



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Law

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By Email to eidt@gtlaw.com & Hand Delivery to Capt. Cook Hotel (Anchorage)

Troy Eid
Chairman, Indian Law and Order Commission
Greenberg Traurig, LLP
Tabor Center
1200 17th Street, Suite 2400
Denver, CO 80202

Re: 2013 Report from the Indian Law and Order Commission

Dear Chairman Eid:

I write to express my gratitude to the Commission and its staff for their effort and commitment in preparing "A Roadmap for Making Native America Safer." Fundamentally the Commission issued an urgent, yet fair, challenge which resonates with me: the State of Alaska can, and should, be doing more to work collaboratively with local tribes to improve public safety.

As the Commission recognizes in Chapter 4 of the report, there is promise for improved public safety in "the entering into of MOUs or other similar agreements between local law enforcement agencies and tribal public safety agencies to permit or deputize the tribal officers to enforce State criminal law."

In fact, the State has taken a significant step in that direction with an effort that has been developing for several months. The Department of Law has drafted a template agreement that would enable tribes to address violations of certain State laws through tribal courts. Under the agreement, when a person commits certain domestic violence, alcohol, or misdemeanor offenses, a tribal police officer (or other peace officer) could offer the person the option of having the offense addressed in tribal court through tribal civil remedies, in lieu of State criminal prosecution. The goal is to foster meaningful restorative justice by empowering the tribal community to enforce locally and culturally relevant sanctions for tribal members *and* nonmembers alike. This initiative was

announced by the Governor at the Alaska Federation of Natives Conference last month. We have sent the template to the Tanana Chiefs Conference (TCC), a nonprofit entity representing forty-two tribes. The response thus far has been positive and we have a meeting with TCC this month to start negotiations.

As another example, many small communities and villages in the State are incorporated as second-class cities. We have drafted a template MOU for those “cities” that have adopted an alcohol ban. The MOU outlines the right of these communities to establish a local council to address alcohol possession offenses. The local council, which could be staffed by tribal elders or other leaders in the community, can issue restorative justice remedies in lieu of citation for alcohol possession—and I will concede this is an offense which is rarely prosecuted in smaller rural communities under State law. However, we hope local communities will take advantage of this opportunity to empower themselves to stop a violation when they see it occurring, starting with destroying or pouring out the contraband.

We are also taking strides with our juvenile population. The Division of Juvenile Justice has entered into a pilot program with the Aleut Community of Saint Paul Island to collaborate on the development and implementation of a diversion program. DJJ reviews all cases for juveniles who have been charged with minor offenses on the Island and appropriate referrals are diverted to the local program. The community has committed to “provide a local, community-based diversion program for the purpose of providing restorative justice diversion activities for juveniles charged with minor juvenile offenses.” Although this program, too, is in its early stages we hope it can serve as a model for other Native communities around the State.

Finally, I also want to update you about developments with VPSOs.¹ An effort has been underway for some time to draft regulations allowing officers who otherwise meet minimum standards and training to carry a firearm in the performance of the officer’s duties. The public comment period on those regulations is now open and will continue through January 17, 2014.

¹ The report states on page 46 that VPSOs are paid by the regional non-profit corporations. This is not true. It is true that VPSOs are *employed* by the regional non-profits, but their benefits and salary are paid through grants from the State of Alaska. On that score, I also want to correct the impression from your report that VPOs and TPOs already carry firearms. That is not true. Other than the North Slope Borough Police Department, it is our understanding that no other communities support their VPOs or TPOs carrying firearms.

I would like to address some larger issues raised by the report.

I. *The Report ignores important demographics about Alaska's Native population.*

The statistics cited about Native victimization, suicide and other public health measures are, with few exceptions, state-wide. They should be of grave concern to any responsible public official and—they certainly are to me. However, the state-wide numbers cited in the report—and the resulting recommendations—do not reflect that the majority of the Alaska Native population lives in Alaska's larger communities. For example, 60% of Alaska Natives, over 80,000 people, live in Anchorage, Fairbanks, Juneau, Ketchikan, Sitka, Wrangell, Kodiak, Bethel, Dillingham, Nome, Kotzebue, Barrow, and the Kenai Peninsula.² Approximately 26% of Alaska Natives reside in the Municipality of Anchorage alone;³ 38%, over 50,000 people, live in the Municipality of Anchorage, the Fairbanks North Star Borough and the City and Borough of Juneau.⁴

These are communities with all the attributes of “self-government,” and all the services that you decry are lacking in our rural communities. People who live in these hub communities have access to law enforcement, shelters, court facilities, treatment facilities, protective orders, and so on.⁵

² Percentages were derived from 2010 Census data by looking at the number of persons who identified as “American Indian and Alaska Native alone or in combination with one or more other races” in a city, municipality, borough, or census area. Anchorage includes its entire municipality; Fairbanks, Juneau, Ketchikan, Sitka, Wrangell, Kodiak, and the Kenai Peninsula include their entire boroughs; Bethel, Dillingham, Nome, Kotzebue, and Barrow include only the named cities. *See* State of Alaska, Dep't of Labor & Workforce Dev., Research & Analysis, 2010 Census Demographic Profiles, <http://live.laborstats.alaska.gov/cen/dparea.cfm> (last visited Dec. 2, 2013).

³ *Id.*

⁴ *Id.*

⁵ The report implies that Emmonak is only one of two shelters serving the Native population. This is not an accurate impression by any means. There are twenty-one shelters and programs for domestic violence and sexual assault victims that the State at least partially funds, and these are located all across the State, including Bethel, Cordova, Nome, Dillingham, Kodiak, Barrow, Unalaska and Sitka. These are communities that serve large segments of the Native population. Likewise, there are ten Child Advocacy Centers across the State that are partially funded by the State, including centers in Bethel, Nome, Dillingham, the Copper River Basin and Kodiak (which is operated by the Kodiak

The report highlights the admittedly dire state-wide statistics about Alaska Natives, which would include both our urban and rural populations, but I question the evidentiary basis for the rhetorical question the report raises, “Why do these grave crime and safety issues persist in Alaska's tribal communities?” I believe the more accurate question is why do these grave crime and safety issues persist in the Alaska Native population? Indeed, public safety is a state-wide concern, not limited to rural villages.

However, I did not see any recommendations dealing with Alaska’s justice system in terms of serving the 60% of the Native population that resides in those urban and semi-urban communities. I was frankly disappointed that the report did not look beyond the creation of Indian country to help solve those problems. I would have been very interested in learning about recommendations for dealing with these crime and safety issues which are *not* limited to tribal communities—because that is not where the majority of the Alaska Native population lives.

With all due respect, I submit the cause-and-effect is much more nuanced than implied by the statistics cited in the Commission’s report. As a result, the Commission did not look beyond solutions that would dismantle the core agreement in ANCSA, and build up the conventional reservation model, which Alaska’s Natives thoroughly considered—and rejected—when ANCSA was negotiated.

II. *The Commission’s report fails to address the difficulties in imposing tribal self-government in communities with significant non-Native populations.*

As I noted at the outset, I agree with the Commission’s finding that the State should build on the premise that “tribal self-government is the best means of improving outcomes for American Indians living in tribal communities.” But Alaska villages are not exclusively tribal communities. The report does not explain how non-Native residents in these communities will participate in that tribal self-governance given that they have no right to vote on tribal laws or participate in electing tribal leaders. It is worth emphasizing that this is a significant number of people.

The Commission views Alaska’s villages through the lens of the Lower 48 reservation system, where citizens understand that entering a reservation will subject them to tribal law, and non-tribal member residency on the reservation is often controlled by the tribe. In contrast, since ANCSA’s passage, Alaskans have been free to reside in any Alaska community and expect to be governed by a uniform system of criminal laws. These people, while not members of the tribe that may predominate in a particular community, have bought land and built lives in these communities.

Area Native Association). It is unfortunate that the Commission understated the extent of these facilities.

Respectfully, the Commission's Report does not adequately address the difficulties that could arise with respect to the non-tribal member population living on these non-tribal lands. Understandably, I believe most Alaskans would not choose to live in a community in which they had no right to participate in electing their leaders or voting on the laws that will apply to them.

III. *The State is committed to reducing domestic violence and sexual assault in all our communities, rural and urban.*

The Commission's Report harshly criticized the State for supporting an exception in the Violence Against Women Reauthorization Act that was recently passed by Congress. The exception sought by the State clarified that the Act, while expanding the jurisdiction of tribal courts in the Lower 48 to issue protective orders, did not expand *or retract* tribal court jurisdiction in Alaska.

When I met with you and Professor Goldberg last year in my office, I frankly don't recall if then Commissioner of Public Safety Joe Masters talked about State Trooper enforcement of tribal court protective orders. In point of fact, the Alaska State Troopers do enforce tribal court protective orders. They are required to be registered in State court, but Commissioner Masters assured me on more than one occasion that, if confronted with an emergency or tense situation, the troopers enforce the orders without the formality of State court registration.

Frankly, domestic violence and sexual assault are a scourge in this State, and no one is more sensitive to that than Governor Parnell. Since taking office he has made the fight against this epidemic a priority of his administration. The fact is we will not solve this problem solely through arrest and prosecution—though that is obviously an important component. Instead, we must also raise awareness and educate our kids.

Among other efforts, the Governor started a Choose Respect initiative, which substantially increased the funding for VPSOs. In 2007 there were less than fifty funded and filled positions; in August of this year they exceeded 100 funded and filled positions. The Governor has made a commitment to provide a VPSO for every community that wants one.

He also started an annual march in communities throughout the State to raise awareness and start turning the tide. In 2010 eighteen communities participated; in March 2013, over 160 communities participated in marches that took place throughout the State. And we are not talking about State employees; we are talking about men, women, and children who live in these communities and take the time to be involved. I traveled to Barrow in 2012 to march with that community and the turnout was impressive, including many students and community leaders.

The Governor and First Lady have marched in Huslia, Fairbanks and Palmer; only bad weather prevented them from landing in Old Harbor this year.

There was an article in the paper today announcing the second annual state-wide summit sponsored by the Council on Domestic Violence & Sexual Assault in Juneau. CDVSA is a state-funded umbrella support organization. Teams from nineteen communities in Alaska will be participating in the three-day long event. Participants include victim service providers, law enforcement officials, health care providers, VPSOs, and tribal leaders from Allakaket, Bethel, Dillingham, Emmonak, Nome, Nulato, Old Harbor, Prince of Wales, Sitka, Unalaska and Yakutat, along with other communities.

The Commission's Report concluded that Alaska's support of the VAWRA exception was "unconscionable." While I do not question the Commission's good faith, with all due respect, I believe that characterization is inappropriate. We have admittedly a long way to go to solve this problem but I think the Commission does a disservice to the State when it paints with such a broad brush.

In summary, the State believes the Commission was wide of the mark in recommending a return to Indian country as a means for solving the admittedly serious public safety issues facing our Native peoples.

These are Alaska's problems that must be, and will be, solved by Alaskans. Creating Indian country in Alaska is not the only way to reap the benefits of working effectively and collaboratively with tribes on local issues. Again, I believe the Commission was on point in challenging the State to do more. We disagree with the means you suggest to accomplish that goal, but rest assured this administration remains committed to that goal and we will continue to work on solutions that are practical, effective and respectful of tribal interests.

Sincerely,



Michael C. Geraghty
Attorney General

cc: Senator Lisa Murkowski
Senator Mark Begich
Congressman Don Young
Kip Knudson