prosecute Indians for minor tribal offenses. For serious offenses such as murder, manslaughter, assault, domestic violence, rape, and drug crimes – the very crimes that plague the residents of Indian country at rates much higher than anywhere else in the United States – tribes are largely dependent on the willingness and capability of federal or state authorities to prosecute.

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[11] Federal law defines "Indian country" for criminal jurisdiction purposes as "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same." 18 U.S.C. § 1151.

[12] Oversight Hearing before the Senate Committee on Indian Affairs on Contemporary Tribal Governments: Challenges in Law Enforcement Related to the Rulings of the United States Supreme Court, July 11, 2002 at 15, Testimony of The Honorable Thomas B. Heffelfinger, United States Attorney for the District of Minnesota.

[13] *Id.* at 38, Prepared Statement of Thomas B. Heffelfinger.

That willingness and capability has proved inadequate. While conclusive data does not exist, the National Congress of American Indians has reported estimates that United States Attorneys decline to prosecute as many as 85% of felony cases referred by tribal prosecutors.[14] One legal scholar who is a former Assistant United States Attorney has noted that "[b]ecause of the non-reviewability of decisions to decline prosecution or to under-prosecute, the weak or nonexistent political accountability of federal prosecutors to tribal communities, and the lack of media interest in Indian country prosecutions, federal prosecutors feel little external pressure to treat Indian country cases seriously."[15] The problem of federal authorities declining to prosecute crimes in Indian country has received extensive critical attention.[16] However, such attention "may be the most serious negative repercussion that these federal officials face[,] making criminal justice a haphazard event at best for Indian tribes."[17]

Similarly, in P.L. 280 states, state law enforcement officials are often reluctant to rely on tribal police investigations, are confused as to jurisdiction, or simply lack the resources or institutional desire to enforce criminal laws in Indian country. A leading scholar on P.L. 280 has described the federal efforts to authorize state criminal jurisdiction over Indian country

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[14] Testimony of Joe A. Garcia, President of the National Congress of American Indians, United States Senate Committee on Indian Affairs Oversight Hearing on Law Enforcement in Indian Country, June 21, 2007.
[15] Kevin K. Washburn, *American Indians, Crime, and the Law*, 104 Mich. L. Rev. 709, 733 (2006).
[16] *See, e.g.*, Carol Goldberg-Ambrose, *Planting Tail Feathers: Tribal Survival and Public Law 280* (1997) at 162 ("[F]ederal law enforcement agents, particularly the [FBI] and the U.S. Attorney's Office, have demonstrated a history of declining to investigate or prosecute violations of the Major Crimes Act"); Larry Echohawk, *Child Sexual Abuse in Indian Country: Is the Guardian Keeping in Mind the Seventh Generation?*, 5 N.Y.U. J. Legis. & Pub. Pol'y 83, 99-100 (2001) ("U.S. Attorneys often decline to prosecute Major Crimes Act cases on the reservation because of a mixture of factual, legal, practical, or logistical problems."); B.J. Jones, *Welcoming Tribal Courts into the Federal Fraternity: Emerging Issues in Tribal-State and Tribal-Federal Court Relations*, 24 Wm. Mitchell L. Rev. 457, 513 (1998) ("Federal prosecutors, busy with prosecuting a variety of more serious crimes, perhaps have been remiss in devoting the necessary attention to the problems that arise when non-Indians commit offenses in Indian country, oftentimes with apparent impunity."); Larry Cunningham, Note, *Deputization of Indian Prosecutors: Protecting Indian Interests in Federal Court*, 88 Geo. L. J. 2187, 2188 (2000) ("[M]any United States Attorneys have abdicated their responsibility to prosecute crimes in Indian country committed by non-Indians."); Amy Radon, Note, *Tribal Jurisdiction and Domestic Violence: The Need for Non-Indian Accountability on the Reservation*, 37 U. Mich. J. L. Reform 1275, 1278 (2004) ("Because federal prosecutors decline to prosecute [domestic violence] crimes, the law provides no deterrent effect[.]").
[17] Washburn *supra* note 15 at 734.

culminating in P.L. 280 as "a story of law gone awry."[18] While P.L. 280 was the product of "congressional concern over law-and-order problems on Indian reservations," *Washington v. Confederated Bands and Tribes of Yakima Nation*, 439 U.S. 463, 488 (1979), the law "has itself become the source of lawlessness on reservations. . . . [J]urisdictional vacuums or gaps have been created, often precipitating the use of self-help remedies that border on or erupt into violence. . . . [State] government(s) that may have authority in theory have no institutional support or incentive for the exercise of that authority. . . . [W]hen state law enforcement does intervene, gross abuses of authority are not uncommon."[19]

The Congressionally-mandated dependence of Indian tribes on inadequate federal and state criminal law enforcement has, in short, placed the tribes and their members in a position of extreme vulnerability. Recent data show that Indians are victims of violent crime at twice the rate of African Americans and that, overall, the violent crime rate in Indian country is 250% of the national average.[20] A 1999 United States Department of Justice study found that over 70% of Indian victims of violent crimes were victimized by non-Indians.[21]

The picture is particularly harrowing when it comes to sex crimes against women. While precise figures are hard to come by, the evidence suggests that for all female groups in the United States, Indian women are raped at the highest rates, two-and-a-half times the national average.[22] United States Department of Justice researchers have concluded that a shocking

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[18] Carol Goldberg-Ambrose, *Public Law 280 and the Problem of Lawlessness in California Indian Country*, 44 UCLA L. REV. 1405 (1997).
[19] Goldberg-Ambrose, *supra* note 13 at 1418.
[20] Washburn, *supra* note 15 at 713.
[21] Lawrence A. Greenfeld and Steven K. Smith, *American Indians and Crime*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 1999 NCJ 173386 at *vi*, *available at*: http://www.ojp.usdoj.gov/bjs/pub/pdf/aic.pdf.
[22] Amnesty International, *Maze of Injustice: The failure to protect Indigenous women from sexual violence in the USA*, April 24, 2007 at 3 & n.8 (citing Steven W. Perry, *American Indians and Crime – A BJS Statistical Profile 1992-2002*, Bureau of Justice Statistics, United States Department of Justice, Office of Justice Programs, December 2004), *available at*: http://www.web.amnesty.org/library/Index/ENGAMR510352007.

34.1% of American Indian women will be raped during their lifetimes.[23] And an estimated eighty to ninety percent of Indian victims of rape or sexual assault are victimized by non-Indian assailants.[24] As this Committee knows, credible reports by Amnesty International and others have found that Indian women are often "targeted for acts of violence" based on their Indian identity and that a root cause of this has been the "systemic failure to punish those responsible[.]"[25]

That Indian reservations at the dawn of the 21st century have become oases for sexual predators and perpetrators of domestic violence who target Indian women because the protections of the law do not extend as effectively into Indian country as elsewhere is a tragic perversion of more than two centuries of United States policy toward Indian tribes. Congress's earliest efforts to extend federal criminal jurisdiction into Indian country – laws that ultimately coalesced into the ICCA and MCA – were grounded in Congress's desire to curb lawlessness in Indian country and in particular to protect Indians from threats of violence posed by non-Indians. As then-Justice Rehnquist, quoting from President Washington, observed in the *Oliphant* decision:

> Congress was concerned almost from its beginning with the special problems of law enforcement on the Indian reservations . . . . Congress' concern was with providing effective protection for the Indians "from the violences of the lawless part of our frontier inhabitants."

435 U.S. at 201 (quoting Seventh Annual Address of President George Washington, 1 Messages and Papers of the Presidents, 1789-1897, pp. 181, 185 (J. Richardson, ed., 1897)).

Today it is apparent that Congressional policy – as amplified by Supreme Court decisions – has in fact achieved the opposite result. By largely stripping the tribes of meaningful authority

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[23] *Id.* at 3 & n.9 (citing Patricia Tjaden & Nancy Thoennes, United States Department of Justice, *Full Report on the Prevalence, Incidence and Consequences of Violence Against Women* (2000)).
[24] Greenfeld & Smith, *supra* note 21 at 7.
[25] Amnesty International, *supra* note 22 at 3-4.

to enforce criminal laws on their own lands, and by constructing in piecemeal fashion a highly complex and inadequate jurisdictional substitute, Congress and the Court have left tribal members unconscionably vulnerable to "the violences of the lawless part" of their own and surrounding communities. The current state of criminal justice in Indian country is a portrait of dysfunction and failure. Congress has the power and the duty to act to stem the crisis, and I turn now to some concrete steps that Congress can take in this regard.

Recommendations

The following recommendations are not intended to be comprehensive. In making them, moreover, I of course do not and cannot pretend to speak for the many different tribes in this country. I do believe, however, that if implemented, these steps would lead to a significant improvement in the administration of criminal justice in Indian country.

1. Restore Tribal Criminal Jurisdiction over Non-Indians

As the hearings before this Committee have made clear, the problems that undermine criminal law enforcement in Indian country are many and complex. There are several clear steps that Congress can take, however, to bring measurable improvement to the situation. Perhaps chief among these is the restoration of tribal criminal jurisdiction over non-Indians. Congress does not have to do this in blanket fashion. It could restore tribal jurisdiction over non-Indians with respect to a discrete set of crimes. This Committee is presently focused, and rightly so, on the problems of domestic violence and sexual assault in Indian country. Given the high percentage of these crimes committed by non-Indians, restoring to the Tribes the power to prosecute non-Indian perpetrators of such crimes could potentially be of great benefit to tribal communities.

The question is sometimes raised whether Congress has the constitutional authority to restore tribal criminal jurisdiction over non-Indians. The answer, as the Supreme Court made clear in its recent decision in *United States v. Lara*, 541 U.S. 193 (2004), is an emphatic "yes."

Lara reaffirmed several fundamental tenets of federal Indian law:

- First, that Congress has very broad powers to legislate with respect to Indian affairs, powers that the Court has "consistently described as plenary and exclusive." Those powers are grounded in the Indian Commerce Clause, which is found in Article I, Section 8 of the Constitution.
- Second, the Court observed that Congress has historically exercised its powers both to restrict, and in turn, to relax restrictions on the Tribes' sovereign authority. Neither Congress nor the Court has treated Congress's plenary powers over Indian affairs as a one-way ratchet – they may be used both to expand and to contract tribal authority. Indeed, there exist no textual limitations in the Constitution on Congress's authority to restore sovereign powers to the Tribes.
- Third, the ability of Tribes to control events that take place in their own Territories, including through the maintenance of a criminal justice system, is an integral aspect of their sovereign authority, such that there is nothing remarkable or unconstitutional about Congressional action that restores to the Tribes the ability to do just that.

The history behind the *Lara* decision is highly instructive. As I mentioned earlier, in its 1978 decision in *Oliphant v. Suquamish Tribe,* 435 U.S. 191 (1978), the Court examined an array of statutes, treaties, and other legal materials and concluded that the cumulative effect of those legislative and executive branch actions was to have divested Tribes of their inherent sovereign authority to prosecute non-Indians committing crimes in their territories. *Oliphant*

reads like a federal common law decision – the Court did not purport to ground its decision in the text of the Constitution. However, as I will discuss in a moment, some came to argue that the decision was constitutional in nature and hence immune from Congressional modification. The same argument was made with respect to the Court's 1990 decision in *Duro v. Reina,* 495 U.S. 676 (1990), where the Court again canvassed an array of materials in concluding that the Tribes had been divested of their sovereign authority to prosecute Indians who are not members of the prosecuting Tribe.

The *Duro* decision prompted immediate action from Congress. In legislation that came to be known as the "*Duro* fix," Congress provided that the Tribes' powers of self-government include "the inherent power, . . . hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians." That legislation was challenged by criminal defendants who argued that *Duro* and *Oliphant* were constitutionally based decisions that could not be altered by Congress.

In its 2004 decision in *Lara,* the Supreme Court flatly rejected this argument. After re-affirming Congress's plenary power over Indian affairs, the Court stated in no uncertain terms that *Oliphant* and *Duro* are not constitutional decisions, but instead are subject to Congressional modification. In the Court's words, those decisions "reflect the Court's view of the tribes' retained sovereign status as of the time the Court made them. They did not set forth constitutional limits that prohibit Congress from changing the relevant legal circumstances, *i.e.,* from taking actions that modify or adjust the tribes' status. To the contrary, *Oliphant* and *Duro* make clear that the Constitution does not dictate the metes and bounds of tribal autonomy, nor do they suggest that the Court should second-guess the political branches' own determinations . . . . [W]e do not read any of [our] cases as holding that the Constitution forbids Congress to change

'judicially made' federal Indian law through . . . legislation." *Lara*, 541 U.S. at 205, 207. It bears mention in this regard that the *Lara* majority included then-Chief Justice Rehnquist, who had authored the *Oliphant* decision. And *Lara* is entirely consistent with the language and tenor of *Oliphant*, where Justice Rehnquist closed his opinion for the Court by stating:

> Finally, we are not unaware of the prevalence of non-Indian crime on today's reservations which the tribes forcefully argue requires the ability to try non-Indians. *But these are considerations for Congress to weigh* in deciding whether Indian tribes should finally be authorized to try non-Indians.

Oliphant, 435 U.S. at 212 (emphasis added).

The *Lara* decision is subject to one very important caveat. The Court did not express a view on the question whether Congress can authorize tribes to prosecute either non-Indians or non-member Indians absent the full panoply of due process protections that apply in federal and state courts. The Indian Civil Rights Act already makes most of those protections applicable in tribal court, but there are some important exceptions, most notably the right to counsel for indigent defendants. It is my view that any legislation authorizing the tribes to exercise criminal jurisdiction over non-Indians should make the full array of due process protections applicable to such prosecutions. I think that there is a strong chance that the Court would otherwise strike down the legislation. Expanding the applicability of the due process clause in this way would not constitute an affront to tribal sovereignty because the tribes will always have a choice regarding whether or not to pursue such prosecutions. However, it would at the same time be sensible to make federal funding available so that tribes that do not already do so can provide counsel for indigent defendants.

Constitutional issues aside, the question is also sometimes raised as to whether it would be good policy to restore tribal criminal jurisdiction over non-Indians. This question is usually framed in terms of raising doubts about the competence of tribal courts to try non-Indians.

I think that it is critically important that the legislative decisions that Congress makes to ensure the effective administration of criminal justice in Indian country not be influenced by broad generalizations regarding the adequacy or competence of the tribal courts.

There are well over three hundred tribal courts in this country.[26] Like state courts, they of course vary in terms of their resources and sophistication. But I can say without hesitation that the tribal courts I have observed or litigated before administer justice with the fairness, care and competence that we all expect from courts in this country. One of the most rigorous oral arguments I have participated in was before a tribal appellate court whose three judges included two highly respected professors and a long-time tribal judge who has been commended as one of the ten most respected members of the legal profession in the state of Michigan. That court, like so many other tribal courts, issues thorough and well-crafted opinions, and is guided by the same respect for impartiality and principled decision-making that we expect from the best of the federal and state courts. As then-Justice O'Connor stated a decade ago, "[t]he role of the tribal courts continues to expand, and these courts have an increasingly important role to play in the administration of the laws of our nation."[27]

We read constant reports in the press about the inadequacy of various state court systems. As just one example, the New York Times ran a devastating series last year on the lower-level New York courts.[28] No one thinks that on the basis of those reports state courts should be stripped of their jurisdiction over the crimes being committed in their territories. Rather, the solution, where necessary, is to improve those courts.

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[26] *See, e.g.,* Testimony of Mary T. Wynne, Chief Judge, Confederated Tribes of the Colville Reservation, available at http://www.senate.gov/~scia/1998hrgs/0407_mw.htm, at 1.
[27] Wynne Testimony, *supra* note 26, at 1.
[28] http://www.nytimes.com/2006/09/25/nyregion/25courts.html

I understand that one possibility being considered by this Committee would be to restore criminal jurisdiction over non-Indians (perhaps for a defined set of crimes) to a discrete set of well-established tribal court systems. Assuming that the selection of the tribal courts in question could take place without stigmatizing other tribal courts as somehow inferior or unworthy of jurisdiction, a pilot project of this sort may make sense in order to assuage concerns about the ability of the tribal courts to administer justice fairly.

Lara is an extremely important decision. A Supreme Court that is widely regarded as highly jealous of its own prerogatives reaffirmed the notion that it is Congress that has the ultimate authority over Indian affairs. And *Lara* is the right decision. The field of federal-state-tribal relations is far too important and nuanced to ultimately be controlled by the inevitable constraints that exist on judicial decisionmaking. The Court's decision in *Oliphant* has, as a practical matter, contributed to disastrous results in Indian Country, but in *Lara* the Court at least made it clear that Congress may act to remedy those problems.

2. Extend Tribal Sentencing Limitations under the Indian Civil Rights Act

As noted, under ICRA, where tribes have criminal jurisdiction, they are limited to imposing punishments of no more than one year imprisonment or a $5,000 fine, or both. 25 U.S.C. § 1302(7). These caps severely hamper tribes' ability to meaningfully deal with criminal conduct in Indian country. A recent account in The Wall Street Journal exemplifies the horrible cycle of violence that can unfold in Indian country due to the limited reach of tribal sentencing authority:

> [Jon Nathaniel] Crowe's name is all too familiar on the reservation. Tribal Police Chief Benjamin Reed has known him since he was a juvenile. "What I remember is his domestic-violence incidents. He just wouldn't stop," Mr. Reed says.

> Crystal Hicks, who dated Mr. Crowe before his marriage, says the tribal member was verbally abusive. She says she left him after she had a miscarriage, when he berated her for not giving him a ride to a motorcycle gathering. . . .
>
> After that, in several telephone messages saved by Ms. Hicks and her family, Mr. Crowe threatened to kill them and bury Ms. Hicks in her backyard. He was jailed by the tribe and ordered to stay away from the Hicks family.
>
> "One year," says Ms. Hicks. "He even told me he was fine in jail. He got fed three times a day, had a place to sleep and he wasn't going to be there long."
>
> After he married, the violence escalated, says Police Chief Mr. Reed. During one incident he drove to the home Mr. Crowe shared with his wife, Vicki. "He had threatened her, and dug a grave, and said no one would ever find her. We believed him," Mr. Reed said. "Just look at some of the stuff he'd done. That girl was constantly coming down here, her face swollen up." At one point, he choked his wife, poured kerosene into her mouth and threatened to light it, police reports say. . . .
>
> None of these acts led to more than a year in jail, a sentence he has been given twice since 2001. His criminal file at the tribal court building fills dozens of manila folders. There are reports of trespassing and assault convictions, telephone harassment, threats and weapons assaults – one for an incident when he hit his wife with an ax handle, breaking her wrist. His latest arrest, in September, came about a week after he finished his most recent sentence, when he came home and beat his now-estranged wife – again.[29]

The same article described a tribal member who had been "arrested by the tribe more than a dozen times for various drunk-driving offenses." In 2001, he again drove drunk and caused a wreck killing three tribal members. He was sentenced to meaningful jail time only because by happenstance the wreck had occurred less than a mile outside the boundary of the reservation. He is serving 45 years in state prison for three counts of state vehicular homicide.[30] Had the wreck by chance occurred less than a mile away, within the borders of Indian country, the tribe in question could have sentenced him to no more than one year for each death. Adequate justice, in other words, was not available within the borders of Indian country.

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[29] Gary Fields, *Tattered Justice: On U.S. Indian Reservations, Criminals Slip Through Gaps – Limited Legal Powers Hobble Tribal Nations; Feds Take Few Cases*, The Wall Street Journal, June 12, 2007 at A1.
[30] *Id.*

As these accounts make clear, the tribal penalty caps imposed by ICRA are a core factor in the plague of insecurity and lawlessness that pervades Indian country. Congress should act swiftly to repeal them.

3. Establish Accountability for U.S. Attorneys who Decline to Prosecute in Indian Country

Whether or not tribal jurisdiction is restored over non-Indians, or the ICRA sentencing caps are lifted, federal authorities, with their resources and experience, should play an important role in law enforcement and prosecutions in Indian country. Congress should require both the FBI and the Executive Office of United States Attorneys to establish mechanisms for routinely and reliably collecting data on how reported crimes in Indian country are handled. In particular, information should be collected and made available regarding referrals and declinations by the United States Attorneys Offices. A policy requiring United States Attorneys to respond in writing to tribal referrals for prosecution would facilitate much greater accountability.

4. Facilitate Cooperation between Tribal, Federal and State Law Enforcement Officials

The jurisdictional complexities that impede effective law enforcement in Indian country make cooperation among tribal, state and federal officials essential. A number of tribes and their neighboring jurisdictions have entered into cooperative law enforcement agreements grounded in the shared recognition that they have a strong mutual interest in effective law enforcement in Indian country. These agreements often provide for training and cross-deputization of police officers (so that tribal police can enforce state law in Indian country and state officers can enforce tribal law) and address the execution of search and arrest warrants in Indian country. Where such agreements are in place the results have been favorable.[31] However, there are still many places where cooperation is minimal, relations are antagonistic, and those who seek to

[31] *See* Western Association of Attorneys General, Indian Law Deskbook at 413 (2d ed.).

forge stronger cooperative law enforcement ties receive little support. Congress can create incentives for greater cooperation by, for example, providing for additional law enforcement funding for those jurisdictions that enter into working agreements. The National Congress of American Indians has presented this committee with detailed suggestions in this regard.[32]

5. Amend P.L. 280 to allow Tribes to Initiate Retrocession of State Criminal Jurisdiction

As originally enacted, P.L. 280 provided for the assumption of state criminal jurisdiction over Indian country without the consent of any affected tribes. As he signed P.L. 280 into law, President Eisenhower expressed "grave doubts" about imposing state jurisdiction on sovereign tribes without their consent, and in his signing statement he requested that Congress enact a swift curative amendment.[33] Such an amendment was partially enacted in 1968, by which time nine additional states had assumed some jurisdiction over Indian country under P.L. 280. The amendment provided that any *further* state acceptance of jurisdiction over Indian country under P.L. 280 would not take effect without tribal consent. No Indian tribe has ever provided such consent.[34] Thus, every tribe presently subject to state jurisdiction under P.L. 280 is subject to that jurisdiction without its agreement.[35]

The tribal consent provision of the 1968 amendment reflected Congress's emerging policy favoring tribal self-determination, which of course is a policy that has now firmly taken root. Unfortunately, for the tribes already affected by P.L. 280, President Eisenhower's "grave doubts," and those of the tribes themselves, remained unaddressed. Congress should provide to

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[32] *See* Testimony of Joe A. Garcia, President of the National Congress of American Indians, United States Senate Committee on Indian Affairs Oversight Hearing on Law Enforcement in Indian Country, June 21, 2007 at pp. 5-6.
[33] *See* Timothy J. Droske, *The New Battleground for Public Law 280 Jurisdiction: Sex Offender Registration in Indian Country*, 101 NW. U. L. REV. 897, 902-03 (2007).
[34] Only one state, Utah in 1971, has sought jurisdiction since the 1968 amendment, and no tribe in Utah has consented to that jurisdiction. COHEN, *supra* note 8 at § 6.04[3][a] and n.310.
[35] P.L. 280 affects 23% of the reservation based tribal population and 52% of all tribes in the lower forty-eight states. *See* Carol Goldberg & Duane Champagne, *Is Public Law 280 Fit for the Twenty-First Century? Some Data at Last*, 38 CONN. L. REV. 697, 697 & n.2 (2006).

tribes presently subject to state jurisdiction under P.L. 280 a mechanism for exercising their self-determination.

One way to accomplish this would be to permit the tribes to initiate retrocession of state jurisdiction. In addition to its tribal consent provision, the 1968 amendment also provided that any state that wished to do so could, with federal approval, retrocede back to the federal government all or part of the jurisdiction over Indian country that it had assumed under P.L. 280. Numerous states have exercised this option and have relinquished to the federal government jurisdiction over approximately 30 tribes.[36] However, despite its official policy favoring tribal self-determination, Congress has not extended to the tribes themselves any power to influence a state's retrocession of criminal jurisdiction under P.L. 280. Given the widely perceived shortcomings of P.L. 280, Congress should provide P.L. 280 tribes with the authority to initiate retrocession themselves.

Conclusion

I again would like to thank the Committee for the opportunity to present testimony on this very important subject. Congress has the authority to take meaningful action to stem the violence and lawlessness that plague many tribal communities, and in particular that have wreaked havoc in the lives of so many Indian women. I hope that the analysis and recommendations provided above prove helpful and that Congress seizes the opportunity to re-invigorate the administration of criminal justice in Indian country.

[36] National Institute of Justice, United States Department of Justice, *Public Law 280 and Law Enforcement in Indian Country--Research Priorities* at 4 (2005), *available at*: http://www.ncjrs.gov/pdffiles1/nij/209839.pdf.

The CHAIRMAN. Mr. Kanji, thank you very much.

Let me ask a couple of questions and then I will call on my colleagues. My understanding is that when on an Indian reservation, a non-Indian commits a crime, in this case let's describe it as violence against women, rape or sexual assault, that that then has to be dealt with by the U.S. Attorney, right, or law enforcement off the reservation, is that correct?

Mr. KANJI. That is largely correct, Mr. Chairman, except in the Public Law 280 States where the States would have criminal jurisdiction.

The CHAIRMAN. And there have been complaints to our Committee and there have been references in research that has been done, articles written, that often those cases are not pursued with great vigor, those cases are not given priority. You refer to that, Ms. Young and Ms. Artichoker, in your testimony. Describe that and your concern about that again.

Ms. ARTICHOKER. Well, I think there is interplay and dynamic there. One, we have a community now that believes nothing will be done. So there is the, we have a no reporting problem. People are not reporting. Nothing is going to happen anyway. And then, if you do have situations where it is reported and I can share a personal situation where a young woman came to me, she had been raped in her own home, in her own bed. And she had reported it, she said the criminal investigator told her, sounds to me like you need to change your lifestyle.

So she came to me and she said, can you advocate for me, I want this to go to court, I want to testify, I want to tell my story. And so I called the FBI, and I was told that she was so drunk she didn't know whether she gave consent or not. So this interplay also with alcohol use and where most often we are going to see alcohol involved in these situations. So there is an attitude issue around alcohol use, especially on the part of women. And then you have again how that moves down into the community to what is the point in reporting. So we have a domino effect.

And so we don't see them prioritizing these cases then, because everyone is related, nobody is going to testify. In the end, the addiction issue is going to be too great, it might prohibit a family's really being able to support someone. So it just goes on and on and on.

The CHAIRMAN. Ms. Young?

Ms. YOUNG. In small communities, when women attempt to make reports, they are oftentimes forced to give their story over the telephone. That in and of itself creates a lot of barriers. We have a young woman in a small village, about 150 people, called not just once, but three different times, feeling as though may be they didn't understand what she was explaining to them, what had actually happened. An entire year went by and no response other than the interview on the phone. No other person was contacted.

When you are in a small community like that, you know who your perpetrator is. To give some context to that, if you do find your way to a court situation and to the sentencing piece, I have sat in court while mothers and aunties and grandmothers are asked for their input before the sentencing happens. And these women are standing up and saying to the judge, please, don't allow them to come back to our community, please when they get out of jail, which generally is a short amount of time.

But probation, they generally end up back in our same communities. The perpetrator of my own daughter lives about four blocks away from me. And on an ongoing basis, if I am in my yard, he is sitting across the street at his aunt and uncle's house, watching me. So not only do they have the opportunity to stalk and prey on young women int eh community, but afterwards they terrorize family members.

The CHAIRMAN. It seems to me that the three areas that have been discussed here include one, the lack of adequate medical treatment and perhaps the gathering and development of evidence in the medical treatment shortly after a sexual assault, rape kits and so on, the availability of all of that. Second, the concern about the lack of aggression by investigators or the investigation itself in some cases not taken seriously. In other cases it is tied up over the labyrinth of issues about who has jurisdiction and so on. And third, the concern about the lack of aggressiveness in the prosecution or even determining whether it will be prosecuted. Are those accurately pretty much the three ares that are of great concern?

And then as you think about that and answer that, Ms. Arriaga, it has been very difficult to get data or statistics about what has happened, and Amnesty International did gather data and statistics. Tell us how you did that? And how confident are you in the information that you have developed?

Ms. ARRIAGA. Well, the data that we gathered was a combination. Part of it was looking at what does exist and trying to find out what exists. As I sated, some of this was statistics that the Department of Justice does have, general statistics that they have.

But the specifics are still severely lacking. We believe that it is important that for data collection, that there be much more done. As I said, there are no statistics right now on specifically sexual violence in Indian Country or Alaska Native villages. Federal, State and tribal authorities should be collecting this information. The U.S. Attorney's Office should be looking to see which cases are reported and referred, which ones are declined and for what reasons, what the specifics are about the case, whether the perpetrator or the victim is non-Indian. None of that is currently taking place as far as we can tell. Amnesty did request that kind of information from the U.S. Attorney's Office and it was not provided to us. Perhaps the Congress would have more success in that area to determine whether or not this is happening in a systematic way.

In addition, there should be information that is collected about the severity of the issue. And for this I would really look to my colleagues here, because we relied heavily with advocates to get a sense from their communities and from their experience about what in fact is the reality. So much of the research we did was based on interviews. And I know that in the case of the Violence Against Women Act there are some specific areas there that may speak to this. So I would really defer to my colleagues on that as well.

The CHAIRMAN. Thank you very much.

I am going to defer to my colleagues for questions. But Mr. Kanji, your testimony is going to be very helpful to us. And I hope that you will remain available to us as we reach out following this hearing to try to think through and work through some of these issues. So I thank you very much for your testimony.

Senator Murkowski?

Senator MURKOWSKI. Thank you, Mr. Chairman. And to followup with your line there in terms of the three areas that we are breaking down, when you think about the law enforcement aspect and the tangled mess that we have, the maze, as Amnesty calls it, we

recognize that today, this month, this year, we are probably not going to unravel that. We desperately need to address it.

But there are some things that I think that we can do now that can make a difference. For instance, the collection of the forensic evidence. If this is causing a problem or not allowing prosecutions to go forward, and it is because we don't have the sexual assault nurse examiner available or trained, we can do that. If it is an issue where we don't have the professionals that are out there, we don't have access to them, we can work on aspects of that.

I understand, though, that part of the problem, and Ms. Young, maybe you can address this, is that IHS nurses can get the same training to be a sexual assault nurse examiners. But they have to take time off from their regular duties for the training, they have to pay their own transportation to the training locations. So if you are coming from a small community in southeast or out in western Alaska, and you have to fly into Anchorage for the training and you have to pay for that out of pocket, you and I know that you are talking $500, $600, $700 just for that, and that they then also receive no overtime pay for what they are doing as a SANE examiner.

To me, these are barriers that keep individuals from moving forward and saying, okay, I will help out. We need to remove those barriers. We need to help with that.

I want to ask a question, because it has been mentioned, Ms. Rozell, in your testimony and both Ms. Artichoker and Ms. Young, you have spoken to it. The fact that in so many of the communities, the villages in Alaska or on the reservations, you are talking about close-knit communities. Everybody knows everybody. You are related to half the people in the village. and when violence occurs, there oftentimes is well, don't go after him, he is Uncle So and So, or everybody knows him. And there is a hesitancy because of that closeness.

There is also nowhere to go. In too many of our villages, there is no road out of town. The only way out is an airplane that is cost prohibitive. So we have geographical barriers that are inhibiting. Do you have any suggestions for us? How do we deal with these close-knit communities in providing for a level of protection? When you go into the clinic for an exam, where is your perpetrator? Are there any suggestions that you can give us as we deal with these kinds of problems?

Ms. YOUNG. This has been something that we have talked about at great length. When we have the opportunity for women to be provided an exam, a rape exam, many times they have to leave the community. It is the only way.

Senator MURKOWSKI. I know that in some areas we are trying to provide transportation funding to get the woman to a hub community so there is a safe house.

Ms. YOUNG. Yes. In some communities there are safe homes, and more used for the domestic violence piece than for the sexual assault piece. One of the conversations that we have been having is around the issue of protection orders for victims of sexual violence, especially in small communities. Of course, this is after the exam is happening.

One of the largest pieces for us is that in small communities, community health aides are the only form of medical provider. At this point in time, they have no training to provide this. This next coming month, we will be meeting with the trainers for the community health aides to have this very conversation: how can we get them trained and also at what level of liability are we talking about.

Generally speaking, when you start talking about medical, that is the very first issue that folks want to address. Even in the community that I live in, in Sitka, we had the opportunity to develop a SART team, a sexual assault response team. And it took us three and a half years of dialogue to figure out at which hospital, because there was a non-Native and a Native hospital. And even after all of that conversation, the program only stayed in place for a little less than 2 years.

Senator MURKOWSKI. Ms. Artichoker?

Ms. ARTICHOKER. On the Pine Ridge, we just built a beautiful new shelter. And of course, we serve victims of domestic violence and sexual assault. And through then the shelter, we are coordinating to get, for instance, recently a young woman was gang raped as part of a gang initiation. Her choices were to be assaulted physically with fists or to be sexually assaulted. She chose to be sexually assaulted, after which she became psychotic.

So using the shelter then, and shelter advocates, we have become sort of the hub to refer out and would like to be able to expand our resource base so that we could really provide substantive services to both victims of domestic violence and sexual assault, knowing that most women who are battered are also victimized by sexual violence.

So we are thinking that we don't really, our communities are small, we don't need to go the route of having a separate domestic violence movement, a separate sexual assault movement. We need to be able to do both. We would really like to see some community-based pilot projects where we could have a women's advocacy center that would provide a forensic exam, an advocate, a mental health professional. Because quite honestly, we do see a lot of women becoming psychotic following sexual assault.

Senator MURKOWSKI. You mentioned that you have a nice, new shelter in Pine Ridge.

Ms. ARTICHOKER. Yes.

Senator MURKOWSKI. What is the condition of shelters in the other areas in your state?

Ms. ARTICHOKER. Well, in the State of South Dakota, actually, it is quite good. We have been working as private non-profits in our communities for many, many years.

However, the rest of Indian nations, we have only been able to identify about 30 shelters. So that is one of the reasons why we are constantly saying we need construction dollars, we need to be able to build in our communities, because the infrastructure is not there. And it is only with the help of the Shakopee Mdewakanton Sioux community that we were able to build our shelter.

So prior to that, we had people sleeping on the floor like cordwood. We say like cordwood, because we had a two-bedroom shelter. Now we can accommodate 36 people, and I think for us, we are

looking at a continuum of services, so that you can remain in your community but in some sheltered space. We want transitional housing. We want the capacity to shelter women for long term so they can get the support that they need. Because otherwise you are out there and people are nattering at you that, how dare you, you need to not testify and there is the family feuds that occur when these crimes are committed.

So we would really like to see a continuum of services. Many times women will be homeless as a result of sexual assault or domestic violence. This past summer, we had a tipi up for a women's mental health program. We put up this tipi. We had one woman come and ask if she and her children could live in the tipi for the summer. We had another woman who was living down by the creek in a tent with her children. We had one woman living in an abandoned trailer house with her teenage son.

So the housing issue is really problematic, and it doesn't lend to families being able to support each other in these really stressful situations.

Senator MURKOWSKI. Thank you, Mr. Chairman. My time is up.

The CHAIRMAN. Thank you, Senator Murkowski.

Senator Tester?

STATEMENT OF HON. JON TESTER, U.S. SENATOR FROM MONTANA

Senator TESTER. Thank you, Mr. Chairman. I appreciate everybody who has testified here today on an issue that is more than just a little bit distressing. I have several questions, and I want to say, before I get into questions that Ms. Rozell, I particularly appreciate your testimony and the fact that you were able to even do it. And I think it is—I can't imagine how difficult. But I really appreciate your being able to come here today.

I guess I will start with Mr. Kanji. And it deals with, as I am sitting here listening to testimony, you have actions against Indian women that could be by an Indian, by a non-Indian, it could be on tribal land, it could be off tribal land. Is the jurisdiction clear, or do we need to clarify that, and can we clarify it, if it is not clear?

Mr. KANJI. Thank you, Senator.

First off, the jurisdictional problems are certainly very, I think there is nothing clear about the jurisdiction when it comes to criminal actions in Indian Country, partly because of the maze of Congressional statutes and partly because of the court decisions that I described. I think that Congress certainly can do a great deal to help clarify the jurisdictional situation. Because of time constraints, I limited my remarks to one aspect of that, expanding the tribes' criminal jurisdiction to include non-Indians.

But there are several other very important steps that Congress could take, I think, that would help greatly in this situation. First and foremost, as you noted, certainly a good deal of these crimes are committed by tribal members against other tribal members. I think the statistics suggest that the majority are committed by non-Indians. But we certainly have an important quota of crimes that are committed by Indian defendants. And there the problem is that the Indian Civil Rights Act limits tribal sentences to 1 year in jail and a $5,000 fine. So even when a tribe is prosecuting one

of its own members for a violent crime, it is severely constrained in the punishment that it can mete out.

And many of the terrible stories that one hears are about tribal members in their own communities wreaking havoc and being sentenced to jail for a year and then coming right back out and doing it again and again and again. That is a terrible situation and that is certainly something where Congress could act to increase that ceiling and increase that limit.

I think Congress can also act to provide incentives for the sort of Federal-State-tribal cooperation that has also been discussed and that I think can be very helpful in situations where there is inevitably going to be jurisdictional overlap. I think there has been a great deal of success in recent years in tribes and States forging cooperative agreements in certain parts of the Country to work together on criminal investigations, criminal prosecutions, the cross-deputization of police officers being a prime example. Chairman Dorgan referred to U.S. Attorney Troy Eid and his program in Colorado, where Federal commissions have been provided to State and tribal officers.

Those are all very good things. But by and large they are happening in a very local way in certain pockets of the country and not in others. I think if Congress were to provide incentives for that form of agreement, cooperation, that could be very helpful. In the State of Wisconsin, there has been a State program where the State has provided additional funding to those counties that enter into cooperative agreements with tribes. And what we have seen there is that the number of those cooperative agreements has grown exponentially. And from what I have heard, the experience has been a very positive one. So that is the second thing that Congress can do.

A third thing I think would be to—we haven't talked very much about the Public Law 280 States, but the States where by virtue of Public Law 280 the States have primary criminal jurisdiction, even with respect to Indian territories. There again, as with the Federal situation, the situation has been very mixed, but we have a lot of States, counties where the State authorities are not terribly interested in prosecuting these kinds of crimes. And if Congress were to act to make clear that the tribes have concurrent jurisdiction in those situations, so the tribes can act, whether or not the States are acting, that would again eliminate a jurisdictional problem and provide for increased enforcement and prosecution.

Senator TESTER. Thank you. I appreciate that.

I want to go to the other end of the panel. Ms. Arriaga, at the end of your testimony you said that crimes against Indian women were human rights abuses. Then you said that the United States had, the way I interpreted it, signed up with other nationalities, so to speak, but had not done anything with Native Americans. Could you expand on that a little bit, to give me a little better understanding of what exactly you are talking about?

Ms. ARRIAGA. What I was referring to was basically international law, which treaties we have ratified and which we have not that are international treaties. And what international human rights law is with regard to issues of sexual violence. So in that category, there are several categories that the United States has entered into

that are generally United Nations treaties that are the standard that, the standard-setter for human rights worldwide and the guiding post that Amnesty uses.

Amnesty International holds any government accountable to certain standards. That is what the treaties lay out. So in accordance with international law, these are in fact human rights abuses. In some cases, some parts of the world, when you talk about violence against women, it is considered cultural. It is not cultural, it is a crime. It is an abuse.

So that is why these standards exist, so that you can actually cut through and say, no, there are minimal standards and we have to recognize them. So some of the treaties that the United States has in fact ratified that apply would be, for example, the International Covenant on Civil and Political Rights. There may be some aspects of some other treaties that apply, too.

One that we have not ratified is the Convention on the Elimination of All Forms of Discrimination Against Women. One hundred eighty-five countries have, but the United States has not. The United States is one of eight countries that has not, even though we were instrumental in drafting that treaty. So that is one that looks at issues of discrimination and Amnesty believes that discrimination is a root cause of violence. Once you establish relationships that are unequal it becomes a lot easier to conduct violence. So that is one of our recommendations.

The other thing that I will mention very quickly is that the United Nations did pass just recently, of course there is the U.N. Declaration on the Rights of Indigenous Peoples. But specifically in September of this year, the U.N. General Assembly adopted the Declaration and that calls on all State governments to, and then in quotations, "consult and cooperate in good faith with the indigenous peoples' concerns through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."

So that is why Amnesty believes that the first step is to have a genuine consultation in good faith in order to determine with the tribal governments how to go forward.

Senator TESTER. Okay. Thank you very much. I appreciate that.

I just have—well, I have many more questions, but I am going to limit it to one more. It was something that Tammy Young said about the clergy being part of the problem, if that is what I heard. I am curious to know if you can expand on that a little bit because oftentimes that is the first place you turn.

Ms. YOUNG. Yes. As part of our packet that we submitted, there was about 105 pages of news articles that have been in the Anchorage, Fairbanks and other newspapers in Alaska. Several of them talk about a progression of years of abuse that both men and women as adults are coming forward.

When we talk about the effect of sexual violence and the reality that it is a multi-generational situation for many of our families, it is important for us to know where it is coming from.

Senator TESTER. Very good. Thank you. Once again, thank you, Mr. Chairman. I appreciate your putting this hearing together and the staff helping on that.

In a short close, I hope this isn't the last conversation, I hope it is the first of many, and I hope that we come forth with some policy initiatives that will really help, take some serious inroads to give hope back to Indian Country in this particular area. So thank you all for testifying.

[The prepared statement of Senator Tester follows:]

PREPARED STATEMENT OF HON. JON TESTER, U.S. SENATOR FROM MONTANA

Thank you for holding this important markup and hearing today, Mr. Chairman. We address several critical issues in Indian Country; housing, violence against Indian women and others.

I first want to recognize and thank all the folks in this room who have been working on these bills. I know that some of you have been working for years on them and want to thank your for dedication and hard work. I think all of us in this room have similar goals for our work on this Committee. And that, Mr. Chairman, is to improve conditions in Indian Country. We don't always agree on exactly how to accomplish those goals but, it's comforting to know that we're moving in the right direction.

Mr. Chairman, some folks, including Montanans, do have some concerns remaining with the NAHASDA bill. But, rather than slow down the momentum of this critical bill, I'll vote to pass it and hope that our staffs can work together on some report language or something to make sure that this bill translates into better housing in Indian Country for as many people as possible. I want to make sure that we improve conditions for everybody; not just ⅔ of the people, or ⅓ of the people, but for everybody.

Regarding the hearing this morning, Mr. Chairman, I can't thank you enough for shedding Congressional light on this critical issue. As you know, Indian women suffer from much greater rates of violence than non-Indians. This is outrageous. Mr. Chairman, Indians face too many challenges already. Indian women should not have to live in pain and fear.

I stand committed to doing everything possible to remove this damaging element of Indian life. I encourage everybody in this room to continue working together closely to solve problems and improve conditions in Indian Country. We can't afford to wait. While we deliberate, Indians suffer. Mr. Chairman, I'm going to vote to pass these bills today because they represent another step forward in improving Indian Country and look forward to future work.

The CHAIRMAN. Senator Tester, thank you.

Let me just say you have, as a first term Senator, just arrived, you have been a great addition to our Committee. We appreciate your participation. You come from a State that has reservations, I visited one with you and I know you care about those issues deeply. So Senator Murkowski and I are really appreciative of your participation.

And let me echo your comments to Ms. Rozell. It is, I am sure, very difficult to be public about these issues. And yet I suspect that you know that doing so is really advocating on behalf of others who perhaps can't or won't or feel that they are not able to do what you are able to do. So the Committee really appreciates your being here.

The work that Amnesty International has done, I think, is very important work. And I hope you will continue to do that, because I think it will be very instructive for us. To Ms. Young and Ms. Artichoker, your work at the local level is also, I am sure, work that gives hope to some people who have desperately needed that hope.

Mr. Kanji, we are going to call on you, we are trying to work through this maze of contradiction and conflict to see what could we do that could address some of these jurisdictional issues in a

way that recognizes, continues always to recognize the sovereignty issue. But in a way that reaches out and helps tribal governments with respect to their law enforcement and helps victims understand that if they are victimized, perpetrators will be brought to justice. That is very important.

So this is another of a series of hearings that we have held on these issues, law enforcement, violence, in this case violence against women. And Senator Murkowski and I were just talking about several other steps that we are hoping to take to both gather data and develop the basis on which to consult with tribes, which is very important to us. But second, then, reach consensus about what those consultations could allow all of us to do in concert that will address these issues in a meaningful way.

Senator Murkowski, do you have any final comments?

Senator MURKOWSKI. I do, Mr. Chairman. I think we are all troubled, troubled is a mild word. The violence that we see against women in this Country we know is simply not acceptable. And I applaud those that dedicate their lief as advocates to help end domestic violence.

But I am so troubled, Mr. Chairman, that within that sector of violence against women that our stories, because I don't want to even go to the statistics, we know our statistics are what drives it, we have to have the data. But it is really the stories of the violence directed toward American Indian and Alaska Native women. This subset of women, where we see the statistics doubled and tripled, to know that in my State, if you are a Native woman, the statistics, the chances of you being raped are two and a half times more than if you are a non-Native woman. Same place, same people around you, but if you are a Native, then the chances that you are going to be a victim are that much greater.

And it hurts to hear some of the stereotypes. But we have to figure out how we can provide for a level of protection, a level of safety for all women. But to know that within our American Indian and our Alaska Native communities that women are simply not safe is just not acceptable, Mr. Chairman. I appreciate the efforts of so many. But we have to get beyond just saying, thank you for the good work that you do. We really have to turn this around for the people in Alaska and the people all over Indian Country.

The CHAIRMAN. Senator Murkowski, thank you very much.

Let me make one additional comment. I was thinking about a hearing I held in this area, not just about women, but the area of sexual abuse. And I held that hearing in North Dakota some long while ago. And a young woman testified who was in charge, on one of our reservations, of social services and various issues related to that. And she was a woman in her mid-20's, had just taken that job. And she began testifying and she described a stack of folders in her office on the floor that represented complaints, in some cases sexual violence against children. She said the complaints have not even been investigated, there is nobody to investigate them. And then she said, if there is a young child who needs to go to a clinic for some tests or some medical treatment, she said, I have to go beg to borrow somebody's car to take them.

Then all of a sudden she stopped testifying, she broke down sobbing and couldn't continue, just couldn't continue. She was so

struck with grief about her situation. And a month or two later, she quit her job. But it describes why we are here and why there is an urgency and a need for us not to ignore this, but rather to address it. I am committed, I know Senator Murkowski and Senator Tester are as well, to make this hearing count and attempt to make some real progress.

I thank you very much for testifying. This hearing is adjourned.

[Whereupon, at 10:39 a.m., the Committee was adjourned.]

APPENDIX

PREPARED STATEMENT OF CHARON ASETOYER, M.A. (COMANCHE NATION); EXECUTIVE DIRECTOR, NATIVE AMERICAN WOMEN'S HEALTH EDUCATION RESOURCE CENTER

I would like to submit this testimony for the record to the Senate Indian Affairs Committee: Oversight Hearing to Examine Violence Against Native American Women that was held on September 27, 2007. Violence against women is against the law and that include crimes of sexual violence. Our history has illustrated that patterns of sexual violence against Native American and Alaska Native women occurs against a backdrop of systemic discrimination against Indigenous Peoples. When a Native woman suffers abuse, this abuse is not just an attack on her identity as a woman, but on her identity as Native.

The Fourteenth Amendment of the U.S. Constitution guarantees all Americans equal protection under the law. This means that the government has a legal obligation to intervene in sexual assault crimes against Native American and Alaska Native women just as it responds to sexual violence against other Americans. Failure to do so would be unconstitutional racial discrimination.

More than 1 in 3—Native American and Alaska Native women will be raped during their lifetime. Sexual assault against Native American and Alaska Native women is not met with uniform response and the challenges faced by survivors at every level increases the likelihood of impunity for perpetrators.

In January 2005 the Native American Women's Health Education Resource Center released a report entitled A Survey of Sexual Assault Policy and Protocols Within Indian Health Service Emergency Rooms. The Resource Center has put together this briefing paper on emergency room services and policies for Native American and Alaska Native women who go to an Indian Health Service facility for assistance after a rape or sexual assault. The findings of this survey are alarming and document a substantial gap in services.

- 30 percent of Service Units surveyed reported that they do not have policies in place for emergency services in case of sexual assault.
- 70 percent of the respondents indicated they have policies.
- 56 percent of Service Units have their policies posted and accessible to staff members. The statistics reflect a discrepancy between policy and practice.
- 44 percent of the facilities lacked trained personnel to perform emergency services such as the collection of evidence done in a police rape kit. For those facilities in the lower 48 states that do not provide emergency services for sexual assault, victims must travel long distance some over 150 miles to receive services. This figure does not include the extreme travel distances and challenges faced by Alaska Native women.

Indian Health Services could greatly reduce the number of sexual assaults within our communities if they would have trained Sexual Assault Nurse Examiners (SANE) and Sexual Assault Response Team (SART) programs within each Service Unit. A Sexual Assault Nurse Examiner is a registered nurse who has been specifically trained to provide care to victims of sexual assault and is capable of conducting forensic exams. In addition, a SANE collects the forensic evidence that is needed in court to get a conviction that would remove these perpetrators from our communities. Many of these perpetrators are repeat offenders and they know that nothing is being done to remove them from the streets so they are free to rape again and they do.

To strengthen the services provided to victims of sexual assault Indian Health Services must adopt a set of standardized Sexual Assault Policies and Protocols within Indian Health Service Emergency Rooms and all clinical facilities with SANE in place. This would dramatically reduce the number of perpetrators that on our streets.

Over the past 5 years Native American and Alaska Native women and a coalition of national organizations have been working to develop a set of Sexual Assault Policies and Protocols for Indian Health Service Emergency Rooms.

In 2005 this coalition took these policies and protocols to the National Congress of American Indians and NCAI passed Resolution #TUL–05–101 in support of adoption and implementation of these standardized sexual assault policies and protocols.

When Indian Health Service is asked about standardized sexual assault policies and protocols their repeated response is that they respect the sovereignty of Tribes and IHS does not impose standardized policies. With the passage of this resolution, which is a collective decision of sovereign Tribes, IHS stills does not implement standardized sexual assault policies and protocols. This is not respecting the decision or the sovereignty of Tribes, it is undermining the sovereignty of Tribes to work together.

IHS does not have standardized sexual assault policies and protocols in place; in addition the current process for approving a witness to testify in court, which is essential in order to get a conviction of a rapist, is so complicated that it does not occur. The request for an IHS staff to testify in court has to go through so many levels of approval that by the time it gets to Head Quarters it gets lost into some kind of a "black hole" never to be responded to or that it is so timely that the prosecution has no one to testify on the evidence and the case is lost, leaving the perpetrator to rape again.

To reduce the number of rapes that occur within Native American and Alaska Native communities the follow must happen:

1. Indian Health Service must adopt and implement Standardized Sexual Assault Policies and Protocols.
2. Train and place existing staff to become Sexual Assault Nurse Examiners (SANE) in all Indian Health Service Clinic Facilities.
3. Ensure that police rape kits are available all Indian Health Service clinics and facilities.
4. Simplify the witness testimony approval process, which currently prohibits needed court testimony from the appropriate medical personnel.
5. Modify the method of service unit collection data by giving sexual assault it's own category number so there are accurate statistics on the number of sexual assaults committed.

PREPARED STATEMENT OF DORMA L. SAHNEYAH, CHIEF PROSECUTOR, HOPI TRIBE

Good morning, Honorable Byron L. Dorgan, Chairman, Honorable Lisa Murkowski, Vice Chairman, and members of the U.S. Senate Committee on Indian Affairs, I am honored to present testimony today before the Committee.

I bring greetings to all from the Hopi and Tewa people and Chairman Benjamin H. Nuvamsa.

My name is Dorma L. Sahneyah. I am an enrolled member of the Hopi Tribe and belong to the Tewa Tobacco Clan on my mother's side. I serve the Hopi Tribe as Chief Prosecutor, a position I have held for almost 11 years after having completed my legal education at the Arizona State University School of Law. I currently also serve as President of the Arizona Tribal Prosecutors' Association.

The Hopi Tribe is a federally recognized tribe located in the State of Arizona. The Hopi Reservation, which consists of 1.5 million acres of land that extends into two counties, is located in the arid deserts of northeastern Arizona. As with other American Indian tribes that are located in remote areas, the Hopi Tribe faces many challenges and obstacles in keeping our community, particularly our women and children, safe from perpetrators of crime.

The Hopi Tribe is a non-gaming tribe that has over the past years relied primarily on revenue from coal mining operations to support government-based programs and services. The Tribe is however anticipating a shortfall of almost $8 million in Fiscal Year 2008 due to decreased revenue from the sale of coal from our lands. The Tribe is therefore reluctant to contract under Public Law 93–638 (The Indian Self-Determination Act) law enforcement programs from the Bureau of Indian Affairs (BIA) because it does not have adequate tribal funding to supplement what it anticipates will be an inadequate law enforcement budget. The BIA therefore continues to directly administer corrections, criminal investigations, and police services on Hopi. Today, ten BIA police officers patrol the entire reservation, and working three shifts means that often only one police officer is working an entire shift alone. One criminal investigator handles all cases involving major crime violations that are referred

for Federal prosecution. Many times Federal prosecution is declined because the cases have not been adequately investigated.

Programs to address domestic violence and sexual assault related issues for many tribes started after 1997 as a result of funding under the Office on Violence Against Women. Tribal prosecution offices benefit greatly from training opportunities from these programs and work very hard to address the cases that police officers bring on a regular basis. It is not unusual for my office to receive 5–7 domestic violence cases per week. A majority does not involve serious bodily injury and will not be referred for Federal prosecution. On the other hand, cases that involve offenses under the Major Crimes Act many times are not accepted for Federal prosecution.

Tribal prosecutors are facing the following types of problems in prosecuting domestic violence and sexual assault cases in Indian Country.

- Investigations typically are based and/or centered on the victim. The victim more often than not will recant; ask for charges to be dismissed; write new statements blaming themselves and/or that provide a self-defense claim for the defendant. This unfortunately is part of the untreated victim mentality. It is evident that more specific and extensive training is needed for all law enforcement officers. This should include training officers to build the case around the victim, not on the victim. This has been referred to as "victimless" prosecution or "evidence based" prosecution. Both require the officer to respond to domestic violence calls through a completely different process and procedure from the traditional police response that officers are trained to use. Officers must approach the investigation assuming from the outset that the victim may, for whatever reason, not be reliable, which requires the officer to gather collateral or circumstantial evidence in abundance.
- A lack of cooperation between tribal prosecutors and Federal agencies. This is a problem that could be solved by memorandum from the Attorney General's office to U.S. Attorneys and the Field Solicitor that represent and advise Federal agencies that operate on Indian lands. They generally are reluctant to allow Federal employees to be subjected to tribal court subpoenas. This includes, but is not limited to, Bureau of Indian Affairs Law Enforcement officers; Detention Officers; Dispatchers, Indian Health Service employees, such as doctors, nurses and other health care providers who treated the victim's injuries. On Hopi, the local IHS administrators will not allow medical staff to conduct sexual assault examinations, which requires then sexual assault victims to be transported hundreds of miles to be examined. IHS medical staff often is crucial witnesses. These individuals work within the territorial boundaries of the Reservation and pursuant to tribal law are under the jurisdiction of the tribal court; however legal representatives, generally, field solicitors, will refuse to allow Federal employees to cooperate in the tribal court process claiming they are exempt because they are Federal employees. This is a ridiculous and counter-productive policy, as well as disrespectful of tribal sovereignty and tribes' ability to self-govern. These are archaic positions whose time has passed. It is time for a cooperative and collective approach to all Tribal Issues by both the U.S. and the Tribes themselves. A practical solution is to change the Attorney General's position and policy on these issues. Foster an attitude of cooperation with Indian Tribes especially in cases where the Tribes are simply attempting to solve the problems of their communities, while the Federal Government seemingly is attempting to thwart those efforts.
- There is a substantial and seemingly intentional problem of communication and cooperation between the U.S. Attorney's office, Criminal Prosecution Department, Federal Law Enforcement; and Tribal Prosecutors especially on cases where the U.S. Supreme Court has found that both sovereigns possess "concurrent" jurisdiction over criminal violations that occur on Indian lands when the suspect is Indian. When such a case is being federally investigated, tribal prosecutors are not privileged to any information obtained or on the progress being made. The result of this practice is tribal prosecutors often are not aware that there is an ongoing investigation until a family member of the victim or the victims themselves contact the tribal prosecutor's office inquiring on the status of the case. This places the tribal prosecutor in a very difficult position on several levels. First, we cannot provide any information much less comfort our own tribal members that are going through very difficult times. Second, our jurisdictions generally have one to 2-year statute of limitations for filing criminal charges in the tribal court even in rape, assault, sexual assault, and homicide cases. Therefore, the time that the feds have the case runs against the Tribes' time to file charges. Third, the Indian Civil Rights Act limits Indian tribes to can only sentence offenders to a 1-year maximum incarceration and/or a $5,000.00 fine

(maximum). Many times after the Federal investigation has been ongoing for 6 to 8 months, the Federal investigator will forward the case to the tribal prosecutor with the announcement that the U.S. Attorney's office has declined to prosecute without explanation as to the reason for declining. Tribal prosecutors then are forced within a relatively short timeframe to build a case, file the charges, and try to figure out where the U.S. Attorney felt the case was so weak that they had to decline. In spite of this, Tribal Prosecutor's have still been able to gain convictions in these declined cases (which should raise its own inquires). However, as stated earlier, we can only ask for a maximum sentence of 1 year in jail and a $5,000.00 fine for what are sometimes egregious, violent crimes. Some of the issues identified could be remedied by simple policy changes by U.S. law enforcement agencies that provide services to Indian tribes. Other issues identified concerning sentencing abilities and jurisdiction over non-Indian offenders would require legislative action on the part of the U.S. Congress. Surely, the day has come for redefining and strengthening "dependent sovereign" in favor of the Tribes, just as it is with the States.

Nevertheless, the movement to end domestic violence in Indian Country has been initiated and we must not lose the momentum of change that is happening in our villages and communities. It is therefore more important than ever that the dialogue between Indian Nations and with you, as representatives of the Federal Government, continue in a respectful and meaningful way.

The intersect between economically depressed populations, high rates of alcoholism and drug abuse, domestic violence, sexual assault, and other similar problems and conditions present on a majority, if not all, of our reservations is complex and will continue to require a tremendous amount of Federal dollars to enhance our capacity to respond to these issues. We are aware that OVW has supported demonstration initiatives for Indian country, such as the Safety for Indian Women from Sexual Assault Offenders Demonstration Initiative. The Hopi Tribe patiently awaits results from this initiative and subsequent funding opportunities to address issues we now have, including refusal of the reservation based Indian Health Care Service Unit to provide forensic sexual assault examination services, which has placed further demands on already limited resources by requiring transport of victims hundreds of miles away from the reservation and timely response to court subpoenas for medical staff to testify in tribal court in criminal proceedings.

The pestilence of domestic violence, sexual assault, and stalking cannot be eliminated overnight. It is a persistent problem that needs to be addressed on the Hopi reservation year after year through services designed to work in a stark environment that lacks a stable economic base and that already is plagued with other social ills. The Federal Government must understand that it takes time and tremendous financial resources to develop the necessary infrastructure that will insure successful programs. The strides that have been made on Hopi are amazing considering the challenges and obstacles that the Tribe has faced, and continues to face, in implementing these programs.

And, just when we have managed to get our heads above water, here comes the Adam Walsh Act with its mandates and election and implementation timelines. Again, without adequate resources, we are challenged with building from ground up a functioning sex offender registration and notification system or face the risk of placing tribal sovereignty in jeopardy. Do not assume that tribes fail to understand the importance of having a sex offender registry system. The Hopi Tribe elected to opted-in to the registry program as we desire our children and people to live in protected, safe, and healthy environments; however the Hopi Tribe unfortunately is one of the economically poorest populations in the United States, and because of its remote location in Arizona, its population is far removed from resources generally available to other tribes. It is therefore not surprising that the lack of available resources—experienced personnel, technology infrastructure, and financial support—is the biggest obstacle the Tribe will face in implementing requirements of the Sex Offender Registration and Notification Act (SORNA). The challenges the Hopi Tribe faces in complying with the Adam Walsh Act requirements include, but are not limited to: (1) remoteness and size of the reservation; (2) lack of tribal expertise to develop and maintain a website; (3) lack of trained staff to deal with collection, storage and disposal of DNA evidence; (4) use of traditional Hopi names for registration purposes; (5) lack of a tribal sex offender registry ordinance; and (6) collaboration with state, county, and other tribal governments on jurisdictional-related implementation issues.

The Federal Government can play a key role by supporting and facilitating government-to-government dialogue between the tribes and with state agencies that

will result in cooperative agreements to aid the tribes in implementing SORNA requirements.

Lastly, it has become increasingly difficult to continue to ignore a glaring gap in the tribal criminal justice system's ability to hold all criminal offenders accountable. The fact that tribes are limited to misdemeanor level authority over serious crimes committed by American Indians only is a matter that must be discussed. The tribal courts are restricted to imposing criminal punishments of no more than a $5,000 fine and/or incarceration for 1 year, or both. We must begin the difficult, but necessary, discussion of enhancing the criminal penalties and the ability of the tribes to hold non-Indian offenders criminally accountable in tribal courts. Although, on the other hand, many tribes are currently facing serious detention issues, including inmate overcrowding, lack of jail facilities, dilapidating buildings and lack of trained staff. We have been told that there is no funding to support construction of adult and juvenile detention facilities for offenders. The Hopi Agency Bureau of Indian Affairs correction staff today transports inmates back and forth nearly 300 miles from the Hopi Reservation to Flagstaff on a daily basis. Juvenile offenders are transported for detainment to Gallup, New Mexico and Towaoc, Colorado, 300–500 round-trip miles away, and many times are turned away because there is no available bed space. We must together find a better solution and more efficiently utilize the funding that is supporting the way in which this problem is being addressed.

We must admit that these are persistent problems that the tribes need to address year after year with adequate Federal financial support and in collaboration with state agencies We look forward to working the U.S. Senate Committee on Indian Affairs to address crimes of violence that are being committed against Indian women in Indian Country by both Indian and non-Indian perpetrators alike and would be pleased to offer knowledgeable and dedicated leadership and staff from the Hopi Tribe to sit on a *national advisory work group* to address these important and complex issues.

Thank you.

PREPARED STATEMENT OF HELEN PARISIEN, SHELTER MANAGER, BRIDGES AGAINST DOMESTIC VIOLENCE

I have been Bridges Against Domestic Violence Shelter Manager for about eighteen months. During this period, I have worked with numerous women, mostly Native American, from several areas including but not limited to Minnesota, Montana, North Dakota, and primarily from Standing Rock and Cheyenne River Reservations in South Dakota.

Although the situations vary, they have several things in common. These include fear, emotional turmoil, transportation problems, and a general lack of financial resources.

One of the other things that the women have in common, is their refusal to contact law enforcement when an incident occurs. Rather, they wait until they have an opportunity to escape many times with only the clothes they and their children are wearing.

I have found it is not uncommon on the reservations for the perpetrators of violence continue with their lives without fear of law enforcement. Many times, they are living in the same house where the violence occurred despite laws which state a woman and her children do not need to leave a home due to domestic violence.

Due to jurisdictional issues, I have experience a disturbing failure of law enforcement to serve protection orders on abusers. If the protection order has not been served, the victim must resubmit the request to the court and repeat the entire process. This results in an unnecessary delay in helping to insure the safety of the woman and her children and takes up an unnecessary amount of court administrative time.

If after the second time an order is not served, the victim has a choice of either giving up, once again receiving limited protection under the law which is there to protect her and her family, or, begin the process again. To say it could easily take 8 weeks or more is not by any means an exaggeration.

One of the issues, which repeatedly arises and is a major contributing factor in the lack of reporting, is the length of response time or lack of response time when law enforcement is called. The following are some of my experience since beginning work at Bridges:

- I was called by the Standing Rock Police Department concerning a woman who had been severely beaten. The officer stated to me that if she did not enter our shelter, she would be killed. She had numerous bruised in various stages of healing, cuts, blackened eyes, and was wearing a cast. I asked her if the cast

was the result of this beating. She replied no. She had received the broken arm in a beating she had gotten 2 weeks before.

I spoke to her several times a day about her situation during her stay. In the course of those discussions, I learned that her abuser had told her if she tried to contact the police, he would kill her family. He also told her that since the police were so slow, he could have her family dead before the "cops" would even show up.

She told me she would like to have him prosecuted on this and we began the process. I had to make several telephone calls to the BIA Law Enforcement in Fort Yates, ND, and was sent through several offices before I could get through to an investigator. By the time the investigator and a FBI Agent came to interview the woman 6 weeks had passed. She said it was too late and, "See, I told you."

- I received a call concerning a young woman whom reported being physically beaten and raped. I again contacted the BIA Law Enforcement and requested than officers come down to investigate.

  Once again, I had to make numerous calls in an attempt to get cooperation from law enforcement and was again sent from office to office. When I finally reached the investigator, I was told he would be down that same afternoon to interview the victim. He did not come down.

  Another telephone call the following day said he would be down before noon. He again did not show up. This continued until the victim left the shelter a couple of weeks later. The police never did do an investigation.

  In continuing conversations with this woman, she told me that she lived in daily fear of being found by her abuser.

- I worked with a woman who had been severely beaten and raped on Standing Rock Reservation just across the river from Mobridge. After this assault, she was left along the road with little clothing on and was told by the abusers that if she told anyone they would kill her.

  She hid in the ditches for several hours while they repeatedly drove by looking for her. They left and she began to walk along the highway when a passerby picked her up and brought her to the Mobridge Police Department. She was brought to the Mobridge Regional Hospital for care and a rape exam.

  While there, the Mobridge Chief of Police repeatedly called the Standing Rock BIA Law Enforcement requesting an officer to come and interview her. After 4 hours, he was finally able to speak to a BIA officer—on the telephone—and assured the Chief of Police he would be down later.

  The woman came to our shelter expecting to be interviewed. I called the Standing Rock BIA as an officer had not come and was told an investigator would be down the next morning. He did not come. After yet another call later in the day, I was told the investigator would be down that same afternoon. He did not come.

  Consequently, the woman left shelter saying that if law enforcement was not going to do anything, she needed to leave the area fearing that the abusers would find her and carry out their threats.

- I received a call from a woman who said her partner had beaten her. She told me that he was in the area and that she had already call the Standing Rock police to report it.

  I received another call from her a few weeks later saying that her partner had returned home. He had heard that she reported him and again beat her. I asked it he had been arrested for the first beating and she said, "no" and that no officer had come to interview her either.

  This last beating was more severe and resulted she be in the hospital for life threatening injuries. Her life was saved, however, it took almost sixteen months before he was tried in Federal court.

While it may seem to you that these incidents are extreme, I am sorry to say they are the norm. I could list numerous other examples in which the same time periods and inability to contact or receive cooperation from law enforcement have occurred. Or, in which the victims have state they are afraid to call the police, even if they have been severely beaten, due to the slow or complete lack of response time. Women have a very realistic fear they may be killed while waiting for law enforcement.

I understand that there are several reasons for the responses we have received when working with BIA Law Enforcement, which include but are not limited to:

1. Mobridge's location borders on the Standing Rock Reservation. The examples listed above all occurred on the reservation but women come to Mobridge to shelter because there is no shelter on Standing Rock. This also places them in a different jurisdiction whereby local law enforcement cannot help them with the crime committed on the reservation.

In addition, it is worthy of note that if an assault occurs here in Mobridge, many times the perpetrator will go onto the reservation to escape prosecution and service of court papers-another jurisdictional issue.

2. Standing Rock is a large reservation covering area in two states, North and South Dakota. The communities within average 25–30 miles apart.

For the past few years, Standing Rock has experienced a sever shortage of law enforcement officer. There have been numerous times we have been told that there was only one officer on duty. Officers may be either in the very northern part of the reservation or out on another call. We have been told by Standing Rock dispatch that the officer would get to a woman's call when they have time no matter how life threatening the situation may be.

3. Thus, it is imperative that Standing Rock BIA Law Enforcement not only fill the present vacancies but also consider a program review to establish more positions. Response time by officers must be cut especially when Standing Rock women are beaten and raped. This can only happen when there is an adequate number of officers on duty at any given time.

4. Adequate training on the response of law enforcement to domestic violence and sexual assault/rape needs to be a priority for all Standing Rock law enforcement staff. Over the past year, two trainings have been sponsored by Bridges Against Domestic Violence for law enforcement in Mobridge and in Fort Yates on Standing Rock Reservation. Both events were facilitated by certified trainers and were of no cost to the departments. Standing Rock law enforcement failed to send even one person from their department to either of these.

Domestic violence and sexual assault/rape are an unpleasant fact on the reservations lived out by the Native American women who live there. In fact, when posed with the question "Do you know of any woman in this community who has not been beaten or raped?" women in a small reservation community responded they did not know of anyone.

Please do everything possible to help the women of Standing Rock reservation be safe in their homes and hold the abusers and rapes accountable for their crimes.

PREPARED STATEMENT OF THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY (SRPMIC)

Background

The Salt River Pima-Maricopa Indian Community (SRPMIC) is located in Maricopa County, aside the boundaries of Mesa, Tempe, Scottsdale, Fountain Hills and metropolitan Phoenix, Arizona. The enrolled population exceeds 8,000 and the total land base is 53,600 acres and maintains 19,000 acres as a natural preserve.

We estimate that 200,000 vehicles and 100,000 non tribal people enter the Salt River Pima-Maricopa Indian Community on a daily basis. Some of these individuals are here asemployees passing through to get to and from work, for business, to utilize the retail businesses located within the Community boundary, and we anticipate that the majority of the vehicle and non tribal people are just passing through. We are concerned about the potential for violent attacks against our women and Community members in general.

Violence Against Women Act (VAWA)

In 2005, Congress reauthorized the Violence Against Women Act (VAWA), which for the first time includes a Tribal Title (Title IX) that seeks to improve safety and justice for Native American and Alaska Native women, including by; carrying out a study that provides a comprehensive understanding of the scope and nature of sexual violence against Indigenous women and the barriers to justice Indigenous women survivors face; and establishing a Tribal Registry to track sex offenders and protection orders. VAWA would also provide critical resources to tribal authorities for criminal justice and victim services to respond to violent assaults against women. Full funding for the Violence Against Women Act is a vital and necessary step that the U.S. Government must take to ensure the effectiveness of these measures. The SRPMIC has developed several programs and has approved supplemental funding to protect our Community members.

SRPMIC Domestic Violence Program

With respect to the SRPMIC, funding ended in the year 2000. We received funding under the STOP Violence Against Women grant program and the Grants to Encourage Arrests program. When funding ended, the SRPMIC absorbed the cost for funding a:

- judge position dedicated to domestic violence cases.
- prosecutor dedicated to domestic violence cases.
- police officer dedicated to domestic violence cases.
- victim's advocate to assist victims through the administrative and judicial system.
- intergovernmental task force continues to address needs of community.
- grass roots women's advocate group continues to assist and raise awareness.
- counseling is available in the school system.
- mandatory domestic violence training was conducted for all employees.

The Community sponsors awareness events, assists in obtaining immediate shelter care, prosecutes offenders regularly, and is supportive in the movement to end domestic violence.

1. Funding Issues

Any new funding should focus on teen violence and even reach down to the grade school level to start awareness and promote self-esteem at an earlier age.

A. There are specific needs related to SRPMIC Domestic Violence Services, which are:

- funding to hire personnel to provide the ongoing support services such as the Intensive Outreach Services needed to just begin the building of trust between the Victim and the Domestic Violence Service Worker. That process entails numerous meetings with the victims.
- SRPMIC Male Victims who are in need of information and assessments are now coming forward asking for assistance. Their needs are different in numerous areas than the female victims.
- There is a need for expanded services for children involved in the domestic violence situations. Intensive services for children can help with prevention in the repetitive cycle of children either becoming perpetrators or victims.

B. With regards to funding under the Adam Walsh Act, the timeframe to prepare and submit a proposal prevented some tribes from being able to apply for funds. This short timeframe was contrary to the intent of distributing such funding to tribes with the highest needs.

2. Enhancing the Safety of Indian Women From Domestic Violence, Dating Violence, Sexual Assault and Stalking

A. Alternative Housing. In Indian Country the victim is remaining in the home throughout the incidents that occur. With each additional incident the intensity of the abuse increases leading to fatalities. There is a need for alternative housing for either the victim or perpetrator while services are being provided and during the transitioning of an individual once released from a counseling program where domestic violence was a contributing factor to substance abuse.

B. Shelter. Salt River is in desperate need of a shelter(s) that understands the needs of the Native Community. Outside shelters create too large of a learning curve for a Native client to be able to survive there for a long enough period of time. Oftentimes, shelters will not let males stay with their families, so that older sons are separated from their families.

C. Program for Perpetrators. A Perpetrators Program needs to be developed. We send the victim and their children to counseling but they return to the same home without the perpetrators' behavior changing to support the family in a healthy environment. A Perpetrators Program would require a male and a female counselor to conduct group sessions together, when appropriate, as well as a case manager.

3. Federal Legislation Efforts Regarding Consultation

Subsequent legislation such as the current VAWA Act continues to keep a light shined on the need to address domestic violence. But one consultation a year may not be adequate. Further, there may be issues that are occur more in one region than another, so there should be consultations that address the needs more specifically.

4. Federal Efforts Regarding Prosecution

The Department of Justice should make the prosecution of offenders a high priority. This should be a nationwide policy with all U.S. Attorney's Offices.

5. Re-Assumption of Criminal Jurisdiction Over Non-Indian Offenders

The Violence Against Women Act, like the Adam Walsh Act, has extensive reach into Indian Country. Both acts deal with the safety of women and children and the need to prosecute offenders. Both Acts put a tremendous burden on tribes. Tribal communities are very concerned for the safety of its members and residents. The harm being done in Indian Country was highlighted in the recent report by Amnesty International. The report stated that Department of Justice statistics found that:

- Native American and Alaska Native women are 2.5 times more likely to be raped or sexually assaulted than women in the USA in general.
- More than one-in-three Native women will be raped in their lifetimes.
- At least 86 per cent of perpetrators are non-Indian.

Currently, there is no tribal criminal jurisdiction over non-Indians who commit crimes within the jurisdiction of the Indian Community, but a tremendous burden to keep everyone safe. Travel through and between jurisdictions heightens the problem. Arrests and prosecution by city and Federal jurisdictions is minimal. Relationships between the tribal governments and the U.S. Government are on a government-to-government basis. In order to truly work toward making communities safe, jurisdiction over offenders in domestic violence and sex-offender registration must be returned to Indian Communities, even if on a limited basis. A pilot project should be developed. Eligibility should be determined on a government-to government basis, depending on the level of services the tribal government provided.

6. Advisory Board

The U.S. Department of Justice should appoint a Native American Advisory Board for issues that would directly impact Indian Country. This recommendation was raised to former U.S. Attorney Alberto Gonzales and his staff on August 27, 2007.

7. Support for Reauthorization of American Indian Health Care Improvement Act (AIHCIA)

The reauthorization of the AIHCIA must be a priority and also supported by the Department of Justice. Violence Against Women and Health Care go hand in hand.

Thank you for your time and consideration of these very important issues.

PREPARED STATEMENT OF THE U.S. DEPARTMENT OF JUSTICE

Introduction

The Department of Justice ("the Department" or "DOJ") is committed to helping combat violence against women in Indian Country. While we focus on investigation and prosecution of Federal crimes, we have a comprehensive range of efforts that include crime prevention and the provision of services to victims and at-risk individuals.

The Department's efforts in Indian Country are led by the Federal law enforcement agencies and the United States Attorneys. The United States Attorneys play the central role in seeking justice in Indian Country, and they are committed to prosecuting Federal offenses on Indian lands to the fullest extent of the law. The investigation and prosecution of these cases is challenging, but the United States Attorneys continue to dedicate resources to Indian Country and to work with tribal governments and law enforcement agencies to increase cooperation and to find solutions. The Office of Tribal Justice, the Office on Violence Against Women, the Civil Rights Division, the Office of Justice Programs, the Office of Community Relations Services, and the Environment and Natural Resources Division, among others, provide support for these efforts. The Department also works closely with our partners in other Federal departments and agencies and among state and tribal authorities.

The following sections of this statement address the jurisdictional context of the Department's efforts, describe some of the accomplishments of the Department with regard to crime in Indian Country generally and domestic violence specifically, and respond to recent criticisms of these efforts.

Background

Indian Country criminal justice issues are complex because of the unique relationship of the Federal Government to the hundreds of tribes, whose sovereign authority we are obligated to respect. In most areas of Indian Country, the Federal Government, Indian tribes, and states share responsibility for prosecuting crimes, depending on the nature of the offense and whether the victim or perpetrator of the crime is Indian or non-Indian.[1] Jurisdictional issues, therefore, play a substantial role in determining the path a criminal case in Indian Country takes. For example, first responders to violent crime incidents in Indian Country are most often tribal or the Department of the Interior's Bureau of Indian Affairs (BIA) police. In the case of Public Law 280 jurisdictions, state or local police are often the first responders to a call for assistance. Subsequent investigation of violent crimes can be initiated by tribal investigators, state or local detectives, BIA Criminal Investigators, or Special Agents from the Federal Bureau of Investigation (FBI), among others, depending on the jurisdiction. Finally, violent crimes occurring in Indian Country may be addressed in tribal, state, or Federal court, depending on the severity of the matter and the jurisdiction in which the crime occurred.

The following paragraphs provide some background on this complex subject.

Federal criminal jurisdiction. There are two main Federal statutes governing Federal criminal jurisdiction in Indian Country: 18 U.S.C. § 1152 and § 1153. Section 1153, known as the Major Crimes Act, gives the Federal Government jurisdiction to prosecute certain enumerated serious offenses, such as murder, manslaughter, rape, aggravated assault, and child sexual abuse, when they are committed by Indians in Indian Country. Among other things, Section 1152, known as the Indian Country or Inter-racial Crimes Act, gives the Federal Government exclusive jurisdiction to prosecute all crimes committed by non-Indians against Indian victims. The Federal Government also has jurisdiction to prosecute Federal crimes of general application, meaning those that do not require Federal territorial jurisdiction as an element such as drug and financial crimes, when they occur in Indian Country. Finally, the Federal Government prosecutes certain specific offenses designed to protect tribal communities, such as bootlegging in Indian Country, theft from a tribal organization or casino, unlawful hunting on tribal lands, and entering or leaving Indian Country with the intent to stalk or commit domestic abuse. The FBI, the BIA, and tribal law enforcement share responsibility for investigating Federal Indian Country offenses. In most cases, tribal law enforcement acts as first responders to Federal Indian Country offenses in their communities.

Tribal criminal jurisdiction. As part of their inherent sovereignty, Indian tribes have jurisdiction to prosecute all crimes by Indians in Indian Country. Tribes have exclusive jurisdiction to prosecute minor crimes between Indians, and, under section 1152, the option to prosecute minor crimes by Indians against non-Indians and thereby preclude a Federal prosecution for the same offense. Tribes also have concurrent jurisdiction to prosecute Major Crimes, although tribes are limited by statute to imposing 1-year prison sentences and $5,000 fines. Most tribal offenses are investigated by tribal law enforcement or the BIA, although the FBI may investigate crimes by Indians against non-Indians, which are often subsequently prosecuted by tribes if the local United States Attorney's Office refers the case.

State criminal jurisdiction. States have jurisdiction to prosecute offenses in Indian Country where both the victim and perpetrator are non-Indian, as well as "victimless" crimes by non-Indians. It should also be noted that Congress has authority to adjust criminal jurisdiction in Indian Country, and, in some cases, has delegated Federal responsibility for prosecuting Indian Country crimes to particular states or with respect to specific areas of Indian Country. As a result, under Public Law 280 and other related statutes, some states have jurisdiction to prosecute crimes by Indians in Indian Country, including Major Crimes and Inter-racial Crimes and even crimes between Indians.[2] Depending on the particular statutory scheme, that jurisdiction may be exclusive of or concurrent with Federal jurisdiction. State offenses are investigated by state and local authorities, although, again, it is common for tribal law enforcement to act as first responders to crimes in their

[1] A person is considered an "Indian" for purposes of Federal criminal statutes if they have Indian heritage and are recognized as an Indian by a tribe or the Federal Government. In nearly all cases, this is established by a person's membership in a federally recognized Indian tribe.

[2] The jurisdictional framework applicable in Indian Country is subject to adjustment by Congress, and Congress has done so in a number of cases. Most notably, Public Law 83–280, 18 U.S.C. sec. 1162, required six states—Alaska, California, Minnesota, Nebraska, Oregon and Wisconsin—to assume jurisdiction over Indian Country crimes and divested the Federal Government of jurisdiction to prosecute under the Major and Indian Country Crimes Acts in those areas, while giving other states the option to assume that jurisdiction under 25 U.S.C. sec. 1321.

communities, even when they involve only non-Indians. Many tribes and local law enforcement agencies have arranged cross-deputization or other cooperative schemes to accommodate their shared responsibilities for and interests in law enforcement in Indian communities.

These jurisdictional issues form the background and context for DOJ efforts in Indian Country, which we will now describe.

DOJ Efforts to Combat Crime Generally in Indian Country

Of the ninety-three Federal judicial districts, twenty-nine have some Indian lands within their jurisdiction. Each of these districts has at least one tribal liaison, an Assistant United States Attorney who is responsible for coordinating Indian Country relations and prosecutions. There are currently forty-four Assistant United States Attorneys serving as tribal liaisons. The tribal liaisons work diligently to identify and respond to the needs of the tribes within their districts. Because each tribe is a sovereign, and the challenges they face are diverse, solutions and strategies are best developed at the local level, in close consultation with the tribal government and, where possible, the state and local governments and the BIA.

The cases the Department prosecutes in Indian Country represent some of our most important and challenging work. Seldom do Federal prosecutors have the opportunity to work as closely with victims and communities as we do in Indian Country. That said, prosecuting violent crime, particularly sexual assault or domestic violence cases, poses unique challenges. These cases are some of the most difficult crimes to prosecute in any jurisdiction. By their very nature, these crimes involve the most intimate subjects and relationships, creating unique testimonial issues. In predominantly rural Indian Country, the vast distances police must travel often make it difficult for officers to timely secure crimes scenes, and thus also more difficult to collect and preserve evidence for use at trial. These difficulties are not reasons to forego prosecutions, only complicating factors that must be addressed in any prosecution.

Even with these challenges, the Department's dedicated public servants are successfully prosecuting cases in Indian Country. For example, in FY 2006, the last complete year for which statistics are available, the Department filed 606 cases against 688 defendants in Indian Country. That is nearly 5 percent higher than the average since 1994 of 580 cases against 643 defendants per year. In the same year, 82 cases went to trial, 13.8 percent more than the average of 72 cases each year since 1994. Finally, the conviction rate for Indian Country prosecutions in FY 2006 was 89.4 percent, slightly higher than the 86.2 percent average since 1994. Approximately 25 percent of all violent crimes investigated by United States Attorneys nationally occur in Indian Country.

The FBI also plays a significant role in Indian Country. Even in this time of heightened awareness of and demands on the FBI from terrorism investigations, Indian Country law enforcement remains important to the FBI. Notably, since 2001, the FBI has increased the number of agents working Indian Country cases by 7 percent.

The FBI investigates serious crimes in Indian Country, including murder, manslaughter, kidnapping, maiming, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, assault against person under age 16, arson, burglary, robbery, felony theft, and narcotics trafficking. Currently, two-thirds of the FBI's investigations fall into three top priority areas: homicide, child sexual and physical abuse, and felony assaults (including adult rape).

The FBI also utilizes the Joint Indian Country Training Initiative with the BIA to sponsor and promote training activities pertaining to drug trafficking. In FY 2007, the FBI will have provided more than 30 training conferences for local, tribal, and Federal investigators regarding gang assessment, crime scene processing, child abuse investigations, forensic interviewing of children, homicide investigations, interviewing and interrogation, officer safety and survival, crisis negotiation, and Indian gaming. Furthermore, the FBI's Office for Victim Assistance dedicates 31 Victim Specialists to Indian Country, serving 38 Indian tribes. The Victim Specialists dedicated to Indian Country represent approximately one third of the entire Victim Specialist work force.

Improving State, Local, and Tribal Capabilities to Fight Crime in Indian Country

In an effort to further strengthen the criminal justice response to crimes in Indian Country, the Department has joined with the BIA to train and commission state, local, and tribal law-enforcement officers so that they can properly exercise Federal jurisdiction over non-Indians who commit Federal crimes in Indian Country. This

cross deputization, or cross commissioning, of state, local, and tribal law enforcement increases the number of law-enforcement officials on the ground in Indian Country—all at little or no cost to the state, local, or tribal governments.

Although the BIA is responsible for law enforcement in Indian Country, state, local, and tribal governments regularly assist the BIA in responding to emergencies in Indian Country; however, the assisting agencies often do so without the ability to fully investigate and enforce Federal laws because the agencies lack Federal law enforcement training and credentials. To resolve this problem, the BIA for many years has trained tribal, state and local officers, giving them an opportunity to take an examination and if successful, receive Federal law enforcement commissions through the BIA. Unfortunately, many state, local, and tribal officers were not taking advantage of this training program, in part because of a lack of regional and local access to the training.

Recognizing that the training program was not being fully utilized, the Department and the BIA in February 2007 initiated a pilot program in the District of Colorado to allow the United States Attorney's Offices to offer local and regional training sessions. The program, hosted by the Southern Ute Indian Tribe, consisted of a 2-day training session ending with an optional Special Law Enforcement Commission examination administered by the BIA to cross-commission officers. This 2-day pilot program resulted in the cross-commissioning of 40 officers, making the program a resounding success.

In the months since the pilot program, more than 100 tribal, state, and local law enforcement officers have been successfully trained under this pilot program in the District of Colorado and have passed the required BIA test for cross-deputization. Moreover, based on the success of the pilot program, the Department initiated a "train the trainer" program in August of 2007 to train Assistant United States Attorneys serving as tribal liaisons throughout the country to offer the cross-deputization training and test in and around their respective districts. Also, in November of 2007, the Department and the National Congress of American Indians (NCAI) will be sponsoring a special cross-deputization training and testing course to be held in conjunction with NCAI's national convention in Denver, Colorado. This course is expected to be attended by law enforcement officers from Indian tribes across the United States.

The Department is committed to the success of the training program, which allows officers to cross jurisdictional lines with the ability to fully enforce Federal statutes against those who would commit crimes in Indian Country. With the full participation of tribal, local, and state agencies, this program will maximize resources, thereby offering greater protection to those living in Indian Country.

The Strategic Federal Response to Violence Against Women in Indian Country

The Department's efforts to combat crime in Indian Country, as described above, include the issue of domestic violence. In fact, in November 2002, the Native American Issues Subcommittee (NAIS) of the Attorney General's Advisory Committee of U.S. Attorneys made family violence in Indian Country, including sexual assault against women, a priority. In February 2003, NAIS adopted the recommendations of a working group tasked with developing a strategic Federal response to violence against women in Indian Country.

In response to these recommendations, members of NAIS worked with staff at DOJ's National Advocacy Center training facility to develop training opportunities for Federal and tribal participants focused on domestic violence in Indian Country. The training events were held in June 2003 in Seattle, Washington, and May 2004 in Phoenix, Arizona. Both trainings convened tribal and Federal advocates, law enforcement, prosecutors, and national subject matter experts to learn in a collaborative model how to better assist domestic violence victims and to hold offenders accountable. In January 2006, a new course was offered for Federal prosecutors and investigators at the NAC. The course title was "Prosecuting Federal Sexual Assault Cases Seminar." This training focused on issues specific to sexual assault cases, including medical evidence, DNA, special interview techniques, pretrial motions, the use of expert witnesses, and crime scene investigation. The last half-day of the training was dedicated to the investigation and prosecution of sexual assault in Indian Country.

In addition, the majority of the NAIS legislative recommendations were incorporated into the Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109–162), enacted on January 5, 2006. The NAIS proposals, now a part of the Act, include the addition of tribal court convictions for misdemeanor domestic violence under 18 U.S.C. § 922(g)(9), warrantless arrest authority for BIA officers in certain cases of domestic violence, and increased penalties for

repeat domestic violence offenders. We believe that these laws will prove to be powerful tools in addressing domestic violence in Indian Country.

DOJ Funding Support for Domestic Violence Prevention and Victim Services

The Department not only prosecutes crime in Indian Country, but also funds efforts to reduce crime in Indian Country, including Indian Country over which the states, not the Federal Government, have primary jurisdiction. Over the past 6 years, the Department has provided more than $642 million to tribal governments and law enforcement agencies through the Office of Justice Programs, the Office of Community Oriented Policing Services, and, especially, the Office on Violence Against Women (OVW).

At the heart of OVW's mission is the charge to help communities across the country to develop a coordinated community response to crimes of violence committed against women by using the force and effect of the criminal justice system to promote victim safety and offender accountability. Resource issues result in many tribes struggling to provide critical criminal justice infrastructure, such as law enforcement officers, courts, and prosecutors. Many tribes that do operate their own criminal justice systems struggle to fully fund such agencies. These infrastructure gaps can jeopardize the safety of all Native Americans, including Indian women. OVW grant programs have provided Indian tribal governments the opportunity to obtain funding to hire dedicated criminal justice professionals who can focus their efforts exclusively on responding to violence against Indian women.

Since its creation in 1995 following the enactment of the Violence Against Women Act (VAWA), OVW has awarded more than $100 million to Indian tribal governments, tribal nonprofit organizations, and tribal coalitions to combat domestic violence, sexual assault, stalking, and teen dating violence. In Fiscal Year 2007 alone, OVW awarded approximately $47 million in grant funding to Indian tribes and other non-profit organizations to address violence committed against Indian women. OVW currently funds more than 110 tribal governments and nonprofit organizations that serve more than 200 tribal communities. While much remains to be done to effectively address the high rate of sexual assault and domestic violence committed against Indian women, OVW, since its inception, has provided an array of resources to assist in this effort.

For example, through its Technical Assistance Initiative, OVW has sought to provide a broad range of very practical solutions to help tribal governments become more engaged in preventing domestic violence and sexual assault among their members. Over the past few years, OVW has supported several training and technical assistance events for its tribal grantees that have focused on sexual assault. The Southwest Center for Law and Policy, for example, has used OVW funding to support its highly successful National Tribal Trial Training College (NTTC). The goal of the NTTC is to provide Indian Country victim advocates, civil legal assistance attorneys, and criminal justice, social services, and health care professionals with the skills necessary to improve the adjudication of violence against Indian women cases in Federal, state and tribal courts. Previous NTTC training topics have covered forensic and special investigation issues in sexual assault, domestic violence, and stalking cases for tribal prosecutors and tribal law enforcement officers; developing effective responses to the intersection of stalking and sexual assault in Indian Country; and the development of trial skills for Indian Country sexual assault nurse examiners, health care practitioners, social services providers, and victim advocates in cases of sexual assault against Indian women. The most recent NTTC training was held in Seattle, Washington, this past July and focused on developing the capacity of tribal court judges and tribal court personnel to adjudicate sexual assault cases. An Assistant United States Attorney, specializing in the prosecution of violent crime in Indian Country, participated as faculty at this training.

In addition to tribal governments, through the Tribal Domestic Violence and Sexual Assault Coalitions Program (Tribal Coalitions Program), OVW funds broad anti-violence coalitions of grassroots community organizations, often composed of affected women who assume a leadership role in advocating for systemic change. Funding from the Tribal Coalitions Program currently supports the operation of twenty-two tribal domestic violence and sexual assault coalition programs across Indian Country. The tribal coalitions funded by OVW provide training to both Native and non-Native organizations and agencies that serve Indian victims of domestic violence, sexual assault, and dating violence. They also conduct public awareness and community education campaigns in tribal communities to increase the public's understanding of violence committed against Indian women, and provide technical assistance to the tribal government victim services programs and tribal nonprofit programs that make up their membership. The work that these coalitions have done

with Indian tribal government leaders and community members, as well as Federal, state, and local leaders, to raise awareness about violence committed against Indian women has had a tremendous impact on national policy.

The Department also believes that access to forensic medical examinations is critical to both the successful prosecution of sex offenders and the recovery of victims. Ideally, all persons who report or disclose a recent sexual assault—including Native American women—should have access to specially educated and clinically prepared sexual assault forensic examiners (SAFEs) who can validate and address their health concerns, minimize their trauma, promote their healing, and maximize the detection, collection, preservation, and documentation of physical evidence related to the assault for potential use in the legal system.

To advance the goal of increased access to SAFE professionals, the Department has funded two technical assistance projects. First, OVW entered into a cooperative agreement with the International Association of Forensic Nurses to disseminate the Attorney General's National Protocol for Sexual Assault Forensic Examinations (the Safe Protocol) and to assist jurisdictions with implementation of such protocols. Second, OVW and the National Institute of Justice jointly made an award to the Interactive Media Laboratory at Dartmouth Medical School to develop an advanced distance learning program, known as the SAFE Virtual Practicum, for health care practitioners who perform or may perform sexual assault forensic medical examinations. The SAFE Practicum walks students through the steps of a forensic medical exam, guided by the process outlined in the SAFE protocol. It also includes a virtual clinic with clients and mentors, lectures, and interviews with experts and victims. The Department anticipates that the completed Practicum will be available to practitioners this fall.

Finally, three of the Department's Violence Against Women Act (VAWA) grant programs fund or encourage improved access to forensic medical exams. First, since its enactment in 1994, VAWA has mandated that, in order to receive STOP Violence Against Women Formula Grant Program (STOP Program) funds, states must certify that victims will not incur the full out-of-pocket costs of forensic medical exams. 42 U.S.C. § 3796gg-4(a)(1). The Violence Against Women and Department of Justice Reauthorization Act of 2005 amended this requirement to permit states to use STOP funding to pay for those forensic medical exams. This amendment took effect in Fiscal Year 2007. In addition, since the inception of the STOP Program, states may use STOP funds for expenses related to the forensic exams, such as purchasing rape kits and forensic equipment, training medical professionals to perform the exams, and witness fees for those medical professionals. Tribes are eligible to receive STOP funds as sub-grantees of states. Second, under the Grants to Indian Tribal Governments Program, tribes may choose to fund forensic medical exams, including personnel, training and equipment costs. Third, under the Rural Domestic Violence, Dating Violence, Sexual Assault, Stalking, and Child Abuse Enforcement Assistance Program, grantees—including Indian tribal governments and tribal nonprofit organizations—may use program funds to improve access to forensic medical exams.

Responses to Recent Critiques of DOJ Efforts

As discussed earlier in this testimony, the Department continues to work with tribal governments and tribal entities to prevent and respond to domestic violence and sexual assault in Indian Country in a variety of ways. Recently, statistics have been cited for the proposition that high levels of violent crime in Indian Country are not being addressed by Federal law enforcement. These accusations are largely based on misreadings of statistical studies that deal with a subject that is inherently difficult to quantify. It is unfortunate that this misunderstanding has detracted from the successful work being done by tribal, Federal, and state prosecutors to eradicate sexual violence in Indian Country.

One of the Department's studies that has been misunderstood in relation to Indian Country is *American Indians and Crime, A BJS Statistical Profile, 1992–2002,* which relies on the National Crime Victimization Survey (NCVS) to provide data on the level and nature of victimization among American Indians in the general population.[3] Although *American Indians and Crime* is a significant publication, the data in the report primarily reflect the experience of Native Americans living *outside* of Indian Country. Less than one-third of 1 percent of households in the NCVS sample are occupied by Indians residing in Indian Country. This sample size is insufficient to produce a reliable estimate. Thus, the statistics in that report cannot, and do not, speak to crime occurring in Indian Country. Instead, the report is reflective of those

[3] *American Indians and Crime, A BJS Statistical Profile, 1992–2002* is available at: *http://www.ojp.usdoj.gov/bjs/abstract/aic02.htm.*

crimes occurring *outside of* Indian Country, an area in which Federal jurisdiction is limited by the Constitution and the Congress.

In addition, even considering the unreliable sample size of households in Indian Country, the NCVS cannot generate estimates of violence on reservations, in tribal communities, or on trust lands because the sampled households in NCVS are derived from geographic units that include reservations, but do not uniquely identify them. Moreover, during NCVS interviews, Native Americans self-identify themselves, but do not provide details of tribal affiliation. As a result, the NCVS sample is not reflective of Indian Country and can only provide estimates of victimization rates among American Indians residing off the reservation, where the states, not the Federal Government, are responsible for general crimes of violence.

That said, the Department recognizes the need for better data on crime occurring in Indian Country and, consequently, has increased its efforts in this field. The Bureau of Justice Statistics (BJS) is working with State Statistical Analysis Centers (SACs) to generate State Based Tribal Crime Reports. BJS has actively sought to generate estimates that compare tribal (reservation or tribal community) crime to jurisdictions adjacent to the reservations. This localized comparison provides a truer picture of criminal activity on tribal lands than does an aggregated national average that is possibly skewed for a variety of factors. BJS is currently working with BIA to obtain such data from six states (including data from 40 tribes) in the West.

In addition, the Department is currently in the process of establishing a task force to assist the Department in conducting a National Baseline Study to Examine Violence Against Women in Indian Country under VAWA 2005. The members of the task force will possess a broad and varied knowledge of the complexities of Federal Indian law, the nature of domestic violence, dating violence, sexual assault, and stalking committed against American Indian and Alaskan Native women, and the cultural considerations that must be observed when conducting research in tribal communities. OVW is working to ensure that the proposed nominees will maintain a geographic balance representative of many of the challenges unique to Indian Country. In creating the task force, the Department is taking steps to ensure that the task force is established as a Federal advisory committee under the provisions established by the Federal Advisory Committee Act.

This task force will assist the National Institute of Justice (NIJ) in the development and implementation of a national baseline study to examine violence against Indian women in Indian Country. In particular, the NIJ study will examine the types and magnitude of violence against women in Indian Country; will evaluate the effectiveness of Federal, state, and local responses to violence against native women; and will propose recommendations to increase the effectiveness of these responses. Within the study, the crimes that will be reviewed include domestic violence, sexual assault, dating violence, stalking, and murder.

Finally, statistics alone do not convey the on-the-ground reality of DOJ's efforts. For example, many districts with Indian Country responsibilities have dedicated specific task forces, government-to-government meetings, or multidisciplinary teams organized to work cooperatively with the tribes on issues related to sexual assault. Moreover, significant liaison work performed by Assistant United States Attorneys and victim's advocates with the tribes is not susceptible to statistical description.

Conclusion

The Department of Justice recognizes and is committed to helping meet the law enforcement challenges in Indian Country, including in the area of domestic violence and sexual assault. The Department believes that each tribe, as a sovereign government, is best positioned to craft sustainable, culturally appropriate, and effective solutions to the diverse problems they face. However, the Federal Government is a vital partner in these efforts, and the Department will continue to work with tribes, state and local law enforcement, and the Department of Interior to meet these challenges.

Initial Report and Recommendations

of the

Alaska Rural Justice and Law Enforcement Commission

2006

Introduction

For years, Alaska Natives, the government of Alaska, the federal government and others have sought the most effective way to provide law enforcement and access to the justice system in rural Alaska. In 2004, following a number of statewide forums and discussions, the United States Congress created the Alaska Rural Justice and Law Enforcement Commission to review federal, state, local and tribal jurisdiction over civil and criminal matters in Alaska (Public Law 108-199). The Commission was formally appointed by the U.S. Attorney General and charged with providing recommendations to the Congress and the Alaska State Legislature regarding ways to improve the quality of justice and law enforcement in rural Alaska.

The reach of the Commission's work extends to all areas of rural Alaska. In the enabling legislation, this is defined as those areas outside of the Municipality of Anchorage, the Fairbanks North Star Borough, the Kenai Peninsula Borough, the Matanuska-Susitna Borough, the City and Borough of Juneau, the Sitka Borough and the Ketchikan Gateway Borough.

Meetings and public hearings were held beginning in early October 2004. The Commission also established four working groups to address the key areas of the Commission's charge: law enforcement, judicial services, alcohol importation and interdiction, and domestic violence and child abuse. The workgroups met weekly from January 2005 through April 2005 and developed over 100 options that the Commission reviewed. The options it adopted were organized into nine general recommendations that form the outline of this report.

The Alaska Rural Justice and Law Enforcement Commission's charge has been extended and the Commission will work to ensure implementation of the recommendations contained in its "Initial Report and Recommendations."

Initial Report and Recommendations of the Alaska Rural Justice and Law Enforcement Commission

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In Memoriam

Eric D. Johnson
April 27, 1965 – May 6, 2005

Eric D. Johnson, a tribal rights attorney for the Association of Village Council Presidents in Bethel, committed hundreds of hours to the work of the Alaska Rural Justice and Law Enforcement Commission, both offering testimony and serving on the law enforcement workgroup. In so doing, Eric strived to foster greater cooperation and mutual support between State and tribal law enforcement systems.

Eric came to Alaska in 1994 as a summer law clerk for the Sierra Legal Defense Fund. After graduating with distinction from Stanford Law School in 1995, he returned to Alaska to serve as a law clerk to then Chief Justice Allen Compton of the Alaska Supreme Court, and for a second year served as the law clerk for the then Chief Judge Alex Bryner of the Alaska Court of Appeals.

From 1997 to 1998, Eric was an Alaska Legal Services Corporation staff attorney in Barrow, after which he received a prestigious two-year fellowship from the National Association for Public Interest Law to work in Anchorage for the Native American Rights Fund.

Eric's significant litigation activities included a successful challenge to a 1998 referendum declaring English to be Alaska's official language; a challenge to Alaska's law enforcement system for rural villages; multiple cases to enforce tribal government rights under the Indian Child Welfare Act; and successful litigation challenging the Alaska Legislature's attempted repeal of a court rule protecting plaintiffs who bring public interest lawsuits against the State of Alaska.

Eric's work also included extensive representation of Alaska Native hunters and fishermen before the Alaska Fish and Game Boards and the Federal Subsistence Board, as well as subsistence litigation. He also provided legal assistance to many villages throughout the Yukon-Kuskokwim Delta.

In 2003, the American Civil Liberties Union of Alaska honored Eric's life work with its Liberty Award as a Champion of Equal Rights.

Eric is remembered for his humility, compassion and good natured interactions with others. The Commission commends Eric's dedicated service on the law enforcement workgroup and his valuable contributions to the Commission's work.

PREAMBLE

To provide context for the readers of this Report, the Alaska Rural Justice and Law Enforcement Commission sought a personal statement from an elder resident of rural Alaska who could convey the "sense of place." Alice Abraham, a respected Yup'ik Elder, agreed to prepare this preamble to the Report. Alice has spent many years working in the mental health and substance abuse prevention and treatment fields in rural Alaska and has personally experienced problems that are addressed by the Commission. Alice's is an individual oral history, and there are as many different oral histories from rural Alaska as there are residents of rural Alaska. Alice expresses many experiences, perceptions, and feelings that represent those of other rural Alaska residents.

The Commission feels that this brief oral history, dictated by Alice and transcribed by staff, helps to convey the deeply felt – and deeply personal – sense of community, sharing, tradition, and support that prevails in rural Alaska.

The Importance of Place in Rural Alaska
Alice Abraham[1]

I spent my formative years in the small village of Nightmute on Nelson Island, and traveled to various camps during different seasons with my family of grandparents, parents, aunts, uncles, cousins, and other relatives, gathering food and supplies for the winter. I certainly appreciate people who have chosen to continue this lifestyle and to continue to live in their villages. They have an existing support system of family members, Elders, and other community members. The fondest memories I have of my childhood are living in a winter village and when the spring came we went to a spring camp to hunt geese, ducks, trap muskrat and other small games, then travel in a boat to a fish camp, Umkumuit, to join the rest of the community to continue harvesting food from the ocean and surrounding area. The women in the villages are busy for days, cleaning and braiding the herring around their heads and then hanging them up in the racks; cutting up their seal meat to dry; and other games and fish from the ocean and nearby river. Once those chores are done, then they would start weaving baskets to trade for the goods when the barge Northstar came in from Seattle. And all the children – as children we anticipated having the first taste of fruit, of oranges and apples. It was one of the best treats to die for!

I also went with my father to haul goods from the barge to the villages of Tununak and Nightmute. I used to be fascinated with the man who directed the traffic of unloading the boxes into the boats. He would often toss either an orange or apple to the children that came. That was about the only time I had a chance to have a whole fruit to myself. And then I get to eat it slowly, savoring every bite of it, 'cause once we'd go home my Dad would bring bags of oranges and apples, and my mother would cut up the apples or oranges into quarters to make them last.

When the fish and meat were dried and seal blubber is rendered in their skins, the men would take them to the food caches, and the preparation for berry picking would start. Each family went to their favorite spots to gather berries and fish for the last summer fish, to dry and smoke. Once these tasks were done we returned to the main village for the winter, the rest period for the food gatherers for awhile, then they would prepare for the winter. These activities were

[1] As she explains in this brief oral history, Alice Abraham grew up in Nightmute and has spent most of her life in Western Alaska. She became involved in behavioral health services in the mid-1980s and later pursued and completed her Bachelor's Degree in the field. She lived in the Copper River Basin and continued to be involved in mental health and substance abuse services until she lost her battle with cancer and passed away on November 29, 2005.

continuous. Those who worked hardest to gather food and supplies had easier times than those who worked haphazardly, but of course, no one went hungry or without things they needed. These lazy ones were often visited by Elders and encouraged to do better next time.

As children, we were watched and supervised by adults in the community. We were corrected if we were to misbehave or act inappropriately. We were often fed by whichever household we happened to be at. If our parents or older siblings come looking for us, someone always seemed to know where we're at.

The lifestyle in the villages has changed because of the influence of the Western world that came with their educational system, which has caused conflict with traditional family values. Of course the television brought the rest of the world into our homes, as have the Alaska Native Claims Settlement Act, the Pipeline, Molly Hootch,[2] and all the other modern technology. But our subsistence lifestyle has not changed except for the fact that the state and federal agencies have brought their rules and regulations as to when we can hunt and fish. Some people from the Outside can't seem to understand why we need to harvest or the importance of the subsistence lifestyle.

For me, living a subsistence lifestyle is the very essence of who I am as a Yup'ik woman. I have continued to cut and clean fish, caribou, moose, or other games as my mother and grandmothers and aunts have done for centuries. And living in a village has given me a sense of belonging, a sense of who I am, which has sustained me to this day. Oftentimes today so many Native people are misplaced, like in the cities they become homeless, of course looking for company, or when they get lonesome they often end up in places where it's not safe for them, and usually they end up drinking and drugging. People seem to have lost their sense of who they are and where they come from, or many of them have never learned, because they were placed in foster homes as children, and I think those are the people oftentimes who are very lost, because they have no sense of identity.

I remember the time when I went back to Bethel, and during that time I reconnected with my Elders and my people. I got back into that way of living again, even though it was modernized, but I still had that essence of who I was, who I had come from, and where I belonged. My children and I lived there for eight years, and while we lived there my children got to know their relatives, all their relatives that were around. And what we did was, we built a community, a support system that was very satisfying, and my children recall those were the happy times. I mean life was hard, but in all it was a pretty good life.

Then in 1985 we moved to Anchorage to continue my college education. The first two years were a very hard time for us, because we no longer had that support system like we did in Bethel. Even though we had friends and relatives, they were all scattered throughout the city, and everybody was rushing, working, and too busy even to take the time to visit. So we really didn't have that support system any more. It was a very difficult period. I think the first three or four years, and I think my children suffered from that, and to this day I'm really sorry that I brought them into the city. I think we would have been better off living in the village or living in Bethel. So that's what happens a lot of times to people who move into a city. There's no – in the cities we lose that connectedness to other human beings. It's very lonely living in a city, there are all kinds of people around us, but it's a very lonely time.

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[2] See http://www.alaskool.org/native_ed/law/mhootch_erq.html for information on this important court case that brought schools to most of Alaska's rural villages.

I cannot stress how important it is, as a Yup'ik woman, knowing who I am, knowing where I come from, and knowing the history of my people. I can never be anybody else. I am who I am. It's really sad that as Yupiit and other Alaska Native people we can never be accepted as just human beings that have a different culture, and I don't understand that, because as a Yup'ik person I was brought up to accept other human beings, regardless of their race, into my home, to welcome them, and I still do, and it's sad that a lot of times it's not reciprocated. But I have no control over people's ignorance and their prejudice, and that's how they choose to live and then that's their problem, it's not my problem. I have to maintain my integrity of who I am. It is the right place for us. It is our home, and I always will be proud that I grew up in a village, I was raised in the village by my family and all the other adults in the village, and it has enriched my life, and I will always have a special connection – when I go to villages, I will feel at home. I'll always have a connection with the people there, and when I introduce who I am and I tell them whose family I come from I find out that I have relations, especially in the Bethel region and Dillingham area, I have relations... I am related somehow or another to someone, and they make us feel welcome or they made me feel welcome, and how wonderful that is. Even sometimes when you're a stranger, you go out to a village and you take the time to get to know the people and you make friends there, you will be their friends forever. They will never forget your kindness, your gentleness, whatever you have brought there with you that is good. They will never forget that, and they will always recognize who you are, and they will always acknowledge you when they see you.

Executive Summary

Created by Congress in 2004 (Public Law 108-199), the Alaska Rural Justice and Law Enforcement Commission is charged with the task of studying four broad areas related to rural Alaska: law enforcement, judicial services, alcohol importation and interdiction, and domestic violence and child abuse. Meetings and public hearings were held from early October 2004 through June 2005, and the Commission also established four workgroups of professionals, experts, and officials working in fields related to these four topics, numbering 50 Alaskans in all. The workgroups met weekly from January 2005 through April 2005 and developed over 100 options that the Commission reviewed. In reviewing these options, the Commission also considered the many hours of public testimony offered in hearings held across Alaska. The options it adopted were organized into one of the following nine general recommendations.

1. Engage in More Partnering and Collaboration

One of the most significant outcomes of the Commission's work was engendering collaboration among a broad spectrum of stakeholders in trying to address the four issues before the Commission. In order to continue the dialogue, this Commission recommends that its work continue for the next three to five years. Given the dearth of resources and the daunting nature of the problems facing rural Alaska, the Commission urges more collaboration among the various governments involved. It specifically recommends collaboration on developing a number of agreements that will better coordinate law enforcement and judicial services in rural Alaska.

2. Make Systemic Changes to Improve Rural Law Enforcement

Responding to its first charge, the Commission offers several recommendations to improve law enforcement in rural Alaska, including the development of a statewide, uniform, and tiered system of certification and training for police and public safety officers with a reasonable opportunity for advancement that could culminate in qualifications to seek full police certification by the Alaska Police Standards Council. It further recommends expansion of police and public safety training, changes in state law to help law enforcement reduce the importation of alcohol into dry rural Alaska villages, and a ban on written order sales of alcoholic beverages to "dry" or "damp" communities.[3]

3. Enlarge the Use of Community-based Solutions

The Commission was impressed with the public testimony and evidence that demonstrated the importance and success of approaches responding to the immediate and cultural needs of communities that are *locally* driven. To this end, the Commission recommends amending State statute to allow the Division of Juvenile Justice to delegate authority to tribes to enable the sharing of resources with respect to tribal juvenile offenders, with other amendments to permit tribes to participate in juvenile proceedings and juvenile delinquency treatment. It further recommends expanded funding to help non-profit organizations and rural Alaska communities develop new programs at the local level to increase prevention, intervention and treatment of domestic violence and child abuse. 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. To help reduce the amount of alcohol reaching dry communities, the Commission recommends the establishment of alcohol distribution centers, such as the one established in Barrow, in damp hub communities, restricting alcohol sales to residents of those communities only.

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[3] A "dry" community is one in which alcohol may be neither sold nor possessed. A "damp" community is one in which alcohol may not be bought or sold, but may be possessed.

4. Broaden the Use of Prevention Approaches

The Commission concluded that there are insufficient substance abuse prevention approaches in rural Alaska. The Commission recommends expanding culturally appropriate prevention programs to reduce the demand for alcohol in rural Alaska, starting with youth, linking youth with adults in healthy activities, and providing more information to schools. There should also be more education, prevention, and early intervention programs targeting domestic violence and child abuse in rural Alaska; specifically, the development of new prevention curricula to be implemented in kindergarten through eighth grade, teaching respect, establishing interpersonal relationships, healthy lifestyle choices and the importance of remaining substance free.

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. However, there remains a great need to expand therapeutic approaches. Alcohol and drug abuse treatment programs should be expanded in rural Alaska, with a system of longer-term residential care in hub communities (including programs for women with children) matched with a network of aftercare services in rural villages. Substance abuse, mental health, and dual diagnosis treatment options for youth also need to be strengthened, as well as therapeutic courts, and group homes for children in need of aid who are not appropriate for or unable to access foster care. By changing State regulations to allow close relatives caring for children in need of aid to receive the same level of financial reimbursement that non-relatives now receive the availability of care in rural Alaska could be greatly expanded.

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

Cultural identification and modeling are important in 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 correctional system in Alaska, there is a great – and growing – need to recruit and employ Alaska Natives in these systems. As a result, the Commission recommends the implementation of a focused recruitment effort to bring more Alaska Natives and rural Alaskans into the correctional, law enforcement, and public safety workforce. It also recommends increasing the training and utilization of Village Public Safety Officers as probation officers in the villages and contracting with tribes to oversee community service work, which would increase the supervision of offenders on probation and parole in rural Alaska.

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 offices and holding facilities in rural Alaska; 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

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

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), which includes broadband telecommunications services in most rural Alaska communities. However, in the hundreds of rural Alaska villages that are part of the AFHCAN, other organizations do not have access to existing broadband capabilities. To improve communication within the law enforcement and judicial systems in rural Alaska, the Commission recommends changing current regulations to allow rural police, public safety officers, and court 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[4] for the new community distribution centers.

Finally, noting the importance of consistent monitoring and evaluation of the implementation of its recommendations, the Commissioners ask that Congress extend their appointments or authorize the creation of a successor commission to oversee implementation, continue the dialog among justice stakeholders that has been nurtured by the Commission, conduct additional research, monitor the recommended pilot projects, and evaluate the impact of these new and expanded activities into the future.

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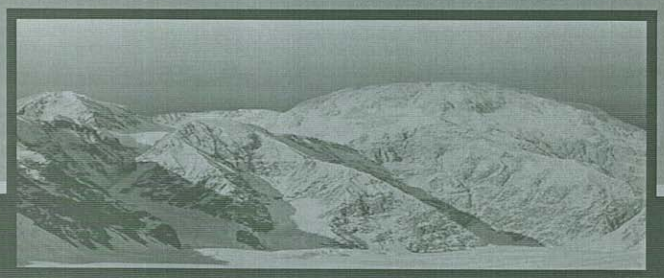
[4] Process to obtain alcoholic beverages from a licensed vendor when delivery, purchase or possession is not otherwise prohibited by law.

Chapter I



Statement of Need

Chapter I. Statement of Need

The Alaska Rural Justice and Law Enforcement Commission was created by Congress to respond to a number of needs related to justice and law enforcement in rural Alaska that are detailed in the congressional language (Public Law 108-199). This chapter of the Commission's Initial Report and Recommendations reviews current conditions in rural Alaska, recounts the history of law enforcement in rural Alaska, recognizes some of the improvements in rural Alaska that have occurred in recent years, and presents excerpts of the testimony given to the Commission during the public hearings.

A. Current Conditions

1. Problems the Commission Has Been Asked to Address

Like other communities nationwide, residents of remote, rural Alaska grapple with family violence, child abuse and neglect, and alcohol addiction. Unlike other communities, however, many remote rural residents in Alaska lack a law enforcement presence in their communities and they face the highest alcohol abuse and family violence rates in the country. Congress asked the Commission to explore various options that might address these issues, including creation of a unified law enforcement and judicial system, cross deputization, and restorative justice methods to address family violence, child protection and alcohol consumption.

Alcohol abuse presents profound challenges in rural Alaska; its effects are insidious, affecting and influencing the health and welfare of all who live there. As the Alaska Natives Commission reported more than a decade ago:

> Facts do not lie: alcohol abuse among Alaska Natives equals tragedy for family and village. It is proven that alcohol abuse equals violence, imprisonment, and death. It is proven that alcohol abuse in the Native family results in frightened, psychologically disordered children. Alcohol abuse leaves FAS, FAE, and a myriad of other physical and psychological symptoms in its destructive wake.[5]

Last year the Institute of Social and Economic Research (ISER), University of Alaska Anchorage, in its *The Status of Alaska Natives Report 2004, Volume I*, stated, "Analysts say that the most difficult social problems in the Native community – from high rates of suicide to domestic violence and child abuse – can be traced in large part to alcohol."[6] The costs to Alaska are not only social. Financially, it is estimated that alcohol abuse cost Alaska well over $525 million a year.[7]

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[5] *Alaska Natives Commission, Final Report, Volume II.* Anchorage, AK: Alaska Natives Commission, 1994, p. 70. Note: Fetal Alcohol Syndrome (FAS), Fetal Alcohol Effects (FAE), and Alcohol Related Birth Defects (ARBD) are now combined into the Fetal Alcohol Spectrum Disorder (FASD), which is the term used in this report.

[6] *The Status of Alaska Natives Report 2004, Volume I.* Anchorage, AK: University of Alaska Anchorage, May 2004, p. 3-24.

[7] *Economic Costs of Alcohol and Other Drug Abuse in Alaska, 2005.* McDowell Group, Inc., December 2005, p. 1.

The Commission emphasizes that alcohol abuse and alcoholism in rural Alaska are not *Native* problems, *per se*, but rather problems for Natives and non-Natives alike. But the Commission also acknowledges that over 66 percent of the population in rural Alaska is Native[8] and that recommendations in this report that mention the importance of culturally appropriate approaches predominantly focus on Alaska Natives. Many may be adopted for non-Natives living in rural Alaska as well.

The consequences of substance abuse and the corresponding importance of finding effective means to prevent alcohol and other drugs from reaching rural Alaska communities that have, through local option laws, decided to ban, partially or wholly, alcohol[9] are important threads in the fabric of society in rural Alaska, as they have been in the Commission's work over the last 10 months. Numerous statistics point to the continuing – and in many cases growing – overrepresentation of Alaska Natives from rural Alaska among children in need of aid, victims and perpetrators of domestic violence and sexual assault, and other crimes. The percentage of Native children under the care of the Office of Children's Services hovers close to 50 percent and the numbers of Native youth and adults in Alaska's juvenile justice and correctional systems are similarly disproportionately large. The justice systems in rural Alaska struggle to find locally and culturally appropriate ways to manage offenders in a way that minimizes negative impacts to families and communities and strives to restore harmony quickly. There are frequent "disconnects" between tribal and State court systems, and disputes over jurisdiction continue throughout rural Alaska. In the meantime, rural residents criticize the inadequacies of current law enforcement and public safety in much of rural Alaska, but an affordable and acceptable resolution has yet to be found.

Domestic violence, child abuse, child neglect, and sexual assault are major problems in rural Alaska. The following quote highlights the experiences of one Alaskan researcher:

> In Alaska, we often see abusive partners who have relocated their families to remote communities to isolate them from the support of their friends and family, and to more easily track and control their movements. Victims may be held hostage in their own homes with no winter clothing or means of escaping their extreme isolation. Deprivation and isolation become powerful tools to control victims.
>
> One survivor, who shares her story to help others understand the dynamics of abuse in rural communities, described how her husband stranded her and their new baby at a remote fish camp for several weeks without enough food, medications and other essentials. Eventually, she was able to escape her abusive marriage and became a domestic violence outreach worker to remote villages in the Arctic. Although she struggles with debilitating, long-term health problems secondary to the abuse, she survived. Her former husband murdered his next wife.

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8 See Section B.2 of this Chapter for the relevant population statistics.

9 Alaska's Local Option law has five categories: (1) Sale by community license only, (2) Sale by selected licenses only, (3) Ban sale, (4) Ban Sale and importation, and (5) Ban possession. For a detailed history of alcohol control in Alaska see http://www.iser.uaa.alaska.edu/Publications/Alcohol_Arctic.pdf

> When domestic violence services are available in rural regions, they face additional challenges in maintaining security and accommodating rural lifestyles. In Alaska, none of the shelter locations are secret – the communities are too small to hide a facility. Maniilaq Family Crisis Center, a victims' assistance program and shelter in northwestern Alaska, offers a safe haven to victims and the animals that they are often unwilling to leave behind. The center uses a snowmobile to pick up clients and has a fenced yard where clients can keep their dog teams and other animals. Susan Jones, the center's executive director, takes threats against victims' pets seriously. The murder or mutilation of a pet by an abusive partner is another indicator of escalating domestic violence.[10]

Statistics reported by the Alaska Council on Domestic Violence and Sexual Assault highlight the seriousness and widespread nature of the situation in Alaska:[11]

- In calendar year 2004 the Office of Children's Services received 957 reports of suspected child sexual abuse. (*Office of Children's Services, State of Alaska*)

- On average, an Alaska woman is forcibly raped every 15 hours and 14 minutes. (*Alaska Uniform Crime Report, 2003*)

- In 2004 Alaska had the highest rate of reported forcible rape among the 50 states: 85.1 per 100,000 inhabitants. The next closest were New Mexico with 54.6 and Michigan with 54.2. (*Alaska Uniform Crime Report, 2003*)

- Based on 2002 homicide data nationwide, Alaska ranked number one in the nation for females murdered by males with a homicide rate of 4.84 per 100,000. This is 3.5 times higher than the national average and 1.6 times higher than the next highest state. (*Violence Policy Center, 2004*)

- From December 2004 to December 2005, 686 victims of sexual assault sought services from victim service programs in Alaska. *(Council on Domestic Violence and Sexual Assault, State of Alaska*)

- 316 sexual assault cases and 295 sexual abuse of a minor cases were referred to Alaska District Attorney Offices in 2005. (*Department of Law, State of Alaska*)

Domestic violence, child abuse, child neglect, and sexual assault, especially in rural Alaska and in the Alaska Native population, represent major issues that need new, creative solutions to resolve.

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[10] Linda Chamberlain, M.P.H., Ph.D., January/February, 2002, "The Network News," National Women's Health Network, Washington, D.C. The article is available at http://www.womenshealthnetwork.org

[11] "Statistics on Sexual Violence: What and where to find them." Alaska Council on Domestic Violence and Sexual Assault. Prepared by Denise Henderson, Executive Director, March 5, 2004.

Part of the solution may lie in enhanced or altered rural law enforcement. Accordingly, the Commission also has been asked to study issues related to law enforcement in rural Alaska. A brief history will help put the current systems in perspective.

2. Brief History of Law Enforcement in Alaska[12]

The U.S. Cutter "Bear" was one of the few signs of the United States' new legal authority along most of coastal Alaska in the early territorial days. Revenue Marine Captain Mike Healy, its legendary captain, was described in the *New York Sun* in the 1890s as "a great deal more distinguished person in the waters of the far Northwest than any President of the United States. ... He stands for law and order in many thousands of miles of land and water...." Healy was frequently called upon to act as a peace officer and to administer legal and extralegal forms of justice.

In the late 1800s the evolution of law enforcement in Alaska continued with the U.S. Army and Navy being the sole law enforcement authority throughout the vast Territory. Later, U.S. Marshals were appointed but were far too few in number to meet the law enforcement needs of the territory. In the tumult of the gold rush period, both Skagway and Nome first brought to focus the need for an additional statewide law enforcement organization to supplement the U.S. Marshal's Office (which continued to bear the responsibility for law enforcement in Alaska for the next 40 years).

Federal Territorial Judge James Wickersham followed the "floating court" tradition of Healy and other cutter captains in 1900, traveling by cutter with an entourage of 18 jurors from Valdez, to preside over a felony trial in Unalaska in the Aleutian Islands. His trip led to regular summer journeys in which the court, with judge and jurors, traveled by Revenue Cutter along the Alaska coastline and came ashore where needed to administer justice.

2a. Alaska State Troopers[13]

In 1941, the 15th Territorial Legislature established the Territory of Alaska Highway Patrol for the purpose of enforcing the traffic code – but it did not provide the new organization with police authority. In 1945, as lawlessness continued to thrive outside the jurisdiction of local police departments, the members of the Alaska Highway Patrol were deputized as Special Deputy U.S. Marshals. In 1948, the Highway Patrol was given the full authority of peace officers to enforce the laws of the Territory.

In 1953 the Territorial Legislature established the Alaska Territorial Police to provide law enforcement services for the entire Territory: the total strength at that time consisted of 36 officers. The Alaska Highway Patrol had already gained a reputation as an elite corps, and formal training became its hallmark.

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[12] Quoted almost verbatim from the University of Alaska Anchorage Justice Center's website – http://justice.uaa.alaska.edu/images/features/crimjust.html

[13] This section is almost verbatim from www.dps.state.ak.us/ast/trooperhistory/

With the advent of statehood in 1959, the name of Alaska's statewide enforcement agency was changed to the Alaska State Police, and the organization became a division of the Alaska Department of Public Safety. The new State Police added 13 former U.S. Marshals and 10 new recruits to its ranks, increasing the number of State Police to 78 commissioned officers. During this time the State Police also provided "contract officers" for communities that were willing to pay for trained law enforcement. Kotzebue was the only community located in rural Alaska that had "contract officers" in the early years of Alaska's statehood.[14]

In 1967, the agency's name was changed to the Alaska State Troopers. The Troopers focused their work in areas of Alaska that were not being served by community police and began to offer more sophisticated services to law enforcement organizations statewide. Also in 1967, the Public Safety Training Academy marked its first year of operation. Today the Alaska State Troopers number approximately 383 commissioned officers.[15]

2b. Village Public Safety Officers

When Bill Nix was appointed Commissioner of the Department of Public Safety in March 1979, he ordered a study and a restructuring of the village police officer program, which led to a proposal by James Messick (a member of the Office of Director of the Alaska State Troopers) to create the Village Public Safety Officer Program. Messick's proposal began by describing the situation that prevailed in rural Alaska at that time:

> Public safety in rural Alaska is perhaps the most neglected aspect of village life, and this poses a serious threat to the bush residents inhabiting about 200 villages....
>
> Consider that rural Alaska:
>
> - Suffers the highest loss of life and property due to fire within the United States, and indeed the industrialized Western world;
> - Suffers the highest loss of life due to boating mishaps and drownings in the United States;
> - Is one of the most inaccessible areas of the United States to obtain assistance from law enforcement agencies;
> - Is one of the most inaccessible areas of the United States to obtain major medical emergencies assistance;
> - Leads the State, and perhaps the nation in the incidence of search and rescue missions;
> - Leads the State in incidence of alcohol abuse and alcoholism; and
> - Has the least developed local resources to address these problems of the State, and possibly the entire United States.

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[14] The other "non-rural" communities were Kenai-Soldotna, Seward, and Palmer.

[15] For a map showing the location of Alaska State Trooper outposts, see Appendix A.

> It is safe to assume that no group of Caucasian communities would tolerate similar circumstances, and that they would demand equal protection under the law.[16]

The proposal goes on to list the functions of the new Village Public Safety Officers (VPSOs), which are (a) law enforcement, (b) water safety, (c) fire service, (d) emergency medical service, (e) search and rescue, and (f) village ordinances. The plan was for one person from each village to be broadly trained in all aspects of public safety, including all of the six listed functions. The Officers were to receive three levels of training. The first level was an initial one-week survey course to present an overall view of the public safety field. Second was a four-week session consisting of two weeks of law enforcement, search and rescue, water safety, and local ordinance development; and two weeks of emergency medical training. Third was one week of fire fighting and fire prevention. Completion of this training would result in:

1. Certification by the Alaska Police Standards Council (APSC) as a Village Police Officer;
2. Certification by the State of Alaska as an Emergency Medical Technician (EMT);
3. Certification by the Department of Education as a Rural Fire Fighter I; and
4. Award (of an as yet undetermined number) of college credits by Sheldon Jackson College / University of Alaska.[17]

It was envisioned that the early phase of the training would take place close to the VPSO's home community and that later phases would be held in hub cities. Some of the first training sessions were held in Nome and Kotzebue. The fire training was planned to be coordinated with the State Fire Service Training Program, which was in the process of constructing training facilities in Anchorage, Fairbanks, Kotzebue, Bethel, and Juneau.

The initial funding for the program was proposed to be federal Comprehensive Education and Training Act (CETA) funds granted to the Native non-profit corporations, but, because CETA funds could be used to pay for only the first 18 months of employment, it was acknowledged that "alternative means for funding must be developed to meet the objectives of both the Village Public Safety Officer and CETA programs."[18]

The VPSO Program was implemented in 1981, with 52 positions throughout the State (i.e., working in approximately one fourth of the villages of rural Alaska). The training has been expanded to a nine-week program, all of which now takes place at the Public Safety Academy in Sitka. Five of the basic areas are still covered: (a) law enforcement, (b) fire fighting, (c) search and rescue, (d) water safety and (e) emergency medical services. VPSOs also receive annual refresher courses. The management authority for the VPSO program resides with three entities: the village where the VPSO is located, the regional non-profit Native corporation that receives the funds from the Department of Public Safety, and the Alaska State Troopers. Currently the corporations that manage VPSOs include the Aleutian/Pribilof Islands Association, Association of

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[16] Messick, M. James "Village Safety Officer Program." *Alaska Justice Forum*, 1979, *3* (6): 1, 6-10, p. 1.
[17] *ibid*, p. 7.
[18] *ibid*, p. 9.

Village Council Presidents, Bristol Bay Native Association, Kawerak, Tanana Chiefs Conference, and KANA (which also assumed the management of the program previously managed by Maniilaq Manpower, which no longer exists). VPSOs are employees of their respective Native corporations; not the State. Much of the program's financial support is from the State, appropriated by the Legislature as a single line item in the Alaska State Troopers (Department of Public Safety) budget.[19] Additional support comes from Congressional appropriations to the State, from regional corporations and from participating communities. This support reflects the importance that all parties, particularly the State and regional and local participants, place on the VPSO program for public safety.

3. Improvements in Rural Alaska

While many problems remain in rural Alaska, the Commission wants to emphasize that there have been many major improvements as well demonstrating that even entrenched, intractable problems can be addressed. These include significant installations of water and sewer systems – that are well on their way to eliminating the "honey bucket" in rural Alaska – as well as health clinics, bulk fuel tank farms and rural energy. There have been large increases in broadband access to the Internet in rural Alaska that have enabled the Alaska Federal Health Care Access Network (AFHCAN) to reach almost all of Alaska's rural villages and substantially improve health care in those villages, and a similar expansion in the access that rural Alaska schools have to the Internet is also occurring.

The Department of Public Safety increased the number of Troopers assigned to rural areas substantially over the past 15 years, and particularly in the last two. The State is investing in rural Trooper housing to aid in efforts to attract quality law enforcement personnel to serve rural Alaska.

In recent years, the State has made significant alcohol seizures and interrupted long-established bootlegging enterprises. The Department of Public Safety adopted strategies to curb the flow of illegal alcohol and drugs into rural communities by strengthening its resources, developing collaborative efforts with other agencies, and identifying this challenge as a top priority for the Department. It formed the Alaska Bureau of Alcohol and Drug Enforcement (ABADE) as a statewide entity focusing only on alcohol and drug issues, and augmented its rural investigator positions. The Department formed the Major Offender Unit within ABADE to target high-volume bootleggers and drug dealers.

The Alaska Legislature has also increased the number of prosecutors and expanded the available tools for enforcement, and the Department of Law is implementing a Rural Prosecution Team with financial assistance from the federal government. Notwithstanding these efforts, there remains a desperate need for a greater law enforcement presence in most rural communities. In addition, the Department of Public Safety's resources continue to be over-extended as it absorbs law enforcement responsibilities for municipalities which are dissolving their police departments because

[19] For a map showing the locations of VPSO positions, VPOs, and CPOs, see Appendix A.

of a lack of funding and increased costs, such as the city of St. Mary's, which shuttered its police department on July 31, 2005.

Another temporary improvement can be attributed to the funding that local communities and tribal organizations have received from the U.S. Department of Justice, particularly through the COPS program.[20]

Also, rural Alaska is populated with many good-willed people who, when given resources, have done much to improve conditions across the State. The Commission heard from many such people as it took testimony, some of whom are quoted in this report.

4. Voices from Across Alaska

During the many public hearings that the Commission held, Commissioners heard from dozens of citizens from many parts of the State, who collectively contributed hours of oral testimony and pages of written testimony. All of these are available on the Commission's website (www.akjusticecommission.com) and some of the more poignant statements from the testimony are included in this section. Because of space limitations, only a few quotes can be included, and the reader is urged to seek out the testimony of others on the website.

> *"We have a single Assistant District Attorney here and file almost 700 criminal cases a year. The office is understaffed for the amount of work that there is to be done and that's something that should be addressed also. The issue with juveniles is real. We struggled with it here for a long time. We are in desperate need of some kind of a secure facility in which to house juveniles and to house juvenile programs. That's a real big issue for us."*
>
> ***Paul Carr***
> ***Chief of Police, North Slope Borough***

> *"We have a Community Residential Center, a six-bed facility here in Barrow. But we're closing it this next year because we can't afford to keep it open. The State only gives us $75 a day to keep the six beds funded. . . . But it costs us $425,000 just to put the minimal staff and package. We've had requests to drop from two staff on at all times down to one staff. That's reasonable to us. It's six beds. It's been denied because the Department of Corrections says that you must have two on at all times. But we also have our two requests in to increase our bed capacity from six beds to 12 beds. At 12 beds, we could almost keep it; it's almost paying for itself. But it does a couple of things. One, it keeps men and women in the community; children, fathers, husbands, uncles. You get the idea. And therapeutically, that's incredible. They get to their appointments, they're successful with substance abuse treatment, with mental health treatment."*
>
> ***Neal George, Acting Director***
> ***North Slope Borough Health Department***

[20] See http://www.ojp.usdoj.gov/archive/topics/fy2002grants/ and http://www.cops.usdoj.gov/

"[M]any of the laws that we have right now are more easily enforced in larger urban areas, but it's difficult for villages in rural Alaska to sometimes strictly adhere to those. One of the things that I can point out in particular is the process for petition for protective orders in domestic violence situations. They become increasingly more complicated in villages because of many reasons. One of them is that oftentimes victims must expose themselves to more danger in order to get their paperwork processed."

Nicole Gray, Counselor/Advocate
Arctic Women in Crisis

"These are my personal views. I am not speaking today on behalf of the Alaska Court System. I feel the State Justice System on the North Slope is able to provide much better service than is possible in most other rural areas of the State. Dedicated judges and magistrates are present in most rural hub communities, but the people of the North Slope have made the financial commitment to have professional police officers in each of the villages and Barrow. Each community has a police station that includes a holding cell. Those defendants appear by phone with the Barrow Court and serious cases are flown to Barrow for the hearings. The combination of the local State-funded court facility with the Superior Court judge and magistrate and the Borough-funded police services helps maintain the credibility and effectiveness of State law enforcement for criminal cases, including domestic violence."

Michael Jeffery, Superior Court Judge
District 2
Barrow, Kotzebue, Nome

"I wanted today to very strongly support the idea that an effective judicial system or social services system for Native communities has to be in that Native community, from that Native community, based in the Native communities. And I just wanted to raise a few points in connection with that. First, I cannot imagine Americans accepting a judicial or social service system run by Japanese or Chinese any more than I can imagine the Japanese or Chinese accepting us setting up a system for them. I think the same applies in the Native communities. It goes further than that though. It's more than just an issue of local control. . . . [W]e still have a lot of, I guess I would call it, ignorance or even ignorant sincerity. Still ignorance in terms of how the Native communities work. You can't base a good system of justice or social services on well-meaning sympathy or ignorance. That just won't do it. It doesn't work."

Anthony Kaliss, Ph.D., Ass't Professor
Social Science
Ilisagvik College, Barrow

"One of the problems that we do have is – as it's been a recurring theme here – that the law enforcement in the villages makes it very hard for families to receive assistance and safety. We end up needing and wanting to bring women and their children into Kotzebue. We have a shelter here and sometimes that's all we can do to keep someone safe – is to take them out of their own home away from their families and their relatives and put them in Kotzebue, which is not always comfortable, especially when you're displaced and having trouble in your family. That's hard enough, but then to have to come to a big town like Kotzebue and stay in a shelter, that's even more scary and upsetting."

Susan Jones, Coordinator
Maniilaq Family Crisis Center

"I think most of us agree that dealing with major crimes, major felonies are best handled by the State system. But the rest of it that leads up to it can be prevented. But you can't prevent it from a regional hub or from Anchorage or Fairbanks. The people themselves have to be involved. We have been trained for the last 100 years or so to not do anything for ourselves. So now when you say okay, what can you guys do? We keep our mouths shut because you never back us up if we try. That's where this fear comes from. If anybody in a village testifies against somebody, chances are that person – even if they're arrested – will be back in the village in a day or so to cause you heartburn because that's the way the courts work. You don't have to wait for two years 'till they get out for their crime; they'll be back in a couple of days to take care of you. So what you have to do is not only give us the authority to take care of the local problems, not the major ones, but the local ones – but back us up. Because your systems don't work up here – either the federal or the State. You have to give us the authority to be free to take care of ourselves."

John W. Schaeffer
NANA Regional Elders Council

"In order for the villages to be empowered to handle issues, they need fully educated, trained, organized tribal courts. Each community has a unique way of handling issues that affect individuals and families. We need to make sure that we continue to have workshops for capacity building to have strong tribal courts. Many of the minor criminal matters and others can be handled at the local level.

"Since alcohol is the main problem, we need to outlaw [alcohol] completely [in] dry areas or regions and not allow the regional hubs to remain damp, like in the case of Bethel. Otherwise we need to have controlled bars or liquor stores. Bootlegging is a major problem in our communities. Right now in Akiak they are selling between seventy dollars and a hundred dollars a bottle and that's what the going rate is. And maybe in Bethel it's around fifty dollars a bottle. There is no middle ground for this. I think going completely dry would be easier to enforce in Bethel. Otherwise, if it's damp, the liquor's being brought in and then it's a haven for bootleggers there."

Mike Williams, President, RurALCAP
Akiak

"Alcohol and drug abuse has devastated our region, and the majority of crimes committed and the deaths that occur are alcohol related. We have an extremely high rate of rape and domestic violence, and we have some of the highest suicide, child sexual and physical abuse and fetal alcohol syndrome rates in the State. We're told time and time again that the State of Alaska's figures are higher than the rest of the nation's. Despite the alarming statistics, due to funding constraints, we often provide a Band-Aid solution and can't provide adequate long-term intervention and prevention services; nor do we have much-needed rehabilitation services in our region. Our only residential treatment facility was closed in 1999 due to lack of funding and there are no treatment options for sex offenders.

"The State provides funding for the VPSO program, but it is the only means of public safety in our villages. But the annual allocation provides funds for only nine positions in our region. Furthermore, what Kawerak receives does not provide adequate pay for a very difficult job in which there is a very high turnover due to burnout as well as little support for a very stressful job.... A few of the villages have Village Police Officers in their communities, but with the dwindling resources for city governments, these positions may soon cease to exist."

Denise Barengo, Executive Director
Nome Eskimo Community

"[W]e're 10 times the national average for suicide and over 20 times the national average in teenage suicide. And our region here leads the State of Alaska. . . . There's nothing more heartbreaking for me as a physician, or for caregivers at the hospital, or in fact for anyone to see, [than] one of our youth taking their own life or do[ing] something to cut down such a promis[ing] future . . . .

"Almost all, not all, but almost all of these suicides attempts and suicide successes are while under the influence of alcohol and/or drugs. . . . It's very rare that we get a suicide attempt where alcohol is not involved. It's also very rare that we get domestic violence, child abuse, incest, [or] rape where alcohol is not involved. . . .

"[W]ithin the last several years [the Alaska State Troopers have] been doing a lot more search and seizures at the point of entry. . . . The airlines have the ability now to contact the Troopers if they think that alcohol is being imported into a place where that's against the law, and that is working.

"I think 60 percent of all of our health care dollars could be used for something else, if . . . we did away with all alcohol and tobacco. I have no numbers to back that up. But numbers that I do have . . . [are] that between 30 percent to 40 percent of all of our patients seen in the emergency room are directly related to alcohol use; 30 percent to 40 percent of just the emergency room visits. . . . [B]etween 50 percent to 60 percent of all admissions to the [Norton Sound Health Corporation's] hospital were directly related to alcohol use.

David Head, M.D., Chief of Staff
Norton Sound Health Corporation

"The current situation is that we seem to have a continuous role modeling of domestic violence, neglect and abuse. . . . There's a great need; it's big and it continues to grow. Two, there's a lack of education and funds [to address abuse]. And while we wait, domestic violence, neglect and abuse rages on. The youth and those who need protection continue to receive devastation in their lives. And three, we need to break the silence that shame, pain and fear has created because [of] domestic violence, neglect and abuse in the past and up until now. This is stored up in our hearts and causes us to react in defensive and survival methods. And then bringing back safety and teaching along with personal stories gives us the strength to visit the impacted places that hold us captives of the past; being free from the past. . . . And then the fourth was, how would we like to see our community: to see our communities throughout Alaska free of domestic violence, neglect and abuse, to see them enjoying healthy family relationships and the children reflecting wellness by playing and enjoying childhood, the community working together to support each other."

Tobias Shugak
Family Wellness Warriors Initiative
Southcentral Foundation

"This problem is all over the world, I think. . . . The liquor flows into Bethel here from Anchorage. And Bethel is voted dry—[there are] not supposed to be any bottles; only in the house. But the bottle walks out from the house all over. . . . One of the guys [from a neighboring village] told me that every time the snow machine trail is open, liquor's open. It goes out to the villages. So I've been trying to find somebody to talk to so it can be solved. It could be solved, I think. There's a way. But we need help. . . .The booze is killing the life. I think the life is more important than the booze."

Billy McCann, Bethel

"The collaboration between our community and the tribal court has been very effective due to the fact we are dealing with our problems locally. To keep our tribal court strong and continuing we need support from the State of Alaska to honor our tribal court orders and support our efforts in stopping the illegal flow of alcohol and drugs into our communities. Our tribal court orders include searching for illegal drugs and prohibited alcohol.

"Our tribal court has gone through tough challenges involving alcohol interdiction. They have stood up and are saying, 'Enough is enough!' Members of our village are now going to airplanes and boats to search suspected people and bootleggers for illegal importation of alcohol. They confiscate this alcohol and destroy it. These people don't want any more deaths or any more alcohol related accidents to happen. We have seen too many children and families torn apart and future generations affected due to alcohol and drugs. All this is preventable. We know that." ***Shannon Johnson-Nanalook***
Traditional Council of Togiak

"Wa'qaa. Ca'mai. I'm Kathy Melbook. A little bit English. Twelve years old, school. Okay. I like to find out—I need help for Bethel. I live in Bethel. Bethel, too many bootleggers. Too many marijuana, Bethel. How come young boys, young girls kill for self? I need help. You and me and council together for work, find out. How come young guys, young boy kill for self? Okay. That's all. I'm done."
Kathy Melbrook, Student, Bethel

Again, the Commission would have preferred to include much more of the testimony in this report but was constrained by costs and space. Readers should take advantage of the presentation of all of the testimony on the Alaska Rural Justice and Law Enforcement Commission's website. Additional quotes from testimony provided at the Commission's public hearings are distributed throughout the remainder of the report.

B. Systemic Obstacles in Rural Alaska

1. Lack of Economic Opportunity

"I'd like to talk briefly about economic justice. You've heard or should hear throughout your travels around the State that there are a disproportionate number of young Native men interacting with the criminal justice system. And in our community, by far, most arrests and convictions are alcohol related. The unemployment and underemployment in this age range runs around 90 percent in our communities. This I think is a causal factor to the interaction with the justice system because there's a lack of meaningful work and so people are frustrated, depressed, they don't have anything to do and so I think this causes an opportunity to run afoul of the justice system."
Deborah Lyn, Special Assistant, City of Barrow

Several striking facts about rural Alaska are that in most villages there are practically no jobs, the population continues to grow,[21] and the cash needs of individual residents are growing as well. These conditions have existed for decades, and committees and commissions studying them have published reports for decades, all of which start to sound very much alike. In 1968, the Federal Field Commission for Development Planning in Alaska reported:

[21] As a caveat, the Commission notes that in many rural Alaska villages, population growth has been stymied by the lack of available, additional housing, forcing many young people to leave the villages and move to urban centers, more often than not Anchorage.

> Great contrast exists today between the high income, moderate standard of living, and existence of reasonable opportunity of most Alaskans and the appallingly low income and standard of living and the virtual absence of opportunity for most Eskimos, Indians, and Aleuts in Alaska. About four-fifths of the more than one-quarter million people of Alaska are not Alaska Natives. Most of them, living in or near urban places, lead lives very much like those of other Americans. . . . The other one-fifth . . . live in widely scattered settlements, are unemployed or only seasonally employed . . . live in poverty . . . in small dilapidated or substandard houses under unsanitary conditions . . . are victims of disease, and their life span is much shorter than that of other Alaskans. . . . They are not only undereducated for the modern world, but they are living where adequate education or training cannot be obtained, where there are few jobs, where little or no economic growth is taking place, and where little growth is forecast.[22]

Fortunately, conditions have improved somewhat in rural Alaska over the last 37 years, but there is still a great disparity between rural and urban Alaska in all things economic. In 1989, over 20 years after the Federal Field Commission report, the Alaska Federation of Natives published its report on the status of Alaska Natives, *A Call for Action*, which reiterated the earlier report (and, for that matter, dozens of other reports that had been published in the interim), noting that "despite investment in infrastructure and education, in most Native communities the increase in self-sustaining economic growth has been minimal. When Native population growth is factored into the equation, the future is even more disconcerting."[23] "This was followed by a report presented in 1991 by the Alaska Department of Commerce and Economic Development, entitled *Alaska's Economic Challenge: The Level of Distress*, which reported:

> Unfortunately, the fact remains that conditions in the rural areas are not getting better. The economic prosperity of the recent pipeline construction era has had little lasting effect on many rural areas. They continue as before with high unemployment and low median incomes. State and federal disputes over regulation of subsistence, boycotts on the fur industry, international socioeconomics, and dozens of road [b]locks face rural Alaska. The population continues to struggle with limited resources trying to find a degree of stability."[24]

Also in 1991, the Alaska Department of Community and Regional Affairs published a report, *Towards a Comprehensive Alaska Rural Development Strategy*, which outlined and discussed barriers restricting the economy of rural Alaska. These included:

1. Rural financing barriers (capital constraints)

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[22] Arnold, R.D., *et al. Alaska Natives and the Land.* Federal Field Committee for Development Planning in Alaska. Washington, D.C.: United States Government Printing Office, 1968: p. 3.

[23] *The AFN Report on the Status of Alaska Natives: A Call for Action.* Anchorage, Alaska: Alaska Federation of Natives, 1989: p. 29.

[24] *Alaska Natives Commission Final Report, Volume II, op cit.*, p. 84.

   a. Lack of access to debt capital
   b. Lack of equity
   c. Lack of public invested capital base
2. Rural education and training barriers
3. Rural economic development barriers
4. Rural infrastructure barriers
5. Rural housing barriers
6. Rural health barriers
7. Communications barriers

To overcome these barriers, the Department recommended that leadership begin at the local, community level: "There must be an understanding by federal and State agencies of the complexity of the various leadership roles which exist in Alaska's rural communities. This role may be shared by many, and determining priorities is difficult at best."[25]

In March 1992, the Institute of Social and Economic Research (ISER), University of Alaska Anchorage, published a series of Alaska Native Policy Papers focusing on issues of Alaska Native communities. One of these, *The Economy of Village Alaska*, by Professor Lee Huskey, presented a comprehensive organization of the three interwoven economies of rural Alaska: subsistence, transfer, and market. The interplay among the three and the multiple participation of rural Alaskans in these economies are also covered in his paper, as he notes the limitations imposed on rural villages by their small size, remoteness, and lack of economic integration, pointing to the facts that (a) many areas do not have commercial resources and (b) significant shares of existing jobs are taken by non-residents. Professor Huskey echoed conclusions that he and Professor Thomas Morehouse, also of the ISER, published earlier in a review of eight years of conferences and symposia on the subject of northern and arctic development. The key problems highlighted were:

> The prescriptions for self-sufficiency are shaped by development constraints. Three types of problems are associated with economic development in Native villages. First, economic limits are imposed by the small size and remoteness of most villages; these limit opportunities for market activity and increase the cost of living. The second set of problems is associated with dependency and control; not only are decisions affecting the local economy made outside the region, there may also be external controls on access to local resources. Third, rapid growth of population in the villages complicates the problem of economic development by increasing the required level of economic activity.[26]

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[25] Towards a Comprehensive Alaska Rural Economic Development Strategy. Alaska Department of Community and Regional Affairs, December 1991: p. 12.

[26] Huskey, L., and T. A. Morehouse. Development in remote regions: What do we know? *Arctic*, 1992, *42*, 2, 128-137: p.134. Internal references to two additional papers: Stabler, J., and Howe, E. Socio-economic transformation of the native people of the Northwest Territories, 1800-2000; and Langdon, S. Commercial fisheries: implications for western Alaska development; papers presented at the Western Regional Science Association in 1990 and 1984, respectively.

The literature has often decried the problems that Alaska Natives living in rural villages face in trying to adjust to the modern world of "economic development" but has offered only limited recommendations for realistic change. The issue is neither simple nor singular. There are vast differences between regions of Alaska, and any one potential solution, though possibly applicable to one or two villages in a certain region, will not apply to villages in other parts of the State.[27]

The Alaska Natives Commission published its final report in 1994, which again provided statistics, testimony, and recommendations about the economy in rural Alaska, and 10 years after that, in 2004, the ISER released *The Status of Alaska Natives Report*, one section of which related to the remote rural economy. Here are highlights from the Summary of Findings from that section:

- The entire remote rural region has an economy about the same size as Juneau's.
- With some notable exceptions, the billion-dollar petroleum, mining, and seafood industries in remote rural Alaska produce little economic benefit for local residents. (The exceptions are the Red Dog Mine and the Community Development Quota [CDQ] program.[28])
- Local residents get only a small share of the value of the world-class salmon fisheries in southwest Alaska – about 10 percent in 2002.
- Federal money makes up the biggest share of outside money coming into remote rural areas. About $670 million came into the region in 2000.
- Government and service jobs make up much bigger shares of jobs in remote rural areas than in Anchorage – many of these are with non-profit Native organizations that now manage most health care and other federal programs for Alaska Natives.
- Job growth in remote rural Alaska in the 1990s was overwhelmingly in service jobs.
- Small remote communities with low base incomes can sustain very few trade and other local support jobs that are common in urban areas – most jobs have to be sustained with money from outside sources.
- Unemployment is high in remote rural areas, but the published unemployment figures still underestimate the job shortage in remote rural areas – the figures include only people actively looking for work, and local residents don't look for work when they know there are no jobs.
- Per capita income in remote rural areas remains little more than half of Anchorage's.

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[27] A portion of the preceding was based on the *Alaska Natives Commission Final Report, Volume II*, 1994, pp. 83 and 84.

[28] For more information on the CDQ, see http://www.cdqdb.org/

- Transfer payments now make up nearly a third of per capita income in remote rural areas, up from about one-sixth in 1970.

- The cost of living in rural Alaska remains much higher than in urban areas.

- About 90 percent of rural households (Native and non-Native) do subsistence hunting and fishing.[29]

Concerning the final finding (and the comment earlier in this report about the importance of subsistence in countering the high cost of food in rural Alaska), the ISER presented data showing that the annual wild food harvest per person in rural Interior and Western Alaska is over 650 pounds, compared with only about 17 pounds in Anchorage and Fairbanks, a ratio of over 38.24 to 1![30]

The ISER report's comment about unemployment rates is important for readers to understand. Official federal "unemployment rates" do not count the numbers of employable people who are unemployed, would like to be employed, but are not documented because they are, according to the federal terms, not actively seeking employment. As the introductory sentence to this section mentioned, in most remote rural Alaska villages there are no more than a handful of jobs, and some of these – characteristically the teachers – are held by individuals who are not permanent residents of the village but live in the village for the school year only, returning to their "homes," often outside of Alaska, when the schools are closed in the summer.

Concluding its Remote Rural Alaska Economy section, the ISER report stated, "We've seen that remote rural Alaska has fewer jobs, lower wages, smaller incomes, and more poverty than any other part of the State – but at the same time, it also has the highest living costs,"[31] a statement that presents "in a nutshell" the continuing economic conundrum that rural Alaska faces.

The social consequences of the "third world" conditions in rural Alaska are well known, and multitudes of studies have shown the relationship between unemployment, poverty, disenfranchisement, and the other deprivations suffered in poor economic conditions with alcohol abuse/addiction, substance abuse, domestic violence, child abuse, crime, and more,[32] with one of the saddest, most devastating, and totally preventable consequence being Fetal Alcohol Spectrum Disorder (FASD), which still affects a significant number of children born to parents in rural Alaska every year.[33]

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[29] *The Status of Alaska Natives Report, Volume I. op. cit*, p. 5-2. Chapter 5. (The Remote Rural Economy is available on ISER's website at http://www.iser.uaa.alaska.edu/Publications/aknativestatusch5.pdf)

[30] *ibid*, p. 5-24.

[31] *ibid*, p. 5-29.

[32] Jewkes, R. (2002) Intimate partner violence: Causes and prevention. *Lancet, 359,* 1423-1425.

[33] May, P.A., & Gossage, J.P. Estimating the prevalence of fetal alcohol syndrome: A summary. *Alcohol Research and Health, 25, p.* 159-167.

Another resource on economic opportunity in rural Alaska is the U.S. Government Accountability Office's (GAO) Report 05-719 that reviews federal programs benefiting Alaska Native villages.[34]

2. Remoteness

Of all of the states in the United States of America, there is no doubt that Alaska is unique. Geographically, Alaska is by far the largest state, and its coastline is longer than the coastline of the remaining 49 states combined. Also unique are several aspects of the transportation system. With a state capital that can be reached only by water or air, the Alaska Marine Highway System (the State-run ferry system) offers an essential link for Alaskans. The total inter-city public highway system totals just over 3,600 miles[35] and large segments of the State can be reached only by air, water, or, in the winter, snow machines and dog sleds.

In the Congressional language that created the Alaska Rural Justice and Law Enforcement Commission, Congress defined "rural Alaska" as those parts of the State outside of the Municipality of Anchorage, the Fairbanks North Star Borough, the Kenai Peninsula Borough, the Matanuska-Susitna Borough, the City and Borough of Juneau, the Sitka Borough, and the Ketchikan Borough. There are 515,369 square miles in this Congressionally defined "rural Alaska," which comprises an area larger than Texas, New Mexico, and Arizona combined. The rural area constitutes 90.11 percent of the State but contains only 19.33 percent of the population, 66.25 percent of which is Native, compared with only 7.70 percent of the urban population.[36] The maps in Appendix A graphically highlight the comparison of Alaska's size with that of the Lower 48 states and the limited highway system in the rural part of the State.

It is this massive, sparsely populated, predominately Native, rural Alaska that is the focus of the Alaska Rural Justice and Law Enforcement Commission. The primary means of travel in rural Alaska is by air – especially for any emergency law enforcement, judicial, alcohol importation, or domestic violence or child abuse situation, the topics that the Alaska Rural Justice Commission was directed to address. In the summer, some villages can be reached by skiff, and in the winter they can be reached by snow machine or dog sled – but the primary means of transport continues to be by small airplanes.

3. Expense

> *"It is very, very crucial that when it's seen as a line item as transportation costs for educational opportunities, whether it be for our Elders, for our staff or our council, that that be considered with great weight in Alaska because we are not like any other State where we can drive by Interstate. Costs for airfare are not cheap in Alaska."*
>
> ***Tom Gambell, Sitka***

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[34] U.S. Government Accountability Office, Report 05-719, Alaska Native Villages (August 2005). www.gao.gov/cgi-bin/getrpt?GAO-05-719

[35] The National Highway System totals 2,113 miles, and the Alaska Highway System totals 1,507 miles, based on 2003 Alaska Certified Public Road Mileage Report, Alaska Department of Transportation and Public Facilities. This number *does* include mileage through urban boroughs which were outside the scope of the Commission's examination of rural Alaska.

[36] Population data from the 2000 U.S. Census.

The expense of travel in Alaska often surprises individuals in the Lower 48; air fare from Anchorage to many villages far exceeds air fare from Anchorage to Seattle. Some examples are roundtrip fares from Anchorage to the Pribilof Islands and the Aleutian Islands chain, which can exceed $1,100. Travel to small villages in Western, Northwestern, and Northern Alaska require flights to hubs, such as Bethel, Nome, Kotzebue, and Barrow, which can cost as much as $900, followed by a second flight in an "air taxi" – most often a single engine Cessna – to a small, dirt airstrip in the remote village.[37] While flying, the traveler is often surrounded by boxes of groceries and supplies, stacked from floor to ceiling. Not only is travel expensive, but it can be dangerous as well. Alaska ranks first in the United States in general aircraft crashes per capita.[38]

Expense is not limited to travel. Living expenses in rural Alaska are also extraordinarily high. Fresh milk in a rural village costs three times what it costs in Anchorage, and in many rural villages, fresh milk is not available at all. In fact, in many very small rural villages, there is no store, and neither food nor any commodities are available; residents have to bring everything in or order supplies from retailers in a hub city or Anchorage and have it mailed or air freighted in. Beyond the important cultural aspects of subsistence activities in rural Alaska are the basic economic needs that the use of natural resources for food and clothing help meet. But villagers cannot escape the need for cash, in order to purchase heating oil, electricity, gasoline, and other supplies; and for salaries, and living allowances. These and other financial factors that inflate the costs of bringing more law enforcement, justice, treatment, and other personnel into rural Alaska must be considered when reviewing the Commission's recommendations related to increasing support and staffing of justice and law enforcement entities. Simply stated, in remote rural Alaska $10,000 often buys about half what it could buy in Anchorage.

Construction costs, which are heavily dependent on transportation costs, are also extremely high in rural Alaska; the farther away an Alaskan port is from Seattle (the port of origin for most supplies) and then from the port to the village site (such as in Western and Interior Alaska), the higher the costs. A study comparing the cost of shipping a fixed set of construction materials to Ketchikan with the same set delivered to Barrow calculated the Barrow costs were 8.2 times higher.[39] Transportation of construction materials to villages in the Interior, Western Alaska, and other sites far from ports and off the road system requires commercial air carriers, and, as one might imagine, air freighting rebar and concrete can raise the cost of even a simple building astronomically.

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[37] Airfare expenses, which are constantly changing and usually increasing as a result of the increasing cost of fuel, were obtained from Alaska Airlines and Peninsula Airways, two major carriers in Alaska.

[38] During the 1990s there were a total of 1,684 general and commercial aircraft crashes in Alaska, equivalent to a crash every two days. Of these crashes, 188 were fatal and resulted in 402 deaths. On average there were 19 fatal crashes per year with two fatalities per crash and 40 fatalities per year, equivalent to a fatality every nine days.
See http://www.cdc.gov/niosh/docs/2002-115/pdfs/2002115g.pdf

[39] Survey conducted by the Alaska Department of Labor and Workforce Development for the Alaska Housing Finance Corporation, 2002. Available at the Department's website: http://www.ahfc.state.ak.us/iceimages/grants/2002constco.pdf

The continuing escalation of fuel costs, which are more severe in Alaska than in the Lower 48, is exacerbating the situation. As Alaska's Senator Ted Stevens observed:

> As you know, high energy costs are an obstacle to long term sustainability and they hinder economic development in rural Alaska. Additionally, the lack of low cost and reliable energy sources makes it difficult to provide rural Alaskans with basic amenities like water and sewer systems.[40]

The high costs of fuel and transportation need to be considered when budgeting for transporting vehicles and equipment to villages in rural Alaska in addition to construction, and all of these factors are important when reviewing the Commission's recommendations concerning meeting infrastructure needs of village law enforcement.

4. Gaps in the Delivery of Governmental Services

On November 10, 2004, the Commission heard the testimony of Kevin Ritchie, Executive Director of the Alaska Municipal League, who described the disintegration of municipal governmental structures in parts of rural Alaska:

> We have a number of cities that are literally disintegrating. Meaning pieces are falling off and ultimately some of these communities may not be there – some are not there right now. We did a financial survey of all the communities in Alaska. We had 93 responses. Actually we were unable to contact a number of communities. One community, Nikolai. There may be reasons for this. We called [the community of] Nikolai and we got a message that the phone's been disconnected.
>
> Many communities don't even have the basic person to carry on the process of taking care of city council business, doing the sorts of things that need to be done just to maintain a local government.
>
> And in fact, a number of communities don't provide services at all any more. A number of communities in our survey have stopped providing fire protection, for example. . . . Obviously a number have not had public safety services to a great extent for quite a while.[41]

There are a number of reasons for the gaps that exist in many governmental services in rural Alaska. In most villages there is a lack of a tax base to finance governmental functions, although the federally recognized tribes do receive some funding from the Bureau of Indian Affairs that can be used to help support Indian Reorganization Act (IRA) councils and traditional councils, and pay for some limited governmental functions. Most villages and larger hub communities generate revenue through a sales tax that supports governmental services, but most lack an adequate property tax base.

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[40] Senator Stevens's Address to the Alaska State Legislature, February 16, 2004. The speech is available at: http://www.ktoo.org/gavel/archive.cfm?audio=5446

[41] Mr. Ritchie's complete oral testimony was transcribed and is available on the Alaska Rural Justice and Law Enforcement Commission's website.

For many years, Alaska had a State Revenue Sharing (SRS) program that helped fund municipal governments. The SRS program no longer exists and its demise has made it more difficult for municipal governments in rural Alaska to survive.

Further exacerbating the problem of providing sufficient governmental services in rural Alaska is the continuing failure of inter-governmental cooperation, particularly – in many small villages – between municipal and tribal governments. As mentioned in the next section of this report, there are a few examples of highly successful, cooperative arrangements between tribal and municipal governments, but they do not represent the norm. These examples of successful cooperation do illustrate, however, that this is one obstacle to improved rural services that can be overcome.

C. Successful Approaches

Progress is possible, however, and there are a number of law enforcement, justice, and treatment programs that work well today and offer successful strategies that could be adapted elsewhere.

An example of a successful law enforcement arrangement can be found in Quinhagak, a small village on the Kanektok River east of Kuskokwim Bay, less than a mile from the Bering Sea Coast. The total population is around 612, and 97 percent of the residents are Native, almost exclusively Yup'ik. Under Alaska's local option law, Quinhagak voted "dry," banning all sale, importation, and possession of alcohol. Under an agreement between the second class city government of Quinhagak and the tribal government of the Native Village of Kwinhagak, the maintenance and operation of all city services were transferred to the tribal government, and the IRA council and city administration were merged into one. As part of this agreement, a joint law enforcement authority was established, which is administered by the tribal government, and law enforcement applies equally to tribal members of the Native Village of Kwinhagak and non-Native residents of the second class city of Quinhagak. The Kwinhagak/Quinhagak Memorandum of Agreement was reviewed by several of the Commission's workgroups, and the Commission offers it as a model that other rural Alaska villages could follow.[42]

Kake, located on Kupreanof Island in Southeast Alaska, has developed and refined a highly successful restorative justice system, initiated by Mike Jackson, the State Magistrate in Kake. The population of Kake is about 665, of whom 75 percent are Native, predominantly Tlingit, and its governments include both that of a city and a federally recognized tribe, the Organized Village of Kake (OVK). Having suffered many problems with the community's youth for many years, including alcohol abuse and a high suicide rate, the community in 1999 organized the Healing Heart Council and Circle Peacemaking, both of which are embedded in Tlingit tradition but, at the same time, closely coordinated with the Alaska Court System.

Quoting from Harvard University's John F. Kennedy School of Government, which awarded the Organized Village of Kake its "High Honors" in 2003:

[42] A copy of the Quinhagak MOA is on the Commission's website.

> In 1999, in an effort to curb youth alcohol abuse, tribal members of the Organized Village of Kake (the federally recognized Tribe of Kake, Alaska) established the Healing Heart Council and Circle Peacemaking, a reconciliation and sentencing process embedded in Tlingit traditions. Working in seamless conjunction with Alaska's State court system, Circle Peacemaking intervenes in the pernicious cycle by which underage drinking becomes an entrenched pattern of adult alcoholism. Today, the program not only enforces underage drinking sentences in an environment where such accountability had been rare, but also restores the Tlingit culture and heals the Kake community.[43]

Kake's Healing Heart Council and Circle Peacemaking have expanded over the last few years to include adults as well as youth:

> Today, the Healing Heart Council offers not only sentencing circles for juvenile offenders, but also sentencing circles for adult offenders who request Circle Peacemaking, healing circles for victims, intervention circles for individuals who seem to be losing control of their lives, celebration circles for offenders who have completed their sentencing requirements, and critical incident circles for individuals involved in an accident or crime who require immediate counseling.[44]

The success of Kake's Healing Heart Council and Circle Peacemaking approaches to restorative justice in rural Alaska has been shown by its numbers: Over a four-year period ending in 2004, Circle Peacemaking "experienced a 97.5% success rate in sentences fulfillment, compared with the Alaskan court system's 22.0% success rate."[45] Only two offenders out of 80 sentenced during the program's first four years rejected a circle's outcome and returned to State court for sentencing, and all 24 of the juveniles assigned to circle sentencing for underage drinking successfully completed the terms of their sentences. Recidivism among adult offenders is also low.[46]

There are also successful approaches in treating substance abuse that have been initiated in Alaska and that are gaining in statewide and national recognition as a result of their accomplishments. In May 2005, the Cook Inlet Tribal Council sponsored a statewide conference highlighting best and promising substance abuse treatment practices in rural Alaska, a meeting that was attended by numerous treatment providers as well as national experts and evaluators from the Lower 48. The following substance abuse treatment programs that are either in rural Alaska or serve largely rural Alaska clients exemplify approaches that have been evaluated, have been shown to work, and have gained some national recognition for their accomplishments.[47]

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[43] See http://www.innovations.harvard.edu/awards.html?id=6164

[44] *ibid.*

[45] *ibid.*

[46] *ibid.*

[47] The federal Substance Abuse and Mental Health Services Administration refers to these as "promising practices."

- Old Minto Family Recovery Camp is a short-term (35-day cycle) residential care camp that has been operated by the Tanana Chiefs Conference since 1989 with funding from the Indian Health Service (IHS) and the Alaska Department of Health and Social Services (ADHSS). The Camp serves approximately 90 adults annually, with an overall treatment completion rate of 81 percent. There are three components to the Old Minto Family Recovery Camp: (1) "pre-treatment," (2) strengthening families, and (3) continuing care services. The first and third components are carried out in Fairbanks, while the second is held at the Camp, which is located in a very remote setting of the Old Minto historical site.[48] Tribal Elders from Minto play a consultative role in developing and implementing services at the Camp site, which simulates an Interior Athabascan village environment designed to remind patients of traditional times when Native people were connected to the land for survival and relied on the strength of community and family.

- Hudson Lake Recovery Camp is located in a remote area northwest of Copper Center (the Native Village of Kluti-Kaah) and is operated by the Copper River Native Association (CRNA). The mission of Hudson Lake is to provide a residential substance abuse treatment camp to serve up to 15 men and women addicted to alcohol or other drugs for each 40-day rotation of the program, in a culturally familiar and appropriate setting, which is modeled after the Old Minto Recovery Camp, described above. The role of treatment at the Camp is to teach clients to identify the contrasting characteristics of healthy and unhealthy relationships and life practices and then to give them supportive environments in which to practice those skills. This is accomplished through one-to-one counseling, group interactions, and positive role models. Treatment plans are based on identified client strengths rather than deficits. Over the five-year life of Hudson Lake Recovery Camp, clients have come from over 22 different locations in Alaska, but 45.5 percent have been from Anchorage. The Camp has completed a process and outcome evaluation conducted by the Institute for Circumpolar Health Studies, University of Alaska Anchorage, and CRNA is seeking funding from multiple sources to expand the program.

- Raven's Way is a 40-day residential substance abuse treatment program for adolescents operated by the Southeast Alaska Regional Health Consortium (SEARHC). It is based in Sitka and at wilderness sites in the Sitka area, utilizing a cohort model in which 8-10 students enter and participate in the program as a peer support group in a family style environment. It is open to Alaska youth from 13 to 18 years of age who have a primary diagnosis of substance abuse and/or dependence. Funded by the IHS, ADHSS, and through third-party reimbursement, including Medicaid, Raven's Way offers individual and group counseling, substance abuse assessment and education, academic education (as part of the Sitka School District), Hazelden "step" work and relapse prevention, wilderness expedition and ropes course activities, peer support groups, activities relevant to Native cultures, home-like residential living, and aftercare planning

[48] The Village and tribal government of Minto moved from the Old Minto site to the community's new location in 1970.

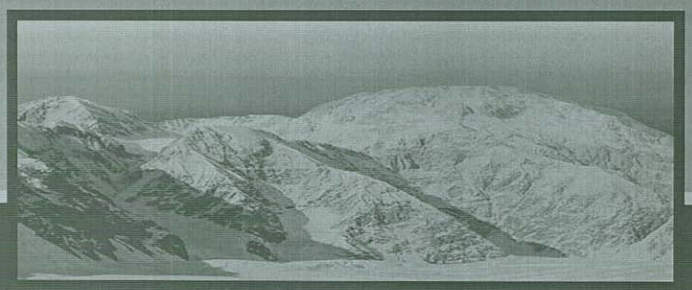
and follow-up contacts. Since it was started in 1989, Raven's Way has served a total of 891 youth (60 annually in cohorts of 10 students), representing 134 communities. The program has been accredited by the Commission for the Accreditation of Rehabilitation Facilities (CARF).

- Therapeutic Village of Care, Ernie Turner Center, an adult residential treatment program operated by Cook Inlet Tribal Council, is also CARF accredited (as an "exemplary program"). The Ernie Turner Center began as the Alaska Native Alcoholism Recovery Center in the late 1980s and has gone through several transformations over the years. Initially a 12-step program, it has now become a Therapeutic Community modeled after life in an Alaska Native village, with the clients given some authority in controlling the program through a "Tribal Council," supported by clinical and administrative staff. Treatment can last as long as 180 days and includes a large number of different components, including a strong emphasis on education and employment. As part of the therapeutic community, the clients take part in the operations and management of "Coho Cup" espresso stands, a gift shop, and an art gallery. The 32-bed facility is located in Anchorage across the street from the Anchorage Native Primary Care Center and the Alaska Native Medical Center. It is funded by IHS, ADHSS, and through third-party reimbursement.

- Dena A Coy, an Athabascan phrase meaning "the people's grandchildren," is a residential substance abuse and mental health treatment program, started as a way to prevent Fetal Alcohol Spectrum Disorders, operated in Anchorage by Southcentral Foundation. Initiated in 1989 by funding from the IHS, CSAT, and ADHSS, this 16-bed program serves pregnant, parenting, and non-pregnant women suffering from substance abuse/addiction and/or mental health problems. Once they complete the residential phase of the treatment, clients are placed in a two-year outpatient aftercare program. Services are also available for infants during their parents' treatment through Southcentral Foundation's Early Head Start program. Services include drug/alcohol education, 12-step recovery, relapse prevention, spiritual involvement, talking circles, anger management, grief/loss depression, building self-esteem, countering domestic violence and sexual abuse, and an array of services relating to parenting, dealing with parental stress, and family activities focused on building and maintaining mutually supportive relationships. This program is also accredited by CARF.

As the reader can discern, there are several successful programs that are already in place serving rural Alaska. The Commission recognized these as it deliberated its charge and used elements of these successful programs in crafting the recommendations to Congress and the Alaska Legislature that are presented in this report.

Chapter II



Charge to the Commission and the Commission's Processes

Chapter II. Charge to the Commission and the Commission's Processes

A. Congressional Charge

The Omnibus Appropriations Act of 2004 (Public Law 108-199) included language that established the Alaska Rural Justice and Law Enforcement Commission. The relevant portion of Section 112 from that Act is quoted below:

> SEC. 112. (a)(2)(A) There is established an Alaska Rural Justice and Law Enforcement Commission (hereinafter 'Justice Commission'). The United State's Attorney General shall appoint the Justice Commission which shall include a Federal Co-chairman, the Attorney General for the State of Alaska or his designee who shall act as the State Co-chairman, 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 Village Public Safety Officer programs, and a representative from the Alaska Native Justice Center. The chief judge for the Federal District Court for the District of Alaska may also appoint a non-voting representative to provide technical support. The Justice Commission may hire such staff as is necessary to assist with its work.
>
> (B) The Justice Commission shall review Federal, State, local, and tribal jurisdiction over civil and criminal matters in Alaska but outside the Municipality of Anchorage, the Fairbanks North Star Borough, the Kenai Peninsula Borough, the Matanuska-Susitna Borough, the City and Borough of Juneau, the Sitka Borough, and the Ketchikan Borough. It shall make recommendations to Congress and the Alaska State Legislature no later than May 1, 2004, on options which shall include the following--
>
> (i) create a unified law enforcement system, court system, and system of local laws or ordinances for Alaska Native villages and communities of varying sizes including the possibility of first, second, and third class villages with different powers;
>
> (ii) meet the law enforcement and judicial personnel needs in rural Alaska including the possible use of cross deputization in a way that maximizes the existing resources of Federal, State, local, and tribal governments;
>
> (iii) address the needs to regulate alcoholic beverages including the prohibition of the sale, importation, use, or possession of alcoholic beverages and to provide restorative justice for persons who violate such laws including treatment; and

(iv) address the problem of domestic violence and child abuse including treatment options and restorative justice.

B. Appointment of Commissioners

On September 2, 2004, the United States Attorney General announced the appointment of nine Commission members. The U.S. Department of Justice press release also quoted Senator Ted Stevens:

> The Alaska Rural Justice and Law Enforcement Commission provides the federal government, the State of Alaska, and rural communities the chance to improve law enforcement and justice in rural Alaska. The problems caused in our communities by alcohol and domestic violence are ever growing and require aggressive enforcement and prosecution. It is my hope that the Commission can work to solve some of these problems.[49]

The Commission has been led by Federal and State Co-chairs. The Federal Co-chair, Deborah Smith, is the Acting United States Attorney for the District of Alaska. Tim Burgess was the Federal Co-chair through January 2006 when he was appointed to serve as a judge on the U.S. District Court. The initial State Co-chair was Alaska's Attorney General Gregg Renkes. He was succeeded by Edgar Blatchford, Commissioner of the Alaska Department of Commerce, Community, and Economic Development, who was in turn succeeded by Alaska's Attorney General David W. Márquez.

- The remaining Commissioners appointed by Attorney General Ashcroft were:
  - William Tandeske, Commissioner of Public Safety for the State of Alaska;
  - Bruce Botelho, Mayor of Juneau, representing the Alaska Municipal League;
  - Roswell "Ross" Schaeffer, Sr., Mayor of the Northwest Arctic Borough, representing an organized borough. Mr. Schaeffer resigned from the Commission in January 2005;
  - Harold "Buddy" Brown, President of the Tanana Chiefs Conference, representing the Alaska Federation of Natives. Mr. Brown was ably represented on the Commission by Mr. Ethan Schutt, the General Counsel for first the Tanana Chiefs Conference and later Cook Inlet Region, Inc.;
  - Wilson Justin, Acting President of the Mt. Sanford Tribal Consortium, representing Alaska Native Tribes;
  - Loretta Bullard, President of Kawerak, Inc., in Nome, representing a non-profit Native corporation that operates a Village Public Safety Officer program; and

[49] See www.usdoj.gov/opa/pr/2004/September/04_ag_594.htm

- Gail Schubert, Executive Vice President and General Counsel, Bering Straits Native Corporation, representing the Alaska Native Justice Center.

- The chief judge for the Federal District Court for the District of Alaska also appointed a non-voting representative, James E. Torgerson, an attorney with Heller Ehrman LLP, in Anchorage.

Biographical sketches of all of the Commissioners are presented in Appendix B of this report. Technical support was provided by staff and contractors of the Alaska Native Justice Center and others, who are acknowledged in Appendix C.

C. Protocols

One of the first actions that the new Commission completed was the development and adoption of a set of protocols to guide its work. They were drafted and adopted by the Commission and are quoted below (as amended):

ORGANIZATIONAL PROTOCOLS

1. Guiding Principles

The Alaska Rural Justice and Law Enforcement Commission members shall utilize the following principles in the conduct of their work. The Commission members recognize that:

All persons have a natural right to life, liberty and are entitled to equal rights, opportunities and protection under the law. There is a public interest in keeping our children, families and communities safe. The safety and security of citizens in their communities is a fundamental responsibility of government.

In general, local issues are best addressed at the local level. Rural law enforcement and justice systems need to be developed and implemented with meaningful involvement by rural residents.

Federal, State and tribal laws and constitutions need to be interpreted to allow for responsive, effective justice and law enforcement systems in rural Alaska.

The Commission will consider all practical alternatives when making recommendations keeping in mind what is possible and not be limited by current legal frameworks.

2. Commission management

a. **Co-chairs.** The Commission shall be presided over by the Congressionally designated Co-chairs. The Co-chairs shall call and chair meetings, set agendas, and oversee the activities of the Commission and its staff.

b. **Commission staff.** The Alaska Native Justice Center will serve as primary staff for the Commission.

c. **Additional Support.** The Commission recognizes that from time to time those supporting and affected by the actions of the Commission shall be called upon to assist with the work of the Commission. These may include, but are not limited to, the Alaska Federation of Natives, Regional Native Non-Profits, the Alaska Inter-Tribal Council, the Alaska Court System, and the State of Alaska Departments of Health and Social Services and Corrections.

d. **Work Groups.** The Commission may establish Work Groups to address specific issues and develop options for consideration by the Commission. A Work Group may be chaired by a Commission member and liaisons from the Commission to the Work Groups may be appointed at the discretion of the Co-chairs. Work Groups are open to any Commission member and such other individuals as the Co-chairs believe would enhance the functioning of the Work Group. Work Groups are not authorized to make decisions for the Commission as a whole. All Commission members will be notified of all Work Group meetings by the Co-chairs.

3. **Commission Meetings**

a. **Quorum.** A quorum shall consist of six (6) members. For purposes of this protocol, member means an appointee to the Commission or the appointee's designated alternate who may participate in all deliberations of the commission, and may vote. Alternates shall be designated in writing by the Commissioner on a per meeting basis.

b. **Open meetings.** While the Federal Advisory Committee Act does not apply to this Commission (see Section 112 (c), Division B, Consolidated Appropriations Act, 2004, P.L. 108-199), reasonable notice will be given of the time and place of Commission meetings. As a general rule, Commission meetings and work group meetings will be open to the public. Invited individuals, including specialists, may participate in Commission or work group meetings as needed and appropriate.

c. **Public participation in meetings.** Members of the public are encouraged to submit written presentations and exhibits. Periodic opportunity for oral testimony will also be provided. Public testimony must be germane to the subject matter under consideration by the Commission. The Co-chairs may set a time limit for public testimony, for individual speakers, or for the length of all public testimony and individual speakers, if it appears necessary. The time limit for individual speakers shall be uniform for all speakers, and shall be strictly enforced. Speakers shall not have the right to transfer their unused time to other speakers, but the Co-chairs may grant

additional time to a person speaking on behalf of a group present in the chambers.

d. **Meeting Minutes.** Draft Commission meeting minutes shall be distributed to Commission members. Approved minutes shall be considered public information. Commission staff shall distribute reference materials and other associated draft documents to each Commission Member or their designated staff. Commission members, in turn, may distribute such materials to other interested parties at their discretion. Executive sessions shall be noted and may include the subject matter of the executive session in the notation.

e. **Agenda.** The Co-chairs will seek to distribute meeting agendas to the members no later than one week in advance of the Commission.

f. **Time-Outs.** A break for the purpose of consultation may be requested at any time by any Commission member. The person requesting the break will be asked for an estimate of the time needed for the consultation.

g. **Meeting Schedule.** Meetings will be held regularly as determined by the Commission.

4. **Procedures**

a. **Rules of Order.** The conduct of the meetings of the Commission shall be governed by the Co-chairs according to Robert's Rules of Order, 10th Edition, except as otherwise provided by law or provided for in this protocol.

b. **Voting.** The Commission will strive for consensus. However, the affirmative vote of five (5) members of the Commission shall be sufficient to take any action except as otherwise provided by law and except in the following instances, which require the affirmative vote of at least six (6) members:

1. Limiting, extending, or closing debates
2. Suspension of the rules
3. Setting of or postponement of special orders
4. Objection to consideration of question
5. Motion for immediate vote (previous question)
6. Rescind

c. **Reconsideration.** Decisions reached by the Commission will not be reopened unless at least six (6) members of the Commission agree to do so.

1. What May Be Reconsidered. Main motions, amendments to main motions, privileged motions involving substantive questions, and

appeals are subject to reconsideration. Procedural motions may not be reconsidered.

2. Who May Reconsider. Any member, whether or not that member voted on the prevailing side, may give notice of or move for reconsideration.

3. Effect of Notice. The effect of giving notice of reconsideration is to suspend all action on the subject of the notice until a motion for reconsideration is made and acted upon or until the time within which the motion for reconsideration may be made and acted upon has expired.

4. Time in Which Notice Must Be Taken Up. A notice of reconsideration expires unless a motion for reconsideration is made and acted upon prior to adjournment of the next regular meeting succeeding the meeting at which the action to be reconsidered occurred.

5. Successive Reconsideration. There may be only one reconsideration even though the action of the Commission after reconsideration is opposite from the action of the Commission before reconsideration.

6. Precedence. A motion for reconsideration has precedence over every main motion and may be taken up at any time during the meeting when there is no other motion on the floor.

7. Effect. A motion for reconsideration completely cancels the previous vote on the question to be reconsidered as though the previous vote had never been taken and effectively returns discussion back to the debate of the question so reconsidered.

d. Telephonic participation. A member may participate via telephone or other electronic means in a Commission meeting, or a Work Group meeting if the member declares that circumstances prevent physical attendance at the meeting. The member shall notify the staff and the presiding officer, if reasonably practicable, at least one day in advance of a meeting which the member proposes to attend from a remote site. A member participating remotely shall be counted as present for purposes of quorum, discussion, and voting.

5. Commission Members

a. Good Faith. All Members agree to act in a good faith effort to reach consensus in all aspects of the Commission's work by encouraging the free and open exchange of ideas, views, and information. Personal attacks and prejudiced statements will not be tolerated.

b. **Exchange of Information.** The members of the Commission agree to exchange information in good faith. Members agree to provide information in advance of the meeting where such information will be necessary. All members agree not to divulge information shared by others in confidence outside of Full Commission and Work Group meetings.

c. **Compensation for Services.** Members of the Commission shall receive no pay, allowance or benefits by reason of their service on the Commission.

d. **Costs and Expenses.** Each member of the Commission may be reimbursed for their reasonable travel costs and expenses related to their work on behalf of the Commission. Requests for reimbursement shall be directed to the Alaska Native Justice Center.

The Commission held its first meeting on October 12 and 13, 2004. It met again on October 27, also the date of the first public testimony, which took place during the annual Alaska Federation of Natives convention in Anchorage. A pivotal meeting took place a bit later in Fairbanks on November 10, 2004. At that time the Commission decided to establish four workgroups, one for each of the four topic areas that had been prescribed by the congressional language for the Commission to address in rural Alaska: Law Enforcement, Judiciary, Alcohol Importation, and Domestic Violence/Child Abuse.

The members of the Commission agreed to have 12 or fewer members in each of the four workgroups. At the Commission's request, staff of the Alaska Native Justice Center, the Alaska Federation of Natives, and the Alaska Inter-Tribal Council drafted a preliminary list of potential workgroup members, which was reviewed and revised by the Commission. At the next business meeting, held in Anchorage on November 19, 2004, the Commission members voted unanimously to appoint the recommended individuals to the four workgroups.

Meetings and Audio-conferences

There were two critical aspects of the Commission's input from the public in Alaska. One was the aforementioned involvement of a large number of knowledgeable individuals – totaling over 70 – in the workgroups, and the second was gathering information and input from a wide range of individuals who offered testimony, both orally and in writing, during 15 public hearings that were held at 11 locations in Alaska, concerning the four topic areas that the Commission was addressing.

The dates and locations of the public hearings are listed below, and copies of the written testimony and transcripts of the oral testimony can be reviewed on the Commission's website: www.akjusticecommission.com.

Date	Location	Date	Location
10/27/04	Anchorage	02/23/05	Nome
11/10/04	Fairbanks	02/24/05	Kotzebue
12/10/04	Anchorage	03/15/05	Barrow
01/05/05	Sitka	03/16/05	Fairbanks
01/06/05	Juneau	04/06/05	Bethel
01/26/05	Anchorage	04/26/05	Mentasta
01/27/05	Anchorage	04/29/05	Kake
02/09/05	Dillingham[50]		

Business meetings

The Commission held business meetings that were open to the public,[51] frequently preceding or following the public hearings. During the business meetings, discussions included such issues as arranging for future public hearings and the ways in which the Commissioners would receive the options developed by the four workgroups, review them, adopt or revise them, and incorporate them into the Initial Report and Recommendations to Congress and the Alaska Legislature.

As mentioned earlier, at the Commission's November meeting in Fairbanks, four workgroups were established. Three of the four were composed of approximately 12 individuals who were selected because of their current and/or prior experiences and involvement in the topic area. The fourth, to address the wide range of problems related to domestic violence and child abuse, was larger, which was a result of the expectation on the part of the Commissioners and support staff that that group would choose to subdivide into two smaller groups, one to address domestic violence and the other to address child abuse.

A list of all of the workgroup members is included in Appendix D of this report, and the majority are shown in the photograph in Appendix E.

D. Workgroup Activities

The workgroups met for the first time in Anchorage on January 27 and 28, 2005. After a charge from Co-chairs Burgess and Renkes, the workgroup members commenced to devise ways in which they could tackle the problems and issues that lay before them, as established by the language in the Act. Following this two-day face-to-face session, the workgroups met by telephone conferences once weekly for nine weeks.[52] The sessions for some of the workgroups routinely lasted at least two hours, while the alcohol importation workgroup meetings were more often than not about one hour in length. The discussions centered around the language in the Act and also the task-and-topic-area

[50] Conducted telephonically after flight conditions made it impossible for the Commission to attend the hearing scheduled in Dillingham on February 8, 2005.

[51] With the exception of occasional executive sessions during the public meetings.

[52] Workgroup 2, Judicial, held eight telephone conference meetings but had one additional face-to-face meeting.

sheets that had been prepared by the staff of the Alaska Native Justice Center to help guide the workgroup members' deliberations.[53]

During several audio conferences, the workgroup members spoke with individuals who provided expert or special information to help the workgroup members formulate their options for the Commission. A list of these individuals is included in Appendix D.

During these telephone conversations, the specialists explained their programs or experiences, and the workgroup members asked the specialists pointed questions related to the work that they were doing. These included conversations and interviews to determine options for increasing inspection and interdiction of bootlegged alcohol coming into dry communities; improving treatment options for alcohol and other drug abusers and addicts in rural Alaska; and expanding alternatives to the State court system, such as circle sentencing; other sessions were devoted to understanding the impacts of having government-operated liquor stores in Alaska Native villages; exploring the unique "distribution center" that is in place in Barrow to limit access to alcohol; expanding different ways in which municipal governments and tribal governments can collaborate to support a community-wide (and accepted) law enforcement system, such as that in Quinhagak; and reviewing numerous other topics that related specifically to the Congressional mandates for the Commission's work.

Both a mid-course face-to-face meeting of the workgroups, held on March 29 and 30, 2005, and the final face-to-face meeting, held on April 14, took place in Anchorage. At the final meeting, each workgroup presented its final options to the Commission as a whole. In addition, all workgroup members, Commissioners and tribal members from across the State of Alaska were invited to participate in Pathways to Justice Alaska Gathering of Tribal Justice Leaders held April 12-13, 2005. The Gathering was sponsored by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice in conjunction with the Alaska Native Justice Center, the National Judicial College, the Tribal Judicial Institute at the University of North Dakota School of Law and the Fox Valley Technical College.

Three of the workgroups used an "Options Sheet" to develop their options for the Commission. Essentially an outline for a "white paper" with the financial costs and legislative obstacles removed, the Options Sheet offered a format that highlighted (a) the statement of need, (b) the option, (c) rationale for the option, and (d) impact statement. The fourth workgroup, established to address the problems of domestic violence and child abuse developed a matrix that focused on (a) the statement of the problem, (b) current status, (c) ideal status, (d) structural barriers, and (e) option(s).

The Commission was provided all of the 104 options proposed by the four workgroups,[54] along with copies of transcribed oral testimony and the written testimony gathered through the many public hearings held starting in October and ending in April. The Commissioners met in Anchorage on May 2 and 3, 2005, to review the options, deliberate, and decide which of the options would become the Commission's

[53] These can be reviewed on the Commission's website: www.akjusticecommission.com
[54] See Appendix G for information regarding accessing the workgroups' 104 options.

recommendations in its Initial Report and Recommendations to Congress and the Alaska Legislature.

A second draft Commission report was prepared and reviewed by the Commissioners on May 17; later versions were reviewed on May 31 and in subsequent meetings, leading to this Initial Report and Recommendations.

Chapter III

Response and Recommendations

Chapter III. Response and Recommendations

A. Introduction

In the course of taking testimony around Alaska, the Commissioners heard from many rural residents. Based on the testimony, the Commissioners' collective expertise and the invaluable product of the working groups, numerous recommendations emerged to address the issues the Commission was charged to explore. The recommendations fit into nine broad themes:

1. Engaging in more partnering and collaboration.
2. Making systemic changes to improve rural law enforcement.
3. Enlarging use of community-based solutions.
4. Broadening the use of prevention approaches.
5. Broadening the use of therapeutic approaches.
6. Increasing the employment of rural residents in law enforcement and judicial services.
7. Building additional capacity.
8. Increasing access to judicial services.
9. Expanding the use of new technologies.

During the course of its proceedings, the Commission became acutely aware of its resource and time limitations as well as the importance of continuing the dialog among justice stakeholders to further develop its recommendations; the need for additional research, including monitored pilot projects; and the need to encourage and monitor progress on implementing its recommendations. To make progress on all of its recommendations, the Commission asks that Congress extend this Commission or authorize the creation of a successor commission to oversee implementation of recommendations contained in this report.[55] The Commission, through staff and appropriate working groups, would meet regularly to analyze problems and propose solutions, foster intergovernmental communications and reduce barriers to cooperation and collaboration.

The Commission's tasks would include such responsibilities as:

- Developing a statewide, uniform, and tiered system of certification and training for police and public safety officers with a reasonable opportunity for advancement that could culminate in qualifications to seek full APSC police officer certification;

- Developing a template cross-deputization agreement between the State and tribes that can be used as a basis for individually negotiated agreements; and

[55] Recommendation 1. For example, the Alaska Telehealth Advisory Commission, created by Congress in 1998. It was, at its sunset, transformed into the Alaska Telehealth Advisory Council. It continues to meet today and has grown in its ability to ensure that telehealth in Alaska is developed in a systematic way, meeting the policies and procedures established by that Commission and serving both rural and urban Alaska. The reader is referred to:
http://www.alaska.edu/health/downloads/Telemed /04.Background.pdf

- Developing voluntary memoranda of understanding between tribes and the State relating to issues such as coordination and integration of child protection and domestic violence protective services.

The Commission believes that the complex issues surrounding delivery of justice and law enforcement in rural Alaska are both chronic and of highest importance. A standing commission can both monitor and evaluate progress being made on the implementation of the recommendations contained in this report and study and appraise additional recommendations and changes related to justice and law enforcement in rural Alaska that may become necessary in the future. The importance of a continuing presence to monitor and track this Commission's recommendations is expressed well in testimony that the Commission heard in Kotzebue:

> *"Having been through this process [a commission studying problems in rural Alaska] before, I understand the limits. But it doesn't make any difference because we had the same process years ago. The Canadian Judge*[56] *came up and went to every village and went into houses and everything else and got detailed reports from people. Nobody listened to that.*
>
> *"It went through the Alaska Natives Commission as testimony, like you did. We worked with committees that held hearings all over the place on different subjects like you're doing. And we put out a report and it took years before anybody looked at it and when they did – when Congress did and provided funds – our people didn't know what to do with the funds. So we gave up the funds."*
>
> ***John W. Schaeffer***
> ***NANA Regional Elders Council***

The Commission contemplated a recommendation that would have called for a pilot project authorizing participant tribes to enact and enforce laws regulating alcohol sale, importation and possession within the boundaries of the respective village. The Commission did not include this recommendation in its interim report. During the public comment period on the draft interim report, numerous organizations and individuals urged the Commission to include this recommendation. We understand the critical importance of local regulation and control of alcohol. Alcohol continues to have a devastating impact on rural Alaska. We intend to specifically and intensively review and act on this issue in the next phase of the Commission's work. In making this commitment, we are mindful that this is a highly charged issue that involves competing views of sovereignty that must be confronted. There are also complex on-the-ground relationships that need to be addressed.

The Commission's other recommendations are presented, by theme, in the following section.

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[56] Thomas Berger, whose visits to Alaska and review of the impacts of the Alaska Native Claims Settlement Act are chronicled in Berger, Thomas R., *Village Journey: The Report of the Alaska Native Review Commission.* New York: Farrar, Straus, and Giroux, 1985.

B. Specific Recommendations

1. Engage in More Partnering and Collaboration

There is no doubt that reduction in state-tribal conflict over jurisdictional issues, and increased cooperation, coordination, and collaboration between State and tribal courts and agencies, would greatly improve life in rural Alaska and better serve all Alaskans. In particular, communication and coordination among and between child protection and domestic violence, child abuse, and sexual abuse service organizations and government institutions are neither systematic nor comprehensive enough, and the tribes are often left entirely out of the process. It therefore recommends the development of more effective coordination and communication, including cross training, among and between all governments and service agencies and organizations.[57] Cross training might include the Alaska Native Indian Child Welfare Association, the Alaska Inter-Tribal Council, the Alaska Legal Services Corporation, the Alaska Native Justice Center and other Alaska Native social service agencies.[58] Because there is insufficient coordination between State and tribal governments at all levels, the Commission recommends (a) strengthening State policy recognizing tribal civil decision-making; (b) developing voluntary Memoranda of Understanding between tribes and the State relating to coordination and integration of child protection and domestic violence protective services; (c) changes to federal laws to require more coordination; (d) broadening the cross-recognition of judgments, final orders, laws and public acts of tribal, State, and federal governments (such cross-recognition already exists for Indian Child Welfare Act (ICWA) and Violence Against Women Act (VAWA)); and (e) fully implementing the Millennium Agreement.[59] Moreover, the State should offer tribes, Alaska Native non-profit organizations, and other service providers a greater opportunity to participate in Memoranda of Agreement to enhance opportunities for collaboration, coordination and communication.[60]

There is historic precedent for cooperative models in this State – and throughout the country – that could be used to encourage a more collaborative approach. For

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[57] In its Final Report in May, 1994, the Alaska Natives Commission recommended that all agencies handling cases of child neglect or abuse should collaboratively renew efforts to eliminate child abuse and neglect among Alaska Natives, share data, and clarify their respective roles, including OCS, the judiciary, IHS, regional health corporations, and tribal councils. Vol. II, p. 34. The "Follow Up Table of Recommendations" from the Final Report of the Alaska Criminal Justice Assessment Commission of 2000 recommended that State agencies, treatment providers, tribal entities and community organizations collaborate to establish aftercare and re-entry programs and procedures. See also the Final Report to the Governor by the Alaska Commission on Rural Governance and Empowerment, 1999, in which the Commission encouraged development of inter-governmental and inter-agency coordination mechanisms, and improving communications and cooperation among tribal, State, local governments and regional institutions, as well as within agencies, by encouraging agreements that enhance local decision-making.

[58] Recommendation 2. The Recommendation footnotes refer to the Workgroup Options that led to the recommendations, as listed in Appendix F.

[59] See Resolution 27, Conference of Chief Justices. See also Wisconsin 161 Agreement, which provides for orderly and thorough coordination and integration between the Vilas County Department of Social Services and the Lac du Flambeau Lake Superior Chippewa Indians on all matters of child protection involving tribal children.

[60] Recommendation 3.

example, during a protracted negotiation process that culminated in August 1990, the State and several tribes negotiated an ICWA Agreement that was eventually signed by 27 tribes. The Agreement, which was negotiated before certain jurisdictional issues had been resolved in *John v. Baker*[61] and *C.R.H.*,[62] "reserved for future negotiation and discussion" issues relating to tribal courts, jurisdiction, and state funding for social services and for children placed in foster homes by a tribe. It is time for those negotiations and discussions to be continued.

Section 1919 of the ICWA provides a mechanism to encourage state-tribal cooperation and collaboration: "States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over custody proceedings." Similarly, state law expressly authorizes the Department of Health and Social Services to enter into agreements under ICWA concerning the "jurisdiction of Native child custody proceedings."[63] Collaboration and cooperation in other aspects of child protection should also be accomplished to improve the overall quality of services available to those families in need.

The Commission recommends development of a state-tribal ICWA agreement for consideration by the State and Alaska's tribes.[64] With the assistance of work group members, the Commission devoted considerable time to development of a model agreement of this kind. The willingness of all of the stakeholders to work toward an acceptable agreement left a great impression on the Commission. Unfortunately, the task of developing a proposed agreement could not be finished in the available time.

There is also substantial need for tribal-state partnerships on juvenile justice matters. Some tribal courts and councils work very effectively with juveniles and their parents to respond to a juvenile's delinquent or troublesome behavior, and there is no need for state participation in the matter. Where the tribal government is able to effectively address the needs of the juvenile and the community, it may prefer not to encourage state involvement, so that the offending minor does not acquire a state juvenile record.

Other village justice systems, however, would prefer to coordinate more closely with the Division of Juvenile Justice (DJJ) and might, with DJJ's consent, wish to refer a juvenile to the Division. The Commission therefore urges DJJ to discuss with interested tribal courts whether such a referral mechanism might be achieved and then make agreements with tribes and tribal courts to coordinate the disposition of juvenile offenses as currently permitted under state law.[65]

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[61] *John v. Baker* I, 982 P. 2d 738 (1999) (recognizing inherent tribal jurisdiction in a custody dispute involving tribal children).

[62] *In the Matter of C.R.H.*, 29 P.3d 849 (Alaska 2001) (upholding transfer jurisdiction under ICWA).

[63] AS 47.14.100(g).

[64] Recommendation 4. Specific to this recommendation, "such an agreement would take into account the changes in the law that have taken place since 1990 and reduce the number of issues over which the State and tribes are currently litigating. It would also provide a template for cooperation between the State and tribes that could provide a model for other topics."

[65] Recommendation 5.

It is also clear that there is a substantial need for greater cooperation, education, and coordination among domestic violence and sexual assault service providers that serve rural Alaska communities throughout the state. There are 21 domestic violence and sexual assault programs listed with the Council on Domestic Violence and Sexual Assault (CDVSA) Community Outreach, but they lack sufficient resources to reach large sections of rural Alaska. As a result, many rural Alaska communities lack safe houses or other safe shelters for those who are victims of domestic violence and/or child abuse.[66] Furthermore, in many communities, no single local entity has been identified either to serve as a coordinating point of contact for safety issues, or to facilitate community development. The Commission recommends that the CDVSA support the Alaska Network on Domestic Violence and Sexual Assault to identify specific needs within individual rural communities for improvement of safety and to coordinate efforts by existing domestic violence and child abuse organizations, including Child Advocacy Centers, to provide technical assistance and consultation to help every rural community develop a safety plan. The Commission also recommends increased domestic violence program funding for rural Alaska.[67]

> "Some of the things that I think are important to address—within your Commission—is training our own people to help our own people. Giving them the resources that they need, which is something that is being done here also. But giving them those resources in a manner that is when they're working with a family, they can say the things that they need to say. And having our people in our own communities having the voice and the strength to say that something is going on within a home that's not right. If a child is being hurt, if a wife is being battered, if an Elder is not being taken care of. Because, as we know, silence is acceptance. So I think part of our own community responsibility is teaching the people how to say this is not okay and to stand up. And then to start creating those support networks around the people who are speaking." ***Paulette Moreno, Sitka***

The Commission recommends that Congress provide funding to form and help staff a tribal justice association as a conduit for communications, including a tribal judicial web site. Through the new tribal justice association, additional funds should be acquired to produce educational materials and handbooks, forms, computer software, and codes that are respectful and supportive of Alaska Native traditions, customs, practices, and values, and that could be adapted for use by individual tribes. Efforts involving the University of Alaska, tribal organizations, and other appropriate judicial training entities should support the provision of consistent, quality training and technical assistance for tribal judicial systems. This should include cross training between tribal judicial systems and all law enforcement entities (i.e., municipal, state, tribal, and federal), the Alaska Court System,[68] Alaska Department of Law, Alcoholic Beverage Control (ABC) Board, Probation and Parole, and the Office of Children's Services.[69]

Collaboration should also take place between the state and the federal government to enhance drug and alcohol enforcement. Lack of adequate Postal Service Investigator

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[66] For a map showing the locations of all domestic violence, child abuse, and sexual assault programs in Alaska, see Appendix A.

[67] Recommendation 6.

[68] For a map showing the location of all the State Courts and magistrates, see Appendix A.

[69] Recommendation 7.

staffing in Alaska is a significant impediment to alcohol and drug interdiction in rural villages. The Department of Public Safety should designate targeted alcohol and drug enforcement areas that include local option villages and their hub communities. This should include seeking Postal Service cross designation authority for drug and alcohol investigators assigned to the target area as well as the statewide Major Offender Unit personnel. Success for this recommendation will be measured by an increase in seizures of alcohol and drugs, forfeitures, and documentation of cases that could not have been possible without cross-designation authority. This recommendation will enhance the Department's efforts to monitor and control choke-points, since almost all alcohol and drugs move to rural Alaska by commercial air carrier or mail and package services.[70]

Finally, at this time, judicial/justice materials are not available in many languages that would serve Alaska.[71] The Commission recommends that more materials be both developed and provided in different languages for Alaska Natives.[72]

2. Make Systemic Changes to Improve Rural Law Enforcement

"The Northwest Arctic Borough is truly rural, an area the size of the state of Indiana, with a population of approximately 7,200, which is predominantly Iñupiat Eskimo. There are no roads connecting any of our 11 communities to one another. Transportation is by boat, airplane, or sno-go. We have many similarities with other rural regions; however, we are different from some regions in that we are an organized borough. Having been formed in 1986, our borough government is young and not yet fully evolved.

"Kotzebue, our hub community, has its own city police force, funded by city taxes, and also has a modern jail facility. Our other 10 communities are quite different. For roughly 3,000 residents, scattered through 10 communities, we have three VPSOs; one in Kobuk, population 100; one in Selawik, population 900; and one in Ambler, population 475. The other 1,500 borough residents in seven communities do without the presence of an officer. Some village communities hire a Village Peace Officer, or VPO. In most all cases this person has no law enforcement training. In many cases, this officer serves primarily as a curfew enforcer, but does not deal with more serious offenses. As fiscal conditions get tighter and tighter for our village municipal governments, we have seen some of these VPOs laid off due to lack of funds to pay them. We expect this trend to continue. By itself, a VPO program cannot address our problems. All Northwest Arctic Borough villages except Kotzebue are served by the Alaska State Troopers, a seven-member group headquartered in Kotzebue. Troopers are dispatched to a village in the event of a serious crime, but due to distance, weather, and other factors, their response time can be less than impressive."

Tom Bolen, Public Services Director, Northwest Arctic Borough

The Law Enforcement Workgroup developed a list of nine "consensus points" to explain the premises and assumptions that underlay the process of agreeing upon options to be forwarded to the Commission. These points are presented below. They relate not only to the work of this one workgroup but also to the recommendations from the other workgroups that relate to the law enforcement theme and are presented in this subsection.

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[70] Recommendation 8.

[71] See Supreme Court Committee Report on Fairness and Access Report at p. 92-93.

[72] Recommendation 9a.

Law Enforcement Workgroup
Consensus Points

- Funding should be secured to ensure that all officers engaged in law enforcement activity in rural villages in the State of Alaska have a basic minimal level of training and certification.

- Law enforcement in rural Alaska should be accomplished in a manner that does not threaten or diminish the sovereignty of either the state or tribes.

- Cross-deputization of tribal and state/municipal police officers has the potential for assisting the State Troopers that serve rural Alaska, assuming an agreement on shared training and certification and liability standards could be reached.

- For state, tribal, and other officers engaged in village law enforcement to work effectively together, a reliable and up-to-date database identifying the officers of each department in rural Alaska, and their current training levels should be developed.

- Creating three tiers of villages or new rural government institutions is not necessary to improve rural law enforcement.

- Effective rural law enforcement, including improvements in recruitment and retention, requires a commitment to adequate infrastructure appropriate to each community's size and need, such as housing, communications, technology, transportation, holding facilities, offices, and equipment.

- Public safety and law enforcement services are a basic need throughout Alaska and should be adequate and appropriate to a community's size and need.

- It is critical that the federal government take a much more active role in ensuring adequate law enforcement in Alaska's Native villages, including far more extensive funding of village law enforcement needs.

- There should be an increased emphasis on juvenile crime prevention programs and positive interaction between public safety officers and youth.

"The Ahtna People do not have a history of having Village Public Safety Officers but, if they did, I am sure that we would be testifying here today about the positive results of having one in our villages.

"At the present time we have many criminal misdemeanor offenses that are not responded to by the Troopers and, if they are responding to it, it may be several hours to a few days before one of the four State Troopers are able to respond to a call for help. The local Alaska State Troopers have a history of establishing a working relationship with the Tribal Governments, by attending village council meetings. The Troopers expressed the hardship they have with responding to calls when the service area includes a 250-mile area on the road systems and areas that need to be accessed by airplanes. Many times they may be out on a call and when a call is received from our villages and they have to finish up with that call before they can respond. The Troopers do have a

history of being in a community for only a short time and then are transferred; thus the community doesn't get to know them very well. Many offenses take place after the Troopers are off duty."
Eleanor Dementi
Copper River Native Association, Cantwell

One of the goals of an ongoing Commission would be the development of a statewide, uniform, and tiered system of certification and training for police and public safety officers with a reasonable opportunity for advancement that could culminate in full APSC police officer certification.[73] The first tier of certification would require a reasonable minimum level of certification and training, including non-police function training, to ensure professional competency and service delivery, with tribal officers encouraged to participate.[74] The Commission would also be charged with developing a template cross-deputization agreement[75] between the State and tribes that can be used as a basis for individually negotiated agreements.[76]

The Commission recognizes that additional funding will be required to augment training and certification of rural police and public safety officers and recommends that new funds should be sought from all available sources, including state and federal governments, grants, and local sources (including in-kind support), with local support expected to be appropriate to community size, need, and capacity.[77] Local contributions should not, however, be used as a factor in determining a community's need for police and public safety services.[78] To further expand the number of law enforcement and public safety officers in rural Alaska, the Commission also recommends making the federal COPS program longer term.

VPSO Program Regulations adopted by the Department of Public Safety (DPS) define a village as a community with a population of less than 1,000 individuals based on the most recent federal census. The populations of rural villages in some areas have steadily increased to a point where there are communities that either exceed 1,000 individuals or are approaching the allowable population limit. The Commission recognizes that the VPSO program is a valuable tool for rural communities lacking resources to provide public safety services for their residents. Therefore, the Commission recommends that DPS modify the definition of a village in 13 AAC 96.900 (12) to read:

(12) "village" means a community with a population of less than 1,500 individuals based on the most recent federal census.

"In sum, as a VPSO I provide preventive community policing and public safety in a wide and sweeping variety of situations. Equally important, the Old Harbor Tribal

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[73] Recommendation 9b.

[74] This option would require a change to AS 18.65.220 & 18.65.290(7), which allows only state, municipal, and certain federally employed officers to be certified. Greater rural representation in the APSC process and governance would improve its responsiveness to rural concerns.

[75] Cross-deputization agreements have potential for combining scarce funds to provide direct and local service in rural Alaska. Such agreements could also create efficiencies and other improvements in law enforcement service delivery, and could be entered into between Tribes and the State boroughs or cities. Alaska Statute 18.65.010 currently allows such agreements.

[76] Recommendation 10.

[77] Recommendation 11.

[78] Recommendation 12.

Council's restorative system allows the community to address situations in a preventive way that can de-escalate a youth's behavior, and help that individual understand the effects of their actions. Together, we provide public safety at a variety of levels.

"How do we improve upon what is working well? Hands down, we need more and stable funding, and more law enforcement officers per village. Ideally, we need two officers per village—at a minimum. It places officers at risk when they are asked to address domestic violence and other situations without a partner or backup of any kind. In addition, because each village is unique in its social makeup, and because domestic violence, juvenile justice, and child protection demand immediate attention and solutions that cannot wait for weather or funding, and further because the state system is already tremendously overburdened, we must allow each village to develop individual restorative justice systems to provide our communities with necessary tools to adequately address public safety."

Valent Maxwell, VPSO, Old Harbor

The Commission recommends that options for alternative methods of police and public safety training be examined to enhance the currently available training at the Sitka Academy. Partnerships with the College of Rural Alaska and other existing training and educational institutions could help remove impediments to recruitment and training for police and public safety careers. The development of regional training programs or centers would also help.[79] The Commission further recommends that the Department of Public Safety initiate a regional rural recruitment effort for rural police and public safety officers.[80]

The Commission has determined that there is a need to make changes in state statute to help law enforcement reduce the importation of alcohol into dry villages in rural Alaska. Even though AS 04.11.010 prohibits the manufacture of alcohol, the provisions of Title IV do not define manufacture, and the definition in Title XI only relates to controlled substances.[81] Present forfeiture provisions do not cover violations of transportation by common carrier and do not provide for forfeiture of firearms and items of value purchased from illicit proceeds, or provide for forfeiture proceedings.[82] Finally, currently there is an inconsistency in the amount of alcohol that triggers presumptive sale (12.0 L) and felony importation (10.5 L), which is confusing for law enforcement. To remedy these problems the Commission recommends the changes in statutory language that are shown in the three attachments presented in Appendix H.

"Alcohol and drug abuse have had tragic consequences in our region. It is estimated that more than 97 percent of the crimes committed by Alaska Natives in our region are alcohol related. Alaska Natives are more likely than any other racial or ethnic group in Alaska to be the victim of a crime. Next to children, Alaska Native women are the most victimized group in the state, suffering high rates of rape and domestic violence. This is true in our region. It is also true that we have some of the highest suicide, child sexual and physical abuse, and fetal alcohol syndrome rates in the state, and that the state's figures are consistently higher than the rest of the nation.

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[79] Recommendation 13.
[80] Recommendation 14.
[81] Recommendation 15.
[82] Recommendation 16.

"The State of Alaska is mandated by the state constitution to provide basic public safety services within the areas in our region where no local governing body provides these services. The State provides funding for a VPSO in only nine of our villages. This means that, in the best-case scenario, six of our 15 villages must make-do without VPSOs. As it is, the funding that we receive does not afford enough to pay for salaries that would attract anyone for this difficult job. With a starting salary of $14 an hour, a VPSO may qualify for food stamps and public assistance under certain circumstances, and studies show that an alarming number of VPSOs are forced to seek this assistance. Statewide, the turnover rate of VPSOs is estimated at 40 percent annually. In our region, only 1/3 of our villages currently have a VPSO. In the villages that do have a VPSO, the person is on call 24 hours a day, 7 days a week, 365 days a year with minimal overtime budgeted for them. They do not carry weapons and must rely on the Troopers in Nome if a situation escalates. Yet one study found that 75 percent of unarmed village officers had responded to a perpetrator with a firearm."

Melanie Edwards, Vice President, Kawerak, Inc.

Another change recommended by the Commission that would benefit law enforcement is banning written order sales of alcoholic beverages to dry or damp communities, thereby preventing residents of dry communities from taking delivery of alcohol in areas where it is legal to receive alcohol.[83] Furthermore, the Commission acknowledges that there is a need to make it easier for law enforcement to detect illegal shipments of alcohol to rural Alaska and that shipping alcohol in plastic containers makes detection more difficult (compared to shipping in glass containers). It therefore recommends that shipping of alcohol in plastic containers should result in a sentencing enhancement or aggravator, unless the containers are sent to a distribution site.[84]

Given the relative lack of law enforcement in rural Alaska to enforce state and tribal orders related to child protection, child abuse, domestic violence, and sexual assault, the Commission recommends that (a) the State adequately fund and staff the VPSO program to help provide this important function, (b) federal funding be obtained for tribal law enforcement, and (c) cross deputization of law enforcement occur.[85, 86]

Because the lack of adequate medical response in many rural Alaska villages makes sexual assault crimes harder to prove, and the lack of law enforcement with specialized training also aggravates the problem, the Commission recommends that the Department of Public Safety, in conjunction with regional Native non-profit corporations (a) develop part-time law enforcement positions for smaller rural Alaska communities

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[83] Recommendation 17.

[84] Recommendation 18.

[85] See Alaska Federation of Natives Resolution 04-14 adopted at the 2004 Annual Convention, a resolution in "Support of Rural Law Enforcement in Alaska's Villages" supporting the VPSO program, and calling on the State legislature, governor and congressional delegation to design a program that will adequately address public safety needs in villages. See also Final Report to Governor, Alaska Commission on Rural Governance and Empowerment, 1999 (a local law enforcement officer should be present in every community in Alaska, with particular attention to off-road communities; all categories of officer should be fully trained, equipped, staffed, paid, and acknowledged as part of the overarching public safety system; effective public safety requires coordination with local communities, tribes, and regional non-profits. The Department of Public Safety should train local officers to extend the reach of the public safety system; training for local officers is necessary to help them balance cultural sensitivity with professional ethics.

[86] Recommendation 19.

with intensive training and continuing support to maintain skills as needed, (b) develop new approaches to provide housing in the villages for these new positions, (c) recruit and train local residents to fill these positions (following a community policing model), and (d) initiate a new system that will ensure that law enforcement officers will be temporarily relocated to cover unfilled positions in the villages while these officers are being trained.[87]

The final recommendation in this thematic category is that the continuing Commission make addressing the scourge of alcohol and substance abuse a priority. The most oft-repeated concern Alaskans expressed in their testimony to the Commission was the toll taken by alcohol and substance abuse. Our fellow Alaskans are, literally, dying under the present regime. According to the final report of the Alaska Commission on Rural Governance and Empowerment, the alcohol-related mortality rate of Alaska Natives is three and a half times that of non-Natives, and the incidence of fetal alcohol syndrome (FAS) among Alaska Natives is three times that of non-Natives. The majority of crimes committed in rural Alaska are committed under the influence of alcohol or drugs. Substance abuse is devastating rural Alaska and the current governmental tools available to combat it are inadequate.

- Federally recognized tribes have a local governmental presence but have disputed jurisdiction. The State has jurisdiction but often lacks an effective local government presence. The result is a gap that leaves many villages without effective law enforcement tools to combat substance abuse.

- Local option laws enable villages to ban or restrict importation of alcohol, but the laws are enforced and prosecuted primarily from regional centers. Defendants are tried, if at all, away from the villages. Geographic and cost constraints likely will always prevent the state from having magistrates, Troopers, and prosecutors anywhere but in the largest communities.

- Second-class city governments in villages cannot effectively address substance abuse. Most have little or no money. State law does not provide for municipal courts and the cost of prosecuting cases in distant state courts means that small cities rarely enforce municipal criminal ordinances.

- Tribal governments are the *only* government in many villages. Many villages have tribal courts that handle juvenile offenses and child protection cases that often entail alcohol problems the tribal courts must deal with. The best solutions to community alcohol problems involve the community.

The tragic consequences of substance abuse in rural Alaska are well known, and all available vehicles should be mobilized to combat this problem: tribal, state and federal. Addressing this issue successfully must be the highest priority of the federal, state, and local governments of rural Alaska. The Commission believes that the ultimate success of other recommendations hinges on addressing the problem of alcohol and substance abuse in rural Alaska.[88]

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[87] Recommendation 20.
[88] Recommendation 21.

"The AFN Sobriety program provided much-needed relief for the mental health and protection services. But the overriding comment from our villages is that there is no control of alcohol coming into the village. The village may have banned alcohol, but without resources, the village is left to watch their family members suffer from bootleg alcohol. To address this issue, they want:

1. *resources to include providing funds to the tribal council to monitor the community,*
2. *liaison with the local police to find the bootleggers,*
3. *search incoming airplanes for alcohol,*
4. *provide a hotline with rewards for results on prosecution,*
5. *provide funding so that the tribal council can hire a tribal policeman.*

"These are but a few suggestions from our village meetings for the sobriety program. Tribal council want help in enforcing the alcohol ban in their villages but are unable to find funds for doing the work."

Arnold Brower, Arctic Slope Native Association, Barrow

3. Enlarge the Use of Community-based Solutions

"Brief history reveals how healthy our people were in the public safety arena. They were in control of their destiny and lived good physical lives; they simply governed themselves to survive. They knew how to take care of each other through public safety, putting together their own way of law and order and live peacefully in harmony with the life/nature. Law and order was respected and no jail system – no repeat offenders, unlike all the later history within the state system today.

"You see our Native people have intellectual knowledge on basic human needs and how to protect each other from harm through good public safety practices. And yet we are not given the chance and opportunity to exercise these rights."

Virginia Commack, Tribal Administrator, Native Village of Ambler

Alaska Statute 47.12.010 states that one purpose of Alaska's juvenile delinquency law is to "encourage and provide opportunities for local communities and groups to play an active role in the juvenile justice process in ways that are culturally relevant." Currently AS 47.12.988 allows the Department of Health and Social Services to select "an entity" to exercise authority, but the statutory definition of "an entity" does not include a tribal entity. The Commission recommends amending AS 47.12.988 to allow DJJ to delegate its authority to tribes in situations in which DJJ and a tribe wish to cooperate and share resources with respect to tribal juvenile offenders, as follows:

> "In this chapter, when authority exercised by the department may also be exercised by an entity selected by the department, the entity that the department may select in order to exercise authority is limited to
> (1) a municipality;
> (2) a corporation;~~ or~~
> (3) two or more persons recognized by the community and operating under contract or license from the department~~.~~; or
> (4) a tribe as defined by the Indian Child Welfare Act (25 USC §1903(8)).[89]

[89] Recommendation 22.

By implementing this recommendation, more culturally appropriate, community-based, procedures can be used in addressing the problems of tribal youth, and remedies that draw on the traditions and strengths of the tribal communities can be developed.

The Commission also recommends that the Department of Health and Social Services increase funding for existing programs and help organizations implement new programs to address prevention, intervention, and treatment of domestic violence and child abuse throughout rural Alaska. Existing programs have not received any increase in funding over the last several years, while costs, including utilities, airfare, and medical care have increased dramatically. Because programs are no longer able to offer competitive salaries, staff in high-stress positions experience a high rate of turnover. Increased funding will enable existing and new programs to provide much needed educational and therapeutic services for sexual assault and child sexual abuse victims.[90]

The Commission has concluded that the alcohol distribution site that was created in Barrow has proven to be very effective in decreasing bootlegging and the ensuing array of social problems related to the use of alcohol, and the Commission thereby encourages[91] damp hub communities that serve as points of entry for villages of which at least 20 percent are either "dry" or "damp" to have community alcohol distribution sites. Permits to pick up liquor from a community's alcohol distribution site must be held by residents of that damp community only.[92]

There is a need for tribes[93] to have an opportunity for notice and to be heard at sentencing and disposition (or before) in state court juvenile proceedings and AS 12.55.011 allows for community participation in restorative justice. The Commission recommends that Title 47 be amended to permit tribes to participate in sentencing or other appropriate juvenile proceedings (as do other victims),[94] and it further recommends that state law be adopted or amended to permit tribes to participate in juvenile delinquency treatment, especially after minors return to their communities.[95] Implementing these recommendations would (a) improve communication between rural Alaska communities and the court about sentencing of juveniles, (b) ensure more effective sentences, and (c) improve the effectiveness of juvenile delinquency treatment at the community level. Similarly, the Commission recommends re-entry programs for Alaska inmates moving back into small rural communities, focusing on community-based restorative justice and the role of the village in assisting in the rehabilitative process.[96]

Alaska needs to find alternatives to housing Alaska's inmates in out-of-state facilities, which is moving to adult law enforcement issues, a weak point in the system. Particularly for Alaska Natives sent to such facilities, the separation from family and

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[90] Recommendation 23.

[91] If the State chooses to mandate hub distribution sites, the deadline for initial establishment of these sites should be set by the State at one year, and if a designated community does not set up the community alcohol distribution site, the ABC Board should.

[92] Recommendation 24.

[93] Tribes as defined in ICWA.

[94] Recommendation 25.

[95] Recommendation 26.

[96] Recommendation 27.

community enhances alienation and is likely to retard rehabilitation and re-entry into the community. Sending inmates from rural Alaska to out-of-state facilities also creates hardships for their families. To help remedy this situation, the Commission recommends that the Department of Corrections explore other options, including working with Native regional corporations and non-profit organizations. If a method can be found to keep inmates within Alaska in a financially feasible way, inmates and their families will benefit, along with local economies.[97]

4. Broaden the Use of Prevention Approaches

The Commission recommends that reducing the demand for alcohol in rural Alaska should involve the development and expansion of a variety of programs that include: (a) programs geared to helping young people learn to make healthy choices; (b) healthy community and cultural activities that link youth and adults; (c) alcohol/drug information schools for first-time misdemeanor alcohol/drug related offenders; and (d) programs that promote community responsibility for preventing and addressing alcohol related problems.[98] All of these need to reflect and respect the culture of the local community.

There are also too few prevention and early intervention programs targeting domestic violence and child abuse in rural Alaska and there is a general lack of understanding or agreement about appropriate prevention approaches. Prevention must begin with the very young (e.g., in Head Start and pre-school), to include structured programs incorporating attitudes of respect toward women, people of color, and persons with different abilities. It recommends that the Alaska Department of Education and Early Development devise comprehensive, culturally appropriate prevention curricula to be implemented in kindergarten through eighth grade in Alaska's public schools, including a component on healthy behavior and the importance of remaining drug free. Increased funding from the Department of Health and Social Services for enhanced prevention programs, developed and implemented in rural Alaska, is also advisable, as is the reinstatement of funding from the U.S. Department of Labor for the highly successful, statewide Youth Opportunity Program.[99]

5. Broaden the Use of Therapeutic Approaches

The Commission is fully aware that increasing and improving methods to reduce the supply of alcohol to rural Alaska can only go so far to reduce alcohol abuse. Reduction in the demand for alcohol must also play a part, including both preventive and treatment approaches. Treatment programs have proven most effective when the programs are located near the person's home, when the programs can address the needs of the entire family, and when they are culturally relevant. The Commission therefore recommends state, federal, and private funding support to develop more local, family-oriented, and culturally based substance abuse treatment programs, such as the Tundra Swan Inhalant Abuse Treatment Program operated in Bethel by the Yukon Kuskokwim Health Corporation.

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[97] Recommendation 28.
[98] Recommendation 29.
[99] Recommendation 30.

Noting that locally developed treatment options that resonate with those values that are deeply ingrained in a culture are more apt to be effective in achieving rehabilitative success for individuals raised in that culture, the Commission recommends greater federal and state support for culturally relevant treatment options for rural Alaskans, and further recommends that the Alaska Department of Corrections collaborate with the Alaska Native regional non-profit corporations to develop culturally relevant behavioral health treatment options for incarcerated individuals.[100]

The Commission finds that substance abuse, mental health, and dual diagnosis screening by domestic violence and child abuse programs is neither consistent nor standardized and recommends the development of agreements between domestic violence and behavioral health programs and the development and statewide implementation of screening tools to ensure standardization.[101] Moreover, local capacity to address alcohol and drug abuse, while essential, is inadequate,[102] and the Commission recommends that both the federal and state governments increase funding to enable the development of more substance abuse treatment services located in Alaska's rural villages that invoke cultural values and include victims, family, and community in treatment. Residential treatment centers in which victims can have children live with them are needed,[103] ideally in each hub city in rural Alaska.[104] In order for residential substance abuse treatment to be truly effective, there need to be more aftercare programs to help returning clients remain sober, especially in the villages of rural Alaska. To this end the Commission recommends that the State increase training, technical assistance, and ongoing support for village-based volunteers and family members; this could be accomplished by integrating a long-term aftercare and family care program with a job training and career development program.[105]

Insufficient substance abuse, mental health, and dual diagnosis treatment options are available in Alaska – and especially for youth in rural Alaska – which presents major problems for the juvenile justice system. Many juveniles are either not receiving treatment at all or are being sent out of Alaska for residential substance abuse or mental health treatment. There is a growing need for the development of culturally effective local juvenile treatment programs and facilities, and the Commission recommends that

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[100] Recommendation 31.

[101] Recommendation 32.

[102] In its Final Report in 2000, the Alaska Criminal Justice Assessment Commission found that it is imperative to reduce substance abuse related crimes through prevention and treatment programs, and that 97 percent of Alaska Native crimes have alcohol or drugs as a factor and 81 percent of reports of harm involve substance abuse. See also, the Final Report of the Alaska Natives Commission, May 1994, finding that alcohol poses the single greatest threat to the well-being of many Native families, resulting in domestic violence and much higher rates of FAS, Vol. II, p. 77. See also, Alaska State Troopers Alaska Bureau of Alcohol and Drug Enforcement (ABADE) 2003 Annual Drug Report, in which ABADE acknowledged that "[m]embers of Alaska's law enforcement community and others who are part of Alaska's criminal justice system have long known that the greatest contributing factor to violent crimes, including domestic violence and sexual assault, is drug and alcohol abuse." Report, at 5.

[103] Recommendation 33.

[104] Recommendation 34.

[105] Recommendation 35.

both the state and the federal governments explore options for increasing funding and support for the expansion of adolescent treatment programs.[106]

Evaluation data show that therapeutic courts in Alaska are effective in dealing with substance abuse related offenses,[107] and it both commends the Alaska Court System for supporting therapeutic courts and recommends that the Alaska Court System continue to expand the establishment of additional therapeutic courts in rural Alaska. The greater emphasis on a "medical model" in processing substance-abuse related offenses will continue to lower the rate of recidivism. [108]

The Commission has learned that when first-degree relatives provide foster care in their homes the state support that they receive is less than that received by more distant relatives and strangers.[109] To remedy this situation the State should explore changes in regulations that would encourage relatives' caring for children in need of aid. The State should also implement a plan to establish more group homes for children who need such services.[110] A concentrated effort should be made to increase the number of group homes in rural Alaska, accompanied by more flexibility on the standards and designed to reflect community values. Specialized training for group home parents and operators.[111]

There is also a need to increase the number of Alaska Native foster homes for Alaska Native children and to facilitate the pass-through of foster care subsidy payments for foster care placements ordered by tribal courts. To help remedy this situation, the Commission recommends enactment of a state law similar to those portions of HB 193 or SB 125 that give the Commissioner of Health and Social Services the discretion to set appropriate standards for foster home placements and grant waivers in appropriate circumstances, and which resolve problems with state liability issues. In the event this becomes law, the Commission recommends that the Alaska Department of Health and Social Services consult with tribes over the foster care licensing standards. The Commission further supports the enactment of federal legislation similar to that in S. 672, introduced in March 2005, allowing tribes to apply for and administer Title IV-E directly from the federal government, while maintaining consistent funding levels for the states.[112] Implementing this recommendation will serve the best interests of Alaska Native children needing foster home placements by increasing the supply of suitable foster homes in state child protection cases and by increasing the resources available to support tribally ordered foster care placements. [113]

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[106] Recommendation 36.

[107] See the Alaska Judicial Council's evaluation of the therapeutic courts in Anchorage and Bethel at http://www.ajc.state.ak.us/Reports/TherCt2004.pdf

[108] Recommendation 37.

[109] When children are placed in first-degree relatives' homes, they have to apply for child-only TANF funding which is considerably less than foster care funding, especially when there are multiple children in the home.

[110] Recommendation 38.

[111] Recommendation 39.

[112] In May 2001 Alfred Ketzler, Sr., CAO of the Tanana Chiefs Conference, Inc., provided testimony to the Senate Commission on Indian Affairs that articulates the Title IV-E problem very well and also makes additional recommendations relevant to this Commission. His testimony can be read at the following website: http://indian.senate.gov/2001hrgs/alaska/ketzler.PDF

[113] Recommendation 40.

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

The Commission recommends that the Departments of Public Safety and Corrections (a) increase the number of qualified Alaska Natives who work as Village Public Safety Officers, (b) continue to increase the utilization and training of Village Public Safety Officers in the role of probation officers in the villages, and (c) consider contracting with tribal governments to provide oversight of community service work, all of which will result in increased supervision of offenders under probation and parole supervision in rural Alaska.[114]

Although Alaska Natives are over-represented in Alaska's prison population, very few correctional workers are Native. Because positive role models are an important component of rehabilitation of incarcerates and also because emotional bonds can form between correctional personnel and inmates, positive and supportive Alaska Native role models in corrections can be conducive to rehabilitation. The Commission recommends that the number of Alaska Natives who work in corrections (as well as those who work as VPSOs and in other law enforcement roles) be increased, which might be accomplished with targeted recruitment campaigns,[115] including films, DVDs, a workbook or written guide, and a website, with materials geared to junior and senior high school-age Native youth. The Commission also recommends that a meeting of stakeholders by convened to consider the development and implementation of such targeted recruitment measures. The stakeholder group should also consider what additional educational and training opportunities for careers in the field of law enforcement and corrections could be implemented in rural Alaska. Participants in the stakeholder group should include, but not be limited to, representatives of the Department of Education, Department of Labor and Workforce Development, the Alaska Association of School Boards and the Alaska Association of School Administrators.

The intended result of increasing the number of Alaska Natives employed by the Department of Corrections, including probation officers, will be lowered recidivism rates, due in part to positive role modeling and to better communication between probationers and their probation officers. Also, by increasing awareness and preparedness for careers in these fields, the intended result is that the number of rural Alaskans employed in the Departments of Public Safety and Corrections will be increased as well. It is also the hope of the Commission that with such training at an early and critical age, Alaska Native youth will be less inclined to partake in criminal activities.[116]

The Commission stresses three points concerning the theme of employment and increased Native representation in law enforcement: First, more rural Alaskans should be recruited and employed as Correctional Officers by the Department of Corrections; second, more Alaska Natives are needed among the ranks of probation officers; and third, more rural Alaska Natives need to be employed in the VPSO and other local law

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[114] Recommendation 41.

[115] The Commission cautions that efforts to recruit more Alaska Native employees must be conducted within the equal-protection constraints of State and federal law.

[116] Recommendation 42.

enforcement programs. In this process, it is important that the authorities and responsibilities of probation officers and Alaska State Troopers continue to be separate.

*7. **Build Additional Capacity***

The Commission finds that there is a significant lack of infrastructure supporting police and public safety functions in rural Alaska, which undermines the safety of rural Alaskans and negatively affects recruitment and retention of police and public safety officers. To help remedy this situation, the Commission recommends that the State develop, improve, and maintain the infrastructure that supports the delivery of police and public safety services in rural Alaska in the following categories:

- Housing: The Commission encourages (a) streamlining the approval process and prioritization of HUD homes for use by police and public safety officers in rural villages; (b) exploring other available and currently vacant federal, state, and public housing that may be available for use by police and public safety officers; and (c) changing the eligibility rules for federal rural housing programs that are now available for teachers[117] and health providers to include funding for police and public safety officers. Although not directly related to law enforcement, the same recommendation also applies to other professionals whose services are so badly needed in rural Alaska, including those working to prevent and treat the problems of domestic violence, child abuse, and sexual assault. In some locations, the construction of rental units should be considered.[118]

- Law enforcement transportation: The Commission recommends increasing the availability of appropriate vehicles for intra-community use by local police and public safety officers in rural Alaska. Additional upgrades to inter-community transportation infrastructure should also be sought, and VPSOs, tribal police, and other village-based law enforcement officers should be able to access public transportation systems on the same terms as other law enforcement officers.

- Law enforcement offices and holding facilities: The Commission recommends providing adequate office and holding facilities, including maintenance and operational funding, in rural communities commensurate with the type of police or public safety officer and community need, in a manner that will ensure continuity in public safety services.

- Law enforcement equipment: The Commission recommends providing adequate and appropriate equipment to rural police and public safety officers.

The State should seek funding to construct multipurpose facilities with an apartment, an office, and a holding cell for the Alaska State Troopers in larger under-served village locations. Qualified State Troopers who are currently assigned to hub communities should be reassigned to these new posts in "sub-hub" villages such as Gambell and Holy Cross. The Troopers should work at these locations on a rotating

[117] For insight into the continuing need for improved teacher housing in rural Alaska, read the testimony of Peggy Cole, a teacher from the Lower Yukon School District, before the U.S. Senate Indian Affairs Committee in 2004, available at: http://www.neaalaska.org/govern/peggycoletestimony.htm

[118] Recommendation 43.

schedule of two weeks on followed by two weeks of leave. This would allow for Trooper availability approximately 80 percent of the time, with a 20 percent absence to account for court time, leave, weather, and similar events. This recommendation embraces the concept of "Community Oriented Policing," reduces response times, and provides a significantly enhanced law enforcement presence than has been possible in the past.[119]

The Commission recognizes the benefits of locating public safety and justice responsibilities in combined or shared facilities in rural areas. The advantages are far greater than simple cost savings for lease or construction costs. The intangible benefits include enhanced communication and interaction. Likewise, victims of crime or members of the public attempting to navigate through "the system" can also be greatly aided when agencies are in one location. The benefits of participating agencies learning and respecting the missions and challenges of other agencies, although difficult to quantify, are unmistakable. The Commission recommends that the concept of a Regional Unified Justice Center be considered whenever affected agencies consider construction projects in rural communities.

The Commission recommends that at least some of the funding for infrastructure development for rural law enforcement services described in the preceding list should be provided by the Denali Commission, and the Regional Housing Authorities should be involved in developing new housing opportunities for village-based police and public safety officers.[120]

Public testimony and reports reviewed by the Commission indicated that many litigants appearing in tribal and state court believe that judges and staff are not adequately trained in domestic violence, child abuse, and sexual abuse and do not consistently apply laws that are intended to help victims. The Commission recommends consistent training, provided no less often than annually, for all relevant court personnel and judges, coordinated with the Council for Domestic Violence and Sexual Abuse and the Alaska Network on Domestic Violence and Sexual Assault. Additionally, the Alaska Court System should hold a forum in rural Alaska for judges and court personnel to discuss issues affecting victims of domestic violence/sexual assault and child abuse.[121]

There is a need for more culturally sensitive forensic services in remote communities statewide to ensure better protection for domestic violence, sexual assault, and child abuse victims. The Commission recommends the establishment of a roving position within each region for a highly trained forensic investigator who has cultural

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[119] Recommendation 44.

[120] Recommendation 45.

[121] Recommendation 46. The Commission commends the court system for having partnered with the CDVSA and others to hold a series of interagency domestic violence forums in rural Alaska. The court system, as part of its Children in Alaska's Courts project last year, held regional forums in Barrow and Bethel (as well as Anchorage, Fairbanks and Juneau) to discuss a variety of concerns about children, giving specific attention to domestic violence and child abuse issues. The Commission acknowledges that state court judges and appropriate court system personnel receive regular, ongoing training on domestic violence, child abuse and sexual abuse at court-sponsored judicial, magistrate and clerks' conferences, at the annual Alaska Bar Conference, through attendance at local training programs here in Anchorage, at the National Judicial College in Reno, at seminars sponsored by the Violence Against Women Office, and at other workshops and trainings throughout the U.S.

skills necessary to communicate within the cultures served.[122] It also recommends that tribal police receive forensic training to the same degree that Alaska State Troopers, other municipal police officers, and investigators do.[123, 124]

In studying the problems of domestic violence, child abuse, and sexual assault in rural Alaska, the Commission has found that there is a lack of information and data regarding law enforcement's response to these criminal activities, and the data that do exist are neither consistent nor standardized. A new data base and reporting requirements need to be established to monitor investigations by law enforcement and to verify that investigations are adequate and uniformly carried out. This should include both internal and external quality control audits to provide sufficient and consistent information to confirm that cases of domestic violence, the abuse of minors, and sexual assault are adequately investigated by law enforcement.[125]

8. Increase Access to Judicial Services

Overall, the Commission has found that residents of rural Alaska do not have access to sufficient civil legal assistance to redress legal problems related to domestic violence and child abuse,[126] and it recommends more funding to meet civil legal needs from local, state, federal, and private sources, including increased federal funding to support Violence Against Women Act Legal Assistance to Victims Grants. The Commission notes that, since 1995, federal Legal Services Commission (LSC) grants to the Alaska Legal Services Corporation (ALSC) have fallen from about $1.7 million to about $1.2 million, and over the same interval state legislative appropriations for ALSC have fallen from about $300,000 to zero. Meanwhile, more people than ever before fell below the Alaska poverty ceiling: 80,405 as of the 2000 census, up from 66,558 as of the 1990 census. ALSC estimates that, while it closed approximately 1,700 cases during 2004, approximately 1,040 other callers were given only brief telephonic referrals due to lack of resources on ALSC's part to provide assistance. To improve access to civil legal assistance, the Commission also recommends the increased use of tribal courts and the use of existing video-conferencing capability to provide better legal representation to residents in rural areas of Alaska.[127, 128, 129]

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[122] In its Report "Improving Safety in Indian Country: Recommendations from the IACP 2001 Summit" the International Association of Chiefs of Police recommended that the federal government should fund services such as forensic exams. (IACP Recommendation #44 at p. 27 of that Report).

[123] In its Final Report to the Governor, 1999, the Alaska Commission on Rural Governance and Empowerment recommended that a local law enforcement officer should be present in every community in Alaska, that such officers should be fully trained, staffed and paid, and that the State should support federal efforts to train, equip and pay tribal officers.

[124] Recommendation 47.

[125] Recommendation 48.

[126] The Alaska Supreme Court Advisory Committee on Fairness and Access in its 1997 report found that "lack of local services can have serious ramifications: . . . civil matters like child support, adoption, probate, and small claims go unattended, telephonic hearings work poorly when the witness has limited English skills or poor understanding of the concepts involved, and villagers remain ignorant of the law because they never see it in action." Directory, fn. 47, p. 20, citing Alaska Court System, Report of the Alaska Supreme Court Advisory Committee on Fairness and Access 14, 105 (1997).

[127] In the report "Racism's Frontier: The Untold Story of Discrimination and Division in Alaska, 2001," the Alaska Advisory Committee to the U.S. Commission on Civil Rights recommended (Recommendation 3.6, at p.53-54.), the use of modern technologies should be increased to upgrade the quality and effectiveness of the judicial system in rural areas. For example, some communities have

During the public testimony and the public comment period, one message was often repeated: Congress should restore the federal funding opportunities for tribes located within the boundaries of all municipalities listed in Public Law 108-199, section 112(a)(2)(b). The Commission makes this recommendation because as a matter of state and federal law, tribes possess undisputed civil jurisdiction for limited matters. A tribe's location should not be a barrier for accessing tribal court funding.

> *"There is no equal access to justice in Alaska. Urban communities are able to use political strength to ensure that their communities have police protection, fire protection, and well-funded court systems. Rural communities are without police protection and rely almost entirely on a state trooper that visits the community when a serious crime is committed or through a regularly scheduled visit. Volunteer fire fighters do relatively well with substandard equipment, in most cases. Many of the people charged with breaking the law in a remote rural community have to be tried in urban courts outside their communities."*
>
> ***Edward K. Thomas, President,***
> ***Central Council of the Tlingit and Haida Indian Tribes of Alaska***

The Commission noted the existence of two types of disparities in rural Alaskans' ability to seek culturally appropriate access to the justice systems. Some victims are uncomfortable participating in the state justice system because of cultural reasons, geographical reasons, or both.[130] Other victims are similarly uncomfortable accessing tribal justice systems because of relationships with the opposing party or with the tribal court administration or adjudicators; in a small community, the opposing party may be a cousin or the presiding Elder may be a grandfather to the plaintiff. To begin to remedy these problems, the Commission recommends that training and technical assistance be provided to judges and support staff in both the Alaska Court System and tribal courts that will better inform and instruct participants in both systems to be aware of and appreciate the cultural differences and implications of their actions in rural Alaska, the population of which, as noted previously, is predominately Native.[131] In addition, the Commission recommends that the state collaborate more with tribal courts,[132] provide Alaska Native language translators throughout the Alaska Court System, and increase training on cultural competency[133] and effective diversion programs.[134] The tribes should also establish guidelines for responding to conflicts between those who are adjudicated

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<127 cont'd> developed video capability so that a probation officer can supplement on-going supervision of offenders in rural communities. A teleconferencing procedure may work for certain court cases as well.

[128] Recommendation 49.

[129] The Alaska Court System's Family Law Self Help Center is a currently available online resource. The website is www.state.ak.us/courts/selfhelp.htm.

[130] See, Supreme Court Committee on Fairness and Access Report, "many citizens believe that the justice system is unfair to ethnic and cultural groups." At p. 49.

[131] Ideally, this would best be accomplished through a collaborative effort of the State, tribal, and Native non-profit regional organizations, with a coordinated training and technical assistance program.

[132] See *Alaska Natives Commission Final Report, Vol. II*, p. 61 (State and federal governments should create and utilize all possible opportunities for tribes to demonstrate their respective capacities to regulate tribal members).

[133] See, Supreme Court Committee on Fairness and Access Report, "[j]udges and court personnel do not have regular cross cultural training about ethnic and cultural subgroups living in their areas." Report at p. 58.

[134] Recommendation 50.

and others in the tribal community by enabling judges to recuse themselves and otherwise eliminating influences from families or factions within the community.[135]

9. Expand the Use of New Technologies

The Commission recommends (a) increasing access to reasonably priced Internet and other telecommunications technology for police and public safety officers in rural Alaska; (b) changing the current regulations that support and subsidize the Alaska Federal Health Care Access Network (AFHCAN) telehealth program to allow rural Alaska police, public safety officers, and court officers to utilize excess bandwidth to support Internet access and email at the village level; (c) improving officer-to-officer communications by standardizing equipment and providing more equipment to village-based officers; (d) creating a system of regional 911 dispatch centers that have access to a comprehensive database of police and public safety services; and (e) opening eligibility for tribes and rural Alaska police and public safety officers to Homeland Security programs and funding.[136]

Because there is a need to utilize developing technologies to facilitate probation supervision in rural (as well as urban) Alaskan communities, the Department of Corrections should be encouraged to develop a pilot project to evaluate the use of electronic monitoring technology in rural Alaska and include training on the use of this technology to rural public safety personnel. Current electronic monitoring technology, utilizing Global Positioning System (GPS), can closely track a probationer's location and may be preferable to other probation methods under certain circumstances.[137]

The Commission recommends that the ABC Board develop a statewide database for collecting, maintaining, and retrieving all alcohol written orders and all transactions of the community distribution centers. With the new database, the State will be able to coordinate the records of purchases from liquor stores and distribution sites and liquor stores will also be able to determine whether a proposed written order purchaser has already purchased his/her monthly legal limit, thereby helping to ensure that prohibited individuals do not make purchases.[138]

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[135] Recommendation 51.
[136] Recommendation 45.
[137] Recommendation 52.
[138] Recommendation 53.

Appendix A

Maps

Map showing the size of Alaska compared with the Lower 48 States

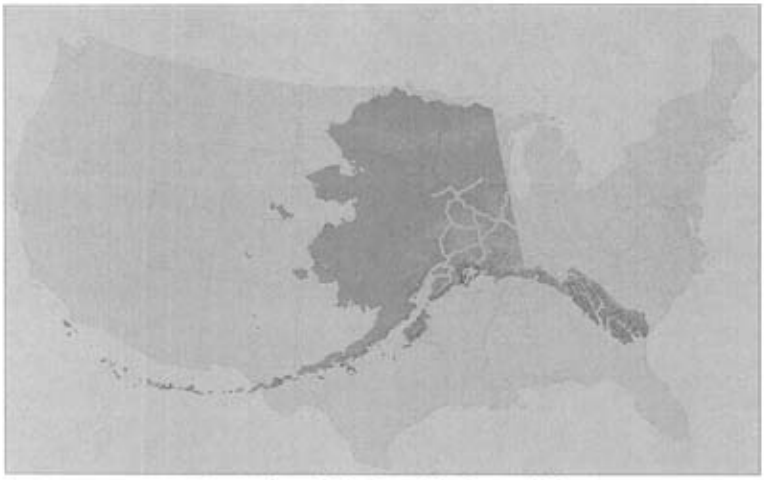
Map showing Alaska's rural highway system

Map showing location of Troopers

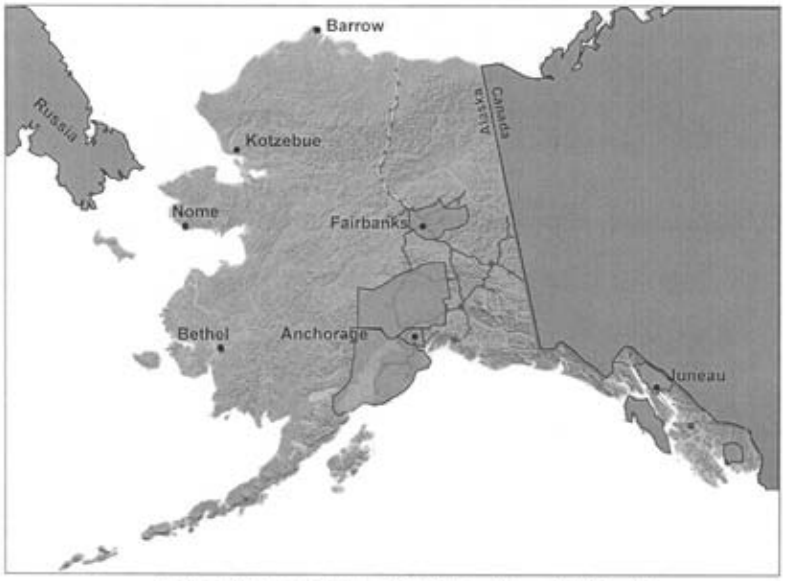
Map showing location of VPSOs, VPOs, and TPOs

Map showing location of State Courts and Magistrates

Map showing location of CACs, DV programs, etc.



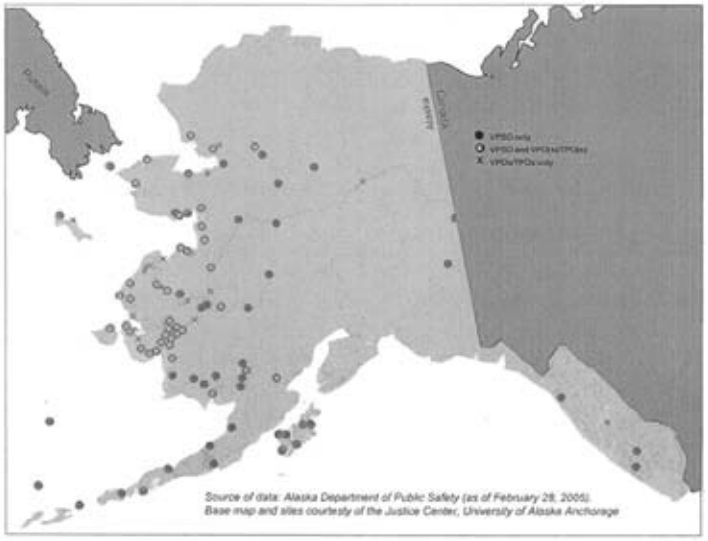
A Comparison of Alaska and the Lower 48 States



Alaska's Highway System with "Urban Boroughs" Shaded
(Source: Alaska Department of Transportation and Public Facilities, February 2005)

* Emmonak now has an Alaska State Trooper Post

Map Showing the Location of All Alaska State Trooper Posts



Map Showing the Location of All Funded Village Public Safety Officers (VPSOs), Village Police Officers (VPOs), and Tribal Police Officers (TPOs). At any given time one or more of these may be vacant.

Map Showing the Location of All Alaska State Courts and Magistrates
(Source: Alaska Court System, February 2005)

Domestic Violence / Sexual Assault Programs in Alaska

ANCHORAGE
AWAIC- Abused Women's Aid in Crisis
AWRC- Alaska Women's Resource Center
STAR- Standing Together Against Rape
VIJ- Victims for Justice

BARROW
AWIC- Arctic Women in Crisis

BETHEL
TWC- Tundra Women's Coalition

CORDOVA
CFRC- Cordova Family Resource Center

DILLINGHAM
SAFE- Safe and Fear-Free Environment

EMMONAK
EWS- Emmonak Women's Shelter

FAIRBANKS
IAC-Interior Center for Non-Violent Living

HOMER
SPWS- South Peninsula Women's Services

JUNEAU
AWARE- Aiding Women in Abuse & Rape Emergencies

KENAI/SOLDOTNA
LeeShore Center

KETCHIKAN
WISH- Women in Safe Homes

KODIAK
KWRCC- Kodiak Women's Resource & Crisis Center

KOTZEBUE
MFCC- Maniilaq Family Crisis Center

NOME
BSWG- Bering Sea Women's Group

PALMER
AFRC- Alaska Family Resource Center

SEWARD
SCS- Seaview Community Services

SITKA
SAFV- Sitkans Against Family Violence

UNALASKA
USAFV- Unalaskans Against Sexual Assault & Family Violence

VALDEZ
AVV- Advocates for Victims of Violence

Map Showing the Location of All Programs and Centers Related to Domestic Violence, Child Abuse, and Sexual Assault (Source: Alaska Network on Domestic Violence and Sexual Assault, March 2005)

Appendix B

Biographical Sketches of Commissioners

Timothy M. Burgess, was the Federal Co-chair representing the United States Attorney General's Office through January 2006 when he was appointed to serve as a judge on the U.S. District Court. Mr. Burgess was nominated by President George W. Bush to be United States Attorney for the District of Alaska in September 2001. Mr. Burgess serves on the 16-member Attorney General's Advisory Committee, co-chairs the Department's Environmental Crimes Policy Committee and chairs the Anti-Terrorism Task Force for Alaska. Prior to his appointment as United States Attorney, Mr. Burgess served as an Assistant United States Attorney for 12 years.

David W. Márquez is the State Co-chair representing the Alaska Attorney General's Office. Governor Frank H. Murkowski appointed David W. Márquez as Attorney General for the State of Alaska on March 31, 2005, and he assumed the role of State Co-chair at that time. Márquez is a graduate of Northwestern University and the University of Wisconsin Law School. He was admitted to the Alaska Bar in 1973. He began his legal career with a private law firm in Anchorage doing title opinions for the Trans-Alaska Pipeline prior to construction. He later became General Counsel of Alyeska Pipeline Service Company that operates TAPS. He worked for ARCO for over 20 years where he was an Associate General Counsel serving in Anchorage as Vice President and Chief Counsel for ARCO Alaska and also Vice President of External Affairs and Environment, Health and Safety for ARCO Alaska. He served twice as the Chair of the Board of Junior Achievement of Alaska and was also Chair of the Board of the Alaska State Chamber of Commerce. Prior to his appointment as Attorney General, Márquez served as the Chief Assistant Attorney General, Legislative and Regulations Section in the Alaska Department of Law and as the Acting Deputy Attorney General, Civil Division for the Department.

Deborah M. Smith is the Acting Federal Co-chair, representing the United States Attorney's Office. Ms. Smith was appointed Acting U.S. Attorney in 2006, having served as the First Assistant U.S. Attorney for Alaska from 2002-2006 and from 1983-1987. She also served as the Chair of the Joint Coordination Group of the Antiterrorism Advisory Council of Alaska, 2004-2006. Ms. Smith began her career in Alaska as an Assistant Public Defender. She later served as the New England Bank Fraud Task Force Director and Deputy Chief of the Environmental Crimes Section, Environment and Natural Resources Division, U.S. Department of Justice, in Washington, D.C. Before attending law school, Ms. Smith was the education editor for the Fort Lauderdale News in Florida.

Bruce M. Botelho representing the Alaska Municipal League, is currently Mayor of the City and Borough of Juneau, Alaska, an office he held once before. He served as Alaska's Attorney General from January 1994 until December 2002. He received both his undergraduate and law degrees from Willamette University in Salem, Oregon. He also completed his B.A. equivalent from Ruprecht Karl University in Heidelberg, Germany. He began his legal career in 1976 as an Assistant Attorney General and later served as Deputy Commissioner of the Alaska Department of

Revenue. Mayor Botelho became Deputy Attorney General in 1992 and served in that capacity until his appointment as Attorney General by Governor Walter Hickel in January 1994. In that role, he served as a trustee to the Alaska Permanent Fund and the Alaska Children's Trust. He chaired the Criminal Justice Council, the Children's Confidentiality Task Force, the state team on state-tribal relations, the Governor's Conference on Youth and Justice, and co-chaired the Criminal Justice Assessment Commission. He served as chief of staff for the Governor's Task Force on Civil Justice Reform and the Governor's Subsistence Task Force. He currently serves as a board member of the Alaska Immigration Justice Project. He is the 2005 recipient of the Alaska State Bar Association's Pro Bono Award. He serves as president of the Juneau International Folkdancers and of the Juneau World Affairs Council. He has previously served as president of the Southeast Alaska Area Council, Boy Scouts of America, the Alaska Council, American Youth Hostels, Inc., the Juneau Arts and Humanities Council, and the Juneau Human Rights Commission. Mayor Botelho is married to Lupita Alvarez and they have two children: Alejandro and Adriana.

Harold N. "Buddy" Brown, representing the Alaska Federation of Natives, is President/CEO for Tanana Chiefs Conference. Mr. Brown argued the Alaska Supreme Court case of John v. Baker in 1998 as a member of a legal team representing tribal interests in Alaska. Mr. Brown then became General Counsel for TCC in 1999, a position he held until January 2002. During this time, he became a member of the Alaska Federation of Natives Legislative Committee. He also serves on the Alaska Native Justice Center Board of Directors.

Loretta Bullard, representing a non-profit Native corporation which is operating a Village Public Safety Officer program, is the President/CEO of Kawerak, Inc. Ms. Bullard serves on the Board of Directors of the Alaska Federation of Natives, and has served on the Alaska Women's Commission, Rural Alaska Village Economies and Needs Commission and the Indian Reservation Roads Negotiating Committee.

Wilson Justin, the tribal representative, is the Health Director/Vice President of the Mt. Sanford Tribal Health Consortium . Mr. Justin, also the Vice Chair of the Association of Tribal Health Directors, a working committee of the Alaska Native Health Board, serves on the Alaska State Community Service Commission and is former President of both the Copper River Native Association and Ahtna Inc.

Gail (Anagick) Schubert, representing the Alaska Native Justice Center as Board Vice-Chair. Gail is the Executive Vice President and General Counsel for the Bering Straits Native Corporation, and President/CEO of several of its subsidiary entities. Gail is an attorney licensed to practice law in the states of Alaska and New York, and holds a Law Degree and Masters Degree in Business Administration from Cornell University. She received her undergraduate degree from Stanford University. Gail serves as Chair of the Alaska Native Heritage Center, Chair of Akeela Treatment

Services, Chair of the Alaska Retirement Management Board, Vice Chair of the Alaska Native Justice Center, Vice Chair of Khoanic Broadcast Corporation, Treasurer of the Bering Straits Native Corporation, and a board member of the Alaska Federation of Natives, and the Alaska Native Arts Foundation.

Bill Tandeske, representing the Department of Public Safety (DPS), was appointed as Commissioner of Public Safety on February 3, 2003. Mr. Tandeske brings to the position, 26 years of public service as an Alaska State Trooper serving the citizens of Alaska. He joined DPS in 1973 and retired as Major (Deputy Director) of the State Troopers in 1999. Following his retirement from the DPS, Mr. Tandeske served as Security Director for Ahtna AGA Security Inc., providing security services to Alyeska Pipeline and clients in the Anchorage area and also for Doyon Universal Services managing security services for the Trans-Alaska Pipeline.

Jim Torgerson, representing the Federal District Court for the District of Alaska, has been the managing partner of Heller Ehrman's Anchorage office since 1998. Before that, he served in the U.S. Attorney's office in Anchorage as Chief of the Civil Division from 1994 through 1998 and Chief of the Criminal Division from 1992 through 1994. He also has worked in the Alaska Governor's office in Washington DC, where he helped develop and advocate the State's policy on Alaska Native issues, and in the Anchorage District Attorney's office. He is a past chair of the Anchorage Youth Court Board of Directors and the current Vice-President of the Disability Law Center Board of Directors.

Photo Pending

Ethan Schutt is currently General Counsel for Cook Inlet Region Inc., an ANCSA regional corporation based in Anchorage. During much of the Commission's work and process, he was General Counsel for Tanana Chiefs Conference, a tribal consortium organized as a non-profit corporation based in Fairbanks. Prior to that, Ethan was an associate with the law firm of Dorsey & Whitney, LLP, and a law clerk for Alaska Supreme Court Justice Walter "Bud" Carpeneti. Ethan was raised in Interior Alaska in the community of Tok. He is a graduate of Stanford Law School and has an undergraduate degree in mathematics from Washington State University.

Photo Pending

Roswell L. Schaeffer, Sr. is the son of John and Annie Schaeffer, Sr. of Kotzebue. Ross's Inupiaq name is Qalayauq. Ross obtained his grade school education in the BIA school in Kotzebue and graduated from the 8th grade at Copper Valley School in Glennallen, Alaska. He then received his high school diploma from Copper Valley High School and later earned his Bachelor of Arts degree in Sociology with a Social Work Emphasis from the University of Alaska, Fairbanks campus in 1973. Ross is currently married to Millie and will celebrate their 35th anniversary in July. He and his wife have three children and four grandchildren. Ross has served in many leadership capacities and held key jobs in the Northwest Arctic Borough serving the people of the NANA region.

His wide range of experience includes:

- Eight years as Magistrate for Kotzebue and six months as a District Court Judge
- Lifelong trapper, subsistence hunter, and fisherman
- Director of the Kotzebue Senior Citizens Cultural Center
- Student Advisor for the Northwest Arctic Borough School District
- President and CEO for NANA Regional Corporation
- Instructor for the Chukchi Campus
- Administrator/Recruiter for the Alaska Technical Center
- Public Assistance administrator and workforce development specialist
- Mayor of the Northwest Arctic Borough

Ross also served as chairman of the Kotzebue Advisory Fish and Game committee for many years, member and past chairman of KIC village corporation, and past chairman of the Alaska Beluga Whale Committee for ten years. Ross will conclude his second and final three year term as Borough mayor in October 2006. He plans on retiring from the State and focusing his attention on his Native art.

Gregg D. Renkes served as Alaska's fifteenth Attorney General and in that position also served as co-chair of the Alaska Rural Justice Law Enforcement Commission. During his tenure as Attorney General, Renkes made protecting Alaska's children, communities, consumers, natural resources, financial assets, and sovereignty his top priorities. General Renkes was a voice for increasing local control over basic public safety issues in village Alaska and advocated the holding of important trials, even at greater expense, in small communities to reinforce community involvement in safety and justice. General Renkes focused on the problems of child abuse and the related problems of substance abuse, and helped initiate a statewide criminal task force to interdict drugs and stop bootlegging of alcohol to dry villages. Prior to taking office as Alaska Attorney General, General Renkes worked on energy, natural resource, and American Indian law and policy in both the public and private sectors. He frequently spoke on these topics and at one time regularly contributed articles to the Tundra Times concerning legal issues that affect Alaska Native people. General Renkes also served as the Majority Staff Director of the U.S. Senate Committee on Energy and Natural Resources and worked as Chief of Staff and Chief Counsel to U.S. Senator Frank Murkowski. General Renkes worked in Anchorage during law school and moved to Palmer to work for the Alaska Court System after graduation. General Renkes holds a Juris Doctor degree from the University of Colorado, School of Law, a Masters of Science degree from Yale University, and a Bachelors of Arts degree from Vassar College.

Photo Pending

Edgar Blatchford

Appendix C

Support Staff

Alaska Rural Justice and Law Enforcement Commission

February 23, 2006

COMMISSIONERS:

Deborah Smith, Co-Chair
Acting U.S. Attorney
District of Alaska

David W. Marquez, Co-Chair
Attorney General
State of Alaska

Bruce Botelho
Mayor
City and Borough of Juneau

Harold "Buddy" Brown, Esq.
President
Tanana Chiefs Conference

Ethan Schutt, Esq.
General Counsel
Cook Inlet Region, Inc.

Loretta Bullard
President
Kawerak, Inc.

Wilson Justin
Vice President
Mt. Sanford Tribal Consortium

Gail R. Schubert, Esq.
Vice President
Bering Straits Native Corporation

William Tandeske
Alaska Commissioner of
Public Safety

Jim Torgerson, Esq.
Managing Shareholder
Heller Ehrman LLP

Denise R. Morris
President and Chief Executive Officer
Alaska Native Justice Center
3600 San Jeronimo Drive, Suite 264
Anchorage, Alaska 99508

Dear Ms. Morris:

On behalf of the members of the Alaska Rural Justice and Law Enforcement Commission, we wish to take this opportunity to thank you for your tireless work on behalf of the Commission. This report, representing our initial findings and recommendations could not have been accomplished without the commitment and perseverance of the Alaska Native Justice Center and your extremely capable staff.

From the Commission's inception in September 2004 to the release of the report, together we have discovered common ground, witnessed the hard work and voluntary commitment of many Alaskans as we sought to identify real solutions to rural Alaska's pressing justice and law enforcement needs.

At every turn, we at the Commission could count on the staff of ANJC to be there to help ease our passage and ensure that we reached the end of our journey with our report written, our recommendations ready for the public, our mission complete.

In particular, we would like to offer a special note of thanks for the contributions of yourself, Karen Bitzer, Joe Garoutte and Lindsey Lamar. You and your staff were always there, often at a moment's notice, during our transitions, helping establish our work group process, compiling all of our information, staffing our conference calls – the list goes on. Through it all the staff of ANJC were professional, dedicated, and committed to the task.

Now our report is in the hands of the public. How these ideas are acted on, and the future of justice and law enforcement in rural Alaska rests in greater hands than ours. We can all be proud of the role we have played in that effort and together we look forward to a strong and fair system of justice in rural Alaska.

Sinderely,

Deborah Smith
Acting United States Attorney

David Márquez
Attorney General

3600 San Jeronimo Drive, Suite 264 Anchorage, AK 99508 Telephone: 907-793-3550 Fax: 907-793-3570
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Appendix D

Workgroup Members and Additional Specialists

Workgroup Members

Workgroup 1: Law Enforcement
Workgroup Co-chairs: *Commissioner Harold "Buddy" Brown*/Commissioner William Tandeske (* Ethan Schutt, Attorney at Law, Tanana Chiefs Conference sat in for Commissioner Brown)*

Workgroup Members:

1. Evelyn Beeter, COPS Director, Mt. Sanford Tribal Consortium
2. Robert Burnham, Assistant Special Agent, FBI
3. Dean Guaneli, Chief Assistant Attorney General, Alaska Department of Law
4. Randy Johnson, United States Marshal for Alaska
5. Richard Krause, VPSO Coordinator, Aleutian/Pribilof Islands Association
6. Joe Masters, Deputy Director, Alaska State Troopers
7. Lloyd Miller, Attorney at Law, Sonosky, Chambers, Sachse, Miller, and Munson
8. Myron Naneng, President, Association of Village Council Presidents
9. Eric Johnson, alternate for Myron Naneng

Workgroup 2: Judicial System
Workgroup Co-chairs: *Commissioner Bruce Botelho/Commissioner Wilson Justin/Commissioner Gail Schubert/Commissioner Jim Torgerson*

Workgroup Members:

1. Marc Antrim, Commissioner, State of Alaska Department of Corrections
2. Ted Bachman, Deputy Commissioner, Alaska Department of Public Safety
3. David S. Case, Borough Attorney, Northwest Arctic Borough
4. Ingrid Cumberlidge, Director of Tribal Programs, Eastern Aleutian Tribes, Inc.
5. Susanne DiPietro, Judicial Education Coordinator, Alaska Court System
6. Andy Harrington, Executive Director, Alaska Legal Services Corporation
7. Kevin Illingworth, University of Alaska Fairbanks
8. Mike Jackson, Magistrate, Organized Village of Kake
9. Lisa Jaeger, Tribal Government Specialist, Tanana Chiefs Conference
10. Al Kookesh, Alaska State Senator
11. Paul Lyle, Sr. Assistant Attorney General, Alaska Department of Law
12. Don Mitchell, Alaska Legislature Designee
13. Katherine "Jada" Smith, Organized Village of Kake
14. Tony Vaska, Former Alaska State Legislator

Workgroup 3: Alcohol Sale and Importation
Workgroup Co-chairs *Commissioner William Tandeske*

Workgroup Members:

1. Stanley Active, Jr., VPSO, Togiak
2. Sidney Baker, VPSO, Gambell
3. Evelyn Beeter, COPS Director, Mt. Sanford Tribal Consortium
4. Douglas Griffin, Director, Alcoholic Beverage Control Board
5. Ed Harrington, Captain, Alaska State Troopers
6. Andrea Russell, Asst. Attorney General, Alcohol Interdiction, Alaska Department of Law
7. Susan Soule, Regional Coordinator Behavioral Health, retired
8. Mike Williams, President, RurALCap and Advocate, Sobriety Movement

Workgroup 4: Domestic Violence/Child Abuse
Workgroup Co-chairs: *Commissioner Bruce Botelho/Commissioner Loretta Bullard/ Commissioner Wilson Justin*

Workgroup Members:

1. Ginger Baim, Executive Director, Safe and Fear Free Environment
2. John Bioff, Staff Attorney, Kawerak
3. Michelle DeWitt, Executive Director, Tundra Women's Coalition
4. Cheryl Facine, Legal Advocate, Alaska Native Justice Center
5. Teresa Foster, Assistant Attorney General, Alaska Department of Law
6. Sue Hollingsworth, Tribal Court Facilitator, Tanana Chiefs Conference
7. Shannon Johnson-Nanalook, Tribal ICWA Worker, Traditional Village of Togiak
8. Barbara Mason, Executive Director, Council for Domestic Violence and Sexual Assault
9. Christine McLeod Pate, Executive Director, Alaska Network on Domestic Violence and Sexual Assault
10. Don Shircel, State Tribal Relations Group, Tanana Chiefs Conference
11. Katie Tepas, Program Coordinator, Alaska State Troopers
12. Tammy Young, Executive Director, Alaska Native Women's Coalition
13. Doris Bergeron, Office of Children's Services
14. Louise Brady, Social Services Director, Sitka Tribe
15. Dan Branch, Sr. Assistant Attorney General, Alaska Department of Law
16. Donna Goldsmith, former Executive Director of Alaska Inter-Tribal Council
17. Melissa Taylor, CFS Program Director, Kawerak

Specialists and Others Consulted by the Workgroup Members

1. Chief of Police Paul Carr, Barrow
2. Mr. Willard Church, Council Member, Quinhagak
3. Chief of Police Benjamin Dudley, Bethel
4. Mr. Ernest Erick, Venetie
5. Superior Court Judge Richard Erlich
6. Le Florendo, member of Tribal/State Collaboration Group
7. Ms. Grace Friendly, Council Member, Quinhagak
8. Mr. Steve Ginnis, previously from Ft. Yukon
9. Ms. Torie Heart, Community Health Aide Program, Alaska Native Tribal Health Consortium
10. Ms. April Hendon, U.S. Postal Inspector
11. Mr. Loren Jones, past Director of the Division of Alcoholism and Drug Abuse
12. Mr. Carl Jack, Kipnuk
13. Mr. Robert Klein, Brown Jug Liquor Stores
14. Mr. John Madden, Deputy Director, TSA Alaska
15. Renee McFarland, American Civil Liberties Union
16. Chief of Police Jim Sartelle, Quinhagak
17. Mr. Ernie Turner, past Director of the Division of Alcoholism and Drug Abuse
18. Constable Vern White, Royal Canadian Mounted Police
19. Dr. Darryl S. Wood, Associate Professor, University of Alaska Anchorage

Appendix E

Photograph of Commissioners and Workgroup Members

Row One: Lloyd Miller, Denise Morris, Wilson Justin, Gregg Renkes, Evelyn Beeter, Cheryl Facine, Ingrid Cumberlidge. Jada Smith, Ethan Schutt
Row Two: Karen Bitzer, Tammy M. Young, Susan Savile, Sue Hollingsworth, Christine McLeod Pate, Katie Tepas, Susanne DiPietro, Teresa Foster, Karen F. Neagle, Gail R. Schubert, Andrea Russell, Melissa Taylor, Dean Guaneli, Andy Harrington
Row Three: Barbara Mason, Lisa Jaeger, Dan Branch, Mike Williams, Michelle, DeWitt, Joe Masters, Donna Goldsmith, Ginger Baim, Bruce Botelho, Dave Case, Tony Vaska, Paul Lyle
Row Four: Justin Roberts, Kevin Illingworth, Eric Johnson, Ted Bachman, Ron Bates, Doug Griffin, Tim Burgess, Ed Harrington, Randy Johnson, Rob Corsisier, Don Mitchell, Jeff Bioff

Appendix F

Commission Recommendations

Commission Recommendations

For the most part, the Commission's recommendations were selected from among the Options presented to it by one or more of the four workgroups: (1) Law Enforcement, (2) Judicial Services, (3) Alcohol Importation and Interdiction, and (4) Domestic Violence and Child Abuse. The recommendations are set forth in this Appendix F in the order in which they are presented and discussed in the Report. Each recommendation retains, as part of its identification, a designator indicating the workgroup that proposed it. LE-1, for instance, was the first option proposed by the Law Enforcement Workgroup. Options with the designator ALC were proposed by the Alcohol Importation and Interdiction Workgroup, and those designated as JS were proposed by the Judicial Services Work Group. Options designated as D-CI (Coordination/Integration of Services), D-AJ (Access to Justice), D-LC (Local Capacity/Community Empowerment Infrastructure), or D-DS (Development of Services) were proposed by the Domestic Violence and Child Abuse Workgroup. <***Note:*** Juvenile Justice-JJ; Domestic Violence-DV; Child Protection-CP.>

Recommendation 1

Statement of Need:
What became apparent was the need for the Commission to continue its work, to fine tune several of the recommendations with appropriate stakeholders.[139]

Recommendation 2 (D-CI 1)

Statement of problem:
Communication and coordination among and between child protection and DV/SA service organizations and government institutions is neither systematic nor comprehensive enough, and often fails to include tribes.
Current Status:
DV community statewide has engaged in numerous MOUs with other institutions, though tribes are not always parties to those agreements; there is tremendous disparity between various regions statewide regarding institutional coordination and integration of both CP and DV/SA services – depending on region, coordination may or may not include tribal governments; there is some statewide effort to coordinate information sharing between OCS and regional Native non-profits through Tribal-State Working Group – tribal representation on this group is minimal, and fluctuates; Alaska State Court System coordinates cross-jurisdictional education with tribal judges and tribal organizations both by participating in tribal education, and by including tribal judges in state education programs; there are a number of community court agreements, created under state law, which formalize coordination between state, tribal and local governments on JJ diversion matters; there is a disconnect between formal and informal policies adhered to by various arms of state government.
Ideal Status:
a) All governments and institutions should be capable of offering relevant and necessary services without unnecessary duplication of efforts, and with mutual recognition and respect between and among the various service institutions.
b) MOAs achieved as appropriate.
Structural Barriers (e.g., statutes, regulations, etc.):
a) Lack of cross training.

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[139] Since the drafting of this recommendation, the Commission has been continued.

b) Power differential between government entities and private service providers.
c) Misunderstanding and disagreement regarding how tribes are able to be involved in organizational agreements with the state.
d) Some fundamental differences of approaches between DV/SA programs and child protection workers about how to best protect children.
Option(s):
Develop more effective coordination and communication, including cross training, among and between all governments and service agencies and organizations.[140] Cross training might include ANICWA or other Native social service agency.

Recommendation 3 (D-CI 2)

Statement of problem:
There is insufficient coordination between state and tribal governments, at all levels.
Current Status:
OCS collaborates with tribes in many regions (i.e., Bethel, Sitka) to make client contacts - without compensation; Sitka Tribe has formal agreement with Sitka Police Dept. and local shelter where tribe funds a DV position that serves the entire community, and local police recognize tribal protective orders and work with tribe; state court in Kake diverts some JJ and DV matters to Kake Tribal Court in cooperative manner; Kawerak coordinates with tribes to handle OCS priority 3 cases under agreement with OCS; under previous administration, AST cooperated with Mount Sanford Tribal Consortium (MSTC) on police protection – will not do so under current administration, and are threatening tribal officers with prosecution for impersonating officer; there are numerous MOUs among those agencies and organizations that address DV, including SART teams, CACs, etc., though most do not include tribes; there is a statewide OCS tribal-state committee that includes reps from Alaska Native non-profits; dearth of separate child protection teams, and does not typically include tribe; Millennium Agreement and state implementation policies have not been rescinded by state but are not being implemented.
Ideal Status:
Tribal governments would be acknowledged as part of the service delivery scheme statewide, ensuring immediately accessible service presence in villages, as well as maximization of all available resources.
Structural Barriers (e.g., statutes, regulations, etc.):
Alaska State Executive branch policy prevents recognition of tribal authority; insufficient education and capacity development at tribal level in some communities; cross-cultural communication barriers and history of mistrust.
Option(s):
a) Amend state policy to recognize tribal civil decision-making; create voluntary MOU between tribes and state relating to coordination and integration of CP and DV protective services; encourage federal laws to require more coordination including regulations for funding; tribal, state and federal authorities should increase the cross-recognition of judgments, final orders, laws and public acts of the three jurisdictions; fully implement Millennium Agreement.[141]
b) State offers opportunity to participate in MOAs to tribes, non-profits and other service providers.
c) See "Options" submitted in Problem Area 1 of Development of Local Capacity Issues (i.e., D-LC 1-1) regarding tribes and state reaching agreement on tribal jurisdiction, state reconsidering AG opinion dated October 1, 2004, and funding for tribal courts, which are incorporated here by reference.

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[140] The footnote for this option is in the Report narrative.
[141] The footnote for this option is in the Report narrative.

Recommendation 4 (JS-1): ICWA Agreement

Statement of Need:
The need to reduce state/tribal litigation and conflict over jurisdictional issues, and enhance cooperation between state and tribal courts.
Option:
Create a Task Force to explore and if appropriate propose a State/Tribal ICWA agreement for consideration by the Departments of Law and of Health and Social Services and Alaska's Tribes.
Rationale for Option:

- In a protracted negotiation process which culminated in August 1990, the State and several Tribes negotiated a "ICWA State-Tribal Agreement." Eventually, twenty-seven tribes signed the agreement.
- The agreement, negotiated before certain jurisdictional issues had been resolved in John v. Baker and C.R.H., "reserved for future negotiation and discussion" issues relating to tribal courts, jurisdiction, and state funding for social services and for children placed in foster homes by a Tribe.
- ICWA's section 1919 states that "States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings," delegating the federal trust obligation over Indian affairs to the Tribes and the States to establish concurrent jurisdiction through Tribal/State agreements.
- AS 47.14.100(g) expressly authorizes the Department of Health and Social Services to enter into agreements under ICWA concerning the "jurisdiction of Native child custody proceedings."
- Because ICWA explicitly defines "tribes" to include Alaska Native Villages, the potential objection that Alaska Native Villages are not federally recognized tribes is a non-issue under ICWA.
- The Work Group subcommittee members exploring this particular task identified several proposed elements such an agreement might include, and listed several difficult details that would need to be worked out, and concluded that, were more time available, a draft agreement might be attainable.
- One potential benefit from such agreements might be a resolution of the issues raised in Attorney General Opinion 2004-1, which has not been well received by the tribes.
- The difficult details include:
    1. Notice to the State when Tribal cases are initiated.
    2. Tort liability (*Beltrami v. Sayers,* 481 N.W. 2nd 547 (Minn. 1992) discusses vicarious liability for state placement in tribal foster care; possibilities to deal with this issue include changes to AS 09.50.250 and/or other state immunity statutes to preclude any state liability; amendments to 43 U.S.C. § 1983 for state & state officials; amendments to ICWA 1919 to preclude vicarious liability of state for tribes or vice versa; possible tort avenue for damages under an ISDEAA/FTCA model (Indian Self-Determination and Education Assistance Act, Federal Tort Claims Act); or insurance.)
    3. Whether parents would be able to "opt out" of Tribal court as they may in transfer cases.
    4. Provisions for Non-Native parents.
    5. Information sharing.
    6. Confidentiality.
    7. Would the template agreement be mandatory if the Tribes wished to initiate cases?
    8. Consistent provision of financial and human resources to carry out the terms of any agreement.

9. Adequate legal infrastructure to handle cases & adequate infrastructure to provide services.
10. Who would investigate reports of harm?
11. Authority for the State to place and reimburse foster parents for children in tribally licensed foster homes and attendant liability issues.
12. Guardians ad litem.

(Further material on the discussions of these details can be found in the Work Group materials)

Impact Statement:

This would give State representatives and Tribal representatives the opportunity to build on the subcommittee's work, and craft a State/Tribal ICWA agreement that might take into account the changes in the law since 1990 and reduce the number of issues over which the State and Tribes are currently litigating.

Recommendation 5 (JS-6): Tribal Court Referrals of Juveniles to State Division of Juvenile Justice

Statement of Need:

In particular cases there may be a need for traditional Alaska Native village justice systems to draw more effectively upon state juvenile agencies.

Option:

Urge the Division of Juvenile Justice to make agreements with Tribes and tribal courts to coordinate the disposition of juvenile offenses as currently permitted under state law.

Rationale for Option:

- Currently, tribal courts and councils often work with juveniles and their parents in response to the child's delinquent or troublesome behavior in the village. Such proceedings do not usually come to the attention of state authorities, and some village justice systems prefer this outcome because it keeps their minors from acquiring juvenile records within the state court system.
- Other Village justice systems, however, would prefer to coordinate more closely with DJJ in screening and disposition of juvenile offenders. Specifically some village justice systems might wish to refer a juvenile to DJJ, with the consent of DJJ. This option urges DJJ to discuss with interested tribal councils whether such a referral mechanism might be achieved.

Impact Statement:

Better coordination among tribal and state juvenile justice systems.

Recommendation 6 (D-DS 10)

Statement of problem:

Not all victims & communities have access to immediate safety.

Current Status:

a) 21 domestic violence/sexual assault programs listed with Council on Domestic Violence and Sexual Assault (CDVSA) Community Outreach.

b) These programs serve all of rural Alaska but resources and geography inhibit ideal safety in the rural areas.

Ideal Status:

Each community has a safety plan to address victim and community safety.

Structural Barriers (e.g., statutes, regulations, etc.):

No single local organizing entity is identified to facilitate community development;
no single point of contact for safety issues.

Option(s):
a) Have one organization that helps to identify the basic components for safety.
b) The domestic violence/sexual assault programs provide technical assistance and consultation so each community can develop a safety plan.

Recommendation 7 combines JS-9, JS-10, JS-11, and JS-12

JS-9: Providing Technical Assistance for Tribal Judicial Systems

Statement of Need:
There is a need for technical assistance in the areas of basic tribal court design, procedures, and operation, and also in the areas of tribal constitution and code development, membership and enrollment, judicial ethics, tribal court administration, tribal-state collaboration, and inter-tribal collaboration, that is respectful of and supports traditions, customs, practices and values.
Option:
Support the provision of consistent, quality technical assistance to tribal judicial systems through non-profit Native corporations, other appropriate tribal organizations, agencies, or other appropriate entities. Any such technical assistance should be supportive of traditions, customs, practices and values.
Rationale for Option:
Technical assistance for tribal judicial systems is essential for assisting tribes in providing quality service and ensuring the application of due process and respect for traditions, customs, practices and values.
Impact Statement:
With quality technical assistance tribal courts will be more effective in providing quality judicial services and collaborating with state and other tribal court systems.

JS-10: Providing Training for Tribal Judicial Systems

Statement of Need:
Training is needed in the areas of jurisdiction, court development, due process, judicial ethics, tribal court procedures, tribal-state relations, cross cultural training, and tribal court subject areas such as domestic relations and juvenile delinquency, that is respectful of and supports traditions, customs, practices and values.

Option:
Support the provision of consistent, quality training for tribal judicial systems that is respectful of and supports traditions, customs, practices and values through collaborations of tribal organizations, University of Alaska, and other appropriate tribal court training entities. Support cross training between the tribal judicial systems and all law enforcement entities (municipal, state and federal), the Alaska State Court System, Federal Court System, Alaska Department of Law, Alcoholic Beverage Control Board, Probations and Parole, and Office of Children's Services.
Rationale for Option:
On-going training for tribal court judges, clerks, staff, and those who collaborate and work with tribal courts is essential for providing quality judicial services in rural Alaska and for collaborative efforts between court systems.
Impact Statement:
With quality training tribal courts will be more effective in providing quality judicial services and collaborating with state and other tribal court systems.

JS-11: Providing Materials to Tribal Judicial Systems

Statement of Need:
There is a need for well-written, easy to use tribal court materials, such as educational materials and handbooks, forms, computer software programs for case management, and codes that are respectful of and support traditions, customs, practices and values that could be adapted for tribal specific use.

Option:
Support funding collaborative efforts to produce products such as educational materials and handbooks, forms, computer software programs, and codes that are respectful of and support traditions, customs, practices and values that could be adapted for tribal specific use.

Rationale for Option:
- The availability of quality materials and products that are respectful of and supports traditions, customs, practices and values would increase the effectiveness, quality, and consistency of tribal court operations
- Producing products with statewide applicability which could be adapted and used by specific tribes could be extremely cost effective.
- Producing such products would increase tribal access to relevant tribal government information to tribes with limited access to training and technical assistance opportunities.

Impact Statement:
There would be a substantial cost savings for training, technical assistance, and tribal court development for Alaska tribes. There would be greater consistency in tribal court operations such as general use of the same or similar forms.

JS-12: Increase Communication Between Tribal Judicial Systems

Statement of Need:
There are 229 federally recognized tribes in Alaska and improved communication between them is essential for effective, consistent, and efficient delivery of judicial services.

Option:
Support the formation of a tribal justice association as a conduit for communications, and communications through a tribal judicial website and internet communications.

Rationale for Option:
- Enhancing communication between tribes will increase the quality, efficiency and consistency of judicial services
- There is frequent movement of people between villages. Some members are dually enrolled, and it is common for members under 18 to belong to or be eligible for membership in more than one tribe. So it is essential for tribes to communicate on cases where the share jurisdiction.

Impact Statement:
Increased communications will reduce conflicts and increase collaboration between judicial systems.

Recommendation 8

Statement of problem(s):
The Alaska State Troopers have no authority to search packages containing drugs or alcohol on federal property being shipped through the U.S. Postal Service, but the federal government does not have adequate Postal Service Investigator staffing to address the needs of Alaska's local option communities.
Option:
The Department of Public Safety should designate targeted alcohol and drug enforcement areas to include local option villages and their hub communities. This should include seeking Postal Service cross designation authority for drug and alcohol investigators assigned to the target area as well as the statewide Major Offender Unit personnel.
Rationale for Option:
Cross-designating Alaska State Troopers as Postal Service Investigators provides another tool to intercept the flow of bootlegged alcohol through hub communities into local option villages.
Impact Statement:
Targeting the alcohol shipment "choke-points" by using Alaska State Troopers will decrease the amount of illegal alcohol arriving in local option communities.

Recommendation 9a (D–AJ5)

Statement of problem(s):
Lack of court/justice materials in different languages for Alaska Native or immigrant victims. [142]
Current Status:
ANDVSA has order for protection videos available in Yupik and Spanish. IRPS has publications available in AST, has DV booklets available in Yup'ik, Korean, Spanish, Tagalog, Russian, and Iñupiaq. Alaska Department of Law has victim services brochures in some languages.
Ideal Status:
Brochures on domestic violence/sexual assault/child abuse and services available in all languages found in rural areas.
Structural Barriers (e.g., statutes, regulations, etc.):
Money and time, ability to coordinate people with expertise.
Option(s):
Improved coordination among providers.
More materials provided in different languages for Alaska Native victims.

Recommendation 9b (LE-1)

Statement of Need: Village-based police and public safety officers need an opportunity to advance their training and certification within the state-recognized system. There is also a need for a uniform and state-wide system of police and public safety officer training and certification.
Option: Develop a state-wide, uniform, and tiered system of certification and training for police and public safety officers with a reasonable opportunity for and expectation of advancement that culminates in full APSC police officer certification. The first tier of certification would require a reasonable minimum level of certification and training, including non-police function training, to ensure professional competency and service delivery. Tribally-employed officers should be

[142] See, Supreme Court Committee Report on Fairness and Access Report at p. 92-93.

encouraged and permitted to participate.This option would require a change to the employer specific language in AS 18.65.220 & 18.65.290(7) that currently allows only state, municipal, and certain federally employed officers to be certified. Greater rural representation in the APSC process and governance would improve its responsiveness to rural concerns.
Rationale for Option: This option was developed after consideration of the health aide and Australian models in the context of the existing types of law enforcement officers in rural Alaska. There were concerns about uniformity, turn-over rates, and lack of opportunity for advancement.
Impact Statement: A uniform tiered system of training and certification would help to unify the overall system of law enforcement in rural Alaska. It would also provide an opportunity for village-based officers to advance to full APSC police officer certification.

Recommendation 10 (LE-4)

Statement of Need:
Cross-deputization can provide efficiencies and improvements in rural law enforcement by fostering a cooperative and collaborative system between the State, municipalities and the Tribes.
Option:
Develop a template cross-deputization agreement between the State and Tribes that can be used as a basis for individually negotiated agreements. Cross-deputization agreements have potential for combining scarce funds to provide direct and local service in rural Alaska. Such agreements could also create efficiencies and other improvements in law enforcement service delivery, and could be entered into between Tribes and the State boroughs or cities. Alaska Statute 18.65.010 currently allows such agreements.
Rationale for Option:
The workgroup considered cross-deputization agreements from other States. The workgroup also considered the current Quinhagak tribal-city agreement. The workgroup considered the cross-deputization agreements for the concept of cooperation and collaboration, and does not endorse any particular agreement as a model for the template agreement contemplated above.
Impact Statement:
A template cross-deputization agreement would set the parameters of a generally acceptable agreement subject to individual negotiations between the State and interested Tribes. It would also help to fix expectations on generally acceptable contractual language for core issues addressed in such collaborative agreements.

Recommendation 11 (LE-2)

Statement of Need:
There is a shortage of funding for rural police and public safety officers that need further training and certification.
Option:
Provide further funding for training and certification of rural police and public safety officers. The additional funding should be sought from all available sources including the state and federal governments, local sources (including in kind support), and alternative funding sources such as grants. Local support expected should be adequate and appropriate to community size, need, and capacity.
Rationale for Option:
The workgroup considered the inability of small, rural communities to provide adequate funding for the training and certification of their police and public safety officers.

Impact Statement:
Increased training and certification of rural police and public safety officers would increase the capacity of those officers to provide services in their home communities.

Recommendation 12 (LE-11)

Statement of Need:
Police and public safety services must be adequate and appropriate to each community's size and need, accounting for local capacity.
Option:
Provide police and public safety services in Alaska that are appropriate and adequate to each community's size and need, accounting for local capacity. The Department of Public Safety modify the definition of a village to mean a community with a population of less than 1,500 individuals based on the most recent federal consensus. Improvement is needed to provide adequate and appropriate coverage in many rural communities, particularly in many larger off-road villages.
Local contributions, including in-kind contributions, may be required for buy-in and support. Such local contributions should be based upon the community's ability to generate such contribution locally and should be accounted for and attributed to the community. Local contribution should not be used as a factor in determining a community's need for police and public safety services.
Rationale for Option:
The workgroup considered the need for communities to have adequate and appropriate direct police and public safety services. The workgroup also considered the ability of rural communities to provide their own police and public safety services.
Impact Statement:
An improved match between rural communities' individual needs with adequate and appropriate police and public safety services would provide a more equitable distribution of these critical services to rural Alaska.

Recommendation 13 (LE-12)

Statement of Need:
Police and public safety training is currently available primarily from the Sitka academy which is geographically isolated and is otherwise expensive and inaccessible to rural candidates.
Establish a program for young people to interest them in seeking employment.
Option:
Options for alternative methods of police and public safety training should be examined to enhance the currently available training at the Sitka academy. Partnerships with the College of Rural Alaska and other existing training and educational institutions could help remove impediments to recruitment and training for police and public safety careers. The development of regional training programs or centers might also help.
Rationale for Option:
The workgroup considered the desirability of developing training opportunities that provide easier and less burdensome access to training for rural law enforcement officers and candidates.
Impact Statement:
Alternative training options that lower barriers to rural officers and candidates would assist in initial recruitment and facilitate advancement for current and future rural law enforcement officers.

Recommendation 14 (LE-13)

Statement of Need:
There is a need to improve recruitment of rural residents into law enforcement and public safety careers. Augmentation—and even maintenance—of current levels of rural police and public safety services will require identification and recruitment of a pool of rural candidates to fill officer positions.
Option:
Create a regional rural recruitment effort for rural police and public safety officers.
Rationale for Option:
The workgroup considered the benefits of increased recruitment of rural and Alaska Native candidates into police and public safety careers.
Impact Statement:
Increased recruitment of rural residents would access a previously underutilized pool of candidates for police and public safety careers. Rural candidates also offer individual benefits of indigenous language, cultural knowledge, and local knowledge of rural communities.

Recommendation 15 (ALC-1): Changes in Alaska Statute Title IV: Definition of "manufacture"

Statement of Need:
To provide additional information to juries in the form of a definition of "manufacture" specifically for alcohol.
Option: see attachment #1 in Appendix H.
Rationale for Option:
Even though AS 04.11.010 prohibits the manufacture of alcohol, the provisions of Title IV do not define manufacture. The definition in Title XI only relates to controlled substances.
Impact Statement:
A definition will make it easier for juries to make informed decisions in carrying out their responsibility.

Recommendation 16 (ALC-2): Changes in Alaska Statute Title IV: Expansion of the forfeiture provisions

Statement of Need:
To provide the means and method of additional forfeitures for firearms and items from illicit profits, and clarify the procedure for forfeitures.
Option: see attachment #2 in Appendix H.
Rationale for Option:
Present forfeiture provisions do not cover violations of transportation by common carrier and do not provide for forfeiture of firearms and items of value purchased from illicit proceeds, or provide for the means of forfeiture proceedings.
Impact Statement:
These forfeitures will provide additional deterrence and redirects the profits from bootlegging to supplement enforcement.

Recommendation 17 (ALC-9): Ban Written Order Sales to Residents of Dry Communities

Statement of Need:
Presently residents of dry communities can take delivery of alcohol in areas where it is legal to receive alcohol – damp communities.
Option:
Ban Written Order Sales to Residents of Dry Communities
Rationale for Option:
Residents of dry communities pick-up alcohol in damp locations and bring it into the dry community.
Impact Statement:
This will help dry communities be dry.
(see bill SB229 introduced May 17, 2003)

Recommendation 18 (ALC-11): Banning the shipping of plastic bottles by air except to community distribution sites

Statement of Need:
There is a need to make it easier to detect illegal shipments of alcohol to rural Alaska.
Option:
Banning the shipping of plastic bottles by air except to community distribution sites.
Rationale for Option:
It is presently hard to detect illegal shipments of alcohol to rural Alaska, especially alcohol in plastic containers. Glass bottles increase shipping weight, facilitate detection, increase clinking, and increase chance of breakage.
Impact Statement:
This will result in the reduction of illicit alcohol in rural Alaska and improved enforcement of alcohol importation. This container change will provide positive reinforcement for using local distribution centers.

Recommendation 19 (D–AJ7)

Statement of problem(s):
Lack of law enforcement in rural areas to enforce state/tribal orders.
Current Status:
Law enforcement presence in villages is inadequate. The VPSO program is underfunded and understaffed and Troopers in rural Alaska cannot adequately provide a presence in villages, and must prioritize due to lack of resources.
Ideal Status:
Adequate law enforcement exists in all villages in rural Alaska. This would include fully funded and staffed VPSOs and other law enforcement such as tribal police. This would also include more active local involvement by Troopers.
Structural Barriers (e.g., statutes, regulations, etc.):
Underfunding of VPSO program/general lack of funding for law enforcement.
Option(s):
State adequately funds and staffs VPSO program, federal funding obtained for tribal law enforcement, cross deputization of law enforcement.[143]

[143] The footnote for this option is in the Report narrative.

Recommendation 20 (D–AJ8)

Statement of problem(s):
Lack of adequate medical response in many villages makes sexual assault crimes harder to prove and lack of law enforcement with specialized training also aggravates the problem.
Current Status:
Law enforcement in some smaller communities have limited training DV/SA. AST response is sometimes delayed by distance and weather.
Ideal Status:
Trained law enforcement and medical personnel in each rural area or within one to two hours response time.
Structural Barriers (e.g., statutes, regulations, etc.):
a) Funding is inadequate to staff this level of medical care/law enforcement. Resources are concentrated in the hub areas
b) Law enforcement, AST, often reluctant to train existing personnel because they are further understaffed when officers are at training.
Option(s):
a) Develop part time law enforcement positions for smaller communities with intensive training and support to maintain skills as needed. Find housing for these folks. Recruit and train local residents (community policing model).
b) Law enforcement officers are temporarily relocated to cover empty slots while these officers are being trained.

Recommendation 21 (JS-5): Alcohol Jurisdiction

Statement of Need:

The most oft-repeated concern Alaskans expressed in their testimony to the Commission was the toll taken by alcohol and substance abuse. Our fellow Alaskans are, literally, dying under the present regime.

- According to the final report of the Alaska Commission on Rural Governance and Empowerment, the alcohol-related mortality rate of Alaska Natives is three and a half times that of non-Natives and the incidence of fetal alcohol syndrome (FASD) among Alaska Natives is three times that of non-Natives. The majority of crimes committed in rural Alaska are committed under the influence of alcohol or drugs. Substance abuse is devastating rural Alaska and the current governmental tools available to combat it are inadequate.

- Federally recognized tribes have a local governmental presence but have disputed jurisdiction. The state has jurisdiction but often lacks an effective local government presence. The result is a gap that leaves many villages without effective law enforcement tools to combat substance abuse.

- Local option laws enable villages to ban or restrict importation of alcohol, but the laws are enforced and prosecuted primarily from regional centers. Defendants are tried, if at all, away from the villages. Geographic and cost constraints likely will always prevent the state from having magistrates, troopers, prosecutors, etc., anywhere but in the largest communities.

- Second-class city governments in villages cannot effectively address substance abuse. Most have little or no money. State law does not provide for municipal courts and the cost of prosecuting cases in distant state courts means that small cities rarely enforce municipal criminal ordinances.

- Tribal government is the *only* government in many villages. Many villages have tribal courts that handle juvenile offenses and child protection cases that often entail alcohol problems the tribal courts must deal with. The best solutions to community alcohol problems involve the community.

Option:
Addressing this issue successfully must be the highest priority of the federal, state, and local governments of rural Alaska. The Commission believes that the ultimate success of other recommendations hinges on addressing the problem of alcohol and substance abuse in rural Alaska. The continuing commission should make addressing this issue a priority.
Rationale for Option:
Alcohol and substance abuse is the root cause of many social ills tearing at the fabric of rural Alaska. More than 97 percent of crimes committed by Alaska Natives are committed under the influence of alcohol and drugs.
Impact Statement:
Developing successful ways to address substance abuse will drastically increase the overall wellness of rural Alaskans' lives.

Recommendation 22 (JS-14): DJJ Delegation to Tribes

Statement of Need:
There is a need to better utilize available vehicles for state agencies to draw upon Native Alaskan traditional justice systems.

Option:
Amend AS 47.12.988 to allow the Division of Juvenile Justice (DJJ) to delegate its authority to tribes in situations in which DJJ and a tribe wish to cooperate and share resources with respect to tribal juvenile offenders, as follows:

In this chapter, when authority exercised by the department may also be exercised by an entity selected by the department, the entity that the department may select in order to exercise authority is limited to

(1) a municipality;
(2) a corporation;
(3) two or more persons recognized by the community and operating under contract or license from the department~~.~~; or
(4) a tribe as defined by the Indian Child Welfare Act (25 USC §1903(8)).

Rationale for Option:
- Alaska Statute 47.12.010 states that one purpose of Alaska's juvenile delinquency laws is to "encourage and provide opportunities for local communities and groups to play an active role in the juvenile justice process in ways that are culturally relevant."
- AS 47.12.988 allows the Department of Health and Social Services to select "an entity" to exercise authority; however, "an entity" does not include a tribal entity. Adding a new paragraph (4) would address this.
- The Community Juvenile Justice Assistance Program is one example of a program that has worked extremely well in rural Alaska.

Impact Statement:
More culturally appropriate proceedings can be held and sentences fashioned.

Recommendation 23 (D-DS 11)

Statement of problem:
Domestic violence and Sexual Assault programs are not adequately funded.
Current Status:
Domestic violence and sexual assault programs have been flat funded by the state for the past several years, while costs including utilities and health care have skyrocketed. Programs cannot offer competitive salaries (wages may be close to minimum wage). This, combined with high stress of job, leads to great turnover.
Ideal Status:
Domestic violence and sexual assault programs would be viewed as important public safety/public health agencies and well funded.
Structural Barriers (e.g., statutes, regulations, etc.):
Legislative and Governmental priority-setting.
Option(s):
a) Increased funding for domestic violence and sexual assault programs.
b) Provide educational & therapeutic services for sexual assault and child sexual abuse victims.

Recommendation 24 (ALC-10): Alcohol distribution sites

Statement of Need:
To make it easier to account for alcohol going into damp communities and to control who receives that alcohol and the amount they receive.
Option:
Alcohol distribution sites.
Require hub communities (those that serve as points of entry for two or more villages or have a state or federally funded airport) within a region served by the hub airport, where at least 20 percent of the villages are either "dry" or "damp" sites (and that are "damp" themselves), to have community alcohol distribution sites. Deadline for initial establishment of these sites should be set by state at one year. If community does not set up the community alcohol distribution site, the ABC Board will.
Permits to pick up liquor from the community alcohol distribution sites must be held by residents of the damp community only.
The computerized data base (not public information but available to law enforcement) at each site shall be linked to the state data base (see number 4 below).
Rationale for Option:
Without a central distribution site it is difficult to track alcohol volume and sales to individuals in rural communities. Preventing multiple orders and sales to prohibited persons is currently difficult.

Impact Statement:
This would provide for more efficient, cost effective enforcement and help keep alcohol out of dry communities.

Recommendation 25 (JS-16): Tribal Participation in Juvenile Proceedings

Statement of Need:
Provide tribes, as defined in ICWA, an opportunity for notice and to be heard at sentencing and disposition or before in state court with respect to juvenile proceedings and afterwards.
Option:
Amend Title 47 to permit tribes (as do other victims) to participate in sentencing or other appropriate juvenile proceedings.
Rationale for Option:
Frustrating experiences of rural communities with juvenile sentencing and disposition. Would also enable tribal communities to incorporate matrilineal and other traditional values and methods in resolution of juvenile issues. A.S.12.55.011 allows for community participation in restorative justice.
Impact Statement:
Would improve communication between community and court about sentencing of juveniles and ensure more effective sentences.

Recommendation 26 (JS-26): Tribal Participation in Treatment of Juveniles

Statement of Need:
Improve coordination with community in juvenile treatment when the minor returns to the community.
Option:
Adopt or amend state law to permit tribes to participate in juvenile delinquency treatment especially after minors return to their communities.
Rationale for Option:
Frustrating experiences of rural communities with lack of involvement with resolution of juvenile delinquency when minor returns to community. Would also enable tribal communities to incorporate matrilineal and other traditional values and methods in treatment of juvenile delinquency.
Impact Statement:
Would improve effectiveness of juvenile delinquency treatment at the community level.

Recommendation 27 (JS-20): Re-Entry Programs

Statement of Need:
Re-entry of prisoners into the community needs to be facilitated.
Option:
Re-entry programs for Alaska inmates moving back into smaller communities, focusing on restorative justice and the role of the Village in assisting in the rehabilitative process.
Rationale for Option:

- The Department of Corrections has already initiated cooperative programs of this type with Southcentral Foundation, Yukon-Kuskokwim Health Corporation, and Cook Inlet Tribal Council.
- These efforts should be expanded and relationships with local Councils encouraged to facilitate the re-entry process.

Impact Statement:
Recidivism rates should decrease as successful re-entries are increased.

Recommendation 28 (JS-19): Alternatives to Housing Native Inmates in Out-of-state Prisons

Statement of Need:
Alaska needs to find alternatives to housing Alaska inmates in out-of-state facilities. *Particularly for Alaska Natives sent to such facilities,* the separation from family and community enhances alienation and is likely to retard rehabilitation and re-entry into the community. This also creates hardships for inmates' families.
Option:
Have State of Alaska explore other options, including working with Native Regional Corporations and non-profits.
Rationale for Option:
Having Alaska inmates housed Outside is perceived by all as a weak point in the system.
Impact Statement:
If a method can be found to keep inmates within the State in a financially feasible way, inmates and their families will benefit, along with local economies.

Recommendation 29 (ALC-15): Alcohol Abuse Prevention

Statement of Need:
There is a need to reduce communities' tolerance of alcohol abuse and the number of young people who 'learn' this tolerance from their communities.
Options:
Support a variety of prevention programs that include:
Programs geared to helping young people learn to make healthy choices.
Healthy community and cultural activities that link youth and adults.
Alcohol/Drug Information Schools for first time misdemeanor alcohol/drug related offenses.
Programs that promote community responsibility for preventing and addressing alcohol related problems.
(All programs need to reflect and respect the culture of the local community.)
Rationale for Options:
Reducing the supply of alcohol to rural Alaska can only go so far to reduce alcohol abuse. Reduction in the demand for alcohol must also play a part. Demand reduction includes both preventing young people from becoming alcohol abusers and treating people who have become abusers. This recommendation addresses prevention.
Impact Statement:
Fewer young people will become alcohol abusers, with a corresponding reduction in alcohol related violence, crime and intentional and unintentional injuries.

Recommendation 30 combines D-DS-1 through D-DS 7, which are presented below.

D-DS 1

Statement of problem:
There is a general lack of understanding or agreement about prevention and no coordinated/systematic approach.
Current Status:
Institutions/agencies do not integrate prevention into the way they structure their services, set priorities or 'do business.'

Ideal Status:
a) There would be a shared understanding, integration, and agreement about the purpose, scope, impact, importance of and commitment to prevention.
b) Agency structure, priorities, goals, policies, procedures and practices will be developed and guided by prevention principles (i.e., recreational facilities are a priority for community development because it promotes healthy lifestyles, youth/family activities and prevents abuse/violence).
Structural Barriers (e.g., statutes, regulations, etc.):
a) Knowledge, attitudes and beliefs of individuals and the agencies/entities they are part of.
b) Primarily the natural resistance to change inherent in institutions and agencies.
Option(s):
a) Education, outreach, awareness from the grass roots up to galvanize a shared vision and community action.
b) Incorporate prevention into all strategic plans, community & agency development of goals, etc.

D-DS 2

Statement of problem:
Little buy-in from community & individuals for prevention.
Current Status:
Prevention tends to be viewed as agency based and the responsibility of entities that are primarily set up for interventions.
Ideal Status:
Prevention is an integral part of village life and is community & individual driven first.
Structural Barriers (e.g., statutes, regulations, etc.):
Attitudes, lack of empowerment, chronic dependency and expectation that 'others' will do it for us. Turf problems/opposition from state and other agencies to tribal/village community initiatives on prevention.
Option(s):
Community based education/communication led by elders/recognized traditional leaders with village and culturally specific knowledge.

D-DS 3

Statement of problem:
Children and youth have adopted beliefs and attitudes that lead them to engage in violent acts and self-destructive behaviors.
Current Status:
Very limited and inconsistent approach to prevention initiatives for children and youth.

Ideal Status:
a) Education/learning prevention "programs" both in school and in life with a focus on changing accepted 'norms.'
b) People who have been doing the work, educating youth and children, living a life of cooperation, harmony and respect are the recognized/acknowledge leaders in prevention
Structural Barriers (e.g., statutes, regulations, etc.):
a) Racism, sexism, tribal/state politics, attitudes toward children, lack of funding for programs, activities and initiatives.
b) Changing the dominant culture's attitudes and beliefs about indigenous knowledge – just because we can't see it, or write it down or figure out where it comes from doesn't invalidate its existence or value.

Option(s):
a) Incorporating attitudes of respect toward women/girls, people of (different) color, persons with different abilities, etc. "Walking the talk," empowering youth, keeping them safe.
b) Develop and deliver (through local alcohol/drug counselors and elders) a culturally appropriate and comprehensive prevention curriculum in the school to educate children 1-8th grade on substance abuse and healthy relationships and behaviors.
c) "Few Good Men" approach – let the people in the community identify and acknowledge the leaders/elders. Empower humble people to see themselves as the leaders they are. Pay attention and utilize cultural/traditional ways to recognize mentors.

D-DS 4

Statement of problem:
Funding challenges for non-profit agencies serving victims of domestic violence, sexual assault and child abuse.
Current Status:
Too many separate funding sources with no coordination between them. Money for pilot projects and not core services. Funding is competitive, unsure, and short term. High overhead and administration costs.
Ideal Status:
Long term, secure, operating funds with reasonable compliance guidelines.
Structural Barriers (e.g., statutes, regulations, etc.):
Multiple funding sources, no coordination among funding agencies.
Option(s):
a) Block grant/consolidation within departments, and coordination with compliance and reporting requirements.
b) Provide educational & therapeutic services for sexual assault victims and child sexual abuse victims.

D-DS 5

Statement of problem:
Impact of Fetal Alcohol Effects (FAE) on DV/CP.
Current Status:
Handful of diagnostic teams in rural areas, estimated 30-40 percent of children in rural communities fetal alcohol exposed in Bristol Bay, for example.
Ideal Status:
Women of child bearing age who are sexually active will not drink alcohol.
Structural Barriers (e.g., statutes, regulations, etc.):
a) Lack of effective prevention programs.
b) Inter-generational FAE adults having FAE children.
c) No statewide resource for information and referral.
Option(s):
Prevention programs aimed at family planning, alcohol abuse and domestic violence for all men and women.

D-DS 6

Statement of problem:
Prevention programs in rural Alaska do not have sufficient resources to do prevention.
Current Status:
a) Kawerak has a dual track program, provides prevention services to children and their families. *(MOA available for review).*
State DHSS offers a few mini grants to provide preventive services (Safe and Stable Families Title IVB funding).
AFN Wellness initiative provided for some prevention type programs in rural Alaska.
Wellness Initiative – 4 areas covered: Control of Alcohol, Supporting VPSO, Enforcing local option law, and violence prevention. Best practices shared among villages.
b) ANDVSA DELTA project (CDC grant) funds prevention programs in Valdez, Sitka, Juneau, Dillingham.
c) TCC and YKHC Regions have Tribal Family and Youth Specialists in every village, but they are stretched with multiple duties that do include prevention activities but also include child protection services. Nothing targeted specifically for prevention.
d) Tundra Women's Coalition in Bethel has a prevention program for teens.
Ideal Status:
a) Prevention programs coordinated, non-duplicative, cultural appropriate effective locally or village based provided throughout Rural Alaska.
b) An initiative in each village to spearhead prevention workshops and healthy activities.
c) Have smaller organizations work together, coordinating regularly.
d) Utilize successful already established models.
e) Have well funded prevention projects with capacity for intervention when prevention work uncovers issues.
Structural Barriers (e.g., statutes, regulations, etc.):
a) Very few Funding opportunities for prevention activities.
b) Funding and expertise.
c) Different funding streams not being coordinated at village or statewide level.
d) Funding mechanisms do not exist to help groups providing services or new funding.
e) Most of time spent in intervention rather than prevention.
Option(s):
a) Prevention programs available in the schools and offered by DV/SA, tribal, state and non-profit health organizations, tribal councils or AK Native Village agencies that provide crisis intervention services.
b) Review of Family Wellness Warriors Initiative (Southcentral Foundation) and other local and regional initiatives.
c) Statewide curriculum available for use in every village, with statewide staff support for technical assistance to the villages.
d) Existing programs have funds to offer newly developing prevention projects the training and technical assistance they need to build a foundation.

D-DS 7

Statement of problem:
There are not enough healthy youth and family activities in rural Alaska.

Current Status:
Youth Opportunity Grant programs have been in operation (8 in TCC region), but U.S. Department of Labor funding cuts are curtailing the program.
Ideal Status:
a) A position and/or capacity/plan in each village to coordinate youth and family activities.
b) Cooperation and collaboration in the local and state level.
Structural Barriers (e.g., statutes, regulations, etc.):
Lack of funding and interest.
Option(s):
a) Small funding sources through the state or the federal Wellness Initiative to support opening gyms after hours, craft materials, game nights, etc.
b) Continued and expanded U.S. Department of Labor funding for Youth Opportunity grants.

Recommendation 31 (JS-22): Culturally Relevant Treatment Options

Statement of Need:
Culturally relevant treatment options are more apt to be effective with rural Alaskan offenders.
Option:
Greater federal and state support for culturally relevant treatment options. The Alaska Department of Corrections should collaborate with the Alaska Native Regional Non-profit Corporations to develop culturally relevant behavioral health treatment options.
Rationale for Option:
Locally-developed treatment programs which resonate with those values deeply ingrained in a culture stand a greater chance of rehabilitative success for individuals raised in that culture.
Impact Statement:
Enhanced rehabilitation, reduced recidivism.

Recommendation 32 (D-DS 16)

Statement of problem:
Inconsistent screening of DV/SA, substance abuse and dual diagnosis.
Current Status:
Some DV/SA programs screen for substance abuse and some substance abuse screen for DV/SA but not consistent or standardized.
Ideal Status:
Routine screening (for the purposes of helping people in trouble identify the issues they are facing and resources available) is incorporated in all DV/SA and chemical dependency (CD) programs.
Structural Barriers (e.g., statutes, regulations, etc.):
a) From the perspective of DV/SA programs: limited client confidentiality and program's mandatory child abuse reporting make programs hesitant to document substance abuse for fear of harming victim (who therefore would never return to program).
b) Resources are already stretched thin and programs cannot perform this function without more funding.
Option(s):
Screening tools & interagency agreements for responding to this information are readily available.

Recommendation 33 (D-LC 1-1)

Statement of problem:
Alcohol and drug abuse and its impact on families.
Current Status:
Village Alcohol counselors and 28+ day treatment centers in some hub communities that also provide outpatient care/long term care in cities.
Ideal Status:
a) More services located in village that invoke cultural values and include victims, family, and community in treatment.
b) More treatment centers where women and their children can receive treatment together.
Structural Barriers (e.g., statutes, regulations, etc.):
Lack of funding for villages to create infrastructure for new approaches to treatment.
Option(s):
a) More services located in village that invoke cultural values and include victims, family, and community in treatment.
b) More treatment centers in which victims can have children live with them.

Recommendation 34 (D-DS 17)

Statement of problem:
There are not enough programs that offer long term in-patient substance abuse treatment to women with children; need integration of DV/SA and CP programs.
Current Status:
Some "model" integration of DV/CP program-Anchorage, Kenai, Dillingham.
There are some programs where women can take children – FNA's Women's and Children's program, Old Minto Program, Southcentral Foundation's Dena A Coy program in Anchorage, and SEARHC's program.
Ideal Status:
Integrated services available to parents with children in at least each hub community.
Structural Barriers (e.g., statutes, regulations, etc.):
Funding coordination between DV/SA programs and substance abuse treatment programs.
Option(s):
Create one program in each rural hub that is culturally appropriate and provides all necessary services to chemically dependent women with children.

Recommendation 35 (D-DS 18)

Statement of problem:
a) Aftercare programs are not available in many villages.
b) Need more alternative/traditional treatment options.
Current Status:
a) 4-Rivers Mental Health has alcohol counselors in most of the villages that they serve.
b) Norton Sound Health Corporation has village based counselors in many villages in Bering Strait region. They are at various levels of certification to provide substance abuse counseling and treatment. Most cannot do substance abuse assessments. Itinerant clinicians travel to villages periodically to do assessments and provide treatment and counseling, but overall there is not consistent, adequate local treatment and counseling for substance abuse.
c) Family recovery and spirit camps (Minto, Curyung, Sitka, etc.).

Ideal Status:
a) Aftercare programs in every village or one year residential aftercare programs as available options in hub villages for aftercare.
b) Alternative/traditional Native based programs in at least each region.
Structural Barriers (e.g., statutes, regulations, etc.):
Limited funding and expertise in the villages.
Option(s):
a) Have residential aftercare programs in hub villages to re-orient people before returning to their own village and have trained alcohol counselors in every village.[144]
b) Increase Native traditional treatment programs in regional hubs.
c) Increase programs for family treatment.
d) Increased training, support and technical assistance for village based volunteers and family members.
e) Integrate a long-term aftercare/family care program with a job training/career development program.

Recommendation 36 (D-DS 26)

Statement of problem:
Many juveniles are either not receiving treatment at all or are being sent out of state for residential substance abuse or mental health treatment.
Current Status:
a) No residential programs for dual diagnosis children to receive treatment in state.
b) Limited substance abuse programs for youth.
Ideal Status:
Culturally appropriate local effective juvenile treatment programs and facilities available for both voluntary/ mandatory.
Structural Barriers (e.g., statutes, regulations, etc.):
a) Funding.
b) Lack of understanding of the scope of the problem.
Option(s):
Development of culturally effective local effective juvenile treatment programs and facilities.

Recommendation 37 (JS-15): Expand Therapeutic Courts

Statement of Need:
There is a need for a diversity of state court approaches to substance-abuse related offenses.
Option:
The State Court System should continue and expand its progress in the establishment and utilization of therapeutic courts.
Rationale for Option:
- Indications are that therapeutic courts are effective in dealing with substance-abuse related offenses.

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[144] See the Alaska Criminal Justice Assessment Commission Report, 2000, which recommended increasing the number of substance abuse beds for Alaskans in need of residential treatment, supporting culturally relevant programs for alcohol treatment, and increasing the programs available in rural areas. See also CFSR Review of Alaska OCS, September, 2002, finding that reunification efforts in child protection cases are affected by overall lack of access to relevant services in parent's community, and scarcity of alcohol treatment and follow up services, Review at 38.

- The Alaska Court System should be saluted for its efforts in this direction and encouraged to continue those efforts.

Impact Statement:
More of an emphasis on a "medical model" for processing of substance-abuse related offenses, and diminution of recidivism.

Recommendation 38 (D-DS 20)

Statement of problem:
Funding for first degree relatives is not equivalent to funding strangers may get under the state and tribal foster care systems, so relatives may not be financially able to provide foster care.
Current Status:
When children are placed in first degree relatives homes, they have to apply for child-only TANF funding which is considerably less than foster care funding, especially when there are multiple children in the home.
Ideal Status:
Family members who take in relatives for foster care (grandparents, for example) would be reimbursed at the same rate as foster parents.
Structural Barriers (e.g., statutes, regulations, etc.):
Federal regulations on tribal foster care, Alaska statutes or regulations.
Option(s):
Explore regulation changes to support close relatives in the care of children in need of aid.

Recommendation 39 (D-DS 22)

Statement of problem:
Lack of group/children homes for children not appropriate for or able to access foster care.
Current Status:
Rural/Native children taken into state custody are often shipped to Anchorage or other urban areas for placement in an inadequate group home.
Ideal Status:
Group home in at least every rural hub community for children with specially trained, financially supported culturally appropriate residential custodians/foster parents.
Structural Barriers (e.g., statutes, regulations, etc.):
State standards for group homes are strict and inflexible, liability issues, lack of funding.
Option(s):
Increased and redistributed funding, more flexibility on standards to reflect community values, specialized training for group home parents & operators.

Recommendation 40 (JS-4): Pass Through Funding to Tribal Foster Homes

Statement of Need:
There is a need to increase the number of Alaska Native foster homes for Alaska Native children, and to facilitate the pass-through of foster care subsidy payments for foster care placements ordered by tribal courts.
Option:
Recommend enactment of a state law similar to those portions of HB 193 or SB 125 which give the Commissioner the discretion to set appropriate standards for foster home placements and grant waivers in appropriate circumstances, and which resolve problems with state liability

issues; and in the event this becomes law, request DHSS to consult with tribes over the foster care licensing standards.

Also, support enactment of federal legislation similar to that in S. 672, introduced in March 2005, allowing tribes to directly apply for and administer Title IV-E from the federal government, while maintaining consistent funding levels for the states.

Rationale for Option:

- There is a shortage of Alaska Native foster care homes for Alaska Native children.
- Additionally, tribes currently lack a mechanism for accessing federal foster care subsidy payments for tribally-ordered foster care placements.

Impact Statement:

This would serve the best interests of Alaska Native children needing foster home placements, by increasing the supply of suitable foster homes available in state child protection cases, and by increasing the resources available to support tribally-ordered foster care placements.

Recommendation 41 (JS-23): Home Community Probation

Statement of Need:

Probation officer coverage in the villages is insufficient.

Option:

Focus the new recruitment effort to hire qualified Alaska Natives as probation officers. Continue increasing utilization and training of Village Public Safety Officers in that role. Consider contracting with Village Councils to provide oversight of community service work.

Rationale for Option:

- The Dept. of Corrections has been training and utilizing VPSO's in this role.
- Experience from years ago in the Village of Chistochina indicates that arrangements with Village Councils can supply this need.

Impact Statement:

Increased supervision of offenders under probation and parole supervision in rural Alaska.

Recommendation 42 (JS-17): DPS/DOC Native Hire

Statement of Need:

Alaska Natives, over-represented in Alaska's prison population, need to have a substantially greater presence in the staffing of public safety and corrections agencies.

Option:

Increase the number of Alaska Natives who work in corrections (as well as those who work as VPSO's and in other law enforcement roles). This might be done with targeted recruitment campaigns, including films, DVDs, a workbook or written guide, and website, with materials geared to high school age Natives.

Convene a meeting of stakeholders to consider the development and implementation of such targeted recruitment measures. The stakeholder group could also consider what additional educational and training opportunities for careers in the fields of law enforcement and corrections could be implemented in rural Alaska. Participants in the stakeholder group could include, but not be limited to, representatives of the Department of Education, Department of Labor and Workforce Development, the Alaska Association of School Boards and the Alaska Association of School Administrators.

Rationale for Option:

- "Modeling" is an important component of incarceration; often close emotional bonds can form between prison personnel and inmates. Positive and support Alaska Native role models in those settings can be conducive to rehabilitation.
- Higher proportion of locally-hired probation officers will also heighten the level of cultural awarencss of probationers' home communities.

Impact Statement:
Lower recidivism rates should result from more Native employees within Corrections Department, including probation officers, due in part to positive role modeling and to better communication between probationers and their probation officers. Also, by increasing awareness and preparedness for careers in these fields, the number of rural Alaskans employed in the Departments of Public Safety and Corrections should increase correspondingly. Providing education and training for careers in the fields of law enforcement and corrections at an early and critical age to Alaska Native youth will also likely result in lower offender rates. Efforts to recruit more Alaska Native employees must be conducted within the equal protection constraints of state and federal law.

Recommendation 43 combines D-DS 24 and D-DS 25

D-DS 24

Statement of problem:
Too few professionals in Rural Areas.
Current Status:
Qualified professionals only stay for short terms in rural communities.
Ideal Status:
Early recruitment in the schools for professionals, Social Workers, Clinicians, Law Enforcement etc.
Structural Barriers (e.g., statutes, regulations, etc.):
Adequate housing a barrier throughout rural Alaska.
Option(s):
Provide housing for professionals keeping service providers in rural communities.

D-DS 25

Statement of problem:
Agencies experience high staff turnover rates.
Current Status:
Lack of appropriate housing, high caseloads, increased costs of travel, food, etc., lend to professional staff turnover and burnout.
Ideal Status:
Incentives for professional staff, for example, reduced housing, loan payoffs programs.
Structural Barriers (e.g., statutes, regulations, etc.):
High cost of living in rural Alaska not conducive for professional staff trying to pay on school loans and live comfortably.
Option(s):
Construction of rental units.

Recommendation 44

Statement of Need:
Trooper response time is frequently delayed to villages due to weather or other circumstances, and most villages lack the infrastructure necessary for a Trooper. Combined with the isolation of being a law enforcement officer in rural Alaska, staffing these positions with qualified officers is a challenge.
Option:
The State should provide funding, and possibly seek additional funding through organizations such as the Denali Commission, to construct multipurpose facilities with an apartment, an office, and a holding cell for the Alaska State Troopers in larger under-served village locations. The concept of a Regional Unified Justice Center should be considered whenever affected agencies consider construction projects in rural communities. Qualified State Troopers who are currently assigned to hub communities should be reassigned to these new posts in "sub-hub" villages such as Gambell and Holy Cross. The Troopers should work at these locations on a rotating schedule of two weeks on followed by two weeks of leave.
Rationale for Option:
One of the barriers to law enforcement services is lack of infrastructure. In some communities, personnel have been required to detain suspects in their living quarters because of an inadequate or no holding facility. While Troopers enjoy the challenges of working in rural Alaska, in many circumstances, their immediate families do not. Flexible scheduling will keep Troopers on the ground in communities that have never seen this level of law enforcement previously.
Impact Statement:
This would allow for Trooper availability approximately 80 percent of the time, with a 20 percent absence to account for court time, leave, weather, and similar events. This recommendation embraces the concept of "Community Oriented Policing," reduces response times, and provides a significantly enhanced law enforcement presence than has been possible in the past.

Recommendation 45 (LE-7)

Statement of Need:
A significant lack of infrastructure supporting police and public safety functions in rural Alaska undermines the safety of rural Alaskans. It also negatively affects recruitment and retention of police and public safety officers.
Option:
Develop, improve and maintain the infrastructure that supports the delivery of police and public safety services in rural Alaska in the following categories:

Housing
Need: A lack of available housing in many villages impacts recruitment and retention of police and public safety officers.
Option: Encourage streamlining of the approval process and prioritization of HUD homes for use by police and public safety officers in rural villages. Explore other available and currently vacant federal, state, and public housing that may be available for use by police and public safety officers. Change the eligibility rules for federal rural housing programs for teachers and health providers to include funding for police and public safety officers.

Communications and technology

Need: Rural police and public safety officers need better access to communications technology to communicate with Troopers and other law enforcement. Current Internet and other communications technology would improve and speed communications. Rural communities lack basic, and commonly assumed, communications infrastructure and services such as an available 911 system.

Option: Increase access to reasonably priced Internet and other telecommunications technology. Change the current regulations that support and subsidize the telemedicine program to allow rural Alaska police and public safety officers to utilize excess bandwidth to support Internet access and email at the village level. Improve officer-to-officer communications by standardizing equipment and providing more equipment to village-based officers. Create a system of regional 911 dispatch centers that have access to a comprehensive database of police and public safety services. Open eligibility for Tribes and rural Alaska police and public safety officers to Homeland Security programs and funding.

Transportation

Need: Adequate and appropriate transportation infrastructure is needed in rural communities and between rural communities to improve law enforcement service delivery.

Option: Increase the availability of appropriate vehicles for intra-community use by local police and public safety officers in rural Alaska. Additional upgrades to inter-community transportation infrastructure would also assist law enforcement officers. VPSOs, Tribal police and other village-based law enforcement officers should be able to access public transportation systems on the same terms as other law enforcement officers.

Offices and Holding Facilities

Need: Many rural communities lack adequate office and holding facility infrastructure and the resources to adequately maintain such infrastructure in order to properly support the provision of police and public safety services.

Option: Provide adequate office and holding facilities including maintenance and operational funding in rural communities commensurate with the type of police or public safety officer and community need, in a manner that will ensure continuity in public safety services.

Equipment

Need: VPSOs and other rural police and public safety officers lack appropriate equipment.

Option: Provide adequate and appropriate equipment to rural police and public safety officers.

Rationale for Option: The workgroup considered the realities of infrastructure that supports the provision of police and public safety services in rural communities. The workgroup considered creative options to attempt to reduce these infrastructure deficiencies.

Impact Statement: Improvement in the infrastructure that supports rural police and public safety officers would increase their effectiveness.

Recommendation 46 (D–AJ9)

Statement of problem(s):

Many tribal and state court personnel and judges are not adequately trained in DV/SA and do not consistently apply laws meant to help victims.

Current Status:

There is no regular training for court personnel and judges on DV/SA issues. Training that occurs is not always coordinated with statewide experts leading to some controversial trainers presenting. Tribal judges have had some DV training but not mandatory/Court system Children's Forums were helpful in creating dialogues on children's issues and should be continued and expanded.

Ideal Status:
Mandatory training yearly for court personnel/judges coordinated with victims services providers. Same for tribal court (for state court - this is in statute already – AS 18.66.310).
Structural Barriers (e.g., statutes, regulations, etc.):
Judges are burned out on DV/SA cases. There is a perception that sporadic training is enough of a problem that it is counterintuitive and requires repeated, intensive training to counteract stereotypes/judges want to be trained by judges.
Option(s):
Need consistent annual training for all court personnel and judges.
Training should be coordinated with CDVSA or ANDVSA.
Court system should hold regular forums in rural areas for judges and court personnel to dialogue on issues affecting DV/SA victims and child abuse.

Recommendation 47 (D-CI 4)

Statement of problem:
There is a need for more culturally sensitive forensic services in remote communities statewide to ensure better protection for DV/SA and child abuse victims.
Current Status:
a) While Alaska State Troopers are primary investigators for child abuse and DV/SA statewide for purposes of criminal prosecution, there are insufficient numbers of troopers or VPSO's to provide viable forensic response to investigation (time delays cause loss of evidence), and investigators often do not have sufficient cultural understanding to communicate well with witnesses and victims in villages; in Bethel Yupik-speaking women have been used to conduct interviews with great success; state does not recognize tribal policing, and therefore is unwilling to offer formal training to tribal police, who are often the first responders in villages, to assist with forensic investigation.
b) Forensic Interview Training – OCS has training in place; Law Enforcement.
Ideal Status:
a) State, tribal and federal governments work cooperatively to maximize the collection of forensic evidence that is necessary to ensure protection of child abuse and DV/SA victims in remote communities.
b) Train more culturally competent female interviewers.
c) Regional expert available.
Structural Barriers (e.g., statutes, regulations, etc.):
Attitudes; cross-cultural understanding; availability of resources.
Option(s):
Establish roving position within each region for highly-trained forensic investigator who has cultural skills necessary to communicate within cultures served;[145] train tribal police to the same degree that AST and other municipal police officers and investigators receive forensic training.[146]

Recommendation 48 (D-DS 27)

Statement of problem:
Lack of information/data regarding Law Enforcement response to DV/SA and abuse of minors.
Current Status:
Grant through UAA to examine issues associated with sexual assault investigations.
Ideal Status:

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[145] The footnote for this option is in the Report narrative.
[146] The footnote for this option is in the Report narrative.

Sufficient information/data available confirming that DV/SA and abuse of minors are adequately investigated by Law Enforcement.
Structural Barriers (e.g., statutes, regulations, etc.):
Data are collected but not regularly evaluated.
Option(s):
Internal/External quality control audits by Law Enforcement to provide sufficient information/data confirming Law Enforcement is adequately responding to DV/SA and abuse of minors.

Recommendation 49 (D–AJ 1)

Statement of problem(s):
a) People do not have access to sufficient civil legal assistance to redress legal problems.[147]
b) There is no legal service provider that specializes in immigration and refugee services for victims of DV/SA.
Current Status:
Alaska Legal Services has offices in Bethel, Fairbanks, Anchorage, Juneau, Ketchikan (paralegal), Kotzebue, Dillingham and Nome.
ANDVSA Pro Bono Program accesses rural areas through pro bono attorneys and legal advocates at 20 member programs that provide legal assistance to DV/SA victims and children.
Tribal courts provide alternate to state courts for some rural areas and obviate need for attorney and formal legal process. Immigration Refugee Services Program no longer exists.
Ideal Status:
Legal services offices in every rural area with regional rural hub. Extensive travel budgets allowing frequent bush/intake. Legal centers in every rural area that know all the legal resources for DV/SA victims and can serve as a point person to discuss options with person needing assistance and make referrals. Statewide hotline.
Immigration and refugee services re-established in some capacity.
Structural Barriers (e.g., statutes, regulations, etc.):
Not enough funding for civil legal providers and DV/SA programs providing legal advocacy. Low pay and stress of these jobs lead to high turnover and less experienced staff. Urban attorneys are reluctant to go into the bush. Travel is expensive.
Option(s):
More funding for civil legal needs state/local/private/federal.
More use of tribal courts.
Use of video conferencing to better provide representation to rural areas.[148] Recognition of Right to Counsel in civil cases involving fundamental rights. Increased Federal funding for VAWA Legal Assistance to Victims Grants.
See "Options" submitted in Problem Area 1 of Development of Local Capacity Issues (i.e., D- LC 1-1) regarding tribes and state reaching agreement on tribal jurisdiction, state reconsidering AG opinion dated October 1, 2004, and funding for tribal courts, which are incorporated here by reference.

Recommendation 50 (D–AJ2)

Statement of problem(s):
Some victims are uncomfortable in accessing the state justice systems for cultural reasons or geographical reasons.[149]

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[147] The footnote for this option is in the Report narrative.
[148] The footnote for this option is in the Report narrative.

Current Status:
In areas without an active tribal court, victims are forced to go to state court for civil legal problems. All rural criminal cases go through state court with exception of few diversion programs such as Kake's program.
Ideal Status:
Every state and tribal court open to each rural Alaskan for civil needs. Criminal needs addressed through state system with more diversion programs such as Kake's.
Structural Barriers (e.g., statutes, regulations, etc.):
a) State's resistance to tribal courts. PL 280 issues for criminal cases (although not a bar of diversion programs).
Some tribal courts do not have the infrastructure or desire to handle certain types of cases.
b) Geographical barriers make accessing the state system difficult.
c) Loss of faith in criminal/civil justice systems lowers reporting of crimes and keeps unhealthy families.
Option(s):
a) Increase training for tribal courts such as Alaska Inter-Tribal Council's (AITC) programs/ALSC, TCC, ANJC, UAF-Fairbanks.
b) State changes its stance as to tribal courts. [150] Increased training on diversion programs. Training on how to develop culturally relevant, effective models.
c) Translators available at all times in state court.
d) See "Options" submitted in Problem Area 1 of Development of Local Capacity Issues (i.e., D-LC 1-1) regarding tribes and state reaching agreement on tribal jurisdiction, state reconsidering AG opinion dated October 1, 2004, and funding for tribal courts, which are incorporated here by reference.

Recommendation 51 combines D–AJ3 and D-AJ4

D-AJ3

Statement of problem(s):
Some victims are uncomfortable in accessing tribal justice systems because of inter-relationships of opposing party with tribal court administration or adjudicators.
Current Status:
State court doors remain open to these victims but physical barriers are problematic and cultural concerns.
Ideal Status:
Sensitize state court system to be more culturally relevant to Alaska Natives/educate tribal court personnel about domestic violence issues.
Structural Barriers (e.g., statutes, regulations, etc.):
Money and time.
Option(s):
Cultural competency training for court staff.[151]
Tribal courts develop and adopt guidelines for recusing or responding to conflict situations and to prevent a single family group or faction to "take over" court.

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[149] The footnote for this option is in the Report narrative.
[150] The footnote for this option is in the Report narrative.
[151] The footnote for this option is in the Report narrative.

D–AJ4

Statement of problem(s):
State's courts not physically located in all rural areas making access difficult/Not all tribes have courts.
Current Status:
State courts are present in 58 locations. Telephonic participation hearings available. Not all tribes have active tribal courts.
Ideal Status:
Every rural village that wants one would have an active tribal court and better access to state court, including translators.
Structural Barriers (e.g., statutes, regulations, etc.):
Disagreement over jurisdiction for tribal courts/clarification of jurisdiction.
Option(s):
Need to change attitudinal policy that divides rather than works on improving services for people
See "Options" submitted in Problem Area 1 of Development of Local Capacity Issues (i.e., D- LC 1-1) regarding tribes and state reaching agreement on tribal jurisdiction, state reconsidering AG opinion dated October 1, 2004, and funding for tribal courts, which are incorporated here by reference.

Recommendation 52 (JS-24): Electronic Monitoring Technology

Statement of Need:
There is a need to utilize developing technologies to facilitate probation supervision in rural as well as urban communities.
Option:
The Department of Corrections should be encouraged to continue the evaluation of electronic monitoring technology for use in rural Alaska and include training on its use to Village Public Safety Officers.
Rationale for Option:

- Current electronic monitoring technology can indicate that the probationer is not where s/he is supposed to be; new GPS technology can indicate where the probationer actually is.
- Simultaneously, this technology by itself is not sufficient, in the absence of a law enforcement presence, to protect the community.

Impact Statement:
This technology, if used in conjunction with other measures to increase actual law enforcement personnel, could enhance probation monitoring and public safety in small communities.

Recommendation 53 (ALC-8): Alcoholic Beverage Control Board (ABC Board) regulation statute changes: ABC Board to run "alcohol written-order" statewide, compatible data base (when alcohol is shipped, the order is electronically entered to track serial purchasing)

Statement of Need:
To coordinate the records of purchases from liquor stores, so that liquor stores can determine whether a proposed written order purchaser has already purchased their monthly legal limit, and to help ensure that prohibited individuals can not make the purchases.
Option:
ABC Board to develop and oversee an "alcohol written-order" statewide database, which would include prohibitions of purchases based on court proceedings.

Rationale for Option:
To reduce the ability of bootleggers to buy their 'legal' monthly limit from many package stores. All alcohol sales need to be tracked statewide by sale point database entry linked to purchaser. Track all alcohol written-order sales statewide to prevent serial purchases.
Impact Statement:
This will decrease the ability of bootleggers to buy alcohol.

Appendix G

Workgroup Option JS-5 (J-25) Alcohol Jurisdiction

All of the workgroups' options can be found on the Rural Justice Commission's web site at **www.akjusticecommission.org** under the "Topics" link.

Although the Commission has not adopted the workgroup recommendation that addressed granting jurisdiction to tribes to enforce certain laws relating to alcohol and substance abuse, several members of the public strongly asked the Commission to publish the recommendation. It is found below.

Alaska Rural Justice and Law Enforcement Commission
Options Worksheet for Work Groups

Working Group: Judicial

Option# JS-5 (J-25): Alcohol Jurisdiction

Statement of Need:

Alaska Native Villages should have a territorial basis, without creation of "Indian country," to regulate and control alcohol, including civil authority over non-Indians. The law should also allow federal prosecution of both members and non-members.

Option:

Recommend that 18 USC §§ 1156 and 1161 be amended, possibly on a "pilot project" basis for some Alaska Native Villages, along the following lines (underscoring indicates proposed new language):

§ 1156. Intoxicants possessed unlawfully

(a) Whoever, except for scientific, sacramental, medicinal or mechanical purposes, possesses intoxicating liquors in the Indian country or where the introduction is prohibited by treaty or an Act of Congress, or possesses any intoxicating liquors or other controlled substances regulated by an Alaska Native Village Controlled Substance Ordinance pursuant to subsection (c) within the geographic area governed by such Ordinance, or within an area covered by an Alaska Local Option Law, shall, for the first offense, be fined under this title or imprisoned not more than one year, or both; and, for each subsequent offense, be fined under this title or imprisoned not more than five years, or both.

(b) The term "Indian country" as used in this section does not include fee-patented lands in non-Indian communities or rights-of-way through Indian reservations, and this section does not apply to such lands or rights-of-way in the absence of a treaty or statute extending the Indian liquor laws thereto.

(c) The federally recognized tribal governments of Alaska Native villages shall have authority to enact and enforce laws regulating transactions involving alcoholic beverages, prohibiting the sale, importation, or possession of alcoholic beverages, and prohibiting the sale, importation or possession of substances illegal under state, federal or tribal law, within the exterior boundaries of the villages' core townships identified for village corporation land selections by

section 12(a) of the Alaska Native Claims Settlement Act or within a five-mile radius of the village center, as defined by the tribal government; provided, that for Alaska Native villages within incorporated cities the authority provided by this section is limited to Alaska Natives and to transactions involving Alaska Natives, and shall apply to the extent the tribal law does not conflict with the city's alcohol beverage local option law, if any. Alaska Native villages shall submit laws adopted pursuant to this section to the Secretary of the Interior, and the Secretary shall certify and publish those laws within the Federal Register within 180 days, provided that the law is consistent with the Indian Civil Rights Act. Alaska Native villages are authorized to enter into agreements with the State of Alaska or subdivisions thereof respecting jurisdiction over and enforcement of alcoholic beverage and drug control laws.

(d) For violations of Ordinances enacted under subsection (c), an Alaska Native Village Tribal Court may impose civil sanctions, including but not limited to fines, forfeitures, community service, and treatment requirements, on any individual found to have violated the applicable ordinance, but may not impose any criminal sentences on any individual who is not a member of a federally recognized tribe. Any civil or criminal tribal court proceedings must be conducted in accordance with due process and other applicable requirements of the Indian Civil Rights Act.

§ 1161. Application of Indian liquor laws

Except as provided in section 1156(c), the provisions of sections 1154, 1156, 3113, 3488, and 3669, of this title [18 USCS §§ 1154, 1156, 3113, 3488, and 3669], shall not apply within any area that is not Indian country, nor to any act or transaction within any area of Indian country provided such act or transaction is in conformity both with the laws of the State in which such act or transaction occurs and with an ordinance duly adopted by the tribe having jurisdiction over such area of Indian country, certified by the Secretary of the Interior, and published in the Federal Register.

Rationale for Option:

- The Work Group was deeply divided over Option J-5A, to propose yet another commission to study the alcohol problem in Alaska.

- The tragic consequences of alcohol and drug abuse in rural Alaska are well known. According to the final report of the Alaska Commission on Rural Governance and Empowerment, the alcohol-related mortality rate of Alaska Natives is three and one-half times that of non-Natives, and the incidence of fetal alcohol syndrome (FAS) among Alaska Natives is three times that of non-Natives. More than 97 percent of crimes committed by Alaska Natives are committed under the influence of alcohol or drugs.

- All available vehicles should be mobilized to combat this problem, tribal as well as state and federal.

- Existing federal and state laws and programs are not sufficient to combat this problem effectively. Although existing state local option laws enable villages to ban or restrict importation of alcohol, these laws and state drug laws are enforced and prosecuted primarily from regional centers. Defendants are tried in state courts, away from the villages. Penalties for initial offenses are neither certain nor severe. For youthful offenders, serious intervention is needed when the youth first gets into trouble, yet under the state system an individual can accumulate any number of minor offenses before serious attention is paid by the criminal justice system. Geographic and cost constraints will always prevent the state from having magistrates, troopers, prosecutors, etc., anywhere but in the largest communities. Second-class city governments, where they exist, also operate under too many constraints to effectively address alcohol and substance abuse. Most second-class city governments in villages have little or no tax base. State law does not provide for municipal courts, and small cities rarely enforce municipal criminal ordinances because of the costs associated with prosecuting cases in distant state courts.

- Tribal courts can intervene earlier and more effectively, dealing with offenders in their own communities. The best solutions to community alcohol problems are those which begin within the community. Tribal governments are in place, and are the only government in many villages. They are better situated to enforce and adjudicate minor offenses in remote communities than the state. Tribal courts are already dealing with juvenile offenses and child protection cases, many of which entail alcohol problems which the tribal courts need to deal with.

- There is state law precedent for extending authority to village councils in unincorporated communities. Village councils have authority to impose and enforce dog control ordinances within a 20-mile radius of the village, AS 03.55.030. The state local option law, AS 04.11.508, uses a five-mile radius as the jurisdictional perimeter of villages without city governments.

- There is historical precedent for federal and tribal regulation of alcohol within Alaska. In the late 1800s, Congress, in response to court rulings that Alaska was not "Indian country," acted legislatively to designate Alaska as "Indian country" for the purpose of the then-federal Indian liquor laws. In the early 1980s, the Secretary of the Interior published tribal alcohol ordinances for three Alaska villages (Northway, Minto, and Chalkyitsik).

- This proposal adds federal enforcement authority to the tools to combat substance abuse in Alaska's Native Villages as well as other rural areas.

- Portions of this are loosely patterned after language considered in the original enactment of the legislation creating the Rural Justice Commission.

Impact Statement:

Federal legislation confirming that Alaska Native tribes have concurrent jurisdiction over alcohol and drug related offenses would enable village Alaska to address substance abuse locally. It would help fill serious gaps in state services, without divesting the state of jurisdiction or authority.

Extending to Alaska's tribes the clear authority to enforce alcohol and drug laws is a logical and necessary step toward effectively addressing the substance abuse problem in rural Alaska.

Appendix H

Attachments for Recommendations Related to the Definition of Alcohol Manufacture Forfeiture Quantity Consistency

Attachment 1: Definition of Alcohol Manufacture

The suggested statutory changes are as follows.

Put in AS 04.21.080(b) alcohol definition section: **"manufacture" of alcoholic beverages means to use the fermentation process with natural or artificial sugar and yeast, or the distillation process, to create alcoholic content.**

The statutes currently do not have a definition for "manufacture" as it relates to alcohol, but below are the definitions of Title 4 "alcoholic beverage" and Title 11.71 drug cases "manufacture".

AS 04.21.080(b)(1) "alcoholic beverage" means a spirituous, vinous, malt, or other fermented or distilled liquid, whatever the origin, that is intended for human consumption as a beverage and that contains one-half of one percent or more of alcohol by volume, whether produced commercially or privately; however, in an area that has adopted a local option under AS 04.11.491, "alcoholic beverage" means a spirituous, vinous, malt, or other fermented or distilled liquid, whatever the origin, that is intended for human consumption as a beverage by the person who possesses or attempts to possess it and that contains alcohol in any amount if the liquid is produced privately, or that contains one-half of one percent or more of alcohol by volume, if the liquid is produced commercially;

AS 11.71.900(13) "manufacture"

A. means the production, preparation, propagation, compounding, conversion, growing, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; however, the growing of marijuana for personal use is not manufacturing;

B. includes the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance or its container unless done in conformity with applicable federal law

(i) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(ii) by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

Attachment 2: Forfeiture

Below are the current provisions of the forfeiture statute as applies to alcohol offenses. Added in **bold** are the suggested statutory changes.

AS 04.16.220
(a) The following are subject to forfeiture:
(1) alcoholic beverages manufactured, sold, offered for sale or possessed for sale, bartered or exchanged for goods and services in this State in violation of AS 04.11.010; alcoholic beverages possessed, stocked, warehoused, or otherwise stored in violation of AS 04.21.060; alcoholic beverages sold, or offered for sale in violation of a local option adopted under AS 04.11.491; alcoholic beverages transported into the State and sold to persons not licensed under this chapter in violation of AS 04.16.170(b); **alcoholic beverages transported in violation of AS 04.16.125.**

(2) materials and equipment used in the manufacture, sale, offering for sale, possession for sale, barter or exchange of alcoholic beverages for goods and services in this State in violation of AS 04.11.010; materials and equipment used in the stocking, warehousing, or storage of alcoholic beverages in violation of AS 04.21.060; materials and equipment used in the sale or offering for sale of an alcoholic beverage in an area in violation of a local option adopted under AS 04.11.491;

(3) aircraft, vehicles, or vessels used to transport, or facilitate the transportation of

(A) alcoholic beverages manufactured, sold, offered for sale or possessed for sale, bartered or exchanged for goods and services in this State in violation of AS 04.11.010;

(B) property stocked, warehoused, or otherwise stored in violation of AS 04.21.060;

(C) alcoholic beverages imported into a municipality or established village in violation of AS 04.11.499;

(4) alcoholic beverages found on licensed premises that do not bear federal excise stamps if excise stamps are required under federal law;

(5) alcoholic beverages, materials or equipment used in violation of AS 04.16.175;

(6) money, securities, negotiable instruments, or other things of value used in financial transactions, **or items of value purchased from the proceeds** derived from activity prohibited under AS 04.11.010 or in violation of a local option adopted under AS 04.11.491; **and**

(7) a firearm which is visible, carried during, or used in furtherance of a violation of Title 4.

(b) Property subject to forfeiture under this section may be actually or constructively seized under an order issued by the superior court upon a showing of probable cause that the property is subject to forfeiture under this section. Constructive seizure is effected upon posting a signed notice of seizure on the item to be forfeited, stating the violation and the date and place of seizure. Seizure without a court order may be made if

(1) the seizure is incident to a valid arrest or search;

(2) the property subject to seizure is the subject of a prior judgment in favor of the State; or

(3) there is probable cause to believe that the property is subject to forfeiture under (a) of this section; except for alcoholic beverages possessed on violation of AS 04.11.501 or an ordinance adopted under AS 04.11.501, property seized under this paragraph may not be held over 48 hours or until an order of forfeiture is issued by the court, whichever is earlier.

(c) Within 30 days of a seizure under this section the Department of Public Safety shall make reasonable efforts to ascertain the identity and whereabouts of any person holding an interest or an assignee of a person holding an interest in the property seized, including a right to possession, a lien, mortgage, or conditional sales contract. The Department of Public Safety shall notify the person ascertained to have an interest in property seized of the impending forfeiture, and before forfeiture the Department of Law shall publish, once a week for four consecutive calendar weeks, a notice of the impending forfeiture in a newspaper of general circulation in the judicial district in which the seizure was made, or if no newspaper is published in that judicial district, in a newspaper published in the State and distributed in that judicial district.

(d) Property subject to forfeiture under (a) of this section may be forfeited

(1) upon conviction of a person for a violation of AS 04.11.010 , 04.11.499, AS 04.21.060 , or AS 04.11.501 or an ordinance adopted under AS 04.11.501, **or AS 04.16.125** ; or

2) upon judgment by the superior court in a proceeding in rem that the property was used in a manner subjecting it to forfeiture under (a) of this section. **Upon service or publication of notice of commencement of a forfeiture action under this section, a person**

claiming interest in the property shall file within 30 days after the service or publication, a notice of claim setting out the nature of the interest, the date it was acquired, the consideration paid, and an answer to the State's allegations. If a claim and answer is not filed within the time specified, the property described in the State's allegation must be ordered forfeited to the State without further proceedings or showings.

Questions of fact or law raised by a notice of forfeiture action and answer of a claimant in an action commenced under this section must be determined by court sitting without a jury. This proceeding may be held in abeyance until conclusion of any pending criminal charges against the claimant.

(e) The owner of property subject to forfeiture under (a) or (i) of this section is entitled to relief from the forfeiture in the nature of remission of the forfeiture if, in an action under (d) of this section, the owner shows that the owner

(1) was not a party to the violation;

(2) had no actual knowledge or reasonable cause to believe that the property was used or was to be used in violation of the law; and

(3) had no actual knowledge or reasonable cause to believe that the person committing the violation had

(A) a criminal record for violating this title; or

(B) committed other violations of this title.

(f) A person other than the owner holding, or the assignee of, a lien, mortgage, conditional sales contract on, or the right to possession to property subject to forfeiture under (a) or (i) of this section is entitled to relief from the forfeiture in the nature of remission of the forfeiture if, in an action under (d) of this section, the person shows that the person

(1) was not a party to the violation subjecting the property to forfeiture; and

(2) had no actual knowledge or reasonable cause to believe that the property was to be used in violation of the law; and

(3) had no actual knowledge or reasonable cause to believe that the person committing the violation had

(A) a criminal record for violating this title; or

(B) committed other violations of this title.

(i) Upon conviction for a violation of AS 04.11.010 or 04.11.499, if an aircraft, vehicle, or watercraft is subject to forfeiture under (a) of this section, the court shall, subject to remission to innocent parties under this section,

(1) order the forfeiture of an aircraft to the State;

(2) order the forfeiture of a vehicle or watercraft if

(A) the defendant has a prior felony conviction for a violation of AS 11.41 or a similar law in another jurisdiction;

(B) the defendant is on felony probation or parole; the defendant has a prior conviction for violating AS 04.11.010 or 04.11.499; or

(C) the quantity of alcohol transported in violation of this title was twice the presumptive amounts in AS 04.11.010(c).

(j) Notwithstanding (i) of this section, a court is not required to order the forfeiture of a vehicle or watercraft if the court determines that

(1) the vehicle or watercraft is the sole means of transportation for a family residing in a village;

(2) the court may impose conditions that will prevent the defendant's use of the vehicle or watercraft; and

(3) either

(A) a member of the family would be entitled to remission

under this section if the family member were an owner of or held a security interest in the vehicle or watercraft; or
(B) if a member of the family would not be entitled to remission, the family member was unable as a practical matter to stop the violation making the vehicle or watercraft subject to forfeiture.

(k) When forfeiting property under (a), (d), or (i) of this section, a court may award to a municipal law enforcement agency that participated in the arrest or conviction of the defendant, the seizure of property, or the identification of property for seizure, (1) the property if the property is worth $5,000 or less and is not money or some other thing that is divisible, or (2) up to 75 percent of the property or the value of the property if the property is worth more than $5,000 or is money or some other thing that is divisible. In determining the percentage a municipal law enforcement agency may receive under this subsection, the court shall consider the municipal law enforcement agency's total involvement in the case relative to the involvement of the State.

(l) In this section, "village" means a community of fewer than 1,000 persons located off the interconnected State road system.

Current forfeiture provisions relating to controlled substances below

AS 17.30.110. Items Subject to Forfeiture.

The following may be forfeited to the State:

(1) a controlled substance which has been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or AS 11.71;

(2) raw materials, products, and equipment which are used or intended for use in manufacturing, distributing, compounding, processing, delivering, importing, or exporting a controlled substance which is a felony under this chapter or AS 11.71;

(3) property which is used or intended for use as a container for property described in (1) or (2) of this section;

(4) a conveyance, including but not limited to aircraft, vehicles, or vessels, which has been used or is intended for use in transporting or in any manner in facilitating the transportation, sale, receipt, possession, or concealment of property described in (1) or (2) of this section in violation of a felony offense under this chapter or AS 11.71; however,

(A) a conveyance may not be forfeited under this paragraph if the owner of the conveyance establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the owner was neither a consenting party nor privy to the violation;

(B) a forfeiture of a conveyance encumbered by a valid security interest at the time of seizure is subject to the interest of the secured party if the secured party establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the secured party was neither a consenting party nor privy to the violation;

(5) books, records, and research products and materials, including formulas, microfilm, tapes, and data, which are used in violation of this chapter or AS 11.71;

(6) money, securities, negotiable instruments, or other things of value used in financial transactions derived from activity prohibited by this chapter or AS 11.71; and

(7) a firearm which is visible, carried during, or used in furtherance of a violation of this chapter or AS 11.71.

AS 17.30.116. Procedure For Forfeiture Action.

(a) Within 20 days after a seizure under AS 17.30.110 - 17.30.126, the commissioner of public safety shall, by certified mail, notify any person known to have an interest in an item with an appraised value of $500 or more, or who is ascertainable from official registration numbers, licenses, or other state, federal, or municipal numbers on the item, of the pending forfeiture action. Additionally, the commissioner of public safety shall publish notice of forfeiture action of an item valued at $500 or more in a newspaper of general circulation in the judicial district in which the seizure was made, or if no newspaper is published in that judicial district, in a newspaper published in the State and distributed in that judicial district. The notice shall be published once each week during four consecutive calendar weeks. The requirements of this subsection do not apply to the forfeiture of controlled substances which have been manufactured, distributed, dispensed, or possessed in violation of this chapter or AS 11.71, regardless of their value.

(b) Upon service or publication of notice of commencement of a forfeiture action under this section, a person claiming interest in the property shall file within 30 days after the service or publication, a notice of claim setting out the nature of the interest, the date it was acquired, the consideration paid, and an answer to the State's allegations. If a claim and answer is not filed within the time specified, the property described in the State's allegation must be ordered forfeited to the State without further proceedings or showings.

(c) Questions of fact or law raised by a notice of forfeiture action and answer of a claimant in an action commenced under this section must be determined by the court sitting without a jury. This proceeding may be held in abeyance until conclusion of any pending criminal charges against the claimant under this chapter or AS 11.71.

Attachment 3: Quantity Consistency

The most common item bootlegged is R&R whiskey (distilled spirits). The quantity of 14 bottles (750 ml size) equals 10 and one half liters. (16 –750 ml bottles equals 12 liters.) As seen below, the quantity amounts for malt beverages and wine are essentially equivalent for presumptive sale, felony importation and allowable shipping to a sale-restricted location.

The suggested statutory change would make the quantity in AS 04.11.010 consistent if stated **"10 and one half liters or more of distilled spirits".**

Currently, the statutes provide:
AS 04.11.010 presumptive amount for sale is possession **more than 12 liters of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages.**

AS 04.16.200(e)(2) amount that makes importation into a dry location a felony is **10 and one half liters or more of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages.**

AS 04.11.140(g) package store license permits shipping monthly to a damp (restriction of sale) location **10 and one half liters of distilled spirits, less than 24 liters of wine, or less than 12 gallons of malt beverages.**

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Stalking in Alaska

André B. Rosay, Greg Postle, Katherine TePas, and Darryl Wood

Although the available data are limited, a recent Justice Center examination of Alaska State Trooper case files has revealed that the crime of stalking is probably greatly underreported by victims as well as underrecognized by law enforcement and hence not charged often enough in Alaska. A charge of stalking can be applied in a wide range of situations, and its parameters as a crime can be somewhat ambiguous for both victims and law enforcement. The available data show that a stalking charge is often made in conjunction with other charges, particularly when there has been a prior relationship—which is often the case, with stranger stalking fairly rare.

Stalking, by its nature and its legal definition, induces fear. Statistics from the National Violence Against Women Survey showed that even after the stalking ended, 68 percent of victims thought their personal safety had gotten worse, 42 percent were very concerned about their personal safety, 30 percent were very concerned about being stalked, and 45 percent carried something to defend themselves. Psychological counseling was sought by 30 percent of female victims and 20 percent of male victims.

Moreover, other studies have shown links between stalking and intimate partner homicide among female victims. For example, according to an analysis published in *Homicide Studies* in 1999, 76 percent of female intimate partner homicide victims had been stalked by their intimate partner in the past. Furthermore, 89 percent of female intimate partner homicide victims that were physically abused had also been stalked by their intimate partner in the past. Of all female intimate partner homicide victims, 54 percent had previously contacted police to report they were being stalked.

With funding from the National Institute of Justice, the Justice Center is working with the Alaska State Troopers and the Alaska Department of Law to learn more about the characteristics of stalking in Alaska.

In the first quantitative examination of the crime, data from all stalking incidents reported to Alaska State Troopers from 1994 to 2005 were collected to gather descriptive information. The research provides a first overview of a specific crime whose characteristics are not widely known beyond the justice community. The Alaska statutes defining the crime of stalking are presented on page 5.

Methodology

To conduct this study, Justice Center researchers examined the total 267 cases with a stalking charge reported to Alaska State Troopers from 1994 to 2005. (Alaska stalking statutes went into effect in 1993.) The final sample for analysis comprised 210 cases (Table 1) covering a total of 222 stalking charges, 211 suspects, and 216 victims. Case outcome data were gathered directly from the Alaska Department of Law for a sub-sample of the stalking cases—only those reported from 1999 to 2004 ($N = 92$).

Results

For the first four years included in this

Please see ***Stalking in Alaska****, page 7*

Table 1. Case Closure Codes in Alaska Stalking Cases, 1994–2005

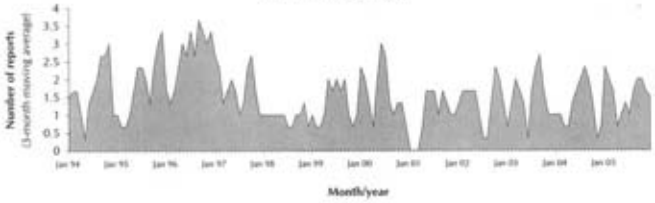
Column percentages

	Reports	
Closure code	N	%
Closed by arrest	140	66.7 %
Closed, declined	6	2.9
Closed by investigation	34	16.2
Closed, referred	22	10.5
Closed, unfounded	8	3.8
Total	210	

Source of data: Alaska State Troopers data (1994-2005)

Figure 1. Number of Stalking Reports in Alaska by Month and Year, 1994–2005

3-month moving average



Source of data: Anchorage State Troopers data (1994–2005)

Stalking Crimes: Do Alaska Stalking Laws Serve Their Purpose in a Wireless, Social Networking Age?

Pamela Kelley

A 32-year-old woman subscribed to an online dating service. She described herself in her online profile as the active, outdoors-loving Alaska resident she was. She answered all of the queries she received. "Jan" was highly selective and very cautious. She declined many initial invitations to correspond and perhaps meet. She responded to one from "Raymond," and they corresponded for two weeks before they met for coffee. Unimpressed, Jan declined Raymond's next invitation for coffee.

Through his own efforts, Raymond learned where Jan lived. Her unprotected home wireless connection allowed him to easily infiltrate her computer and its data. Raymond was able to gain access to Jan's Yahoo email account. He opened her email; sometimes he responded to email in her name. Jan grew confused when email came to her from others in seeming reply to words of her own. Raymond changed Jan's public profile on the online dating service, and posing as her he "winked" at dozens of other men—using the service to falsely indicate her interest.

Jan felt that someone was trying to harass and threaten her in some way, especially after unknown men started showing up at her front door expecting to go out on "first dates." After it happened the second time, she called the police. After the third time, they wondered whether to take her seriously. After all, none of the "dates" intended to or caused her any harm. Maybe it was just a case of vivid imagination.

In this hypothetical incident, has Jan been the victim of stalking? Could Raymond be prosecuted under the current versions of Alaska's criminal stalking statutes? Because of the reach of the Internet and other technologies, these questions have a currency in 2007 that they did not have when Alaska's stalking statute was adopted in 1993. Most individuals did not use email in 1993; today it is ubiquitous. Social networking via the computer was unknown then. It was an era before MySpace, YouTube, FaceBook, IM, and portable GPS devices.

In 1993, Congress directed the National Institute of Justice (NIJ) in the U.S. Department of Justice to develop a model stalking code to encourage states to adopt anti-stalking measures. NIJ entered into a cooperative agreement with the National Criminal Justice Association (NCJA) to research existing stalking laws and develop model legislative language. NCJA, in turn, sought additional input from the National Conference of State Legislatures, the American Bar Association, the National Governors' Association, the Police Executive Research Forum, the National Center for Victims of Crime, and other national organizations.

More than a decade later, one of the original model code advisory organizations, the National Center for Victims of Crime, considered that sufficient data had been collected to evaluate the efficacy of the nation's stalking legislation. The center empanelled a Model Stalking Code Advisory Board, comprising twenty-three academicians, judges, law practitioners, law enforcement authorities and victims advocates to perform its evaluation.

In part because of technological changes, the advisory board concluded there was a need to promulgate an updated criminal stalking statutory model. This article examines the statutory update suggested by the National Center for Victims of Crimes and explores whether the same need exists in Alaska warranting revision of Alaska's criminal statutes. Readers should note that at this time there is no pending legislation on Alaska criminal stalking statutes. As empirical data are evaluated regarding stalking and civil and criminal legal responses, Alaska policy makers will determine the need for legislative action. The promulgation of a model does not mean that any state should follow in lockstep with what the drafters have suggested. A model code is not the end of a discussion but rather a beginning.

Needs Identified for the Model Stalking Code

Using data and information from a spectrum of sources, the National Center for Victims of Crime concluded that on a national basis:

- Stalkers often get away with their criminal behavior with little or no risk of intervention by law enforcement.
- The burden of proof is so high that it is extremely difficult to secure convictions.
- Most stalking offenses are misdemeanor crimes. Stalkers are rarely sentenced for longer than a few days or weeks.
- Stalking laws are written with the "stranger stalker" in mind, restricting the type of behavior that can be prosecuted when the stalker and victim are in a relationship.
- Current state laws do not address the full range of stalking behaviors, which may include indirect communication with the victim. Requirements of proximity or direct contact overlook modern technologies available to stalkers.

Does the Alaska Experience Align with the Center's Findings?

- *Stalkers often get away with their criminal behavior with little or no risk of intervention by law enforcement.*

This criticism of the current situation may be true. The data analysis in Alaska is in its infancy, with more research needed. The companion article, "Stalking in Alaska," discusses the possible extent of underreporting of stalking. Moreover, the prevalence of domestic violence and the documented high number of protective orders issued *after* a petitioner has separated from a respondent may give an initial clue to the extent of stalking behavior.

Although at this time there are few reported cases construing Alaska's stalking statute, one recent case indicates the extent to which stalking may be significantly underreported in the state. In *McComas v. Kirin*, 105 P.3 1130 (Alaska 2005), the Alaska Supreme Court upheld the issuance of a long-term domestic violence protection order based upon threatening letters sent to a woman from her former spouse. The letters were recognized as a course of conduct prohibited as stalking in the second degree. Because in Alaska this crime is one that can be classified as a crime involving domestic violence, the issuance of the protective order was unanimously approved by the Alaska Supreme Court.

As this case illustrates, stalking behavior, which has otherwise not been reported, can be behind the issuance of domestic violence protective orders. In light of the number of post-separation protective orders issued, it seems reasonable to conclude that the incidence of domestic violence may be subsuming incidents of stalking.

- *Most stalking offenses are misdemeanor crimes. Stalkers are rarely sentenced for longer than a few days or weeks.*

Alaska currently has a two-tiered system for stalking charges. At this point there is simply not enough evidence to say that this system is unworkable. As the accompany-

ing article "Stalking in Alaska" discusses, the crime is probably being heavily under-reported throughout the state and possibly undercharged.

Under the two applicable Alaska criminal statutes, stalking is either a Class A misdemeanor or a Class C felony. An individual commits second degree stalking—a misdemeanor—under Alaska Statute 11.41.270 if "the person knowingly engages in a course of conduct that recklessly places another person in fear of death or physical injury, or in fear of the death or physical injury of a family member."

When this basic stalking conduct is coupled with actions that are violations of civil orders of protection against stalking or domestic violence, or the victim is under 16, or if the defendant at any time during the conduct possessed a deadly weapon, then stalking is a felony. In addition, if the basic stalking conduct is itself in violation of a condition of probation, release before trial, release after conviction, or parole, the offense is a felony. Finally, a person who commits the basic act of stalking described above, and who has been previously convicted of a crime, an attempted crime or solicitation to commit a range of offenses against the same victim is guilty of stalking in the first degree.

One of the expected benefits of criminalizing stalking behavior is to intervene early before such conduct leads to more dangerous, even lethal, action. Under Alaska law, a number of factors increase the severity of the offense; these are directly related to the escalation of the risk to the victim. When a victim already possesses a civil protection order against stalking or domestic violence, and the offender continues the prohibited conduct, the felony statute applies.

Under Alaska's sentencing structure, if the person is a first-time felony offender, the period of incarceration ranges from zero to two years; an offender with a previous felony conviction can receive a sentence of up to five years. Misdemeanants can be sentenced up to a year. At this point, we do not have enough data to examine whether the existing penalty structure is sufficient or insufficient.

A future comprehensive study of the treatment of stalking in Alaska might identify the population of stalking convictions obtained, whether they were for misdemeanor or felony stalking, whether the sentences fell within the presumptive ranges and whether those convicted of felony stalking received suspended impositions of sentences.

• *Stalking laws are written with the "stranger stalker" in mind, restricting the type of behavior that can be prosecuted when the stalker and victim are in a relationship.*

This does not appear to be a problem in Alaska. The basic stalking behavior addressed in the Alaska statutes can encompass conduct between those who have been involved in a relationship, particularly in conjunction with criminal and civil statutes covering domestic violence. The interrelationship among the state's statutes governing civil orders for protection against stalking, civil protection orders against domestic violence, and the criminal stalking statutes permits both law enforcement and prosecutors to pursue criminal charges even when a relationship has existed, although as mentioned before, prosecution may be challenging.

A.S. 18.66.100 *et seq.* describe the process through which an individual who has been the victim of a "crime of domestic violence" can obtain one of three civil protection orders of varying duration. Eligible petitioners are those who have been victimized by current or past members of their household. *Household members* is a key defined term under the statutes, as it expands the reach of the statute to those who have dated, have been involved in intimate relationships, are related through marriage, or are related through the fourth degree of consanguinity.

In the civil protection order process, a *crime of domestic violence* is also specifically defined. The term includes:

> (3) "domestic violence" and "crime involving domestic violence" mean one or more of the following offenses or an offense under a law or ordinance of another jurisdiction having elements similar to these offenses, or an attempt to commit the offense, by a household member against another household member:
>
> (A) a crime against the person under AS 11.41;
>
> (B) burglary under AS 11.46.300–11.46.310;
>
> (C) criminal trespass under AS 11.46.320–11.46.330;
>
> (D) arson or criminally negligent burning under AS 11.46.400–11.46.430;
>
> (E) criminal mischief under AS 11.46.475–11.46.486;
>
> (F) terrorist threatening under AS 11.56.807 or 11.56.810;
>
> (G) violating a protective order under AS 11.56.740(a)(1); or
>
> (H) harassment under AS 11.61.120(a)(2)–(4);
>
> (A.S. 18.66.990(3)(2007))

For those who are not eligible for a domestic violence protective order, but who believe they have been the victim of a crime of stalking or sexual assault, A.S. 18.65.850(a) describes the civil protective order remedy:

> A person who reasonably believes that the person is a victim of stalking or sexual assault that is not a crime involving domestic violence may file a petition in the district or superior court for a protective order against a respondent who is alleged to have committed the stalking or sexual assault. A parent or guardian may file a petition on behalf of a minor.

Building on the dual platforms of protective orders available to those who fear physical harm for themselves or family members, Alaska's criminal statutes then incorporate violations of these protective orders into an element that, coupled with a course of conduct of unwanted contact, elevates stalking from misdemeanor to felony behavior.

• *The burden of proof is so high that it is extremely difficult to secure convictions.*

Alaska statutes are not problematic in this area, although this criterion of the model code is phrased somewhat imprecisely. What is meant is not *burden of proof* in the ordinary legal sense—proof *beyond a reasonable doubt*—which, of course, applies for criminal conviction in all cases. Rather, the writers of the model code are referring to the necessity (burden) of proving criminal intent. They are proposing new language to make it clear that the statute should be a general intent crime rather than a specific intent crime. This entails the difference between intending to do the act and intending a particular result; in other words the statute should require that the stalker intend his actions rather than specific consequences of his actions. It is easier for a prosecutor to show intent to perform an act. Currently, in many jurisdictions stalking statutes require evidence of specific intent to cause a special level of fear in the victim—a result—but this is not the case in Alaska. Alaska currently has a general intent statute; in fact, in Alaska the level of criminal intent that has to be proven beyond a reasonable doubt is less even than that suggested under the proposed model. Under the model the defendant must act *purposefully* but in Alaska the statute requires only that the defendant be proven to have acted *knowingly*.

The actual prosecutorial work of proving the general intent of a course of nonconsen-

sual contact remains challenging, but current statutory language seems adequate.

- *Current state laws do not address the full range of stalking behaviors, which may include indirect communication with the victim. Requirements of proximity or direct contact overlook modern technologies available to stalkers.*

The means and methods of stalkers have expanded to include new acts, including the use of new technologies. Drafters of the proposed model act recognize that contemporary imaginations are as ill-equipped to guess what methods will be useful to the stalker of 2021 as the legislatures of 1993 were to imagine what would be available today.

The hypothetical example of Jan at the beginning of this article illustrates the limitations of the current stalking statute from a legal perspective. The story suggests new issues that may arise in prosecuting an individual like Raymond under state stalking statutes, particularly in light of the definition incorporated for "nonconsensual contact." Under Alaska's basic definition of criminal stalking, the stalker must be shown to have engaged in "repeated acts of any contact with the purported victim without that person's consent." The contact covered by the statute includes traditional forms recognized early on—following or appearing within the sight of that person; approaching or confronting that person in a public place or on private property; appearing at the workplace or residence of that person; entering onto or remaining on property occupied by that person; or contacting that person by telephone. Prohibited nonconsensual contact also includes "sending mail or electronic communications to [the victim]...[and] placing an object on, or delivering an object to, property owned, leased, or occupied by that person."

In the hypothetical scenario, the only direct, nonconsensual contact between Raymond and Jan occurred when he infiltrated her Yahoo email account and when he interfered with her public profile at the online dating service. The basis for this conclusion is an expansive reading of A.S. 11.41.270(b)(3)(D) which provides that "nonconsensual contact includes... entering onto or remaining on property owned, leased, or occupied by [the victim]." None of the definitional sections of the statute limits the definition of property to real property, and the law remains unsettled as to the ownership interest one holds in one's property on various social networking or gaming locations on the

Model Stalking Code for the States

Section One: Legislative Intent

The Legislature finds that stalking is a serious problem in this state and nationwide. Stalking involves severe intrusions on the victim's personal privacy and autonomy. It is a crime that causes a long-lasting impact on the victim's quality of life, and creates risks to the security and safety of the victim and others, even in the absence of express threats of physical harm. Stalking conduct often becomes increasingly violent over time. The Legislature recognizes the dangerous nature of stalking as well as the strong connections between stalking and domestic violence and between stalking and sexual assault. Therefore, the Legislature enacts this law to encourage effective intervention by the criminal justice system before stalking escalates into behavior that has serious or lethal consequences.

The Legislature intends to enact a stalking statute that permits the criminal justice system to hold stalkers accountable for a wide range of acts, communications, and conduct. The Legislature recognizes that stalking includes, but is not limited to, a pattern of following, observing, or monitoring the victim, or committing violent or intimidating acts against the victim, regardless of the means.

Section Two: Offenses

Any person who purposefully engages in a course of conduct directed at a specific person and knows or should know that the course of conduct would cause a reasonable person to:

(a) fear for his or her safety or the safety of a third person; or

(b) suffer other emotional distress

is guilty of stalking.

Section Three: Definitions

As used in this Model Statute:

(a) "Course of conduct" means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.

(b) "Emotional distress" means signifi cant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(c) "Reasonable person" means a reasonable person in the victim's circumstances.

Section Four: Defenses

In any prosecution under this law, it shall not be a defense that:

(a) the actor was not given actual notice that the course of conduct was unwanted; or

(b) the actor did not intend to cause the victim fear or other emotional distress.

Optional Provisions

Section Five: Classification

Stalking is a felony.

Aggravating factors.

The following aggravating factors shall increase the penalty for stalking:

(a) the defendant violated any order prohibiting contact with the victim; or

(b) the defendant was convicted of stalking any person within the previous 10 years; or

(c) the defendant used force or a weapon or threatened to use force or a weapon; or

(d) the victim is a minor.

Section Six: Jurisdiction

As long as one of the acts that is part of the course of conduct was initiated in or had an effect on the victim in this jurisdiction, the defendant may be prosecuted in this jurisdiction.

Source: National Center for Victims of Crime. (2007). ***The Model Stalking Code Revisited: Responding to the New Realities of Stalking***. Washington, DC. http://www.ncvc.org/ncvc/AGP.Net/Components/documentViewer/Download.aspx?nDocumentID=41822

Internet. Furthermore, it is even less clear whether Raymond has engaged in nonconsensual contact when he obtained access to Jan's passwords and usernames by walking through the open front door of her unprotected wireless connection.

Under Alaska statutes the alleged stalker must be shown to have engaged "in a course of conduct" which is defined as "repeated acts of nonconsensual contact involving the victim or a family member" that recklessly place the victim or a family member in fear of death or physical injury. The actions that placed Jan in fear of physical injury were the arrivals on her doorstep of three uninvited men expecting a date. These actions were set into motion by Raymond, yet in order for the use of unwitting actors to meet the definition of the criminal act, an Alaska court would be required to read the definition of *any act* in the statutory definition of *nonconsensual act* to include *indirect acts*.

The lack of a definition specifically including *indirect conduct* in the statute could possibly work against the prosecution of the type of behavior described in the hypothetical scenario.

***

There is little doubt that Raymond is stalking Jan. But Jan is not likely to find her peace of mind through a criminal prosecution of Raymond for stalking. There are too many uncertainties under the law. While Raymond acted knowingly when he engaged in a course of conduct that included actions to which Jan did not consent, his actions merely set the stage for the behavior that caused Jan's reasonable fear of physical harm. Raymond knowingly obtained Jan's address, but there is nothing to indicate it was obtained illegitimately. Raymond knowingly jumped on her wireless connection, but without an adequate firewall it was as though Jan provided the key to her front door. All Raymond needed was her user name and password for her online dating account and her email account; those two may have been the same. From that point forward, everything Raymond has done is in mimicry of Jan. He uses the online service to identify men willing to meet her, and sends them off on *faux* dates to knock on her door.

In fact, only in this area, where the model act looks to widen the reach of means and methods, is there a probable alignment of needs between those identified nationwide in the model act and those known here in Alaska. The Alaska statute recognizes "electronic communications" as the basis for stalking charges but it does not clearly contemplate indirect contacts arranged via social networking as a course of conduct that may constitute a criminal violation. The statute leaves open the question of whether *property* includes that which exists only in a virtual state. Given these ambiguities in statutory language brought about by technological advances, the reach of the Alaska statutes on stalking awaits interpretation on a case-by-case basis. The time required for the development of case law might be well used to continue gathering data to support a sound analysis of the efficacy of current stalking laws.

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Alaska Stalking Statutes

A.S. 11.41.260–11.41.270 (2006)

Sec. 11.41.260. Stalking in the first degree. (a) A person commits the crime of stalking in the first degree if the person violates AS 11.41.270 and

(1) the actions constituting the offense are in violation of an order issued or filed under AS 18.66.100–18.66.180 or issued under former AS 25.35.010 (b) or 25.35.020;

(2) the actions constituting the offense are in violation of a condition of probation, release before trial, release after conviction, or parole;

(3) the victim is under 16 years of age;

(4) at any time during the course of conduct constituting the offense, the defendant possessed a deadly weapon;

(5) the defendant has been previously convicted of a crime under this section, AS 11.41.270, or AS 11.56.740, or a law or ordinance of this or another jurisdiction with elements similar to a crime under this section, AS 11.41.270, or AS 11.56.740; or

(6) the defendant has been previously convicted of a crime, or an attempt or solicitation to commit a crime, under (A) AS 11.41.100–11.41.250, 11.41.300–11.41.460, AS 11.56.807, 11.56.810, AS 11.61.118, 11.61.120, or (B) a law or an ordinance of this or another jurisdiction with elements similar to a crime, or an attempt or solicitation to commit a crime, under AS 11.41.100–11.41.250, 11.41.300–11.41.460, AS 11.56.807, 11.56.810, AS 11.61.118, or 11.61.120, involving the same victim as the present offense.

(b) In this section, "course of conduct" and "victim" have the meanings given in AS 11.41.270 (b).

(c) Stalking in the first degree is a class C felony.

Sec. 11.41.270. Stalking in the second degree. (a) A person commits the crime of stalking in the second degree if the person knowingly engages in a course of conduct that recklessly places another person in fear of death or physical injury, or in fear of the death or physical injury of a family member.

(b) In this section,

(1) "course of conduct" means repeated acts of nonconsensual contact involving the victim or a family member;

(2) "family member" means a

(A) spouse, child, grandchild, parent, grandparent, sibling, uncle, aunt, nephew, or niece, of the victim, whether related by blood, marriage, or adoption;

(B) person who lives, or has previously lived, in a spousal relationship with the victim;

(C) person who lives in the same household as the victim; or

(D) person who is a former spouse of the victim or is or has been in a dating, courtship, or engagement relationship with the victim;

(3) "nonconsensual contact" means any contact with another person that is initiated or continued without that person's consent, that is beyond the scope of the consent provided by that person, or that is in disregard of that person's expressed desire that the contact be avoided or discontinued; "nonconsensual contact" includes

(A) following or appearing within the sight of that person;

(B) approaching or confronting that person in a public place or on private property;

(C) appearing at the workplace or residence of that person;

(D) entering onto or remaining on property owned, leased, or occupied by that person;

(E) contacting that person by telephone;

(F) sending mail or electronic communications to that person;

(G) placing an object on, or delivering an object to, property owned, leased, or occupied by that person;

(4) "victim" means a person who is the target of a course of conduct.

(c) Stalking in the second degree is a class A misdemeanor.

Current Guest Worker Programs

A major aspect of the current debate on U.S. immigration policy centers on the on-going need in some industries, businesses, and professions for professional, skilled, semi-skilled or unskilled workers. In Alaska, the demand is for workers in the fishing industry.

A patchwork of visa programs currently addresses these needs (Table 1), but the demand for workers, particularly seasonal unskilled or semi-skilled laborers, seems to exceed the existing quotas. According to the Office of Immigration Statistics, in January 2005 there were an estimated 10.5 million *undocumented* immigrants in the U.S., many of whom find work as seasonal laborers.

There are two existing visa programs which are, essentially, seasonal guest-worker programs – the H-2A and H-2B programs. These programs provide for the temporary short-term residence of seasonal workers in the agricultural industry (H-2A) and in other seasonal work, such as the forestry and fishing industries (H-2B).

There is no cap to the H-2A program. The cap to the H-2B program is set at 66,000, but in recent years Congress has raised that limit because of the extreme demand for seasonal workers. According to preliminary data available on its website in May 2007, the Department of State issued 31,892 H-2A visas and 87,492 H-2B in 2005. For all categories of temporary worker visas (H), the total was 317,493. Department of Homeland Security figures show a total 2,127 actual temporary worker admissions to Alaska in 2005. (Due to DHS recording procedures, this figure may be somewhat low, and in addition to the H visa admissions, it also covers visa categories E, I, L, O, P, Q, R, TD and TN.)

The H2 programs are employer-driven. Employers who anticipate a shortage of domestic laborers may apply to bring foreign workers to the U.S. Several government agencies are involved. Before visas are issued, an employer must apply to the Department of Labor for certification for a requested number of positions. The employer must confirm that there are not enough U.S. resident workers willing, qualified and available for the work and that employment of the foreign workers will not affect the wages and working conditions of similarly employed U.S. workers. U.S. Citizenship and Immigration Services in the Department of Homeland Security authorizes the issuance of the visas through the Department of State.

Under the H-2A and H-2B programs, a foreign worker must be paid at the same rate as U.S. laborers performing similar work. The hourly rate must be at least as high as whichever of the following is highest: the applicable Adverse Effect Wage Rate, which is determined annually by the Department of

Table 1. Classes of Nonimmigrants Issued Visas (Including Crewlist Visas and Border Crossing Cards), Fiscal Years 2001–2006

Class of nonimmigrant		2001	2002	2003	2004	2005
Totals		**7,588,778**	**5,769,437**	**4,881,632**	**5,049,099**	**5,388,937**
A	Foreign government official	78,288	84,151	83,503	92,356	94,222
B-1	Temporary visitor for business	84,201	75,642	60,892	53,245	52,649
B-1/B-2	Temporary visitor for business and pleasure	3,527,118	2,528,103	2,207,303	2,340,795	2,709,468
B1/B2/BCC	Combination B1/B2 and Border Crossing Card	1,990,402	1,399,819	836,407	740,616	732,566
B-2	Temporary visitor for pleasure	381,431	255,487	271,358	279,106	245,816
C	Transit	32,952	30,239	40,839	89,276	75,853
C-1/D	Combination transit/crew member (individual issuance)	167,435	175,446	210,648	228,778	229,115
D-Crewlist	Crew member (individual issuance) and Crewlist Visas	30,095	22,070	20,756	17,951	19,988
E	Treaty trader or investor	36,886	33,444	32,096	36,821	37,164
F	Student	319,517	256,534	235,580	237,807	255,993
G	Representative/staff of international organization	32,877	33,004	31,103	37,145	40,935
H	Temporary worker and trainee	348,995	293,805	286,930	331,628	317,493
I	Representative of foreign information media	13,799	18,187	12,329	16,390	16,975
J	Exchange visitor	299,958	286,380	283,662	282,379	303,822
K	Fiance(e) of U.S. citizen	28,712	39,008	44,633	51,802	53,968
L	Intracompany transferee	120,538	112,624	110,816	121,864	122,981
M	Vocational student	5,658	4,277	4,301	4,912	5,975
N	Certain relatives of SK Special Immigrants	14	12	18	11	14
NAFTA	NAFTA professional	1,828	1,555	1,219	2,176	3,843
NATO	NATO official	4,723	5,687	5,702	6,723	6,550
O	Persnn with extraordinary ability in the sciences, arts, education, business, or athletics	10,871	9,758	10,150	10,727	11,960
P	Athlete, artist, or entertainer	34,018	33,475	34,358	32,040	34,665
Q	International cultural exchange program participant	1,618	1,799	1,970	1,581	1,978
R	Person in a religious occupation	11,512	11,821	11,798	11,782	11,805
S	Informant possessing information on criminal activity or terrorism	0	0	0	0	0
T	Victim of severe form of trafficking in persons	0	0	58	219	112
V	Spouse/Child of lawful permanent resident awaiting availability of immigrant visa	25,332	57,110	43,203	20,969	3,027
Other nonimmigrant classes						
BCC	Border Crossing Cards (BCC)	0	0	0	0	0

Source: *U.S. Department of State, available at http://travel.state.gov/pdf/FY05tableXVIa.pdf*

Labor for all states except Alaska; the federal minimum wage; the state minimum wage; or the prevailing hourly rate.

Employers of H-2A workers must provide transportation, housing and meals under certain conditions. The employees are covered under workmen's compensation regulations and are eligible for federally-funded legal services. The Department of Labor is responsible for overseeing enforcement of the regulations structuring the H-2A program.

The H-2B program is much less highly structured, with fewer regulations and no provision for enforcement or other specific legal protections. In neither program is the worker permitted to change jobs during the term of the visa.

A review of employee need certification numbers from the DOL shows that, as might be expected, there are relatively few foreign workers in Alaska under the H-2A visa program (agricultural workers). More are employed under the non-agricultural worker program (H-2B)—most in the fishing industry.

Stalking in Alaska

(continued from page 1)

investigation (1994 to 1997), the number of reports averaged 22 per year. After that, the average number of reports dropped significantly, to 15 per year. Figure 1 displays the trend of reporting over time, from January 1994 to December 2005, using a three-month moving average. Seasonal variations from January to December in the trend of reporting were not quite statistically significant, but 23 percent of the reports were made in the months of June and October.

Over 50 percent of reports occurred in B and D detachments. B detachment includes five Alaska State Trooper posts (Wasilla, Palmer, Glennallen, Big Lake, and Talkeetna) while C detachment includes nine Alaska State Trooper posts (Coldfoot, Galena, Fairbanks, Nenana, Healy, Cantwell, Delta Junction, Tok, and Northway; see Figure 2). The units with the highest number of stalking reports included Fairbanks AST Enforcement (with 19% of reports), Palmer AST Enforcement (with 18% of reports), and Soldotna AST Enforcement (in E Detachment, with 12% of reports). Together, these three units had 49 percent of all stalking reports. Additional details are shown in Table 2.

Most cases (67%) were closed by arrest, meaning that at least one person was criminally charged, by a physical arrest, summons, warrant, or criminal complaint (see Table 1). Other cases (10%) were closed with a referral to the district attorney for a charging decision. Sixteen percent of cases were closed after the investigation because there were no suspects or because evidence was lacking. Only four percent of cases were closed unfounded (because there appeared to be no basis for the complaint). Finally, only three percent of cases were closed because the prosecution declined to pursue the case, even though a suspect was known.

Please see ***Stalking in Alaska****, page 8*

Figure 2. Alaska State Trooper Locations

Source: Alaska State Troopers May 2006

Table 2. Total Number of Stalking Reports in Alaska by Unit, 1994–2005

Column percentages

Unit	N	%	Unit	N	%	Unit	N	%
Anchorage AST Enforcement	7	3.3 %	Girdwood AST Enforcement	3	1.4 %	Northway AST Enforcement	1	0.5 %
Aniak AST Enforcement	1	0.5	Glennallen AST Enforcement	6	2.9	Mat-Su Regional Office	1	0.5
Bethel AST Enforcement	7	3.3	Healy AST Enforcement	1	0.5	Palmer AST Enforcement	37	17.6
Big Lake AST Enforcement	1	0.5	Homer AST Enforcement	7	3.3	Palmer AST Investigations	5	2.4
Cooper Landing AST Enforcement	1	0.5	Juneau AST Enforcement	1	0.5	Seward AST Enforcement	4	1.9
AB Child Abuse Investigation Unit	1	0.5	Ketchikan AST Enforcement	7	3.3	Soldotna AST Enforcement	25	11.9
Cantwell AST Enforcement	3	1.4	Ketchikan AST Investigations	1	0.5	St. Marys AST Enforcement	2	1.0
AB Cold Case Investigations	1	0.5	Klawock AST Enforcement	9	4.3	Talkeetna AST Enforcement	3	1.4
Cordova ABWE	1	0.5	Kodiak AST Enforcement	9	4.3	Tok AST Enforcement	1	0.5
Delta Junction AST Enforcement	7	3.3	Kotzebue AST Enforcement	6	2.9	Unalakleet AST Enforcement	1	0.5
Fairbanks AST Enforcement	40	19.0	Nondchik AST Enforcement	1	0.5			
Fairbanks AST Investigations	4	1.9	Nome AST Enforcement	2	1.0			
Galena AST Enforcement	2	1.0	Nome V.P.S.O.	1	0.5	Total	210	

Source of data: Alaska State Troopers data (1994-2005)

Stalking in Alaska

(continued from page 7)

The 210 stalking incidents reported to troopers from 1994 to 2005 included a total of 222 stalking charges. Seventy-seven (35%) of the 222 stalking charges were for stalking in the first degree (AS §11.41.260) and 145 (65%) were for stalking in the second degree (AS §11.41.270). For each stalking charge, thirty different forms of behavior were examined, shown in Table 3. On average, four forms of stalking behaviors were found per charge. The most common forms of stalking behaviors included standing outside or visiting the victim's home (found in 54% of charges), making unsolicited phone calls to victims (found in 51% of charges), following the victim (found in 39% of charges), threatening to physically assault the victim (found in 36% of charges), harassing the victim's family and friends (found in 28% of charges), trying to communicate with the victim in other ways (found in 27% of charges), standing outside or visiting the victim's work (found in 20% of charges), physically assaulting the victim (found in 19% of charges), sending the victim unsolicited mail (found in 15% of charges), and vandalizing the victim's home (found in 13% of charges).

The primary location for stalking behaviors was most often the victim's residence. As shown in Table 4, 45 percent of stalking behaviors occurred primarily at the victim's home. Cyberspace was also a common location for stalking behavior, with 27 percent of charges occurring primarily in cyberspace. An additional 10 percent of charges occurred primarily on public roads and parking lots.

The 210 stalking incidents reported to troopers from 1994 to 2005 included a total of 211 suspects and 216 victims. Most suspects (91%) were male and most victims (89%) were female. As shown in Table 5, most suspects (78%) were white and most victims (86%) were also white. On average, suspects were 36 years old while victims were 33 years old; with 13 percent of suspects and 20 percent of victims under 21, 18 percent of suspects and 22 percent of victims between 21 and 30, 37 percent of suspects and 33 percent of victims between 31 and 40, and 31 percent of suspects and 25 percent of victims over 40. One in five suspects (20%) had used alcohol, but very few victims (2%) had. Drug use was very infrequent (1% or less) for both suspects and victims.

Relationships between suspects and victims are shown in Table 7. Half (54%) of the suspects were, or had been, in a romantic relationship with the victim, as an ex-boyfriend or ex-girlfriend (29%) or current spouse (15%). In addition, 35 percent of suspects were friends or acquaintances of the victim, with acquaintances as the more

Table 3. Stalking Behaviors in Alaska Stalking Cases, 1994–2005

Row percentages

Behaviors	Yes N	Yes %	Total
Followed victim	86	39.4 %	218
Sent victim unsolicited mail	33	14.9	222
Made unsolicited phone calls to victim	112	50.5	222
Sent victim unsolicited electronic mail	7	3.2	222
Sent victim unsolicited text messages	0	0.0	222
Tried to communicate in other ways	60	27.0	222
Photographed victim without permission	3	1.4	219
Abused victim's pets	3	1.4	221
Threatened to harm victim's pets	0	0.0	222
Physically assaulted victim	42	18.9	222
Threatened to physically assault victim	78	35.8	218
Sexually assaulted victim	13	5.9	222
Threatened to sexually assault victim	8	3.6	222
Harassed victim's children	13	5.9	221
Threatened victim's children	13	5.9	220
Harassed victim's family and friends	62	27.9	222
Vandalized victim's home	28	12.7	221
Vandalized victim's car	14	6.4	220
Vandalized other property	11	5.0	222
Stood outside/visited victim's home	120	54.1	222
Stood outside/visited victim's work	44	20.0	220
Left unwanted items for victim	3	1.4	222
Sent victim presents	20	9.0	222
Opened victim's mail	1	0.5	222
Filed false police reports against victim	1	0.5	222
Contacted victim's employer	4	1.8	222
Contacted or filed report with children services	1	0.5	222
Installed spyware on victim's computer	2	0.9	222
Installed/utilized GPS on victim's car	0	0.0	221
Relocated residence to follow victim	10	4.5	222

Source of data: Alaska State Troopers data (1994-2005)

Table 4. Primary Location for Stalking Behavior in Alaska Stalking Cases, 1994–2005

Column percentages

Location	Charges N	Charges %
Cyberspace	60	27.0 %
Victim's house	99	44.6
Other residence	8	3.6
Work / school	17	7.7
Public places	16	7.2
Roads / parking lots	22	9.9
Total	222	

Source of data: Alaska State Troopers data (1994-2005)

Table 5. Race of Suspects and Victims in Alaska Stalking Cases, 1994–2005

Column percentages

Race	Suspects N	Suspects %	Victims N	Victims %
White	160	78.0 %	183	85.9 %
Native	42	20.5	27	12.7
Black	3	1.5	2	0.9
Other	0	0.0	1	0.5
Total	205		213	

Source of data: Alaska State Troopers data (1994-2005)

Table 6. Age of Suspects and Victims in Alaska Stalking Cases, 1994–2005

Column percentages

Age	Suspects N	Suspects %	Victims N	Victims %
11 to 20	27	13.2 %	43	20.1 %
21 to 30	38	18.5	47	22.0
31 to 40	75	36.6	70	32.7
41 to 50	47	22.9	41	19.2
51 to 60	13	6.3	6	2.8
61 or over	5	2.4	7	3.3
Total	205		214	

Source of data: Alaska State Troopers data (1994-2005)

prominent category. Very few suspects (4%) were currently living with the victim. Slightly over half of the relationships (55%) had ended prior to the stalking, and 58 percent had ended by the time the stalking was reported to law enforcement (these statistics were not calculated for strangers or family members).

Table 7. Relationship Between Suspects and Victims in Alaska Stalking Cases, 1994–2005

Column percentages

Relationship to victim	Suspects N	Suspects %	Suspects % of non-stranger
Stranger	15	7.5 %	—
Current spouse	31	15.5	16.8 %
Ex-spouse	13	6.5	7.0
Current boy/girlfriend	5	2.5	2.7
Ex-boy/girlfriend	59	29.5	31.9
Other family	7	3.5	3.8
Friends	13	6.5	7.0
Acquaintances	57	28.5	30.8
Total	**200**		

Source of data: *Alaska State Troopers data (1994-2005)*

Table 8. Number of Total, Stalking, and Non-Stalking Charges per Suspect in Alaska Stalking Cases, 1994–2005

Column percentages

	N	%	cumulative %
Total charges			
Zero	0	0.0 %	0.0 %
One	89	42.2	42.2
Two	65	30.8	73.0
Three	32	15.2	88.2
Four	9	4.3	92.4
Five	6	2.8	95.3
Six or more	10	4.7	100.0
Total suspects	**211**		
Stalking charges			
Zero	0	0.0 %	0.0 %
One	202	95.7	95.7
Two	7	3.3	99.1
Three	2	0.9	100.0
Total suspects	**211**		
Non-stalking charges			
Zero	94	44.5 %	44.5 %
One	63	29.9	74.4
Two	29	13.7	88.2
Three	9	4.3	92.4
Four	6	2.8	95.3
Five	4	1.9	97.2
Six or more	6	2.8	100.0
Total suspects	**211**		

Source of data: *Alaska State Troopers data (1994-2005)*

Most suspects (55%) were not charged solely with a stalking offense. Stalking charges were often accompanied by other charges (Tables 8 and 9). On average, suspects had a total of 2.32 charges, including an average of 1.05 stalking charges and an average of 1.27 other charges. Overall, the 211 suspects were charged with 489 offenses (i.e., 222 stalking offenses and 267 non-stalking offenses). The most common additional non-stalking charges included assault, violating a protective order, and harassment. In addition to these additional charges, 38 percent of suspects had at least one aggravating factor (Table 10). The most common aggravating factors included violating protective orders and prior arrests for stalking the victim—present for 20 percent and 12 percent of suspects respectively. In addition, 22 percent of suspects had a prior arrest for stalking, assaulting, or harassing the victim. More specifically, 12 percent of suspects had a prior arrest for stalking the victim, 8 percent had a prior arrest for assaulting the victim, and 5 percent had a prior arrest for harassing the victim. Almost three quarters (74%) of the victims had previously contacted law enforcement to report harassing behavior by the suspect (e.g., to seek a protective order).

Overall, 75 percent of the 92 cases reported between 1999 and 2004 were referred; 55 percent were accepted; and 40 percent resulted in a conviction (Table 11). The likelihood of referring, accepting, and convicting varied substantially by legal factors (Table 12)—whether suspects violated protective orders, violated conditions of release, violated conditions of probation, had prior arrests for assaulting the victim, had prior arrests for harassing the victim, had multiple stalking charges, or had additional non-stalking charges. In general, these legal factors enhanced the likelihood of referral, acceptance, and conviction.

In particular, violating protective orders and having additional non-stalking charges were important legal factors. Cases with suspects who violated protective orders were 20 percent more likely to be referred for prosecution, were 19 percent more likely to be accepted, and were 41 percent more likely to result in a conviction. Cases that included additional non-stalking charges were 27 percent more likely to be referred, were 84 percent more likely to be accepted, and were 139 percent more likely to result in a conviction. In other words, cases that included additional non-stalking charges were 2.4 times more likely to result in a conviction than cases that did not include

*Please see **Stalking in Alaska**, page 10*

Table 9. Additional Non-Stalking Charges in Alaska Stalking Cases, 1994–2005

Column percentages

Charge	Non-stalking charges N	Non-stalking charges %
Assault	60	22.5 %
Violating protective order	56	21.0
Harassment	31	11.6
Criminal trespass	23	8.6
Burglary	15	5.6
Criminal mischief	15	5.6
Violating conditions of release	10	3.7
Sexual assault / abuse	10	3.7
Other public administration offense	10	3.7
Other	7	2.6
Misconduct involving controlled substance	6	2.2
Misconduct involving weapon	5	1.9
Driving offense	5	1.9
Theft	4	1.5
Reckless endangerment	4	1.5
Coercion	4	1.5
Kidnapping	2	0.7
Total	**267**	

Source of data: *Alaska State Troopers data (1994-2005)*

Table 10. Aggravating Factors in Alaska Stalking Cases, 1994–2005

Row percentages

Factors	No N	No %	Yes N	Yes %	Total
Violated protective order	165	80.5 %	40	19.5 %	**205**
Violated conditions of release	188	90.8	19	9.2	**207**
Violated conditions of probation	185	90.7	19	9.3	**204**
Had prior arrest for stalking victim	175	87.9	24	12.1	**199**
Had prior arrest for assaulting victim	181	91.9	16	8.1	**197**
Had prior arrest for harassing victim	190	95.0	10	5.0	**200**

Source of data: *Alaska State Troopers data (1994-2005)*

Table 11. Case Outcomes by Stage in Alaska Stalking Cases, 1994–2005

Column percentages

Stage	N	% of reported	% of referred	% of accepted
Reported	92	100.0 %	—	—
Referred	69	75.0	100.0 %	—
Accepted	51	55.4	73.9	100.0 %
Convicted	37	40.2	53.6	72.5

Source of data: *Alaska Department of Law (1999-2004)*

Table 12. Percent Referred, Accepted, and Convicted in Alaska Stalking Cases by Legal Factors, 1994–2005

Cell percentages

Legal factors		N	% referred	% accepted	% convicted
Violated protective order	No	72	73.6 %	54.2 %	37.5 %
	Yes	17	88.2	64.7	52.9
Violated conditions of release	No	82	74.4	52.4	36.6
	Yes	8	100.0	100.0	87.5
Violated conditions of probation	No	83	74.7	54.2	39.8
	Yes	5	100.0	80.0	60.0
Had prior arrest for stalking victim	No	78	73.1	50.0	34.6
	Yes	6	100.0	100.0	100.0
Had prior arrest for assaulting victim	No	76	72.4	50.0	38.2
	Yes	8	100.0	87.5	37.5
Had prior arrest for harassing victim	No	84	75.0	53.6	38.1
	Yes	2	100.0	100.0	100.0
Had multiple stalking charges	No	88	76.1	56.8	40.9
	Yes	4	50.0	25.0	25.0
Had additional non-stalking charges	No	40	65.0	37.5	22.5
	Yes	52	82.7	69.2	53.8

Source of data: *Alaska State Troopers data & Alaska Department of Law (1999-2004)*

Stalking in Alaska

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additional non-stalking charges.

It is important not to over-interpret these results because some categories are represented by extremely low sample sizes (e.g., only two suspects had a prior arrest

Stalking Cases

The following individual case summaries, drawn from the sample studied in the accompanying article "Stalking in Alaska" illustrate a range of situations and circumstances in which the Alaska State Troopers issued a stalking charge. The details were taken from the AST case file. The initials of those involved have been changed.

B.W. reported receiving phone calls from S.M.; she reported being frightened for herself and for her family. S.M. had previously pled "no contest" to harassment charges and had been ordered to have no contact with her. At the time of the reported phone calls, he was on probation for the previous harassment offense. During the phone calls, S.M. stated that he was in trouble and needed B.W., that he loved her and found her perfect. In response to this report, the troopers charged him with first degree stalking.

***

T.K. reported that she was being stalked and harassed by her boyfriend's ex-wife, M.D. An order forbidding contact between M.D. and her former husband, P.D., was in place, but there was no provision forbidding contact with the girlfriend T.K. The two former spouses were involved in a child custody case.

T.K. reported that M.D. was making threatening phone calls; that she had destroyed T.K.'s personal property—including cutting up clothes—and had followed T.K. and P.D. to a mall and attempted to force her way into their vehicle. On another occasion she had followed the couple on a berry-picking trip.

M.D. was charged with second-degree stalking, criminal mischief involving personal property and misdemeanor assault.

***

N.C. called the troopers to report that P.M., her ex-boyfriend, was in her home yelling and causing a disruption. Another man, who was spending the night, and two of N.C.'s children were present in the house at the time P.M. arrived. She also reported that P.M. had been following her to her workplace and other locations. She had reported to the troopers at least once before. She said she had previously obtained protective orders against P.M. but had let them drop.

N.C.'s employer and a co-worker confirmed that P.M. would regularly appear at the workplace.

N.C. stated that she had made it clear that she no longer wanted a relationship with P.M. He maintained that they still had an active sexual relationship and that he often came to her house late at night. The two have a child together.

P.M. was charged with third degree assault, fourth degree criminal trespass, and second degree stalking.

L.K. reported that her ex-husband S.K. had telephoned her several times that day, leaving threatening messages on her voice mail. He had been served with a protective order two days previously. L.K stated that S.K. could be violent and that he had been trying to obtain a gun.

When contacted by AST, S.K. said he had only been trying to contact his daughter. He was charged with violating a protective order and stalking in the second degree.

***

E.R. called to report that her ex-boyfriend V.L. was pounding on her door and refused to leave. He ran off just before the troopers arrived and was caught shortly afterward.

He had been previously arrested for a crime involving domestic violence against E.R., stalking and criminal trespass. She had had several protective orders against him. She stated that he was violent when drinking and had assaulted her in the past.

The couple had lived together off and on for nine years but not for three years prior to this incident, although they had recently been sexually intimate and he had done work on her property. She stated she had told him she did not want a relationship with him.

For this incident, V.L. was charged with fourth degree assault and second degree stalking.

***

I.W. reported to the VPSO that she was being harassed and threatened by her ex-boyfriend J.T. He had been sending her obsessive letters for some time and was threatening to kill her. (*Copies of some of the letters are in the AST file.*) The two have two children together. They had last lived together three years previously, and she had indicated she no longer wanted a relationship with him.

It appeared that he had followed her from one community to another over a period of time. There had been previous incidents in other towns, including at least one in which the local police were called when J.T. attempted to take one of the children from I.W.

A witness confirmed that J.T. had made threats to kill others if I.W. would not be intimate with him again.

J.T. was charged with second degree stalking.

for harassing the victim). Nonetheless, it is interesting to see the variation in the likelihood of cases being referred, accepted, and convicted. For example, although only six cases had suspects who had a prior arrest for stalking the victim, all six were referred for prosecution, all six were accepted, and all six resulted in a conviction. By comparison, only 34.6 percent of other cases resulted in a conviction. When suspects had a prior arrest for stalking the victim, they were 2.9 times more likely to be convicted.

Comparisons with National Data

Few national statistics on stalking are available. The current primary source of information on the offense is the National Violence Against Women Survey (NVAWS). While the numbers are not directly comparable, in looking at the NVAWS statistics and the Alaska figures presented here, we can note several points. First, stalking seems even more underreported and, possibly, underrecognized by law enforcement in Alaska than in the country as a whole. Second, it is likely that this is particularly true among Alaska Natives. Third, it is likely that the prosecution of stalking is more effective in Alaska than nationally.

Based on NVAWS results, an estimated 2.2 percent of men and 8.1 percent of women in the United States have been stalked at some point in the past (for a total of over two million men and over eight million women). Annual stalking estimates (rather than lifetime estimates) are obviously much lower, with 1.0 percent of women and 0.4 percent of men stalked per year. Nationally, this equates to over one million women and over 370,000 men stalked in a given year. Although we must do so with great caution, we can use these statistics to estimate the prevalence of stalking in Alaska.

Using the annual NVAWS statistics that 1.0 percent of women and 0.4 percent of men are stalked (derived from a sample of 8,000 women and 8,000 men), and assuming that annual rates in Alaska would be similar to annual rates in the U.S., we can estimate that around 2,100 adult women and 900 adult men are stalked in Alaska in a given year (see Table 13). Further NVAWS estimates suggest that nationally 55 percent of female stalking victims and 48 percent of male stalking victims report to law enforcement. If similar reporting patterns emerged in Alaska, around 1,100 women and over 530 men in Alaska would report a stalking incident in a given year (see Table 14). Alaska's numbers are much lower than those for the rest of the country, something that may be a factor of underreporting by victims or underrecognition by law enforcement.

More accurate estimates of stalking prevalence and reporting patterns will be available only through additional research; nonetheless, even in the absence of this additional research, it is clear that stalking is greatly underreported in Alaska. In 2005, only 17 stalking incidents were reported to the Alaska State Troopers, and statewide from all jurisdictions only 30 stalking cases were referred to the Alaska Department of Law.

The underreporting may be particularly true among Alaska Natives. NVAWS statistics show that "American Indian/Alaska

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Table 13. Annual Estimates of Stalking Incidents in Alaska by Gender (With and Without Anchorage)

	Alaska (with Anchorage)			Alaska (without Anchorage)		
Gender	Number of adults	Estimated prevalence	95% confidence interval	Number of adults	Estimated prevalence	95% confidence interval
Women	210,104	2,101	1,681 to 2,521	118,645	1,186	949 to 1,424
Men	226,111	904	678 to 1,130	133,158	533	399 to 666
Total	436,215	3,005	2,359 to 3,651	251,803	1,719	1,348 to 2,090

Source of data: *NVAWS (1998); U.S. Census (2000, SF1)*

Table 14. Annual Estimates of Stalking Reports to Law Enforcement in Alaska by Gender (With and Without Anchorage)

	Alaska (with Anchorage)			Alaska (without Anchorage)		
Gender	Number of victims	Estimated # of reports	95% confidence interval	Number of victims	Estimated # of reports	95% confidence interval
Women	2,101	1,156	1,071 to 1,240	1,186	652	605 to 700
Men	904	434	371 to 497	533	256	218 to 293
Total	3,005	1,590	1,442 to 1,737	1,719	908	823 to 993

Source of data: *NVAWS (1998); U.S. Census (2000, SF1)*

Table 15. Number of Adults and Number of Stalking Reports in Alaska by Gender and Race (Without Anchorage)

	White			Native		
Gender	Number of adults	Number of reports	Rate of reports per 100,000	Number of adults	Number of reports	Rate of reports per 100,000
Women	150,925	165	109.3	150,925	25	16.6
Men	30,554	18	58.9	30,554	2	6.5
Total	**167,513**	**183**	**109.2**	**167,513**	**27**	**16.1**

Source of data: *U.S. Census (2000, SF1); Alaska State Troopers data (1994-2005)*

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Stalking in Alaska

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Native women reveal significantly more stalking victimization than women of other racial and ethnic backgrounds." While 8.2 percent of white women reveal being stalked at some point in their lifetime, 17.0 percent of American Indian/Alaska Native women revealed being stalked at some point in their lifetime. American Indian/Alaska Native women (and men) were the most likely persons to indicate having been stalked at some point in their lifetime—over two times more likely than for whites. This was true for both women and men. (It is important to note that the NVAWS figures do not represent actual reports to law enforcement, but rather self-disclosure of incidents that may or may not have been reported to the police.) By comparison, according to the study, the rates of stalking reported to Alaska State Troopers were 6.6 times higher for white women than for Native women and were 9.1 times higher for White men than for Native men (see Table 15)—rates contradicting national figures. Although these statistical extrapolations are fraught with untested assumptions, it is nonetheless clear that stalking is underreported in Alaska, particularly for Alaska Natives.

But, while stalking may be underreported in Alaska, prosecution seems to be somewhat more effective. The Alaska Department of Law secured convictions in the cases accepted more often than occurred nationally: while NVAWS results showed that 54 percent of accepted cases resulted in a conviction, 72 percent of the 51 cases accepted by the Alaska Department of Law between 1999 and 2004 resulted in a conviction.

Reporting and Early Intervention

While we do not have any data on why stalking is so underreported, law enforcement hypothesizes that stalking may be underrecognized by victims. NVAWS statistics show other factors may also come into play. Of the victims that did not report to police, 20 percent believed it was not a police matter, 17 percent believed that police could not help, and 16 percent were afraid of reprisal from the stalker. Of the victims that did report to police, 50 percent were not satisfied with police actions and 46 percent thought that police actions did not improve the situation.

Law enforcement might be trained to capitalize on opportunities for early recognition of stalking patterns. Efforts might also be undertaken to raise public awareness of stalking as a crime and report it as such and to further train law enforcement to recognize the signs of stalking. This will increase the likelihood that suspects who violate stalking statutes are reported to law enforcement and are appropriately charged.

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Justice Center Departures

Professors Robert Langworthy and Darryl Wood are leaving the Justice Center in summer 2007. Langworthy, currently director of the Center, has accepted a position as Chair of the Department of Criminal Justice and Legal Studies at University of Central Florida. Wood has accepted a position at Washington State University Vancouver.

André Rosay will serve as interim director at the Justice Center.

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