

U.S. Department of Justice Tribal Consultation on Public Safety in Alaska Native Villages Summer 2016

The U.S. Department of Justice is determined to work together with Alaska Natives to ensure that they enjoy the rights, liberties, and protections to which they are entitled. The Department's top priority in that undertaking is to guarantee Native communities' basic right to security by ensuring greater access to the public safety resources they need and deserve. Today, extraordinarily difficult public safety issues plague Alaska Natives' remote rural communities. This is an urgent concern.

The Justice Department currently has about 140 active grants totaling more than \$71 million supporting critical public safety related programs and services for Alaska Natives. The Department has a U.S. Attorney, with offices in Anchorage, Fairbanks, and Juneau, who is deeply committed to promoting public safety and law enforcement in rural Alaska. In addition, the Department is providing critical resources to help build up a wide range of programs supporting Native youth, including mentoring services and crisis centers. The Department of Justice, at the highest leadership levels, strives to help every young Alaska Native grow up healthy, safe, and motivated.

Still, the Department's leaders are committed to doing more, and doing better. In short, we intend to marshal the full resources of the U.S. Department of Justice to meet the public safety needs of Alaska Native villages.

The most productive way — indeed, the only truly effective and appropriate way — to address issues facing Alaska Native communities is to seek solutions from Alaska Native leaders and Tribes themselves. That is why Attorney General Loretta Lynch, after meetings with Alaska Natives this summer in Anchorage, directed the United States Attorney's Office in Alaska and the Department's Office of Tribal Justice in Washington to develop a series of focused Tribal consultations with Alaska Native leaders to discuss specific strategies for improving public safety in rural Alaska. The goal of these formal government-to-government consultations will be to identify new concrete actions that the Department can begin taking in the coming months to address the unique public safety and law enforcement challenges facing Alaska Native villages.

BACKGROUND

Alaska is home to 229 distinct federally recognized Tribes, scattered across a State that is larger than the next three largest States combined (Texas, California, and Montana). The population of a typical Alaska Native village is measured in the hundreds, not thousands. Many villages are located off the road system and thus can be reached only by air or water. Basic necessities such as food, water, fuel, health care, and telecommunications are expensive and scarce in rural Alaska.

The Public-Safety Crisis in Alaska Native Villages

Delivering law enforcement and justice services to these remote communities is no easy task. The Alaska Department of Public Safety reports that State troopers' efforts are often hampered by delayed notification, long response distances, and the uncertainties of weather and transportation. And dozens of Alaska Native villages lack any law enforcement presence at all.

Today, Alaska Natives face extraordinarily high rates of domestic violence, sexual assault, child abuse, juvenile suicide, and alcohol and substance abuse. Earlier this year, the Justice Department's National Institute of Justice released a study showing that more than four in five Alaska Native women — and more than one in three Alaska Native men — have experienced violence in their lifetimes. In 2013, the Indian Law and Order Commission concluded that Alaska Natives are disproportionately affected by crime and that public-safety problems in Tribal communities are systematically more severe in Alaska than in the rest of the United States. In 2012, the Alaska Rural Justice and Law Enforcement Commission reported that, while Alaska Natives represent about 19 percent of the State's total population, they are twice as likely to be represented in the State's juvenile justice and adult correctional systems, and more than three times as likely to be represented in the State's child-protection system. These numbers are not only alarming. They are completely unacceptable in the United States of America in 2016.

Two Key Legal Features of Rural Alaska's Criminal Justice System

The small size and geographic isolation of Alaska Native villages are not their only unique traits, nor can they fully explain the epidemic of violent crime that is currently plaguing their residents. Two legal features of Alaska's unique jurisdictional

landscape also create issues for anyone seeking Federal or Tribal solutions to rural Alaska's public-safety challenges.

The first legal feature is that Alaska is one of only a half dozen "mandatory P.L. 280" States. This means that, under Public Law 83-280 (*see* 18 U.S.C. 1162), the State of Alaska — rather than the United States — has jurisdiction to prosecute certain crimes committed by or against Native Americans. Therefore, Congress has assigned State law enforcement and State courts, rather than their Federal counterparts, the key role in arresting, investigating, prosecuting, and punishing offenders and thus protecting public safety in Alaska Native villages.

The second, and currently more significant, legal feature, which is unique to Alaska, is the near total absence of recognized Indian country. "Indian country" is a legal term of art, defined in 18 U.S.C. 1151, that, among other things, generally establishes the geographic scope of Tribes' territorial jurisdiction. In *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998), the U.S. Supreme Court held that millions of acres of land owned in fee simple by Native villages pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA) no longer qualify as Indian country. That ruling undercut Alaska Native villages' authority to exercise criminal jurisdiction over their lands, which in turn placed an even greater responsibility on the State's highly centralized law enforcement and criminal justice systems.

Some Recent Changes in the Jurisdictional Landscape

In 2010, Congress enacted the Tribal Law and Order Act (TLOA), which authorizes Tribes whose Indian country is subject to a State's mandatory P.L. 280 criminal jurisdiction to ask the United States to accept concurrent criminal jurisdiction within the Tribe's Indian country. *See* 18 U.S.C. 1162(d). The procedures for Tribes to make such requests, and for the Attorney General to decide whether to consent to such requests, can be found in 25 C.F.R. 50.25 (promulgated Dec. 6, 2011). Under these new procedures, the Tribe initiates the request for Federal criminal jurisdiction, and the State cannot veto it. Of course, these new Federal laws matter only if a Tribe has Indian country, which (as explained above) seemingly is not the case for most Alaska Native villages today. However, another recent legal development might change that fact.

In 2014, in the aftermath of policy recommendations from two blue-ribbon commissions and successful Federal district-court litigation brought by several Alaska

Native Tribes, the U.S. Department of the Interior promulgated a new regulation that, for the first time in decades, will allow Interior to take land into trust for Alaska Tribes. *See* 79 Fed. Reg. 76,888 (Dec. 23, 2014). Land that the United States holds in trust for the benefit of federally recognized Tribes typically qualifies as Indian country. Thus, in the relatively near future, it is possible that some Alaska Native village lands will once again be deemed Indian country.

While these changes could potentially result in an expansion of Alaska Tribes' territorial jurisdiction, a number of issues make it difficult at this time to determine what effect these potential changes could have on public safety in Alaska Native communities.

The Focus of the Tribal Consultations

Recognizing the urgent need to improve public safety in Alaska Native villages, 2016 is an opportune time for the Department of Justice to increase the intensity of its engagement with Alaska Native leaders and citizens on these issues. Toward that end, during the upcoming Tribal consultations, the Department would like to hear feedback from Alaska Native leaders on two specific proposals.

Tribal leaders should not, however, feel confined to these two proposals. Suggestions for any concrete actions that the Department can take to improve public safety in Alaska Native villages are most welcome.

The first proposal involves the viability of creating a new Alaska Native Villages Public-Safety Committee of key stakeholders — Alaska Native, Federal, and State — not to “study” public-safety issues in Alaska Native villages, but rather to focus on specific, concrete *actions* that could be taken to address those issues. This Committee would be similar to the Alaska Rural Justice and Law Enforcement Commission that operated from 2004 to 2012. The second proposal involves the viability of creating a new, high-level position in the Justice Department, to be known as the Senior Counselor for Alaska Native Affairs, to focus full-time on engagement with the Alaska Native community.

A Proposal for an Alaska Native Villages Public-Safety Committee

We wish to formally consult with Alaska Native leaders about the viability of creating a new Alaska Native Villages Public-Safety Committee of key stakeholders — including members of the Alaska Native community and governance entities, State

representatives, and the U.S. Attorney — that would be dedicated to policy action addressing the concerns of Alaska Natives. To be clear: The mission of this Committee would not be to simply “study” public-safety issues in Alaska Native villages. Rather, it would be focused on identifying actionable solutions to these problems — whether in legislative proposals, grants and funding opportunities, or policy initiatives.

A Proposal for a Senior Counselor for Alaska Native Affairs

We also wish to formally consult with Alaska Native leaders about the viability of creating a new position within the U.S. Department of Justice — the Senior Counselor for Alaska Native Affairs — a career attorney, housed in the U.S. Attorney’s Office in Alaska and reporting either to the U.S. Attorney or to the Office of Tribal Justice, who would serve as a full-time liaison to the Alaska Native communities and who would be responsible for pursuing solutions to the public-safety challenges faced by those communities.

We are also aware that the State of Alaska has been working with Alaska Native representatives to find new and creative solutions to public-safety issues. Any new Federal proposal would aim to foster such communications and solutions.

ISSUES AND QUESTIONS FOR TRIBAL CONSULTATION

The Department welcomes comments on the issues presented below, as well as on any other issue or question of concern regarding public safety in Alaska Native villages.

1. Should the U.S. Department of Justice create a new Alaska Native Villages Public-Safety Committee of key stakeholders — including members of the Alaska Native community and governance entities, State representatives, and the U.S. Attorney — that would be dedicated to identifying actionable solutions to problems that concern Alaska Natives?
 - a. What should the scope of the Committee’s duties be?
 - b. Who should serve on the Committee, to represent Tribal, Federal, and State perspectives?
 - c. Should the Committee focus more on studying public-safety problems or on identifying actionable solutions to those problems?
 - d. Should the Committee focus on legislative proposals, on grants and funding opportunities, on policy initiatives, or on all of the above?

- e. Should the Committee be focused entirely on public safety and criminal law enforcement, or should the focus extend to other matters such as civil rights, environmental and natural resources litigation, and Justice Department grants?
 - f. What specific issues should the Committee address?
2. Should the U.S. Department of Justice create a new position, the Senior Counselor for Alaska Native Affairs, housed in the U.S. Attorney's Office in Alaska, who would serve as a full-time liaison to the Alaska Native communities and who would be responsible for pursuing solutions to the public-safety challenges faced by those communities?
- a. What should the scope of the Senior Counselor's duties be?
 - b. Should the Senior Counselor serve as the Department's chief liaison to the 229 federally recognized Tribes in Alaska and also to other Alaska-based Federal officials who work heavily with Alaska Native Tribes?
 - c. Should the Senior Counselor be responsible for preparing and submitting to the Attorney General an annual report summarizing what the Department has done in the previous 12 months to improve the lives of Alaska Natives and to strengthen the government-to-government relationships between the Alaska Native Tribes and the United States?
 - d. Should the Senior Counselor be focused entirely on public safety and criminal law enforcement, or should the focus extend to other matters such as civil rights, environmental and natural resources litigation, and Justice Department grants?
 - e. How should the new Senior Counselor position be advertised and publicized, to maximize the chances that well qualified applicants learn about and apply for the new opening?
 - f. What specific issues should the Senior Counselor address?
3. What other proposals should the U.S. Department of Justice consider to help improve public safety in Alaska Native villages in the coming years?