



**ALASKA RURAL JUSTICE AND LAW  
ENFORCEMENT COMMISSION**

**REPORT**

**TO THE UNITED STATES CONGRESS AND THE  
ALASKA STATE LEGISLATURE**

**JANUARY 2012**

## I. INTRODUCTION

The complex issues surrounding the delivery of justice and law enforcement in rural Alaska are profound and acute. They represent multi-dimensional challenges that have stymied rural communities for decades. Residents of these remote communities, the majority of whom are Alaska Native, continue to face high rates of alcohol abuse, juvenile suicide<sup>1</sup> and family violence/sexual assault,<sup>2</sup> often simultaneously struggling to maintain order in their communities without a law enforcement presence physically located in those communities. While Alaska Natives represent only nineteen percent of the total population of the state,<sup>3</sup> they are twice as likely to be represented in the state's juvenile justice and adult correctional systems,<sup>4</sup> and more than three times as likely to be represented in the state's child protection system.<sup>5</sup>

The social consequences of these conditions in rural Alaska are well known. It bears repeating that multitudes of studies have demonstrated the relationship between unemployment, poverty, disenfranchisement and other deprivations suffered under poor economic conditions, and alcohol abuse/addiction, substance abuse, domestic

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<sup>1</sup> See State of Alaska Statewide Suicide Prevention Council, Department of Health and Social Services, *Mending the Net: Suicide Prevention in Alaska Annual Report FY2010 9* (2010), available at <http://www.hss.state.ak.us/suicideprevention/>.

<sup>2</sup> Of those domestic violence cases reported to law enforcement in Alaska, 70% of the victims were female, and 47 percent of the female victims were Alaska Native women. See Forest Kvasnikoff, with André Rosay and Barbara Armstrong, *Special Report: UAA Justice Center Domestic and Sexual Violence Research Review and Recommendations* 5 (State of Alaska Council on Domestic Violence & Sexual Assault, May 13, 2010), available at <http://dps.alaska.gov/CDVSA/docs/DPS%20Report%20and%20Recommendations.pdf/>. Due to the manner in which this data is often collected, the Commission is aware that these statistics do not reflect the totality of these assaults and cannot be precise, as not all entities that provide essential social services relating to domestic violence and/or sexual assault contribute their respective statistics to the database, and not all victims of these assaults report the assaults to any agency.

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

<sup>4</sup> Alaska Natives represent 36.76 percent of the criminal institutional population for the State of Alaska. See State of Alaska Department of Corrections, *2010 Offender Profile* 13 (2010). As of December 1, 2010, 41.44 percent of the juvenile offender population was Alaska Native. *Id.* at 38.

<sup>5</sup> Alaska Natives comprise slightly more than sixty two percent of those children who are in the legal custody of the State of Alaska Office of Children's Services and placed in "out of home" placements. Email from Naomi Harris, Community Relations Manager, State of Alaska, Office of Children's Services, to Donna J. Goldsmith, Special Assistant, Alaska Rural Justice and Law Enforcement Commission, (Jan 13, 2012) (on file with Donna J. Goldsmith). According to the State of Alaska Office of Children's Services, in 2008 Alaska Natives/American Indians represent approximately 10.5 percent of the general population in Anchorage, yet just over 55 percent of Anchorage's children in care are. In Juneau, which is the largest community in Southeast Alaska, the Alaska Native/American Indian population is approximately 16.6 percent of the general population, while approximately 73 percent of Juneau's children in care are of Alaska Native and/or American Indian heritage. In the other two services regions in Alaska, numbers of Alaska Native children are over represented as well. See State of Alaska, *Child and Family Services Review Alaska Statewide Assessment*, 6 (Alaska Department of Health & Social Services, Office of Children's Services, July 2008), available at <http://hss.state.ak.us/ocs/Publications/default.htm/>.

violence, child abuse and other crimes.<sup>6</sup> The insidious nature of these social ills serves as an impediment that prevents large numbers of Alaska's residents from contributing as full participants in their communities. They call for immediate, focused attention from communities and political leaders at all levels, and demand honest, practical solutions that are adequately funded.

Since its inception in 2004,<sup>7</sup> the Alaska Rural Justice and Law Enforcement Commission ("Commission") grappled with identifying these much-needed solutions. While funding challenges have prevented the Commission from fully realizing its potential, numerous recommendations have emerged from the fact-finding and deliberative processes in which the Commission has engaged.

Two themes continue to stand out above all others. *First*, increased cooperation, coordination and collaboration between tribal, state and federal courts and agencies, would greatly improve life in rural Alaska and better serve all Alaskans. *Second*, tribal, state, federal and local governments must find a way to *jointly identify and implement* the most effective means by which to prevent alcohol and other illegal substances from reaching rural communities that have chosen to become dry.

## **II. CREATION OF THE COMMISSION AND INITIAL EFFORTS**

### **A. Establishment of Commission**

For decades, Alaska Natives, tribal, state and federal governments, and non-profit and for-profit corporations have sought to enhance law enforcement and access to justice in rural Alaska. Following the work of several statewide forums and commissions that examined the delivery of essential governmental services in rural Alaska,<sup>8</sup> the United States Congress created the Alaska Rural Justice and Law Enforcement Commission and directed it to study four broad issues as they relate to rural Alaska: law enforcement; alcohol importation and interdiction; domestic violence and child abuse; and judicial services. The enabling legislation charged the Commission with review of tribal, state, federal and local jurisdiction over civil and criminal matters in Alaska, and directed the Commission to make recommendations to Congress and the Alaska State Legislature regarding how best to improve access to justice and law enforcement in rural Alaska communities.

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

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

<sup>8</sup> See, e.g., Alaska Natives Commission, Joint Federal-State Commission on Policies and Programs Affecting Alaska Natives, *Final Report* (1994), available at [http://www.alaskool.org/resources/anc2/anc2\\_toc.html/](http://www.alaskool.org/resources/anc2/anc2_toc.html/). See also Alaska Commission on Rural Governance and Empowerment, *Final Report to the Governor* (State of Alaska Department of Community and Regional Affairs, 1999), available at <http://www.comregaf.state.ak.us/rgc/>.

In 2004, the United States Attorney General formally appointed nine members to the Commission,<sup>9</sup> which included:

- The United States Attorney for the District of Alaska as the federal co-chair
- The Alaska Attorney General as the state co-chair
- The Commissioner of Public Safety for the State of Alaska
- A representative from the Alaska Municipal League
- A representative from an organized borough
- A representative of the Alaska Federation of Natives
- A tribal representative
- A representative from a non-profit Native corporation that operates a Village Public Safety Officer program
- A representative from the Alaska Native Justice Center

In addition, as authorized by the enabling legislation, the chief judge for the Federal District Court for the District of Alaska appointed a representative to provide technical support for the Commission.

## **B. Initial Work**

At its first meeting on October 12<sup>th</sup> and 13<sup>th</sup>, 2004, in Anchorage, the Commission adopted two parallel strategies to achieve its congressionally mandated objectives - public hearings and the formation of subject matter work groups.

The Commission conducted fifteen public hearings in eleven locations throughout the state between October 2004 and June 2005. During the hearings the Commission accepted oral and written testimony from a broad range of individuals with substantial expertise concerning one or more of the four topic areas that Congress directed the Commission to study. Many of those who testified shared significant personal experiences regarding the impact of epidemic rates of domestic violence, sexual assault, child abuse and alcohol abuse on the quality of life in rural Alaska, and the difficulties of trying to address these matters without a law enforcement presence physically located in their communities.

Simultaneously, the Commission established four work groups to assist in fact-finding and deliberations, directing each to address one of the four general topic areas within the Commission's Congressional mandate. Each of the 70 Alaskans who comprised these groups brought substantial expertise to the work group to which the individual was assigned.<sup>10</sup> At the conclusion of an intensive nine-week work period, the groups

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<sup>9</sup> See Appendix A, United States Department of Justice Press Release, September 2, 2004. See also Appendix B for a complete list of the current commissioners and their predecessors.

<sup>10</sup> For a complete list of the members of each of these work groups, see *Initial Report and Recommendations, supra*.

collectively presented more than 100 recommendations to the Commission.<sup>11</sup>

### **C. The Commission's Initial Report**

Over the course of the following six months, the Commission reviewed and deliberated over each of the recommended options, giving careful consideration to the many hours of public testimony offered during the 15 hearings. In its *Initial Report and Recommendations*, the Commission adopted a detailed set of specific recommendations organized thematically under nine overarching recommendations, set forth below substantially as adopted.<sup>12</sup>

#### ***1. Engage in More Partnering and Collaboration***

The single most significant outcome of the Commission's work was engendering collaboration and good will among a broad spectrum of stakeholders on the Commission. Given the dearth of resources and daunting nature of the challenges faced by rural Alaskans, the Commission urges more cooperation and collaboration between tribal, state, local and federal governments in Alaska. In particular, the Commission urges joint development of cross-jurisdictional agreements that will enhance coordination and cooperation between tribal, state, local and federal law enforcement and judicial agencies in rural Alaska.

#### ***2. Make Systemic Changes to Improve Rural Law Enforcement***

To improve the availability and accessibility of law enforcement in rural Alaska, the Commission recommends development of a statewide, uniform and tiered system of certification and training for tribal and village police and public safety officers that will offer a reasonable opportunity for advancement that could culminate in the qualifications needed to seek full police certification by the Alaska Police Standards Council. It further recommends expansion of tribal and village police and public safety officer training, changes in state law to help law enforcement reduce the importation of alcohol into dry rural Alaska villages, and a statewide ban on written order sales of alcoholic beverages to "dry" or "damp" communities.

#### ***3. Enlarge the Use of Community-based Solutions***

Public testimony impressed upon the Commission the importance, and success, of *locally driven* approaches that respond to the immediate and cultural needs of communities. To this end, the Commission recommends amending state statutes to allow the Division of Juvenile Justice to delegate authority to tribes to address juvenile matters affecting their youth. This would enable the state to share resources with tribes desiring to respond to

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<sup>11</sup> See *Initial Report and Recommendations* at 32.

<sup>12</sup> See *Initial Report and Recommendations* at 3-4, and 34 - 51.

tribal juvenile offenders. The Commission recommends additional amendments that would authorize tribes to participate in state juvenile proceedings and treatment programs, and expand funding to help non-profit organizations and rural Alaska communities develop locally-driven child abuse and domestic violence prevention, intervention, and treatment programs. In addition, housing Alaska's inmates in out-of-state facilities is a weak point in the state's correctional system, and the Commission recommends that the Department of Corrections explore other options, including working with Native regional corporations, to keep inmates in Alaska. Finally, to help reduce the amount of alcohol reaching dry communities, the Commission recommends the establishment of alcohol distribution centers, in damp hub communities such as the one established in Barrow, restricting alcohol sales to residents of those communities.

#### ***4. Broaden the Use of Prevention Approaches***

Substance abuse prevention approaches currently available throughout most of rural Alaska are insufficient in both number and scope. The Commission recommends expanding the availability of culturally appropriate prevention programs to help reduce the demand for alcohol in rural Alaska. Development of additional culturally relevant approaches should: 1) focus on youth; 2) provide schools with more information; and 3) link youth with adults in healthy activities. There is also a need for more education, prevention and early intervention programs that target domestic violence and child abuse in rural Alaska. In particular, the Commission recommends development of new prevention curricula that help students learn how to establish respect within their interpersonal relationships, how to make healthy lifestyle choices and the importance of remaining substance-free, all of which should be included in curriculum from kindergarten through eighth grade.

#### ***5. Broaden the Use of Therapeutic Approaches***

There are a number of programs in rural Alaska that target the problems of substance abuse, domestic violence, child abuse and neglect and sexual abuse, all of which are routinely tied to the consequences of substance abuse in rural Alaska. There remains, however, a tremendous need to expand the availability of therapeutic approaches to these same concerns. Alcohol and drug abuse treatment programs should be expanded in rural Alaska, and should offer a system of longer-term residential care in hub communities (including programs for women with children) that are matched with a network of aftercare services in rural villages. Agencies should also strengthen the substance abuse, mental health and dual diagnosis treatment options available for youth, as well as therapeutic courts and group homes for children in need of aid who are either not appropriate for, or unable to access, foster care. Finally, the availability of foster care in rural Alaska would expand significantly if the Office of Children's Services were to amend its regulations to allow close relatives who provide foster and adoptive care for children in need of aid to receive the same level of financial reimbursement that non-relative caregivers now receive.

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

Cultural identification and modeling are important components of successful rehabilitation. In the face of significant overrepresentation of Alaska Natives from rural communities who encounter legal problems with law enforcement, and an even greater overrepresentation of Alaska Natives in the state's correctional system, there is a great – and growing – need to recruit and employ Alaska Natives in these systems to ensure cultural identification. The Commission therefore recommends implementation of a focused recruitment effort to bring more Alaska Natives and rural Alaskans into the correctional, law enforcement and public safety workforce. In addition, it recommends increasing the training and utilization of Village Public Safety Officers as state probation officers in the villages, as well as contracting with tribes to oversee community service work. Implementation of these recommendations would increase the availability of supervision for offenders on probation and parole in rural communities.

## ***7. Build Additional Capacity***

The Commission reviewed a multitude of indicators that pointed to the relative lack of infrastructure to support police and public safety functions in rural Alaska, which in turn has a detrimental effect on recruitment and retention of officers. The Commission therefore recommends the improvement and expansion of housing for police and public safety officers, increased availability of appropriate intra-community transportation, more law enforcement officers and holding facilities in rural Alaska, and new and improved law enforcement equipment. The Commission also recommends improved and expanded public safety training, and the development of a standardized statewide data system to document and monitor law enforcement investigations in rural Alaska.

## ***8. Increase Access to Judicial Services***

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

## ***9. Expand the Use of New Technologies***

Alaska enjoys the most sophisticated telehealth system in the world - the Alaska Federal Health Care Access Network (AFHCAN) – that includes broadband telecommunications services in most rural Alaska communities. However, in the hundreds of rural Alaska villages that participate in the AFHCAN, other organizations in those villages are unable to access existing broadband capabilities. To improve communication between the law enforcement and judicial systems in rural Alaska, the Commission recommends

changing current regulations to allow rural police, public safety and judicial officers to utilize this resource. The Commission also recommends that the Department of Corrections explore the use of new electronic monitoring technology, such as the Global Positioning System, for rural Alaskan probationers, and that the Alcohol Beverage Control Board develop a statewide database for all alcohol written orders for the new community distribution centers.

### **III. IMPLEMENTATION OF INITIAL RECOMMENDATIONS**

The Commission presented its initial recommendations to Alaska's Congressional delegation, Alaska's Governor and the Alaska State Legislature. In 2007 and 2008, many of these recommendations led to substantial changes in Alaska law through legislation offered by the Governor and enacted by the Legislature. Among the new legislation's salient features:

- Authorization for communities to establish their own distribution sites to inconvenience alcohol bootleggers
- An amendment that lengthens the time period before a community can vote to change its wet or dry local option status
- A prohibition on shipments of alcohol to residents of dry villages
- A limit on possession of materials used to make home brew in dry communities
- An amendment that adds a rural member to the Alcohol Beverage Control Board
- Creation of a statewide database of the sales of alcohol into local option areas, which allows monitoring what bottles of alcohol go into "damp" communities that might be destined for importation into dry communities
- An amendment to the civil forfeiture statute to resolve timing issues
- An increase on the penalty for bootlegging, with a progressive penalization scheme that is akin to DUI
- Repeal of AS 12.20.010 regarding double jeopardy

The Commission's focus on rural law enforcement was also a catalyst for the state's sustained funding of multiple public safety initiatives:

- The Alaska State Troopers and United States Postal Service agreed to cross



deputize Postal Inspectors, and the Alaska State Troopers have implemented that agreement.

- The Alaska State Troopers created a sub-hub in the Native Village of Selawik, designating an office and residence for use by a roving Alaska State Trooper so that the troopers do not have to rely on the regional hub as a home base.<sup>13</sup>
- The Alaska Department of Public Safety is providing additional funding to non-profit organizations to enhance Village Public Safety Officer<sup>14</sup> (VPSO) salaries and reflect their service in providing probation and parole functions.
- The Alaska State Legislature's VPSO Task Force recommended an increase of 15 VPSO positions for each of the four succeeding years. This goal was accomplished. To further this effort, Governor Sean Parnell has also committed his administration to ensuring that there is a law enforcement presence in every village that desires it, and has promised to expand the VPSO Program by 15 positions per year for 10 years.
- The state pursued funding for cross-training that would integrate Village Police Officers and Tribal Police Officers<sup>15</sup> into the VPSO training program provided by the Alaska State Troopers, which would both eliminate the need for a tiered certification system and increase the level of training and certification achieved by tribal and village police officers. The state has committed substantial resources to fully realize this effort, which is currently in the developmental stages, and is seeking partnerships with both the Bureau of Indian Affairs Office of Justice Services and Bethel-based Yuut Elitnaurviat toward this end.<sup>16</sup>
- The Department of Public Safety has implemented a significant policy change that permits placement of VPSOs in communities that are on the road system,

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<sup>13</sup> While this particular experiment did not succeed because the staffing demands in other areas within the hub were too great, it led to implementation of a new concept to address the same problem. Alaska State Troopers created two new positions dedicated to the Native Village of Selawik and opened a full time Trooper Post. Email from Joseph A. Masters, Commissioner, State of Alaska Department of Public Safety, to Donna J. Goldsmith, Special Assistant to the Alaska Rural Justice and Law Enforcement Commission, December 19, 2011 (on file with Donna J. Goldsmith).

<sup>14</sup> The state implemented the Village Public Safety Officer Program in 1981 to offer remote villages a trained officer who can provide first responder law enforcement, fire fighting, search and rescue, water safety, and emergency medical services. The management authority for the VPSO Program resides in three entities: the village where the VPSO is located; the regional non-profit Native corporation that receives funds from the Department of Public Safety; and the Alaska State Troopers. VPSOs receive training from the Troopers, but are employees of the respective non-profit Native corporation that receives funds for their service. VPSOs do not carry firearms.

<sup>15</sup> VPOs are employees of the village government, and TPOs are tribal employees. Historically, they received their minimal law enforcement training through grants from the United States Department of Justice that were administered by the state, or, infrequently, by the Bureau of Indian Affairs.

<sup>16</sup> Yuut Elitnaurviat is a 501c(3) corporation dedicated to providing training and education opportunities for the people of the Yukon-Kuskokwim Delta Region, offering culturally relevant and regionally responsive training programs.

where previously they were restricted to communities that were not on the road system.

- The Department of Public Safety has also adjusted its policies to permit placement of a second VPSO in communities with populations of sufficient size.
- The Department of Public Safety has requested and received \$1,000,000 per year for the Alaska Housing Finance Corporation to provide funding for dedicated Village Public Safety Officer housing for fiscal years FY2011 and FY2012. Similar funds have been requested for FY2013.

The Commission's focus on the non-criminal aspects of substance abuse was a catalyst for the state's multi-year sustained funding of the Governor's sexual assault/domestic violence initiative, which includes funding for many prevention programs in rural Alaska.<sup>17</sup>

#### **IV. ACTIVITIES AND EFFORTS AFTER INITIAL REPORT**

After issuing its *Initial Report and Recommendations* in 2006, the Commission embarked upon two parallel endeavors. First, it reconstituted four working groups to concentrate, respectively, on police standards and cross-designation, the Indian Child Welfare Act (ICWA), alcohol interdiction and jurisdiction, and technology. Second, the Commission convened two educational forums involving legislators and policymakers in Alaska. Following are summaries of both efforts.

##### **A. Work Groups - Phase Two**

The four phase-two work groups were comprised of Alaskans with specific expertise related to each group's respective charge. For the most part, the work groups used as their departure point work that had been completed during the first phase of the Commission's work. While their specific recommendations are included in Appendix C to this report,<sup>18</sup> we offer a brief commentary about the progress of each group.

***Police Standards and Cross-Designation.*** The Commission charged this work group with development of recommendations for a statewide, uniform and tiered system of certification and training for VPSOs, VPOs and other public safety personnel, and for

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<sup>17</sup> Four of the most notable of these multi-year programs serve Dillingham, Bethel, Sitka and Kodiak and surrounding communities. See Rural Community DVSA Pilot Project Grantee List, State of Alaska Department of Health and Social Services Fact Sheet, February 1, 2011, available at <http://hss.state.ak.us/press/2011index.htm/>.

<sup>18</sup> Because the Indian Child Welfare Act Work Group was not able to complete its work, the Commission has not included the draft Memorandum of Understanding in this report.

cross-jurisdictional designation of law enforcement officials by different government agencies. In response to its charge, the group recommended a two-pronged approach. First, it recommended amending Title 29 of the Alaska statutes, to increase the population criteria for the definition of “village.” Second, the group recommended that the Alaska Police Standards Council amend its regulations to create and sustain a tiered system of certification and standards for law enforcement personnel that would create three classes of Peace Officer, as well as sub-classes, which would set standards for recruiting, selection and training, as well as provide officers with a clear career path and potential for upward mobility.

***Indian Child Welfare Act.*** The Commission directed this group to develop a template Memorandum of Understanding to be used by the state and any signatory tribes in those cases where the state and the tribe share concurrent jurisdiction over Indian Child Welfare Act proceedings. During the course of those efforts, the Alaska Supreme Court issued its decision in *Native Village of Tanana v. State of Alaska*,<sup>19</sup> holding that the tribes in Alaska share inherent, concurrent sovereignty over child protection cases involving their children. The *Tanana* decision altered the orientation of the work group’s effort and instigated significant changes within the state’s child protection and judicial systems. The Commission continues to urge the tribes and the state to develop robust protocols regarding the exchange of information in child protection cases.

***Alcohol Interdiction and Jurisdiction.*** The Commission directed this group to develop recommendations regarding increased local control over alcohol and drug interdiction in rural Alaska. It concurred in the work group’s conclusion that rural Alaska residents should be able to participate in efforts to stem the unlawful importation of alcohol into their communities.

***Technology.*** The Commission charged this work group to evaluate how to use existing technology in rural Alaska to improve law enforcement and judiciary capabilities in rural Alaska, and asked the group to consider increased collaboration between state and tribal governments, courts and law enforcement agencies, as well as technical issues relating to the use of the Internet and current med-satellite links in rural Alaska. In conjunction with concurrent initiatives instigated by other rural advocacy groups at that time, the Commission supported additional funding from the federal government to assist in implementation of these recommendations.

## **B. Educational Forums**

There is no doubt that the unique geographical, political and economic landscapes that comprise rural Alaska present extreme challenges regarding the delivery of essential government services in rural communities. While tribal governments in Alaska continue to build their capacities to provide critical services that have not otherwise been

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<sup>19</sup> 249 P.3d 734 (Alaska 2011).

available in many rural communities for decades, jurisdictional conflicts continue to arise in a time in history when cross-jurisdictional cooperation offers the most practical, effective and efficient use of governmental resources. Collective expertise and testimony from residents of rural Alaska impressed upon the Commission the notion that enhanced state-tribal relations would vastly improve the quality of life in rural communities.

The Commission was ever mindful, however, that a prerequisite for improved intergovernmental relations between the state and the tribes is a better understanding among state decision-makers, in particular, of the issues and obstacles to cooperation. For that reason, the Commission convened two educational forums<sup>21</sup> to provide an opportunity for tribal leaders and state legislators and policymakers to get to know one another in a facilitated conversation. Participants in these forums explored the unique needs of rural, predominately Alaska Native communities, and the legal and cross-cultural issues that often serve as obstacles to intergovernmental coordination and communication. Following is a summary of what occurred during these forums.

### **1. 2009 Retreat**

In January 2009, the Commission convened a two-day legislative retreat regarding the challenges facing rural Alaska Native communities, the foundation for tribal governmental authority and the jurisdictional conflicts that continue to arise as Alaska Native peoples in rural Alaska address some of the issues affecting their sense of personal safety and wellbeing. The retreat offered a primer on the application of federal Indian law in Alaska, as well as an opportunity for legislators, members of the Commission and six invited experts to discuss how the state and tribal governments might work more cooperatively to better serve rural Alaskans.

The experts offered three observations that participants took to heart:

- Government-to-government issues will never disappear
- Any hope of improving government-to-government relationships will require establishment of some mechanism to address these issues other than through litigation
- It will take an act of pure political will to accomplish anything of lasting importance that will improve inter-governmental relationships and, therefore, improve the lives of all Alaskans

The participants in this forum formulated two proposals that called for the creation of:

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<sup>21</sup> Both meetings took place at the Alyeska Resort in Girdwood, Alaska.

- An Office of Tribal Affairs within the Governor’s cabinet, which would coordinate all tribal-state relations and inform the Governor
- An independent, stand-alone Commission on Tribal Affairs created by the Alaska State Legislature, whose goals and activities would be governed by law and not restricted by the views of a particular administration

While the Commission took no formal action on these proposals, both themes provided a backdrop for the Commission’s subsequent discussions and deliberations.

## **2. 2011 Tribal-State-Federal Dialogue**

Expanding upon threads from the 2009 forum, the Commission convened a second dialogue between state and tribal leadership in July 2011, facilitating a discussion as to how state, tribal, local and federal governments might work together to maximize their respective resources and improve the delivery of essential services to rural Alaskans.<sup>22</sup> Discussions occurred regarding recent changes in state case law affirming the inherent sovereign authority of the federally-recognized tribes in Alaska over child protection matters involving their children, of the tribes’ and the state’s concurrent jurisdictional authority over such matters, and the state’s dedicated efforts to implement changes in child protection and court practice and procedure to reflect the tribes’ concurrent authority.

During this dialogue, the state informed participants about ongoing discussions with one of the tribes regarding implementation of an agreement that would authorize the tribe to address juvenile minor consuming matters that are outside of the jurisdiction of the state’s Division of Juvenile Justice. If finalized, this agreement would realize one of the recommendations made by the phase-one alcohol work group.<sup>23</sup>

Participants also heard from two experts who offered their experiences and insights regarding the benefits that can accrue from improved tribal-state relations. While both experts provided detailed information regarding efforts to formalize tribal-state relations in their respective states, the Commission was also struck by the sentiment, expressed by both speakers, that the successes of tribal-state intergovernmental efforts result in both tangible and intangible effects, bringing together stakeholders to talk, instead of litigate, as well as implementing a formalized relationship. Central to their collective experience was an observation that to enhance intergovernmental communication, coordination and cooperation resulted in enduring cross-cultural friendships, which ultimately strengthened the dialogue to the benefit of all concerned.

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<sup>22</sup> The Commission invited six members of the Alaska State Legislature (three each from the Senate and the House of Representatives), six tribal leaders, and six from the state’s Executive Branch to participate in this dialogue.

<sup>23</sup> See *Initial Report and Recommendations*, Recommendation 5 (JS-6), at 73.

## V. FINAL RECOMMENDATIONS

The Commission is proud of the work that it has undertaken, and believes that it has, on several fronts, “moved the ball forward.” As it completes its business, the Commission offers two final recommendations to supplement those made in its *Initial Report and Recommendations*.

### A. The Commission’s Work Should Continue.

The Commission’s achievements justify, and the Commission recommends, that the work of the Commission continue. The Commission recommends that the continuing entity, whether it be federal or state, proceed with the same charge, to allow continuation of a robust dialogue among the various stakeholder entities represented on the Commission that is both active, and supported, by the state and tribal governments. While some of the benefits that have accrued as a result of the Commission’s work are somewhat intangible and not readily identified, there is little doubt that the Commission’s work has influenced a variety of accomplishments within state and tribal governments, helping to:

- Facilitate discussions among state, tribal, federal and corporate stakeholders by providing a mechanism and forum through which dialogue could address misconceptions
- Provide a forum for non-adversarial problem solving
- Inform public policy
- Shape Governor Parnell’s Initiative on Domestic Violence and Sexual Assault
- Increase the number of VPSOs and Alaska State Troopers available in rural Alaska communities

Whatever final institutional shape the new deliberative body takes, if it is other than a continuation of the Commission as currently constituted, the Commission urges that it include the same stakeholder groups that comprised the Commission, as well as the Commissioner of the Department of Health and Social Services, a representative of the Alaska State Court System and additional tribal representation to expand upon the tribal perspective.

**B. All Levels of Government Should Aggressively Pursue Alcohol Interdiction.**

*Alcohol abuse is the single most dominant issue to which many deadly social ills in rural Alaska are tied. The impact of alcohol abuse has an insidious and devastating impact on the health - and future viability of - rural Alaska communities. Any proposed solutions should look to, and rely upon, the detailed toolbox that has resulted from the work product of both of the Commission's work groups, and must maximize the collective roles of tribal, state, local and federal governments. However, any solution must distinguish between the twin goals of punishing alcohol-related criminal behavior and ridding communities of alcohol. Both goals must be accomplished simultaneously, utilizing different mechanisms to accomplish each. Neither criminal sanctions nor interdiction, alone, will rid rural communities of alcohol.*

Without doubt, state, tribal, municipal and federal governments should work cooperatively to engage in extensive prevention efforts that include, but should not be limited to, community education. To ensure effectiveness of these efforts, the Commission urges the state and federal governments to consult local communities regarding the cultural relevance of any proposed education effort, and to ensure that local residents are integral participants in these efforts.

Additionally, as Alaskans continue to evaluate how best to address the challenges of substance abuse in rural Alaska, the Commission urges consideration of the full panoply of the as-yet unaddressed recommendations of the Commission's alcohol work group, which follow. The spectrum of approaches are organized into five general categories: 1) prevention; 2) development of local option laws; 3) Alcohol Beverage Control Board action; 4) enforcement; and 5) jurisdiction.<sup>24</sup>

**1. *Prevention***

The Commission is keenly aware that simply reducing the supply of alcohol that flows into rural Alaska will not eliminate alcohol and substance abuse in rural Alaska without simultaneous efforts to reduce the demand for alcohol, educate communities and offer culturally relevant treatment options. With this in mind, the Commission urges full consideration of the wide array of recommendations that follow.

- a. Support alcohol abuse prevention programs geared to help young people make healthy choices.*

State, tribal and federal governments should consider partnering with the private sector

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<sup>24</sup> While the Commission has not formally adopted each of these recommendations, it urges any successor agency to give full consideration to each recommendation.

to support a variety of prevention programs that:

- Help young people learn to make healthy choices
- Link youth and adults in community and cultural activities
- Provide Alcohol/Drug Information Schools for first time misdemeanor alcohol-drug related offenses
- Promote community responsibility for preventing and addressing alcohol related problems.

There is an ever-increasing need to reduce or eliminate communities' tolerance of alcohol abuse, which influences a growing number of young people who emulate their community's tolerance. Implementation of a variety of programs aimed at prevention would reduce the number of young people who abuse alcohol, resulting in a corresponding reduction in alcohol related violence, crime and intentional and unintentional injuries.<sup>26</sup>

*b. State and federal governments should cooperate to create a pro-sobriety public information program.*

The state and federal governments should consider a jointly sponsored two-pronged "pro-sobriety" public information program to heighten community awareness and emphasize the importance of prevention. This program should establish an office that can assemble and make available to rural communities vital information resources, and as well as a system of grants to support local communities or groups wanting to promote sobriety. A cross-jurisdictional "pro-sobriety" public information campaign would heighten community awareness and provide much-needed support for locally driven education efforts regarding the benefits of sobriety.

*c. Create a state liaison to assist tribal courts*

The state should consider designating a state "minor consuming" specialist within the state's Division of Juvenile Justice to serve as liaison between village governments and courts on "minor consuming" cases, and amending state law to provide a mechanism that enables tribal courts to refer to state court those juveniles who fail to respond to tribal intervention efforts.

*d. Find funding for private carrier interdiction*

Absent changes to state or federal law previously recommended by the Commission, consider identifying a private funding source that could provide commercial air

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<sup>26</sup> The phase-one alcohol work group initially offered this recommendation, which the Commission adopted as Recommendation 29 in its *Initial Report and Recommendations*. See *Initial Report and Recommendations* at 83-84. Subsequently, the phase-two alcohol work group concluded that this recommendation deserved emphasis and reiterated it.



enterprises the resources to carry out private screenings of cargo and passenger luggage for alcohol that is transported to dry villages. Private transportation entities can and should do more to interdict the flow of alcohol into dry villages. Neither the Alaska State Constitution's right to privacy or right to be secure from unreasonable search or seizure, nor the Federal Constitution's Fourth Amendment right, prevent *private* searches of this kind.<sup>27</sup> Such efforts could include random or systematic cargo "dog sniffs," and better signage to raise public awareness. Case law permits law enforcement agencies to act upon reports from private searches as long as the searches are not conducted at the behest of a law enforcement agency. Some private carriers have indicated a willingness to assist in private screening efforts that do not present any significant inconvenience to legitimate, non-bootlegging customers.

- e. *Require private carriers to take reasonable steps to check cargo for illegally shipped alcohol.*

The Alaska State Legislature should consider amending state law to require transportation businesses that routinely operate within local option areas to implement reasonable standards for screening cargo and luggage for alcohol. Current law sanctions only the knowing importation of alcohol in violation of a local option. Any newly enacted sanction should include an affirmative defense that the business implemented reasonable measures to screen its shipments for alcohol.<sup>28</sup>

## 2. Local Option Laws

Communities that are "wet" present significantly greater law enforcement and alcohol remediation costs than dry communities. With this in mind, the work group recommended amending state local options laws to provide local communities with even greater incentives to become "dry." Following is a summary of these recommendations.

- a. *State revenue sharing should provide significant incentives for local communities to become and remain "dry."*

The Alaska State Legislature should consider amending state law to offer communities revenue-sharing financial incentives to become and remain dry, and lesser incentives to become "damp." If revenue sharing is not offered to unincorporated municipalities, the

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<sup>27</sup> The 4<sup>th</sup> Amendment of the United States Constitution protects citizens against federal government abuses, the Alaska Constitutional right to privacy protects citizens against state government abuses and the Indian Civil Rights Act protects citizens against tribal government abuses. *See* U.S. CONST. amend. IV; Alaska Const., art. 1, § 22; and the Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1301-03 (1968).

<sup>28</sup> The work group concluded that even if a state or federal court were to determine that the results of such a search is inadmissible in a criminal prosecution, the interdiction effort would be worthwhile, as it would prevent alcohol from reaching dry villages.

legislature should create an equivalent financial incentive for unincorporated local option communities.

- b. Amend local option laws to enable tribal councils to adopt local options independently.*

Local governing bodies currently have authority under state law to adopt ordinances on a wide variety of subjects without conducting a community plebiscite. The Alaska State Legislature should consider whether local governing bodies, including Alaska Native villages, should have the same authority to regulate alcohol independently without being required to conduct a community plebiscite. This could be accomplished by amending AS 04.11.491(a) to authorize the local governing body of either a municipality or established village to make this change, which change could be repealed by plebiscite under AAS 04.11.495 or changed under AS 04.11.493. A statutory authorization of this kind would decrease existing impediments for communities that are moving toward “dry” status.

- c. Extend local option laws to encompass public intoxication.*

The Alaska State Legislature should consider amending local options laws to include an option that prohibits public intoxication within a local option area. Under current local options law, “possession by consumption,” i.e. being drunk within the village, cannot be proscribed, making rural communities more vulnerable to public intoxication.<sup>29</sup> An amendment of this kind would offer villages increased flexibility for addressing this situation.

### **3. Alcohol Beverage Control Board**

To address the increase in expenditures that would result from implementation of some of its recommendations, the work group recommended two options to increase revenues that are directly related to alcohol consumption, as summarized below.

- a. Adjust licensing fees for inflation*

The Alaska State Legislature should consider amending state law to increase licensing fees, adjusting for increases in the costs of remediating alcohol damages. Consider tying future licensing fee adjustments to future increases in the Consumer Price Index in a manner similar to that used under the Alaska Exemption Act.<sup>30</sup>

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<sup>29</sup> See AS 04.11.501(d).

<sup>30</sup> See AS 09.38.115.

*b. Designate a program receipt for ABC fines*

Consider amending AS 37.05.146(c) to create a statutorily designated program receipt from Alcohol Beverage Control Board fines to tie fines imposed for violations of Alcohol Beverage Control Board regulations to a funding source for programs designed to remediate problems resulting from alcohol abuse throughout the state. Because the Alcohol Beverage Control Board has some discretion over these fines, the receipts should not go directly to the ABC Board, to avoid any appearance of a remunerative interest.

**4. Enforcement**

There is little doubt that existing state and federal law enforcement mechanisms related to alcohol-related criminal activity could be strengthened in a variety of ways to make available additional remedies in the arsenal used to battle alcohol abuse. Community education and prevention efforts, coupled with local options aimed at preventing alcohol from entering the community, cannot, without the support of sanctions, stem the flow of alcohol into rural Alaska. Following is a summary of the work group's recommendations regarding improvements to existing alcohol-related enforcement mechanisms.

*a. Civil Forfeiture*

The federal Drug Enforcement Agency now requires that property to be forfeited pursuant to criminal proceedings *in Alaska* must be in Drug Enforcement Agency control within 30 days of seizure. This has had a chilling effect on the state's referrals to the Drug Enforcement Agency for federal prosecution unless the state is able to surrender the property during the course of its own criminal prosecutions. This requirement has, thus, created roadblocks to federal prosecutions. To expand the range of remedies available against alcohol and drug related criminal activity, the Drug Enforcement Agency should reconsider its policy, eliminate the 30-day rule, and amend any regulations or laws that are necessary to accomplish this change.

*b. Expand use of alcohol bracelets*

The state Division of Juvenile Justice and the Alaska State Court System should consider expanding the use of "alcohol bracelets" to help monitor individual compliance with court-ordered alcohol abstention. There is a need for development of more efficient ways of monitoring and enforcing these orders, as there are no available resources to monitor individual compliance in rural Alaska. Wider availability of this technology could help reinforce individual willpower.

*c. Create a designated program receipt for civil forfeitures*

The Alaska State Legislature should consider amending AS 04.16.220(k) to create a

statutorily designated program receipt for civil forfeitures. Under current law, while the state may share a portion of the forfeiture proceeds with participating municipal law enforcement agencies, the remaining share is returned to the state's general fund. A designated program receipt would help fund other options and recommendations, and provide additional support for alcohol interdiction efforts.

- d. *Enhance statewide database to restrict residents in dry communities from taking delivery in damp communities*

The Alaska State Legislature should consider amending state law to ban written order sales to residents of dry communities for delivery in damp communities. Currently, residents of dry communities can take delivery of alcohol into damp areas, where it is legal to receive alcohol. The proposed amendment would reduce the ability of bootleggers to buy their legal monthly limit of alcohol in damp communities and then bring this alcohol into dry communities.

- e. *Reintroduce legislation to prevent shipment of alcohol in plastic bottles*

To improve detection of illegal shipments of alcohol to rural Alaska, the Alaska State Legislature should consider reintroducing a legislative ban on shipments of plastic bottles by air, with an exemption for those shipped to community distribution sites. Currently, it is difficult to detect illegal shipments of Alcohol to rural communities, particularly when it is shipped in plastic containers. Glass containers would increase the shipping weight and facilitate detection, improving enforcement mechanisms related to illegal alcohol importation and reducing the availability of illegal alcohol in rural Alaska.

## **5. Jurisdiction**

As the Commission's congressional mandate makes clear, the state judicial system does not have a sufficient profile in rural Alaska communities. At the same time, state-tribal jurisdictional conflicts and state policies have often prevented tribal courts from filling this tremendous void. While the Commission did not have sufficient funding or time to address issues surrounding the role of tribal jurisdiction and authority as it relates to alcohol abuse, the alcohol work group made a number of recommendations regarding tribal authority, as summarized below.

- a. *Create village alcohol and controlled substance interdiction zones*

Congress should consider enacting legislation that authorizes Alaska Native villages to establish "Alaska Native Village Alcohol and Controlled Substance Interdiction Zones," creating protection zones within which villages can impose their own culturally appropriate rules. Because tribal government is often the only physical governmental presence in many remote communities throughout the state, it is well situated to enforce

and adjudicate minor alcohol offenses in remote communities, and is able to intervene earlier and more effectively.

*b. Create specialized village circuit courts*

The Alaska State Legislature should consider amending state law that authorizes creation of specialized alcohol courts known as “Village Circuit Courts,” which would enable rural villages that have adopted or may adopt a local option law to exercise greater control over local options, subject to change by local plebiscite. Each village would have its own court with limited subject matter jurisdiction, personal jurisdiction over anyone committing an offense against the local option ordinance, and territorial reach established within state law. A three-judge panel comprised of a state magistrate and two individuals appointed by the tribal council would serve as a Village Circuit Court’s judicial officers. The magistrate would conduct trials and rule on evidence, riding circuit on a regular schedule to serve a group of villages. Tribally appointed judges would be full time village residents, respected by the village community, and would serve a set term subject to dismissal only for cause.<sup>32</sup>

*c. Give full faith and credit to tribal judicial civil judgments*

The Alaska State Legislature should consider enacting a state statute that accords full faith and credit to tribal court civil money judgments in alcohol cases, which would expand the options available for effective enforcement in tribal civil alcohol cases. Tribal remedies would benefit from state assistance regarding enforcement. Current state law allows enforcement of civil money judgments from other jurisdictions – a parallel tribal remedy would enhance individual incentives and emphasize cooperation between state and village governments.

*d. Develop tribal-state cross-jurisdictional compacts*

The Alaska State Legislature should consider amending state law to authorize development and implementation of tribal-state compacts that delineate shared jurisdiction and law enforcement authority in the regulation of alcohol. Current state law does effectively control the illegal importation of alcohol into rural communities. State-tribal cooperative law enforcement efforts would maximize use of respective resources in efforts to curb alcohol abuse in rural Alaska.

## **CONCLUSION**

The Commission remains cognizant that much remains to be done to help the residents of rural Alaska eliminate alcohol and substance abuse from their communities. Alcohol

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<sup>32</sup> For a more detailed description of this recommendation, see Appendix C, Recommendation 23 of the Phase Two Alcohol Work Group.

abuse and its myriad attendant behaviors continue to stymie the efforts of rural Alaskans to participate fully in their communities. To maximize the options available to these residents to address this scourge, and enhance their chances of success, the Commission urges full consideration of all of the recommendations contained in its *Initial Report and Recommendations*, and in this *Final Report*.

In addition, the Commission is fully aware that during its deliberations the playing field has continued to evolve, offering up new data, new information and new approaches to problem solving. Behavioral science has advanced substantially during the past 20 years, with a hope that new behavioral interventions can achieve better results with resolving negative behaviors such as substance abuse, domestic violence and suicide, among others. With this in mind, the Commission strongly encourages expansion of public policy research and discussion of new and innovative methods for combating social problems in rural communities.

# **APPENDIX A**



# Department of Justice

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## ATTORNEY GENERAL JOHN ASHCROFT APPOINTS THE ALASKA RURAL JUSTICE AND LAW ENFORCEMENT COMMISSION

WASHINGTON, D.C. - Attorney General John Ashcroft today announced the appointment of nine Alaskans to the Alaska Rural Justice and Law Enforcement Commission. The Commission, created by Congress earlier this year, was established to review the federal, state, and local jurisdiction over civil and criminal matters in Alaska.

U.S. Senator Ted Stevens (R-Alaska) proposed the Commission, which was directed to submit recommendations to Congress and the Alaska State Legislature regarding ways to improve the quality of justice in rural Alaska. Rural Alaska is defined in the legislation as those areas of Alaska outside the Municipality of Anchorage, the Fairbanks North Star Borough, the Matanuska-Susitna Borough, the Kenai Peninsula Borough, the Juneau Borough and City, the Sitka Borough and the Ketchikan Borough.

The Commission will be co-chaired by U.S. Attorney for the District of Alaska Timothy M. Burgess and the Alaska Attorney General Gregg Renkes. Additional commission members will include: Alaska's Commissioner of Public Safety Bill Tandeske; Juneau Mayor Bruce Botelho, representing the Alaska Municipal League; Northwest Arctic Borough Mayor Roswell "Ross" Schaeffer, Sr., representing organized boroughs throughout rural Alaska; Tanana Chiefs Conference President Harold "Buddy" Brown, Esq., representing the Alaska Federation of Natives; tribal representative Wilson Justin; Kawerak, Inc. President Loretta Bullard, representing non-profit Native organizations operating Village Public Safety Officer programs; and Bering Straits Native Corporation Vice-President Gail Schubert, representing the Alaska Native Justice Center. Additionally, Robert Bundy will serve as a non-voting representative to provide technical support to the Commission.

"This is a great opportunity to thoroughly examine the criminal justice needs of rural Alaskans and, through the Commission's recommendations, help ensure justice for all," said U.S. Attorney for the District of Alaska Timothy M. Burgess.

"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," said U.S. Senator Ted Stevens.

Specifically, the Commission will be responsible for four primary duties that include:



- Creating 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;
- Meeting 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;
- Addressing 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
- Addressing the problem of domestic violence and child abuse, including treatment options and restorative justice.

The Commission is required to make its recommendations to Congress and the Alaska State Legislature no later than January 1, 2005.

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04-594

## **APPENDIX B**

# COMMISSIONERS

**Patrick Anderson**, *Representing the Alaska Federation of Natives*

Patrick Anderson is Executive Director of Chugachmiut.

**Bruce M. Botelho**, *Representing the Alaska Municipal League 2004 - 2012*

Bruce Botelho is Mayor of the City and Borough of Juneau, Alaska. He served as Alaska's Attorney General from 1994 to 2002.

**Charlotte Brower**, *Representing the North Slope Borough 2006 - 2012*

Charlotte Brower is Mayor of the North Slope Arctic Borough. She served as Deputy Magistrate in the Alaska State Court System from 1975 - 1977, and as Magistrate from 1977 - 1981.

**Loretta Bullard**, *Representing a Non-profit Native Corporation that operates a Village Public Safety Officer Program 2004 - 2012*

Loretta Bullard is President/CEO of Kawerak, Inc., and has served in this capacity since 1991.

**John J. Burns**, *State Co-Chair, 2011 - 2012*

John Burns served as the Attorney General for the State of Alaska from 2011 to 2012.

**Wilson Justin**, *Representing the Tribal Perspective 2004 - 2012*

Wilson Justin is Tribal Administrator of the Chee'shna Tribal Council, and previously served as the Executive Vice President of the Mt. Sanford Tribal Consortium.

**Karen L. Loeffler**, *Federal Co-Chair 2009 - 2012*

Karen Loeffler has served as the United States Attorney for the District of Alaska since October 2009, and was Acting U.S. Attorney from 2009 to 2009.

**Joseph A. Masters**, *Representing the Department of Public Safety 2008 - 2012*

Joseph Masters is Commissioner of Public Safety for the State of Alaska. He served as a law enforcement officer for 28 years, including 20 years as an Alaska State Trooper, and several years as a Village Public Safety Officer, a Village Police Officer and a Municipal Police Officer.

**Gail R. (Anagick) Schubert**, *Representing the Alaska Native Justice Center 2004 - 2012*

Gail Schubert is President/CEO of the Bering Straits Native Corporation. She is an attorney, and is a board member of the Alaska Federation of Natives.

**James E. Torgerson**, *Representing the Federal District Court, Alaska 2004 - 2012*

James Torgerson is managing partner of the Stoel Rives' Anchorage office. Prior to private practice, 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 to 1994.

## FORMER COMMISSIONERS

**Edgar Blatchford**, *State Co-Chair 2006*

Edgar Blatchford served as Commissioner of the Alaska Department of Community and Economic Development from 2003 to 2005.

**Harold Buddy Brown**, *Representing the Alaska Federation of Natives 2004 - 2006*

Harold Brown served as President/CEO for the Tanana Chiefs Conference during his tenure on the Commission. Prior to that time, he served as General Counsel for the Tanana Chiefs Conference, and was a member of a legal team representing tribal interests in the landmark Alaska Supreme Court case *John v. Baker*. Mr. Brown passed away while serving on the Commission after a valiant battle against cancer.

**Timothy M. Burgess**, *Federal Co-Chair 2004 - 2005*

Judge Burgess currently sits on the Federal District Court for the District of Alaska. He served as the United States Attorney for the District of Alaska from 2001 to 2005.

**Nelson P. Cohen**, *Federal Co-Chair 2006 - 2009*

Nelson Cohen served as the Acting United States Attorney for the District of Alaska from 2006 to 2009.

**Talis J. Colberg**, *State Co-Chair 2006 - 2009*

Talis Colberg served as the Attorney General for the State of Alaska from 2006 to 2009.

**David Marquez**, *State Co-Chair 2005 - 2006*

David Marquez served as the Attorney General for the State of Alaska from 2005 to 2006.

**Walt Monegan**, *Representing the Department of Public Safety 2006 - 2008*

Walt Monegan is President of Alaska Native Justice Center, and served as Commissioner of Public Safety from 2006 to 2008.

**Gregg Renkes**, *State-Cho-Chair 2004 - 2005*

Gregg Renkes served as the Attorney General for the State of Alaska from 2002 to 2005.

**Roswell L. Schaeffer, Sr.**, *Representing an Organized Borough 2004 - 2005*

Roswell Schaeffer served as Mayor of the Northwest Arctic Borough.

**Ethan Schutt**, *Representing the Alaska Federation of Natives 2004 - 2006*

Ethan Schutt is Senior Vice President, Land and Energy Development at CIRI, and previously served as CIRI's general counsel. He also served as general counsel to the Tanana Chiefs Conference.

**Deborah M. Smith**, *Federal Co-Chair 2006*

Magistrate Judge Smith is the Federal Magistrate for the District of Alaska, and

served as Acting U.S. Attorney for the District of Alaska from March 2006 to August 2006.

**Daniel S. Sullivan**, *State Co-Chair 2009 – 2010*

Daniel Sullivan served as Attorney General for the State of Alaska from June 2009 to December 2010. He is now serving as Commissioner of the Alaska Department of Natural Resources.

**William Tandeske**, *Representing the Department of Public Safety 2004 - 2006*

William Tandeske served as Commissioner of the Department of Public Safety from February 2003 to December 2006. Prior to that time, he served as an Alaska State Trooper for 26 years.

## **STAFF**

**Donna J. Goldsmith** *October 2008 – March 2012*

**Walt Monegan** *October 2008 – January 2009*

**Karen Bitzer** *October 2004 – November 2007*

## **APPENDIX C**

## **Overview — Work Group 1 Police Standards and Cross-Designation**

### **Members**

James Hoelscher, Clinton O'Malley, Terry Vrabec, Val Maxwell, Richard Krause, Rick Svobodny, Lare Aschenbrenner and Justin Roberts

### **Facilitator**

Walt Monegan

### **Commissioners**

Bill Tandeske and Loretta Bullard

### **Meetings**

The work group held biweekly teleconferences from the beginning of October until the end of November and had two face to face meetings.

### **Charge**

This working group is charged with the development of recommendations for: a) a statewide uniform and tiered system of certification and training for VPSOs, VPOs and other public safety personnel; and b) cross-designation of law enforcement officials by different governmental entities.

### **Recommendations**

The work group envisions a future with the following: 1) professional and standardized public safety to meet community needs; 2) tiered certification of training to facilitate career development; 3) adequate support of infrastructure for continuity of service; and 4) consistent and sufficient fiscal stream.

The tiered certification of training recommends amending Alaska Police Standards Council regulations to adopt and create new levels for Village Peace Officers, Tribal Police Officers and Village Public Safety Officers to include selection with minimum standards and training requirements. The new levels of certification would include Peace Officer I, II and III. Peace Officer III would contain Basic, Intermediate and Advanced levels. Each subsequent class and sub-level would require an increasing amount of training and demonstrated expertise.

The work group recommended amending Title 29 to clarify the legal definition of "village" to include increasing the population criteria from 1,000 to 1,500 to 2,000.

The recommendations require a retooling of existing infrastructure to facilitate, document and maintain standards toward improving levels of public safety statewide. Adequate support of infrastructure includes: mutual aid agreements; training, monitoring, support; facilities, equipment; staffing, recruitment, retention, liability coverage, benefits; and sub-hub expansion. In addition, instructions and support should be setup for any new villages seeking their own public safety programs to ensure quality and consistency.



## **Alaska Rural Justice and Law Enforcement Commission**

### **Work Group Presentations December 1, 2006 Marriott Downtown Anchorage**

**Commissioners:** Bruce Botelho, Wilson Justin, Loretta Bullard, Gail Schubert, Jim Torgerson, Bill Tandeske and Patrick Anderson

**Staff:** Karen Bitzer, Randy Ruaro, Rob Corbisier and Julia Meier

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#### **Work Group 1— Police Standards and Cross-Designation**

Facilitator Walt Monegan presented the Police Standards and Cross-Designation work group's recommendations to the Commission. The work group distributed a one page description of its recommendations and a PowerPoint presentation. Walt began by thanking the members of his work group.

The group recommends creating and sustaining a tiered system of certification and standards for law enforcement personnel. The creation of such a system would require amendment of Alaska Police Standards Council (APSC) regulations to include selection with minimum standards and training requirements. The group suggests creating three classes of peace officer: Peace Officer I, II and III. Peace Officer III would include three sub-levels: Basic, Intermediate and Advanced.

The sustainability of the new tiered system would require adequate support of infrastructure, including: mutual aid agreements; training, monitoring, support; facilities, equipment; staffing, recruitment, retention, liability coverage, benefits; extension of the sub-hub program; and consistent and sufficient funding.

Phase I of the group's recommendations include amending Title 29 to clarify the definition of village to include increasing the population criteria from 1,000 to 1,500-2,000. The definition may need to be further amended. Bruce asked what the significance is of increasing the population requirement. Walt responded that it is significant due to the current VPSO regulations and the prevalence of villages coming up to the 1,000 population.

Phase II of the group's recommendations requires the Commission to approach APSC to change its regulations into a tiered system. The purpose is to show law enforcement a clear career path and potential for upward mobility. The system would set standards in recruiting, selection and training. It would give communities an expectation. One of the goals is to enable law enforcement to not repeat training when they want to move positions. One possible way to do this is through lateral academies similar to those of the Anchorage Police Department.

Jim asked how APSC regulations are amended. The recommendations would have to be made to the council who then votes on the recommended changes. AP SC may adopt regulations if the underlying statutory authority exists.

The actualization of these recommendations would give a recipe to communities. In the future, the model could be expanded to include urban as well as rural areas.

## Questions and Answers

Wilson noted that the tiered system appears redundant and asked whether the tiers have separate certification and training. Walt responded that they do. Bill said that these recommendations would serve to solidify what is already in place.

Wilson asked whether there was room for community councils to participate in the new system. For example, whether there is room for looking at cultural norms in the hiring process. Walt said that there is room so long as it is not discriminatory.

Wilson asked whether the recommendations will produce law enforcement in every village. Walt did not think that this would be the result. However, the recommendations do suggest continuation and expansion of the Department of Public Safety's sub-hub program so that law enforcement is in a village for more than just a call. Bill suggested that village safety aides may morph into a state-funded COPS program.

Loretta noted that there is currently no coordination in the tracking of training and that there are many different funding sources for law enforcement.

Gail asked whether the work group looked at other bathers to individuals becoming peace officers, including psychological bathers or minor possession convictions. Walt said that the group had not gotten that far, but the goal would be to establish minimum standards that could include what Gail suggests.

Bruce asked whether APSC sets standards for the training agencies. Bill said that Fairbanks has a program with the University of Alaska. We are missing the formal recognition by APSC and the tracking of training. Walt noted that the recommendations would also protect villages from liability. Indemnification would be based on the training of personnel.

Bill said that there is a training academy in Sitka. The Anchorage Police Department has a training academy. There is one in Fairbanks. There is VPO training in St. Lawrence and King Salmon. VPSO training is mostly done in Sitka. The Department of Public Safety considered moving VPSO training to the hubs. There is a possibility of having training in the planned facilities in Nome and Bethel.

Jim asked about the timeline for Phase I and its funding implications. Walt said that there needs to be a sponsor whom should not be too difficult to find and support from the Department of Law and the Department of Public Safety. Phase I could happen during this legislative session. He does not believe that there are funding implications.

Jim asked about the timeline for Phase II and its funding implications. Walt said that Phase II is foundational and required before doing other things. The Commission needs to review Phase II recommendations and make its own recommendations. Bill noted that Phase II does require APSC to take on more responsibility.

Bruce asked whether the group has recommendations on what the qualifications for the tiers should be. Bill noted that APSC is qualified to set these qualifications. We need to look at VPSO standards with a broader perspective and then maybe do some tweaking. Wilson asked whether there is an age limit. Walt responded no so long as an individual can pass the physical tests.

VPO/TPO/VPSO Workgroup  
Graphic Overview  
December 1, 2006

**Current Situation:** VPO/TPO/VPSO all have: - varied base of employers [*VPO are village employees, TPO in the absence of a village government may have been hired by tribal councils, and VPSO are employees of a regional non-profit corporation*]; - difficult to recruit and retain; - inconsistent selection criteria though VPSOs criteria is consistent; - no career ladder; - questionable legal authority for VPO or TPO, while VPSO is clear in statute; - little or no continuous training for VPO and TPO, though VPSOs are well trained initially and ongoing; - confused chain of command for VPSO only, as VPO and TPO work for city or tribe; - pay and benefits varied; - no overall retirement plan.

- TPO, being problematic in jurisdiction and authority, may be cross-deputized in a limited capacity if they adhere through an MOU that require adherence to APSC standards. Any cross-designation would have to come from a legal authority such as DPS. Having said that, these further discussions on TPOs would only include those who are bound by such a MOU.
- VPSO, non-government employees, may also be similarly cross-deputized with a binding MOU, and/or candidates for special commissions by the Commissioner of Public Safety.

**Phase One:** Amend Title 29 for VPO/TPO/VPSO to clarify legal definition for "village" to include increasing the population criteria from 1000 to 1500 or 2000.

- Might be necessary to forestall smaller road-system communities seeking a similar program; though in time and demonstrated success, may be re-examined to augment existing public safety, on or off the road-system.

**Phase Two:** Amend APSC regulations to adopt and create new levels for VPO/TPO/VPSO, to include selection with minimum standards and training requirements. APSC can certify training and can retain such records if submitted by individual VPO, TPO, VPSO, or their employers. Suggested would be creating three classes for "peace officer;" with class one, Peace Officer I being a VPO; class two, is Peace Officer II being a VPSO; and class three, what is currently a Police Officer, though this class will have three sub-levels in basic, intermediate, and advanced. Each subsequent class and sub-level would require an increasing amount of training and demonstrated expertise. *A future APSC may want to examine standards for non-government security organizations to insure any contracting communities are adequately protected.*

- Necessary re-tooling of existing infrastructure to facilitate, document, and maintain standards toward improving levels of public safety statewide.
- Also, sets up easy to follow instructions and support for any new villages seeking their own public safety program, forestalling just adopting convenient yet questionably legal TPO situations.

## **Overview — Work Group 2**

### **Indian Child Welfare Act Memorandum of Understanding**

#### **Members**

Jan Rutherford, David Case, John Bioff, Mark Regan, Sue Hollingsworth, Teri Carns, Gloria Gorman, Joanne Gibbens and Tammy Sandoval

#### **Facilitator**

Donna Goldsmith

#### **Commissioners**

Jim Torgerson and Charlotte Brower

#### **Meetings**

The work group held biweekly teleconferences from the beginning of October until the end of November and had three face to face meetings.

#### **Charge**

This working group is charged with recommending language for a model MOU between federal, state and tribal entities concerning the disposition of ICWA cases in the State of Alaska.

#### **Recommendations**

The work group drafted most sections of a model tribal-state memorandum of understanding regarding child protection cases affecting Alaska Native children. The draft is a power sharing agreement in which the state and tribe agree to share concurrent jurisdiction. The work group will have one more face to face meeting to finish drafting the remaining sections.

**Memorandum of Understanding**  
**Between**  
**The State of Alaska**  
**And The Native Village of \_\_\_\_\_**  
**Regarding Jurisdiction Sharing Over Child Protection Matters**

**1. Statement of Purpose**

This is a jurisdiction sharing agreement between the State of Alaska, Department of Health and Social Services ("the State") and the Native Village of \_\_\_\_\_, ("the Tribe"), a federally recognized Indian tribe, pursuant to Section 1919 of the Indian Child Welfare Act ("the ICWA"). The purpose of this Memorandum of Understanding/Agreement ("MOU" or "Agreement") is to provide a mechanism by which the Tribe and the State agree to share jurisdiction over child protection matters involving tribal children. The parties agree that there is no resource that is more vital to the continued existence and integrity of the tribes in Alaska than their children. It is national, state, and tribal policy to protect the best interests of Alaska Native children, and to promote the stability and security of the tribes in Alaska and their families.

By signing this Agreement the parties express their mutual respect for each other, and their shared commitment to protecting tribal children and families.

**2. Authority**

This Agreement is entered into under authority of §1919, and other provisions, of the ICWA as applicable, AS 47.14.100(g), and the Tribe's Constitution [and Children's Code or Ordinance # \_\_ ]."

Section 1919 of the Indian Child Welfare Act provides that "[s]tates and Indian tribes are authorized to enter agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which...provide for concurrent jurisdiction between States and Indian tribes."

AS 47.14.100(g) provides that "[t]he Department may enter into agreements with Alaska Native Villages or Native organizations under 25 U.S.C. § 1919 (Indian Child Welfare Act of 1978) respecting the care and custody of Native children and jurisdiction of Native child custody proceedings."

**3. Scope**

**(a) Jurisdiction**

(a) When OCS receives a Protective Services Report regarding an Indian child, it will determine from the reporter, if possible, and from other information available to OCS, the child's tribe and village. OCS will ask the reporter for permission to be contacted by the Tribe if the Tribe takes over investigation of the Protective Services Report. OCS will advise the reporter that OCS will forward to the Tribe the Protective Services Report and the reporter's name if the reporter has given permission to do so.

(b) When OCS receives a Protective Services Report involving a child who may be a member of or eligible for membership in the Tribe, OCS will immediately notify the Tribe by calling the designated tribal representative or faxing notice of the Protective Services Report to the Tribe. OCS will ask whether the Tribe currently has custody of the child or is otherwise providing child welfare services to the child and/or the child's family.

(c) Within 24 hours of oral or written notification of a Protective Services Report, the Tribe will notify OCS in writing of its determination whether the child is a Tribal child. The Tribe will inform OCS whether the Tribe currently has custody of the child or is otherwise providing child welfare services to the child and/or the child's family.

(d) If the Tribe notifies OCS that it has already initiated a child custody proceeding, OCS will request written verification of the tribal case number and other information required under [notice section]. Once the Tribe has provided this information, OCS will share its information with the Tribe and transfer the Protective Services Report to the Tribe for investigation by the Tribe, including the reporter's name if the reporter has given permission for this to be done. If the Tribe notifies OCS that there is no child custody proceeding, OCS will investigate the report under its state mandate and will take any necessary and appropriate action under state law.

(e) If the Tribe determines that the child may still be in need of protection, but the Tribe will not continue its own investigation or child protection case, the Tribe will immediately notify OCS that the Tribe is closing its investigation or tribal court case and will make a report of harm (protective services report) to OCS.

(f) The Tribe agrees that it will establish and maintain procedures that will ensure the safety of the child during the Tribe's investigations.

(g) At any time prior to transferring the investigation to the Tribe, OCS will continue to investigate the protective services report in accordance with its policies and procedures.

## **6. OCS Emergency Placements**

(a) If OCS must make an emergency removal of a Tribal child in the village, the OCS worker will notify the Tribe prior to removing the child, and will determine the Tribe's

of harm).

(b) If the Tribe takes over the investigation OCS will provide the Tribe with all child protection information.

(c) If the Tribe has relevant child protection information regarding a tribal child who is the subject of an OCS inquiry or investigation, upon request the Tribe will share all child protection information as permitted by tribal law.

(d) The parties are expected to exchange such additional information as is necessary to accomplish the purposes and goals of this MOU, including information that aids in the provision of services to, or facilitation of placement of, a child.

(e) Child protection information exchanged between the State and the Tribe shall be kept confidential. Such information shall not be released to third parties unless the release is necessary in conducting an investigation, providing services to the child, and/or family, facilitating placement of a child, protecting the safety of a child or the public, or as otherwise required by law or court order. Each party shall ensure that child protection information received from each other is adequately safeguarded and protected from unauthorized disclosure at all times, including information released to and in the custody of third parties. (this provision evolved from state law and regulation)

## **8. Notice to State**

(a) When the Tribe opens a court case regarding a child, the Tribe will give notice to the nearest State of Alaska Office of Children's Services Field Office as soon as possible within 72 hours unless there is a shorter specified time provision in the tribal codes. The notice shall contain the following information: Name and Date of Birth of the child, tribal case number, name of the parents (if known), when the child was taken into tribal custody, and the tribe's contact information which shall include the name of the tribe and tribal court, the mailing address, contact phone number and the name of a contact person.

(b) Upon request by OCS, the Tribe shall disclose either orally, or in writing, the factual basis for opening the tribal court case.

## **9. Notice to the Tribe**

OCS shall provide notice to the Tribe as required by the ICWA, state law, and sections [x and y] of this MOU.

## **10. Recognition and Enforcement of Tribal Court Orders**

The State shall give full faith and credit to the public acts, records, and judicial

**14. Termination**

This MOU shall continue to remain in effect for each party until either party terminates their participation.

Either party may terminate their participation in this MOU upon 90 days written notice to the other party without cause.

If termination is predicated upon an alleged violation of the MOU, the other party shall have an opportunity to consult in good faith to resolve the alleged violation during the 90-day notice period. The MOU shall terminate after 90 days unless the terminating party advises the other party that they are satisfied with the action taken to resolve the alleged violation. Such termination shall not affect any action or proceeding over which a court already has assumed jurisdiction.

The parties agree to ensure to the greatest extent possible that withdrawal from this MOU is accomplished in such a way as to ensure that children and families are able to continue receiving necessary services.

**15. Definitions**

To the extent that any terms used in this agreement are defined at 25 U.S.C § 1903 those terms shall carry the same meaning as in the ICWA unless otherwise defined in this Agreement.

- "Case"
- "Child custody proceeding"\*\*\* (does this need to be in here?)
- "Child protection case"
- "Child protection information"
- "Child Protection matters" (includes investigation)
- "Custody"
- "Indian child"
- "Parties"
- "Protective Services Report" means Report of Harm
- "Tribal child"
- "Tribal court"
- "Tribe"
- "Tribunal"
- "Written" includes original documents, faxed documents, or email

**16. Effective Date**

This MOU shall become effective upon signature by both parties.



**ACCEPTANCE**

NATIVE VILLAGE OF \_\_\_\_\_:

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

STATE OF ALASKA:

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

APPENDIX A – ARJLEC MOU

Notice

To: State of Alaska Office of Children’s Services

Re: Tribal Child Protection Case

Name of Child: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Mother’s Name: \_\_\_\_\_

Father’s Name: \_\_\_\_\_

Date Child taken into custody: \_\_\_\_\_

Tribal Court Case Number: \_\_\_\_\_

Name of Tribe Taking Jurisdiction: \_\_\_\_\_

Name of Tribal Court: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Contact Person: \_\_\_\_\_

## **Alaska Rural Justice and Law Enforcement Commission**

### **Work Group Presentations December 1, 2006 Marriott Downtown Anchorage**

**Commissioners:** Bruce Botelho, Wilson Justin, Loretta Bullard, Gail Schubert, Jim Torgerson, Bill Tandeske and Patrick Anderson

**Staff:** Karen Bitzer, Randy Ruaro, Rob Corbisier and Julia Meier

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### **Work Group 3 - Technology**

Facilitator Bob Griffiths presented the Technology Work Group's recommendations to the Commission. The work group distributed a description of its recommendations and made a PowerPoint presentation.

The work group's process began by envisioning an ideal future state. The future state acknowledges the uniqueness of each community. In this ideal state, access to technology is immediate and the technology is redundant. Standards would exist throughout Alaska to enable communication between systems. There would be training for both users and maintainers of the systems. Each village would have one to two individuals qualified to maintain and repair the systems. These individuals would have continuing education opportunities.

The work group divided its technology provisions into three levels for the sake of convenience. In the first level the technology would provide emergency response communication, an emergency response plan, community alarm system and redundant voice communication for each village.

In the second level the technology would provide computers along with hardware and software, a regular maintenance and update schedule and access to state and federal purchasing vehicles.

The third level presents the most difficulties and calls for collaboration and cooperation among tribal, regional, state and federal entities. It calls for statewide uniform standards. The technology would provide access to both the state and federal justice systems and support individuals whose first language is not English. Any system created should be supplemented by paper or audio systems.

Bob discussed the applications in first response, rehabilitation and therapeutic services. Applications in first response include emergency calls, tele-video capability enabling the state court system to conduct proceedings within the community and take testimony.

Applications in rehabilitation include tele-video family visits with prisoners incarcerated outside of the community, receipt of services that are conditions of parole and ankle monitoring. Applications in therapeutic services include tele-psychiatry, tele-counseling and online courses in areas like substance abuse and anger management.

The work group came up with eight recommendations to support the actualization of its proposed future state. Recommendation #1 would amend the Telecommunications Act to extend the current subsidy to tribal entities, including tribes and non-profits.

Recommendation #2 suggests a survey be conducted of existing technological systems and perceived needs. The survey could establish a baseline. In addition, the results could assist in receiving grants. Bruce asked who would conduct this survey. Bob replied that maybe AFN, AI-TC or the state could conduct the survey. The Denali Commission or the Rasmuson Foundation could be approached for funding.

Recommendation #3 asks the Commission to review statutes, regulations and policies that inhibit expansion of 911 services and cooperation among different entities. Following review, the Commission should recommend amendment of those that inhibit information sharing. A question was raised as to whether expanded 911 services in the rural communities would require indemnification language.

Recommendation #4 promotes uniform standards for technology. The state needs a vision of what these standards should look like. There is a national standard for information sharing that includes the executive branch and court system. Currently there is no national standard for voice over or video technologies.

Recommendation #5 encourages the development of a statewide tele-video conferencing system. The system would be deployed to support local community needs and the justice system.

Recommendation #6 encourages the development of a centralized web portal for justice information. The state is probably in the best situation to create this site. The site would support the exchange of information, possibly including remote filing, and secure communication. Web-based training could be provided. Wilson asked whether this recommendation poses security issues and would require separate codes or separate tracks licensed from the state or federal government. Patrick said that these questions are the next step in the process that the work group did not reach. Bob noted that this is both a policy and funding issue.

Recommendation #7 relates to the need for local community expertise supported on a regional basis. The Commission should support funding of training and employment for at least one individual in each community who can install and maintain the system. This individual would be capable of training users in the community.

Recommendation #8 supports the expansion of therapeutic courts to rural areas.

### Questions and Answers

Jim asked whether anyone is currently developing uniform standards. Bob said that Enterprise Technology Services within the Department of Administration is charged with that task. The Court is also working on its own standards and information sharing technology.

Rob asked about the restrictions on the technology that currently exists in the villages. Loretta noted that use is restricted to libraries, health clinics and schools. AFN passed a resolution recommending amendment to the Telecommunications Act to expand these uses. Rob asked if there was funding available is the technology permitted to have other uses under federal guidelines. Patrick said that he is hoping for cooperative agreements with villages. Wilson noted that the T-1 lines have some use flexibility but

most be health-related. Gail said that the Alaska Land Mobile Radio system is a good model for how this could work. Bob noted that Alaska Land Mobile Radio is primarily voice and very limited data text messaging.

## **Overview - Work Group 3 Technology**

### **Members**

Beth Heuer, Alan McKelvie, Kevin Illingworth, Scot Prinz, Mike Callahan, Eugene Smith, Robin Bronen and Joe Garoutte

### **Facilitator**

Bob Griffiths

### **Commissioners**

Patrick Anderson

### **Meetings**

The work group held weekly teleconferences from the beginning of October until the end of November and had three face to face meetings.

### **Charge**

This working group is charged with the development of recommendations for increasing the use of existing technology in rural Alaska. This includes recommendations on increased collaboration between governmental and tribal entities (including governments, courts and law enforcements), and technical issues surrounding the use of internet and current med-satellite links in rural Alaska to improve law enforcement and judiciary capabilities.

### **Recommendations**

The work group made the following specific recommendations.

Pursue amendment of the federal Telecommunications Act to extend the subsidy created to Indian Health Services funded clinics to tribes.

Conduct an assessment of existing rural technology through a survey of the perceived needs of rural communities and equipment currently in place.

Encourage a review of state statutes, regulations and policies that inhibit the expansion of 911 services to rural communities, and the cooperation and information sharing among local, tribal, regional, state and federal entities.

Facilitate uniform standards for technology, including hardware, software and communications hardware.

Encourage collaboration among state, local Native non-profits and villages to adopt a standardized tele-video conferencing system for development on a regional and statewide basis.

## **Alaska Rural Justice and Law Enforcement Commission**

### **Technology Work Group.**

#### **Final Recommendations**

**December 1, 2006**

#### *The Future State*

Rural Alaska villages face numerous challenges when it comes to the use of technology for promoting the ends of justice. We could recount those challenges and make recommendations on how to meet them effectively. However, we chose a different course. Instead, we chose to define a future state in which the challenges have been overcome and technology serves the ends of justice effectively and efficiently. This future state is an ideal, viewed through rose-colored glasses with heavy doses of optimism. Will it become reality? Maybe not! But it does give us a goal to aim for. It does allow us to discuss the barriers, and make recommendations for overcoming them.

Our future state first recognizes that each village is unique, and is entitled to put together its plan to serve their individual justice needs. Justice is not meted out in pre-measured doses. Community response needs to be tailored to their critical needs, guided by their own leadership and sense of need. And, as each village travels to their own future state, they will do so at different speeds and with varying resources. In other words, they determine the justice needs of their community and build toward it. Their own journey determines what level of technology support they require.

In our future community, access to technology is immediately available, and is redundant in the event of failure of the first system. It is also affordable, both in transmission cost and capital cost. The technology system in the village is well designed with necessary software for accomplishing justice related tasks. Hardware is available and redundant systems are in place for voice, Internet, and video communications. Emergency power supplies are available with sufficient capacity to weather any emergency. Each village has one or two "Tekkies" who are fully qualified to maintain and repair the systems. They receive continuing education, and have access to support through various means—conferences and workshops, telephone support, and a knowledge InfoBase of solutions discovered in work on others' village systems. Training on how to use the hardware and software is available in order to make all operators productive. Systems are posted with instructions on use, and who to call in the event the technology is not functioning properly. Assistance is immediate and effective.

The first level of technology service in our future state serves village emergency response communication needs for policing, fire, natural disaster and medical services. The Alaska Land Mobile Radio System (ALMRS) has been extended to the community to

facilitate calls for mutual aid and interagency communication. 9-1-1 emergency telephone service is available through a shared regional communications center. An emergency response plan is in place that spells out response duties, including who to call within the community and how to go about contacting others for mutual aid or coordinated response. A community alarm is also available with specific signals for different types of emergencies to alert the community of dangers. A system of redundant voice communication systems is available for the community to use. Telephones are the primary link to the outside, followed by ALMRS, internet connections (Voice over Internet Protocol, as an example), a satellite telephone and finally, a single side band radio. This ensures that the village has contact in all types of emergencies.

The second level of technology serves local needs, including computer access to justice services. Computers and related hardware (servers, printers, scanners, etc.) are readily available at affordable prices. Installation is available through village based Tekkies. Training is available both in person and through distance learning. The services required to install, service, and train users are provided through the local non-profit tribal organizations that are most familiar with their village members. These tribal organizations, in turn, have representation on the boards of regional non-profits, who may serve as service providers. Hardware and software are standardized for ease of purchase and training. State or federal procurement pricing is available. A regular maintenance and software-updating schedule is developed that ensures all technology is ready and available in all times. Back-up power systems are ready to ensure continuity of service.

The third level of technology calls for collaboration and cooperation among tribal, regional, state, and federal entities. The purpose of this level is to provide a menu of local services and systems that can be implemented by local village action, and the application of uniform standards for technology. Systems introduced into villages should be thoroughly vetted for reliability and compatibility with the uniform statewide system. Through this level, village personnel are able to access tribal, state, and federal justice systems through their Internet connections. This includes contact with the State Troopers, Fish and Game, the Alaska Court System, the District Attorney, the Public Defender, the Office of Children's Services (OCS), the Department of Corrections, Alaska Legal Services Corporation, various federal agencies, Probation and Parole, and many others. A common database of information, instructions and forms provides ease of contact. This system is supported by a tele-video capability for those villages that desire it. A bridging system exists that lets villages tele-video communicate with each of the agencies participating in the system. The tele-video is located in a facility accessible by village officials, including VPSO's, tribal social services officials, and tribal justice personnel. Local magistrates and judicial officers also have access. Technology would be "accessible" and used as a tool to support language translation as well as those individuals who are hearing or sight-impaired. As technology is not always readily accessible, technology should be supplemented by paper, audio, and video based systems.



### ***Local Menu of Services***

In this system, the first level of technology permits an emergency call to be made that summons Village Public Safety Officers and/or Troopers to deal with violations of criminal law. If an arrest is made, information can be input into the statewide database from the village. In essence, the police report is filed on site. The information is transmitted to appropriate agencies for further processing — the District Attorney for preparation of charges; corrections for detaining the prisoner; probation and parole for possible violations, and the database searched for outstanding warrants on existing cases. If the prisoner is detained in the village, the second level of technology allows for electronic court appearances. Tele-video allows a judge or magistrate to see the prisoner and determine whether the prisoner is competent to face the charges. The Public Defender and District Attorney can participate as well. Post-conviction sentencing testimony could be taken from the village through Tele-video.

If the prisoner completes a term of imprisonment and is released on parole, but with conditions that would ordinarily require residence in a larger community, technology can allow that prisoner to return to their village and receive the services necessary to complete parole through technology. An ankle band can enforce restriction conditions such as confinement as home at certain hours. Alcohol use can be detected through certain kinds of bands. If required, a video camera can be utilized in the home to inspect the restriction devices and ensure that they remain on the parolee.

In many cases services that previously could not be provided in person within villages will be provided through technology. Online courses, monitored and logged, will fulfill conditions for education on alcohol or drug abuse, anger management, and provide online testing to ensure content mastery. For difficult cases, Tele-psychiatry is available to provide one-on-one counseling. Behavioral health counseling is provided through the same system. Group therapy is also available. Through collaboration with the local health care clinic, or village health aid, drug and alcohol screening is provided.

### ***Recommendations for Pursuing the Future State***

The future state we envision cannot be achieved without significant investment, cooperation and collaboration, standardization, and support processes for village use of technology in justice applications. The following recommendations support pursuit of the future state we describe above.

1. Our first recommendation is to pursue amendment of the federal Telecommunications Act to extend the subsidy currently granted to Indian Health Service funded clinics to tribes. The technology applications envisioned for the future state require bandwidth, which is expensive. The subsidy would allow tribal entities to support the necessary bandwidth.
2. Our second recommendation is that an assessment of existing rural technology be conducted through a survey of the perceived needs of rural communities and equipment currently in place. We do not know what systems currently exist in Alaska's villages, what condition they are in, and the level of support and use skill reside within the

communities. This will provide a baseline for support for each community and performance measures to quantify the impact of technology implementation, as well as provide a statewide assessment of the level of technology within rural Alaska. An assessment should be repeated on a regular schedule to identify shortcomings and measure impact. Demonstrating positive impact can be critical to new and renewed grant funding.

3. Our third recommendation is to encourage a review of state statutes, regulations, and policies that inhibit the expansion of 911 services to rural communities, and the cooperation and information sharing among local, tribal, regional, state, and federal entities. Those statutes and regulations that inhibit cooperation and information sharing should be amended to facilitate cooperation and information sharing as well as the availability of 911 telephone service in all communities.
4. Our fourth recommendation is to facilitate uniform standards for technology (hardware, software, communications hardware, tele-video, and peripherals). Uniform standards will reduce acquisition, maintenance, and training costs.
5. Our fifth recommendation is to encourage collaboration among state, local Native non-profits and villages to adopt a standardized tele-video conferencing system for development on a regional and statewide basis. The system could be funded through local, state and federal appropriations, and would be available for use by village, regional, and state agencies, including use by the Alaska Court System, Probation and Parole, the Alaska Tribal Health System, and therapeutic entities.
6. Our sixth recommendation is to encourage the development of a centralized website to serve as a source of information on justice resources, as a repository of forms, and, through a secure portal, a central location for gathering and tracking justice information useful to agencies and villages. Some information that might be tracked includes tracking for defendants within the criminal justice system, the reporting and tracking of large alcohol sales, and a records management system supporting the capture and sharing of justice information. This centralized website could also serve as a base for training on software use, equipment installation and maintenance, as well supporting web-based training, communication, and support for rural public safety responders. Key areas should be provided in multi-lingual formats.
7. Our seventh recommendation is to recommend the State of Alaska assist in identifying and funding the training and employment of at least one individual in each community to install and service technology equipment, and to train users. And at least one individual needs to be identified and funded on a regional level to ensure compliance with critical standards for operability of the technology systems.
8. Our eighth recommendation is to promote the expansion of technology-based support systems including “therapeutic courts” expansion to rural areas. Anger management, counseling, tele-behavioral health and psychiatry are all resources that could be made available by tele-video. Such systems do not require the adoption of expensive

**Alaska Rural Justice and Law Enforcement Commission  
Technology Work Group Final Report**

**December 1, 2006**

technology. Desktop computers are already utilized daily for video calls. Monitoring of parolees can also be done through tracking and reporting via a computer and video-based system.

Development of a system of systems that support rural and village justice will require a considerable amount of coordination, cooperation, and collaboration. The recommendations we make are the initial steps we believe need to be taken in order to start on a path to the future state we described in the opening sections of this document.

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## **Alaska Rural Justice and Law Enforcement Commission**

### **Work Group Presentations December 1, 2006 Marriott Downtown Anchorage**

**Commissioners:** Bruce Botelho, Wilson Justin, Loretta Bullard, Gail Schubert, Jim Torgerson, Bill Tandeske and Patrick Anderson

**Staff:** Karen Bitzer, Randy Ruaro, Rob Corbisier and Julia Meier

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#### **Work Group 4 - Alcohol Interdiction and Jurisdiction**

Facilitator Myra Munson thanked the members of her work group. She believes that the changes in law and the economic consequences of the work group's recommendations are minimal. The work group first worked through the consensus issues and then tackled jurisdiction. The group did not take any jurisdiction options off of the table. Reasonable people could differ as to the jurisdiction options. There is no single solution that is going to work statewide.

Work group member Andy Harrington presented the Alcohol Interdiction and Jurisdiction recommendations to the Commission. The work group distributed a 25 page description of its recommendations. The recommendations are grouped into five subject areas: prevention, local option laws, Alcohol Beverage Control Board, enforcement and jurisdiction.

#### **Prevention Options**

Options 1-5 relate to prevention. Options 1 and 2 are demand side proposals. Option 1 repeats last year's recommendation 15. It recommends support of prevention programs and makes specific mention of the successful D.A.R.E. program. Option 2 recommends that the state and federal governments create a pro-sobriety public information program.

Option 3 recommends that the state designate a minor consuming alcohol specialist to act as a liaison with villages for minor consuming cases. Bruce asked where the specialist would be housed. Andy said at the Division of Juvenile Justice.

Options 4 and 5 relate to private interdiction. Option 4 seeks funding for private shippers to conduct searches of luggage. Option 5 would impose monetary sanctions on private carriers who transport alcohol into villages in violation of local option law. An affirmative defense to the sanction is the existence of reasonable measures to screen for alcohol.

#### **Questions and Answers - Prevention**

Patrick asked about the apparent lack of focus on prevention and service providers. Loretta responded that the Commission covered those areas during the last

round of work groups. Myra mentioned that the work group did have a teleconference with the Family Wellness Warrior's Initiative early on in its process.

A question remains as to whether there is government action in the purely private interdiction option thus triggering Constitutional protections. There is also a question as to whether local governments have the authority to require private carriers to take the suggested steps to check cargo for illegally shipped alcohol.

Bill noted that D.A.R.E. is built around police. It would be advisable to focus on programs that are modified versions of D.A.R.E. In addition, the I.H.S. does not favor D.A.R.E. The focus should be on broader education programs.

### Local Option Laws Options

Options 6-9 relate to local option laws. Option 6 creates financial incentives for communities to become dry and stay dry within the municipal revenue sharing framework. Revenue sharing should not be alcohol neutral. Option 7 would amend 04.11.507(f) to extend the initial time period from 12 to 18 months in which a community cannot remove or loosen its local option law. Option 8 would change local option law to allow village councils to adopt local options with a plebiscite. Option 9 would extend local option laws to include public intoxication.

### Questions and Answers - Local Option Laws

Bruce asked whether there may be community outrage over conditioning revenue sharing on a community becoming dry. Andy said that the work group did not explore how big the condition should be, but only that it should be taken into account. Bruce asked whether or not such a condition is offensive as a double standard. Andy said that non-incorporated communities should also be given some benefit. Myra suggested that the Commission could look at some other incentive if revenue sharing incentives are not feasible.

Wilson asked how the extension of local option laws to include public intoxication would be worded and whether the option comes close to involuntary confinement or is the voluntary intoxication viewed as consent. Andy noted that the group did not consider the enforcement resources.

### Alcohol Beverage Control Board Options

Options 10-12 relate to the Alcohol Beverage Control Board. Option 10 would increase licensing fees for inflation. Legislation is recommended making automatic adjustments to the fees. Option 11 would statutorily create a designated program receipt from the Boards' fees to be used for public education programs. Option 12 would alter the Boards' membership to include a prevention person, someone from rural Alaska and someone with a law enforcement background. There are already two seats designated for the industry.

### Enforcement Options

Options 13-21 relate to enforcement. Option 13 reiterates last year's recommendation 11 on plastic bottles. Option 14 reiterates last year's recommendation on a database for shipments by written orders. Apparently the Department of Public Safety is working on this. Option 15 reiterates last year's recommendation on cross-designation. The Department of Public Safety is moving forward on this. The work group referred the possibility of cross-deputizing Assistant District Attorneys to the Police Standards and Cross-Designation Work Group. Option 16 reiterates last year's recommendation 9 on prohibiting shipments to residents of dry villages.

Option 17 would amend forfeiture laws to allow the civil forfeiture proceeding to begin after the criminal proceeding and would extend the notice time period. Option 18 requests a change in DEA policy so that forfeited property need not be in DEA control within 30 days. Option 19 encourages the expanded use of alcohol monitoring bracelets. Option 20 asks that the legislature statutorily create designated program receipts from civil forfeitures that presently go the state to go to alcohol interdiction efforts.

Option 21 would amend the state's double jeopardy law so that potential monetary fines or work service ordered by a tribal court would not bar subsequent state prosecution.

### Questions and Answers - Enforcement

Bill noted that the Department of Public Safety has been meeting with package store owners to encourage some voluntary actions in regards to written order tracking.

Patrick inquired into the economic impacts on families that result from the tightening of local option and enforcement. Andy said that the group did not discuss these impacts; however, if under the current local option law the village believed these impacts to be a big enough problem then the community could decide to have a community distribution site.

Jim asked whether the above options (the non-jurisdiction options) had unanimity of support within the work group. Myra responded that there was unanimity but without regard as to whether the recommendations would expand tribal jurisdiction where there may not currently be tribal jurisdiction.

### Jurisdiction Options

Options 22-25 relate to jurisdiction. Option 22 proposes that Congress authorize villages to establish Alaska Native Village Alcohol and Controlled Substance Interdiction Zones. While these would be enforced federally, they do not create Indian country. The state has some concerns about Indian country but the concerns relate more to tribes taxing and excluding than alcohol jurisdiction. The group drafted a proposed statute creating these zones. The considerations section highlights some of the work group's discussion. Violations of state or tribal law within the zones create the possibility of federal prosecution.

Option 23 proposes the creation of alcohol courts called Village Circuit Courts to enforce local option laws. The Courts would be composed of a panel of three: one riding circuit and two appointed by the village council. The Courts would have personal jurisdiction over anyone and subject jurisdiction over local option law. Villages initiating a proceeding would be required to notify the Department of Law. The Department would then have 30 days to decide to initiate proceedings in a state forum on more serious offenses. The option proposes something similar to traffic violation prosecutions. State and federal constitutional standards, not the Indian Civil Rights Act, would apply. Appeals would happen through the state system. The proposal suggests a pilot project.

Option 24 proposes the adoption of a state statute giving full faith and credit to tribal court civil money judgments in alcohol cases. Option 25 pulls a piece out of Option 22 as a stand alone option. It authorizes state-tribal compacts on power sharing in the regulation of alcohol.

### Questions and Answers - Jurisdiction Options

Bill asked whether the Interdiction Zone proposal's discussion included the basis of jurisdiction over non-members. Andy said that the violation of alcohol regulations prevents a threat to a community's health. Loretta asked whether Congress is working on closing the loopholes in drug interdiction on Lower 48 reservations. Andy said that Congress has been discussing that, but he does not believe it has taken any action. Myra noted that while the considerations section of the Interdiction Zone option discusses negotiated agreements between tribes and the state, the option really stems from the inherent power of tribes.

Jim asked whether there was state court representation on the work group in drafting the Village Circuit Court Option. Andy replied that there was no such representation. Myra noted that the benefit of this option is that it brings the state court system into the villages. Loretta noted that the option seems to mention only village councils. Paul Lyle said that municipalities and village councils could participate.

## **Overview - Work Group 4 Alcohol Interdiction and Jurisdiction**

### **Members**

Andy Harrington, Carol Daniel, Andy Greenstreet, Paul Lyle, Don Grimes, Doug Griffin, Michael Williams, Dave Jones and Lisa Jaeger

### **Facilitator**

Myra Munson

### **Commissioners**

Bruce Botelho and Gail Schubert

### **Meetings**

The work held weekly teleconferences from the beginning of October until the end of November and had two face to face meetings.

### **Charge**

This workgroup is charged with the development of recommendations regarding increased local control for alcohol and drug interdiction.

### **Recommendations**

The work group came up with options in the following areas: 1) prevention; 2) local option laws; 3) Alcohol Beverage Control Board; 4) enforcement; and 5) jurisdiction.

Of particular interest are the four options that the work group presented relating to jurisdiction. The first option recommends that Congress enact legislation authorizing Alaska Native Villages to establish "Alaska Native Village Alcohol and Controlled Substance Interdiction Zones." Such action would create protection zones within which Alaska Native Villages can impose their own culturally appropriate rules.

The second option recommends changing state law to create specialized alcohol courts called "Village Circuit Courts," to be created within the rural villages which have adopted or may adopt a local option law. Local option laws would be changed to allow local governments to have a greater control over local options.

The third option recommends that the Alaska legislature enact a statute granting full faith and credit to tribal court civil money judgments in alcohol cases.

The fourth option recommends authorizing tribal-state compacts which outline how the two sovereigns will share jurisdiction and law enforcement authority in the regulation of alcohol.



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## Options relating to prevention

- 1 Alcohol Abuse Prevention. This was a last year's recommendation (#15), adopted by the Commission (#29). Our group wanted to mention the successful DARE program.

**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.)

**Rational 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. The D.A.R.E. (Drug Abuse Resistance Education) program, a police officer-led series of classroom lessons that teaches children from kindergarten through 12th grade how to resist peer pressure and live productive drug and violence-free lives, is one example of a successful nationwide effort. In rural Alaska, it would be most effective if the police officers leading the sessions were also Alaska Native to the maximum extent possible. 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.

- 2 Public Information Program

**Statement of Need:** Attitudes towards alcohol and sobriety must change. Legislative changes can only go so far.

**Options:** The State and federal governments should cooperate in creating a "pro-sobriety" public information program to heighten awareness and prevention, with two components: an office to assemble informational resources available to any community group wanting to conduct a public information campaign on the benefits of sobriety; and a system of local grants available to communities or community groups wanting to implement such a public information campaign within their local communities.

**Rational for Options:** Alcohol manufacturers in the private sector devote considerable revenues to marketing alcohol. Pro-sobriety advocates lack a countervailing source of revenues. Public information campaigns have met with success in heightening public awareness and affecting attitudes towards drinking while driving, drinking while pregnant, and smoking.

**Impact Statement:** This would strengthen the efforts of those community activists urging villages to become and remain dry.

### 3 Liaison in state government for tribal court juvenile proceedings

**Statement of Need:** Alaska Native Villages would like to coordinate their efforts with regard to juvenile justice, particularly cases involving "minor consuming," more closely with state agencies.

**Options:** The State should designate a particular "minor consuming" specialist to act as a liaison with village governments and courts for minor consuming cases. Initially, this position might fit well with the "Disproportionate Contact" position currently in the Division of Juvenile Justice (which addresses the problem of over-representation of Alaska Native children in the Alaska juvenile justice system).

**Rational for Options:** Despite the fact that the State does not have the resources to bring a case for every "minor consuming" in Alaska's rural villages, its agencies might play a constructive backup role to tribal government efforts. In particular, some juveniles appearing before the tribal court might be more responsive to the tribal court's attempts to get the juvenile to address his/her alcohol problem if there were a mechanism under which the case could be "referred" to the State of Alaska for consideration of state court proceedings if the tribal court assessed the minor to be insufficiently responsive to traditional tribal attempts. The State might play a role analogous to that it plays with respect to Youth Court cases.

**Impact Statement:** This would help drive home the message that village governments and state government are determined to work together to address alcohol abuse, and provide a further incentive for juveniles to respond positively to tribal government attempts to get them to avoid alcohol.

#### 4. Purely private interdiction

**Statement of Need:** Private entities, such as airlines, need to do more to interdict the flow of alcohol into dry villages. However, any governmental mandate which might have the effect of branding a private entity as an agent of a law enforcement agency will undercut the efficacy of this approach.

**Options:** *Without* changes in state or federal law, urge that an appropriate non-profit private agency (e.g., Alaska Federation of Natives) approach a private funding source (e.g., the Rasmuson Foundation) for funding to provide commercial air enterprises with resources to carry out private screenings of cargo and passenger luggage for alcohol being transported to dry villages. Have a private entity recognize and reward conscientious businesses.

**Rational for Options:** The Fourth Amendment of the United States Constitution gives us rights as against the federal government; Alaska's Constitutional Right to Privacy gives us rights against the state government; and the Indian Civil Rights Act gives us rights against tribal governments. None of these preclude purely private searches without governmental involvement. This might include such approaches as random or systematic "dog sniffs" of cargo and luggage to detect alcohol, which state constitutional law places off-limits to state law enforcement agencies. It could also include better signage to raise public awareness. The case law is clear that when reports of the results of private searches are made to a law enforcement agency, it can act upon those, assuming that it conforms to its own warrant and/or "reasonable suspicion" requirements. If, however, the private entity conducts the search at the *behest* of a law enforcement agency, the results of the search are likely to be excluded from a subsequent criminal prosecution.

It appears that at least some private air carriers have indicated a willingness to assist in private screening efforts, assuming that these do not result in any significant inconvenience to legitimate (non-bootlegging) customers; but they do not have the resources to arrange the equipment and/or personnel to do so.

**Impact Statement:** If a private entity were able to obtain private funding to make resources available to private companies to conduct private screenings of cargo and luggage, then private interdiction might play a significant role in keeping dry villages dry, and any resulting contraband would not be a "fruit of a poisonous tree" excluded from criminal prosecutions.

5      Require private carriers to take reasonable steps to check cargo for illegally shipped alcohol

**Statement of Need:** Current law sanctions only the "knowing" importation of alcohol in violation of a local option. Transportation businesses which routinely operate within local option areas should be required to implement reasonable standards to screen cargo and luggage for alcohol.

**Options:** Create a category of local option monetary sanction for a business found to have transported alcohol into a local option area in violation of the local option law, with an affirmative defense that the business had implemented reasonable measures to screen its shipments for alcohol.

**Rational for Options:** Businesses need an economic incentive before they will find it advantageous to implement stricter screening measures. Otherwise, competition leads businesses to cater to illegal shippers, rather than tightening procedures, and unfairly penalizes businesses (e.g., Birchwood Air Service) which are trying to be conscientious in their screening. Even if the results of these searches are found to be constitutionally inadmissible in a criminal prosecution, the interdiction effect would be worthwhile, because the alcohol won't get to the village.

**Impact Statement:** This should prevent alcohol from reaching the villages, making it more difficult for illegal alcohol importers/smugglers to dupe businesses into transporting alcohol in violation of local ordinances.

## Options relating to local option laws

### 6. Revenue sharing incentives.

**Statement of Need:** There is a tremendous need for rural Alaskan communities to receive a fair share of the State's revenue resources, as their ability to maintain any kind of municipal government at all is at risk. Among these communities, there are significant numbers that have been and remained "dry" for years, some that have remained "wet," and some that have vacillated back and forth, in a series of relatively close local option votes.

**Options:** Assuming state revenue sharing to municipalities is reinstated, it should include a significant financial incentive for communities to become and remain dry, and a lesser incentive for communities to become damp. If state revenue sharing is not generally offered to unincorporated municipalities, some equivalent financial incentive to unincorporated local option communities should be created.

**Rational for Options:** Rural communities that are "wet" present the State with significantly greater law enforcement and alcohol remediation costs than communities that are "dry."

**Impact Statement:** This would hopefully result in a larger proportion of communities voting to become and remain "dry."

### 7. Change in local option time frames

**Statement of Need:** Under 04.11.507(f), an election to remove a local option or to change to a less restrictive option may not be conducted during the first 12 months after the local option was adopted, nor can an election to remove or loosen a local option be held more than once in an 18-month period.

**Options:** Lengthen the initial non-repeal period to 18 months.

**Rational for Options:** Several communities go through periodic "swings of the pendulum" towards and away from the local option. This change would increase the length of the period during which a local option would be the "status quo."

**Impact Statement:** This would help stabilize the community for a longer period after adoption of a local option.

8. Change local option law to enable councils to adopt local options independently, subject to subsequent plebiscites.

**Statement of Need:** Local governing bodies need to have the authority to regulate alcohol independently of conducting a community plebiscite.

**Option:** Amend local option laws to allow local governments to have a greater control over local options, subject to change by local plebiscite. Specifically, change AS 04.11.491(a) to provide that a local option law, besides being enacted by a plebiscite, could be enacted by the local governing body of either a municipality or an established village, without a plebiscite, although such a local option law could still be repealed by plebiscite under AS 04.11.495 or changed by plebiscite under AS 04.11.493.

**Rational for Options:** Local governing bodies are allowed to adopt ordinances on a wide variety of other subjects without conducting a plebiscite.

**Impact Statement:** This decreases the impediments to communities moving towards "dry" status.

**Consideration:** This is also part of our proposal on Village Circuit Courts, but even if that proposal is not adopted, this idea should be independently considered.

9. Extend local option laws to encompass public intoxication

**Statement of Need:** Some villages report that a weakness with local laws is that "possession by consumption" (i.e., being drunk inside the village) cannot be proscribed under those laws. AS 04.11.501(d).

**Options:** The local options laws would be amended to include the additional provision for a local option prohibiting public intoxication within the local option area.

**Rational for Options:** This gives local option laws increased flexibility to deal with a situation that many villages face.

**Impact Statement:** The local option will become more viable for these villages. It will improve public order.

**Consideration:** This is also part of our proposal on Village Circuit Courts, but even if that proposal is not adopted, this idea should be independently considered.

## Options relating to the Alcohol Beverage Control Board

### 10 Adjustment of licensing fees for inflation.

**Statement of Need:** Some of the options recommended will require additional expenditures by the State of Alaska, and Alcohol Beverage Control Board licensing fees are the most appropriate source for revenues.

**Options:** Urge the legislature to increase all licensing fees to adjust for increases in the costs of remediating alcohol damages since those fees were set. Statutorily tie future fee increases to increases in the Consumer Price Index, in a manner similar to that used for exemption amounts under the Alaska Exemption Act, AS 09.38.115.

**Rational for Options:** Alcohol remediation saddles the State with a tremendous cost each year. The law allows ABC licensees to externalize these costs rather than bear them as a cost of doing business. These fees have remained constant, in most cases for approximately 27 years, in some cases for longer than that. (Section 468 of the Alaska "Carter" Code, enacted in 1900, set the fee for a wholesale license at \$2000 per annum, and barroom licenses at \$500, \$1000 or \$1500 annually depending on community size.) The ABC Board will face increased expenses as a result of several recent or proposed changes designed to enhance its ability to assist in the interdiction of the illegal flow of alcohol into villages, including implementation of the database for written orders suggestion from last year.

**Impact Statement:** Adjusting these fees, and tying future fee amounts to the consumer price index, will be a step towards having the industry bear a fairer share of these externalized costs.

### 11. Designated program receipt for ABC fines.

**Statement of Need:** The suggested programs for public education are more likely to be sustained if there is an identifiable program receipt designated for those, without violating the Alaska Constitution prohibition on dedicated funds.

**Options:** Urge the legislature to create statutorily a designated program receipt from ABC Board fines. Add a new subsection (81) to Alaska Statute 37.05.146(c) for this category.

**Rational for Options:** This approach has worked for 80 other "designated program receipts" and would be in compliance with the Alaska Constitution. Since the ABC Board has some measure of discretion over fines, the program receipts should not go directly to the ABC Board, to avoid any appearance of a remunerative interest.

**Impact Statement:** This will tie fines imposed for violations of ABC regulations to a funding source for programs designed to remediate the State's problems resulting from alcohol abuse.



## 12. Adjust membership requirements for ABC Board

**Statement of Need:**

Current law sets aside two of the five seats on the ABC Board for representatives of the alcohol industry. Other perspectives and/or areas of expertise should be represented.

**Options:** Urge the legislature to enact a statutory qualification requirement to balance the two industry seats with a requirement that a seat be designated for a person from rural Alaska, a person knowledgeable about alcohol abuse prevention or treatment, and a person with a law enforcement background. This option should be accompanied by an explicit statement that this is in no way a criticism of current board members, all of whom are very conscientious.

**Rational for Options:** This would merely redress a statutory imbalance.

**Impact Statement:** This would underscore the fact that many different sectors within the State have a vital interest in the work of the ABC Board

### Options relating to enforcement

13. Plastic bottles: This was a last year's recommendation (#11), adopted by the Commission (#18). In the absence of any information as to why this was not included in the 2006 legislation or otherwise implemented, there isn't much for the work group to do beyond simply reiterating it.
14. Database for shipments by written orders: This was a last year's recommendation (#8), adopted by the Commission (#53). Our group mainly wanted to find out if there was any particular obstacle to implementation. There is apparently a proposal within the Department of Public Safety, but the Work Group has not had an opportunity to review it.
15. Cross-designations among state and federal agencies: This was a last year's recommendation (#5) adopted by the Commission (#8). The work group was informed that the Commissioner of Public Safety is moving this forward through negotiations with the Postal Service. Eight AST personnel are close to finishing the cross-designation process. The addition the work group wanted to make was to expand the concept to include having Alaska District Attorneys cross-deputized within the U.S. Attorney's Office; this had worked well with one individual in the past and the work group thought that the idea of institutionalizing it should be explored. The idea was to be referred to the separate Police Standards and Cross-Designation Work Group.
16. Prohibition on shipments to residents of dry villages: This was last year's recommendation (#9), adopted by the Commission (#17). The group looked at SB 229, introduced by Sen. Olson in 2003. This year's group supports the idea and had no particular changes to suggest.

17. Further modifications to drug and alcohol forfeiture laws. Some modifications were included in last year's recommendation (#2), adopted by the Commission (#16) and included in SLA 2006, ch. 96.

**Statement of Need:** Prosecutors report a problem that the current statutes have been interpreted to require that civil forfeiture proceedings be initiated simultaneously with criminal proceedings. Criminal proceedings are a higher priority, and requiring initiation of civil proceedings may detract from the efficacy of criminal prosecutions. By the time the criminal case is dismissed, results in an acquittal, or results in a sentence which does not include forfeiture of property, the civil proceeding may be untimely.

**Options:** Urge the legislature to provide statutorily that, when property is validly held by the State during the pendency of criminal charges, the civil forfeiture proceedings need not be initiated as a separate case until the criminal case is resolved at the trial level. This should be applied to both Title 4 (alcohol) forfeitures and Title 17 (controlled substance) forfeitures.

**Rational for Options:** In case of conviction or plea bargain, the forfeiture can be incorporated into the criminal case judgment, saving the resources that would otherwise have to go into initiating (and then, in most cases, staying until resolution of the criminal case) the civil forfeiture proceedings. In case of dismissal or acquittal on the criminal charges, both the State and the individual can make a better informed decision about whether to initiate or contest, respectively, a civil forfeiture claim.

**Impact Statement:** This will give the State the option, even where it is unable to prove a criminal case beyond a reasonable doubt, to pursue a civil remedy against the defendant, without needing to divert resources during the prosecution itself.

18 Change in Drug Enforcement Administration policy with respect to forfeitures

**Statement of Need:** State law enforcement needs to be able to collaborate with federal forfeiture proceedings, which on occasion present a better option for forfeiture of bootleggers' and/or drug dealers' items of property.

**Options:** The DEA should reconsider its change in policy which required that the property to be forfeited must be in DEA control with 30 days. If changes in federal regulations or statutes are necessary to accomplish this, these should be enacted.

**Rational for Options:** On occasion, federal forfeiture laws provide a more appropriate vehicle for depriving dealers and bootleggers of the items of property being used to further their criminal activities. Formerly, state law enforcement authorities could invite the DEA to consider forfeiture proceedings at the conclusion of a state criminal case. Subsequently, DEA policy was changed to require that the property to be forfeited be in DEA's possession within 30 days, a policy apparently applicable only in Missouri and Alaska. This had the effect of precluding referrals for federal forfeiture unless the State of Alaska was able to surrender the property during its own criminal prosecutions, which created obvious roadblocks in the efficacy of those prosecutions.

**Impact Statement:** This would heighten State/Federal collaboration, and expand the range of remedies available against alcohol and drug-related criminal activity.

Recommendation 18, continued

Draft revised language for AS 04.16.220(c):

- a) [unchanged]
- b) [unchanged]
- c) ~~Within 30 days after a seizure under this section, t~~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, lien, mortgage, or conditional sales contract. As to any item of property with an appraised value of \$500 or more, t 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. The service and publication must be initiated within 30 days of a seizure under this section, except that, for property properly held in connection with the pendency of criminal charges, the mailing and publication must be initiated no later than 30 days after order of dismissal or final judgment is entered. Upon service or publication of notice of commencement of a forfeiture action under this section, a person claiming an 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 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 title.
- d) [unchanged]
- e) [unchanged]
- f) [unchanged]
- g) [unchanged]
- h) [unchanged]
- i) [unchanged]
- j) [unchanged]
- k) [unchanged]

Recommendation 18, continued

Draft revised language for AS 17.30.116:

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 mailing and publication of notice will be initiated within thirty days of a seizure under AS 17.30.110 — 17.30.126, except that, for property properly held in connection with the pendency of criminal charges, the mailing and publication must be initiated no later than 30 days after order of dismissal or final judgment is entered. 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) [unchanged]

c) [unchanged]

19. Greater use of alcohol bracelet technology

**Statement of Need:** Particularly in village Alaska, more efficient ways of monitoring and enforcing orders that individuals abstain from alcohol should be developed. Otherwise, the resources simply do not exist to adequately monitor individuals for compliance.

**Options:** The Division of Juvenile Justice, the Department of Corrections, and the Alaska Court System should expand the use of "alcohol bracelets."

**Rational for Options:** The technology exists for "alcohol bracelets" which monitor alcohol intake for a period of several days. These were used experimentally in the state courts for the Second District in Kotzebue, with favorable results. When no-alcohol conditions were placed on pretrial releasees and probationers, the bracelets provided a systematic and convenient method for actual alcohol consumption to be monitored. At least one individual reported that he found it easier for him to exercise the willpower to abide by the no-alcohol condition, knowing that the bracelet was being used. The bracelet's data can be transmitted by the individual to the supervising agency via the telephone; unfortunately, the Kotzebue pilot program indicated that telecommunications with bush communities outside Kotzebue were not capable of transmitting the data satisfactorily. Still, many releasees were willing to come into Kotzebue in order to transmit the data from their bracelets.

**Impact Statement:** Wider availability of this technology will help reinforce individuals' willpower to avoid alcohol, especially if the problem with telecommunications with bush villages can be addressed.

21. Create a "designated program receipt" from the state share of civil forfeitures

**Statement of Need:** Alcohol interdiction efforts are more likely to be sustained if there are designated program receipts for those efforts, without violating the Alaska Constitution's prohibition on dedicated funds.

**Options:** Urge the legislature to create statutorily designated program receipts for civil forfeitures to support alcohol interdiction efforts. Add new subsection to AS 04.16.220 and AS 17.30.116 for that purpose.

**Rational for Options:** Current law (AS 04.16.220(k)) provides for the State to share a portion of forfeiture proceeds with participating municipal law enforcement agencies, but the remaining state share just goes back to the general fund. These could be used to fund some of the other options and recommendations. This approach has worked for other "designated program receipts" and would comply with the Alaska Constitution.

**Impact Statement:** This will support alcohol interdiction efforts by using proceeds of those efforts to continue them.

21. Amendment to AS 12.20.010

**Statement of Need:** Tribal remedies to stem the flow of alcohol should not reduce the state's jurisdiction in pursuing the same goal.

**Options:** The legislature should amend AS 12.20.010 so that a court judgment of the sort entered by the Metlakatla Tribal Court in the case of *Booth v. State* is not given statutory "double jeopardy" effect in Alaska State Courts.

**Rational for Options:** In *Booth v. State*, Booth had been charged with the same offense (assault) in both the Metlakatla Tribal Court and in state court. Having been convicted and sentenced (imposition of a fine) in Metlakatla, the defendant moved to dismiss the state case based on double jeopardy. The Alaska Court of Appeals found that neither the federal nor the state constitutional double jeopardy clauses would prevent state prosecution, but that the "statutory double jeopardy" law, AS 12.20.010, would. The State argued that, because Metlakatla's tribal ordinance made the offense punishable only by a fines or community service, and not incarceration, the statute should not apply, but the Court of Appeals disagreed.

**Impact Statement:** Particularly for alcohol offenses, but for other actions as well, imposition of a remedy such as a monetary fine or community service should not preclude a subsequent state prosecution. The United States and Alaska Constitutions do not require this, and the State should not require this by statute. Suggested language follows.

Sec. 12.20.010. Conviction or acquittal elsewhere as bar.

When an act charged as a crime is within the jurisdiction of the United States, another state, or a territory, as well as of this state, a conviction or acquittal in the former is a bar to the prosecution for it in this state. This bar shall not apply to an offense which is not punishable by a sentence of incarceration under the law of the jurisdiction entering the conviction or acquittal. A crime punishable by a sentence of community labor or community service shall not be deemed the equivalent of a crime punishable by a sentence of incarceration.



## Options relating to jurisdiction

### 22 Village Alcohol and Controlled Substance Interdiction Zones

**Statement of Need:** There are numerous drawbacks to the present state and municipal law enforcement systems as applied to rural villages. Laws are enforced and prosecuted primarily from regional centers. Penalties for initial offenses are neither certain nor severe; youthful offenders, for whom serious intervention is needed when the youth first gets into trouble, can accumulate numerous minor offenses before significant attention can be paid by the state justice system. Geographic and cost constraints will always prevent the state from having adequate magistrates, troopers, prosecutors, etc., anywhere but in the largest communities. Second-class city governments, where they exist, have little or no tax base, no authority to establish municipal courts, and little ability to enforce municipal criminal ordinances because of the costs associated with prosecuting cases in distant state courts. Law enforcement authorities at both state and municipal levels are required to abide by state and federal rules that (1) preclude them from implementing some of the most effective interdiction methods to keep alcohol out of Alaska Native Villages and (2) may be culturally inappropriate for those Alaska Native Villages.

**Options:** Congress should enact legislation authorizing Alaska Native Villages to establish "Alaska Native Village Alcohol and Controlled Substance Interdiction Zones". A draft is attached. •

**Rational for Options:** 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; they can intervene earlier and more effectively. 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. Interdiction efforts under state and "local option" laws are limited by the privacy provisions of the Alaska and United States Constitutions, which the Workgroup was informed by the Department of Law prohibit random or systematic searches for alcohol. No matter how inappropriate the court rulings from the Ninth Circuit or the United States Supreme Court may be when applied to Alaska Native Villages, Congress cannot enact legislation under which state or municipal law enforcement authorities can act inconsistently with those decisions. With respect to tribal governments, however, Congress has plenary power and can authorize Alaska Native Villages to establish protection zones within which Alaska Native Villages can impose their own culturally appropriate rules. These could function as an important supplement to the local option laws. At least three Alaska Native Villages promulgated their own alcohol control ordinances, published by the Secretary of the Interior. These initiatives should be encouraged.

**Impact Statement:** Allowing Village Governments to promulgate and enforce their own rules would enable them to select legal solutions that are more likely to work for their local community. It might also enhance state prosecutorial efforts; searches that the Native Village conducts pursuant to its own civil authority, independent of State authority, could result in evidence that, once reported to the State authorities by the Tribe, might be admissible into evidence in state court criminal proceedings, as long as the search was not conducted at the behest of the State.

Option 22 continued

**Considerations:** This proposal provides for separate, not shared, power between the tribes and the state, although it provides for negotiated agreements between the State and tribes. It may increase the number of conflicts over jurisdiction, causing more divisiveness between tribes and the state. This proposal would extend tribal civil jurisdiction to non-Indians and non-members. These proceedings would occur under the Indian Civil Rights Act, as is now the case in Metlakatla. This proposal could increase the number of Alaska citizens who may be subject to a third set of civil rights standards, under ICRA, which may in some respects be less protective and in some respects more protective than those under the two standards already set by the United States and Alaska Constitutions. Without a change to AS 12.20.010, which we have proposed, this proposal may create statutory double-jeopardy problems that would impede state prosecutions. It would be helpful to have standards for the Secretary's review of tribal ordinances, if those standards are not already contained in existing regulations. There are those who believe that this proposal constitutes an unprecedented expansion of tribal jurisdiction, in that it creates the prospect of tribal jurisdiction over non-members outside Indian country, albeit only within an "Interdiction Zone."

(Draft statute on following pages)

Option 22 Continued

Recommend that a new 18 USC 1157 be enacted, and amendments made to 18 USC 1161, as set out below.

1157. Alaska Native Village Alcohol and Controlled Substance Interdiction Zones

(a) The federally recognized tribal governments of Alaska Native villages, regardless of whether or not they occupy "Indian country," have authority to enact and enforce ordinances prohibiting or regulating the manufacture, distribution, importation, possession, and consumption of alcoholic beverages and of other substances illegal or regulated under state, federal or tribal law, within an Interdiction Zone as defined herein and consistent with the provisions of this section and other applicable federal Indian laws.

(b) The area encompassed within an Interdiction Zone shall be the area within a five-mile radius of the post office of the village or, if the village does not have a post office, the area within a five-mile radius of another central site within the Village selected by the Village Council and identified in the Village Ordinance as approved by the Secretary of the Interior. Authority is hereby delegated to the Secretary to adjust the boundaries of an Interdiction Zone for a particular Alaska Native Village as necessary to account for local circumstances.

(c) Within an Interdiction Zone, any use of or transactions involving alcohol or other controlled substances must conform with the tribal ordinance, with the laws of the State of Alaska, and with any applicable federal laws. In addition, in any areas in which an Interdiction Zone overlaps with an area governed by an ordinance enacted by a local municipality, or by an area governed by a local option law, any use of or transactions involving alcohol or other controlled substances must conform with the tribal ordinance and with the municipal and local option laws, as well as state law and any applicable federal laws. If any applicable laws set inconsistent standards, the most restrictive of those standards shall govern.

(d) 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, under the same criteria and procedures as the Secretary uses for Indian country tribal alcohol laws under 18 U.S.C. 1161(a).

(e) Alaska Native villages and the State of Alaska are authorized to enter into agreements with each other, or subdivisions thereof, respecting jurisdiction over and enforcement of alcohol and drug control laws.

(f) For violations of Ordinances enacted under this section, 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, regardless of tribal membership, 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.

Option 22 continued

and may not entertain a case against state or municipal officials for actions taken to carry out their official duties under state or municipal law within an Interdiction Zone.

(g) Notwithstanding 25 U.S.C. 1302(2), an Alaska Native Village may by ordinance adopted pursuant to this section impose a systematic search requirement, random search requirement, or similar mechanism, on any cargo or personalty transported across the boundary into an Alaska Native Village Alcohol Interdiction Zone, provided that the Tribe takes reasonable steps to post notices of such search requirements, including requests that such notices be posted at airports from which aircraft are embarking to travel to the village.

(h) Nothing in this section is to preclude the State of Alaska or its municipalities from prosecuting individuals for violations of state laws, municipal laws, or local option laws due to any decision by the tribe to pursue any tribal case against the same individual for the same transaction or occurrence. Nothing in this section is to preclude an Alaska Native Village from initiating tribal proceedings against an individual based upon any decision by the State of Alaska or a municipality to prosecute that individual for that same transaction or occurrence. As used herein, the term "individual" shall mean and include a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person.

(i) Nothing in the amendment is intended to enhance, diminish, or otherwise affect the issue of whether any particular areas in Alaska do or do not constitute "Indian country."

§ 1161. Application of Indian liquor laws

(a) Except as provided in subsection (b), the provisions of sections 1154, 1156, 3113, 3488, and 3669, of this title [18 USC §§ 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.

(b) The provisions of sections 1154, 1156, 3113, 3488, and 3669, of this title [18 USC §§ 1154, 1156, 3113, 3488, and 3669], shall not apply within any area of the State of Alaska that is not within Indian country or an Alaska Native Village Alcohol Interdiction Zone., nor to any act or transaction within Indian country or an Alaska Native Village Alcohol Interdiction Zone provided such act or transaction is in conformity both with the laws of Alaska and with an ordinance duly adopted by the tribe located within the Indian country or Alaska Native Village Alcohol Interdiction Zone, certified by the Secretary of the Interior, and published in the Federal Register.

### 23. Village circuit courts

**Statement of Need:** The state judiciary needs to have a larger profile in the enforcement of local option laws in Alaska Native Villages. Village Councils need to be given the opportunity to play a larger role in local option determinations, at both the enactment and the adjudication stages.

**Options:** Change state law to create specialized alcohol courts called "Village Circuit Courts," to be created within the rural villages (outside the seven specified boroughs) which have adopted or may adopt a local option. Change local option laws as specified below to allow local governments to have a greater control over local options, subject to change by local plebiscite. Specifically:

- 1) AS 04.11.491(a) would be amended to provide that a local option law, besides being enacted by a plebiscite, could be enacted by the local governing body of either a municipality or an established village, without a plebiscite, although such a local option law could still be repealed by plebiscite under AS 04.11.495 or changed by plebiscite under AS 04.11.493.
- 2) The local options laws would be amended to include the additional provision for a local option prohibiting public intoxication within the local option area.
- 3) Each village would have its own court. The territorial jurisdiction of the court would equal the territorial reach of the local option law as set out in state statute. The subject matter jurisdiction would be limited to violations of the local option law adopted for each village. The village courts would have personal jurisdiction over any person committing an offense against the local option ordinance, regardless of tribal membership or residence within the village.
- 4) Offenses against a village's local option ordinance would be charged and tried in the Village Circuit Court of the village whose ordinance was violated. Trials would be held in the village, although telephonic participation would be allowed. Trials could be prosecuted by the State, by a municipality, or by an established village within the meaning of AS 04.21.080; if a municipality or established village initiates the proceeding, notice will be provided to the Department of Law which will have 30 days so that prosecutors could exercise their discretion at that point to file charges in other state courts to address more serious offenses warranting incarceration, criminal conviction or more significant fines. Similar to traffic offenses, proceedings could be prosecuted through an attorney or through a non-attorney representative.
- 5) The Village Circuit Court would be a three judge court consisting of one Alaska Court System magistrate (appointed and supervised under the usual court procedures) and two individuals appointed by the tribal council.
- 6) The magistrate would be responsible for conducting trials and ruling on evidence and other matters. The magistrate would "ride circuit," conducting trials in several village circuit courts on a regular schedule. The same magistrate would serve a group of villages.
- 7) The tribal appointees would have to be full-time residents of the village who, in the judgment of the tribal council, are respected members of the village community. Tribally-appointed judges would serve a set term and would be subject to dismissal only for cause. Pro term appointments by the tribal council would be permitted where a regular tribal appointee was unable to serve due to unavailability or conflict of interest.

"Unavailability" and "conflict of interest" and "dismissal for cause" would be defined by tribal ordinance and the state statute establishing Village Circuit Courts, and could be negotiated by the state and individual tribes or tribal groups.

- 8) Verdict and sentence would be decided by majority vote of the Village Circuit Court panel.
- 9) Trials would be conducted under state and federal constitutional standards and court rules that would be promulgated by the Alaska Supreme Court.
- 10) The offenses that could be tried in the courts would be classified as "infractions" under state law and thus would not be considered criminal convictions. Penalties would be limited to fines of no more than \$1,000 and/or community service (as decided by the panel) not to exceed 500 hours.
- 11) Appeals would be through the Alaska superior court, with review thereafter by the Alaska Supreme Court.
- 12) The costs of Village Circuit Courts would be shared by the federal and state governments. Tribes would make in-kind contributions to the system by providing the temporary facilities for trials, temporary housing for circuit magistrates and by providing tribal appointees to the court, who would not be paid or who would be paid a daily stipend by the tribes.
- 13) This proposal would be initially implemented as a pilot project covering a limited area and number of villages. It would be assessed after two to three years. All sovereigns involved in the pilot project would have an equal voice in the assessment process with a view toward producing a consensus evaluation. The state court system would be involved in the assessment process to the extent it wished to be involved.

**Rational for Options:** The "touchstone" of the concept is "shared power." The concept requires significant participation of the three sovereigns that have a role in improving conditions in rural Alaska. The proposal acknowledges that tribal councils and tribal judges have an important and meaningful role to play in the challenges facing their communities. It requires the state to be a true partner with tribes in addressing jurisdiction over alcohol offenses. It comports with the RJC's charge to establish "a *unified* . . . court system and system of local laws or ordinances for Alaska Native villages and communities" in the area of alcohol jurisdiction. (emphasis added)

**Impact Statement:** This would be a significant experiment in state/tribal cooperation, and could significantly heighten state court presence and enforcement of local option laws in the villages.

**Considerations:** This would not be effective unless it was adequately funded. Past proposals for circuit riding have had problems getting off the ground. Significant training would have to be provided for the Village appointees to the Village Circuit Courts. The proposal may require some villages to have better infrastructure (housing) than they currently have. It would require legislation on the state and federal levels, and court rule changes. This proposal is not intended to supplant tribal courts.

24. State statute for full faith and credit to tribal court civil money judgments in alcohol cases

**Statement of Need:** Tribal remedies for alcohol abuse would benefit from state assistance in enforcement.

**Options:** The Alaska Legislature should enact a statute granting full faith and credit to tribal court civil money judgments in alcohol cases.

**Rational for Options:** Tribal governments should be encouraged to use civil-type sanctions to stem the flow of alcohol. The State has enacted statutes allowing enforcement of civil money judgments from other jurisdictions. A parallel statute granting recognition to civil money judgments issued by tribal governments in alcohol-related cases would enhance enforcement mechanisms in the bush, without significant expense to the State. The mere availability of state court judgment enforcement procedures would serve as an incentive for individuals to pay any civil money judgments imposed on them by tribal governments.

**Impact Statement:** This would provide for more effective enforcement mechanisms as well as emphasize the collaboration between state and village governments in addressing alcohol abuse problems. Draft language follows.

**Considerations:** This proposal provides for separate, not shared, power between the tribes and the state, although it contemplates that the tribal and state systems would be mutually supportive. It may increase the number of conflicts over jurisdiction, causing more divisiveness between tribes and the state. Some tribes may be uncomfortable having a state court pass judgment on tribal jurisdiction — although those tribes could refrain from filing requests for full faith and credit under the proposal. This proposal would extend tribal civil jurisdiction to non-Indians and non-members. These proceedings would occur under the Indian Civil Rights Act (ICRA), as is now the case in Metlakatla. This proposal could increase the number of Alaska citizens who may be subject to a third set of civil rights standards, under ICRA, which may in some respects be less protective and in some respects more protective than those under the two standards already set by the United States and Alaska Constitutions. There are those who believe that this proposal constitutes an unprecedented expansion of tribal jurisdiction, in that it contemplates that there is tribal jurisdiction over non-members outside Indian country.

Alaska Statute 09.30.180. Full Faith and Credit for Tribal Court Money Judgments.

Notwithstanding AS 04.21.020(a), the courts and agencies of the State of Alaska shall give full faith and credit to any Alaska Native Village Tribal Court judgment that meets the following requirements.

- a. The community is a federally recognized tribe, without regard to whether the tribe occupies Indian country or not, which has enacted a tribal ordinance regulating alcohol or other intoxicants.
- b. The ordinance creates a tribunal, which may or may not be the tribe's governing body, to hear cases arising under the ordinance.
- c. The tribunal has conducted a proceeding under the ordinance which has resulted in a civil money judgment being entered for violation of the

ordinance, against either (1) a tribal member or (2) an individual or business not a tribal member which has engaged in a consensual transaction with a tribal member (or with a child eligible for tribal membership) involving alcohol or another intoxicant.

- d. The proceedings were conducted in accordance with the due process and other requirements of the Indian Civil Rights Act, 25 U.S.C. §1301 et seq.
- e. The burden of proof required for proceedings under the ordinance is at least that of a preponderance of the evidence.
- f. If the money judgment is based on statutory rather than actual damages, the amount of the civil money judgment for any one incident does not exceed the ceiling on criminal fines imposed by a tribal court under the Indian Civil Rights Act.

Alaska Statute 09.30.190. Filing and status.

- a. A copy of a tribal judgment under §09.30.180 may be filed in the office of the clerk of the court with jurisdiction in this state. The clerk shall treat the tribal judgment in the same manner as a domestic judgment. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a domestic judgment and may be enforced or satisfied in like manner.
- b. A person filing a foreign judgment shall pay to the clerk of court the fee prescribed for the filing of an action. Fees for docketing, transcription, or other enforcement proceedings shall be as provided for domestic judgments.
- c. At the time of the filing of the tribal judgment, the judgment creditor or the judgment creditor's lawyer shall file with the clerk of court a document with the name and last known mailing address of the judgment debtor and of the judgment creditor. Promptly upon the filing of the tribal judgment, the clerk shall mail notice of the filing of the tribal judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's lawyer, if any. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.
- d. No execution or other process for enforcement of a foreign judgment filed under this chapter shall issue until 20 days after the date the judgment is filed.
- e. If the judgment debtor shows the court that an appeal from the tribal judgment is pending or is available and will be taken, or that a stay of execution has been granted, the court may stay enforcement of the tribal judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the tribe before whose tribunal the appeal is pending, or the tribe whose tribunal has granted the stay.
- f. If the Judgment debtor shows the court any ground upon which enforcement of a judgment of the court this state would be stayed, the court shall stay



enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment that is required in this state.

- g. The court shall grant a request by the judgment debtor to refuse full faith and credit if the judgment debtor establishes by a preponderance of the evidence that:
- (1) the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of the due process clause or other requirements of the Indian Civil Rights Act applicable to civil proceedings;
  - (2) the tribal court did not have subject matter jurisdiction over the case under the laws of the tribe;
  - (3) the judgment debtor is not a tribal member, the judgment debtor does not maintain a residence in the community in which the tribal court sits, the consensual transaction on which tribal jurisdiction is based took place outside the State of Alaska, the defendant in the tribal court proceedings was served outside the State of Alaska, and the defendant lacks other minimum contacts with the tribe;
  - (4) the defendant in the proceedings in the tribal court did not receive notice of the proceedings in sufficient time to enable the defendant to defend;
  - (5) the judgment was obtained by fraud;
  - (6) the cause of action on which the judgment is based is repugnant to the public policy of this state;
  - (7) the judgment conflicts with another final and conclusive judgment;
  - (8) the proceeding in the tribal court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court.
- h. If the judgment debtor shows the court any ground upon which enforcement of a judgment of the court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment that is required in this state.

## 25. Compacts

**Statement of Need:** Current state laws for controlling alcohol in rural Alaska are not working. Everything from prohibition of alcohol sales to Alaska Natives to present-day attempts at curbing alcohol importation under the State's local option laws have been tried with only limited success. The result has been piecemeal policy approaches, with the ultimate outcome being a series of jurisdictional disputes. To the extent the jurisdiction of Alaska's tribes over the conduct of its members is established, one possible solution might be a Tribal-State Compact along the lines of the agreements authorized under the Indian Gaming Regulatory Act.

**Option:** Authorize Tribal-State Compacts which outline how the two sovereigns will share jurisdiction and law enforcement authority in the regulation of alcohol. The Workgroup did not have sufficient time to fully explore this option, but believe it is one that is worth further development.

**Rationale for Options:** Compacts under IGRA recognize tribal and state regulatory authority and jurisdiction and provide for cooperative enforcement efforts.

**Impact statement:** Jurisdictional issues could be resolved by agreement and the State and the Tribe could maximize their respective resources to address the regulation of alcohol in rural Alaska villages.

**Considerations:** Such agreements would be very difficult to negotiate. The State would have difficulties negotiating variant agreements with numerous villages, and may feel that federal or state statutory authorization to enter into an agreement would be required. The work-group urges this be considered, but not to the exclusion of other jurisdictional options.

# **ALASKA RURAL JUSTICE AND LAW ENFORCEMENT COMMISSION**

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