August 26, 2015

The Honorable John Barrasso
Chairman
Committee on Indian Affairs
United States Senate
Washington, DC 20510

The Honorable Jon Tester
Vice Chairman
Committee on Indian Affairs
United States Senate
Washington, DC 20510


Dear Chairman Barrasso and Vice Chairman Tester:

I write to present the views of the American Bar Association (ABA) with regard to actions that Congress should take to help strengthen Alaska Native families. I request that this letter be included in the record of your August 20th oversight hearing, “Strengthening Alaska Native Families: Examining Recidivism, Reentry, and Tribal Courts in Alaska.”

Last month, I submitted a letter to the committee addressing the unmet legal needs of American Indian and Alaska Native youth. I would like to take this opportunity to supplement the views offered in that letter by focusing exclusively on the need for justice system improvements in Alaska. To this end, I direct your attention to the findings and recommendations regarding Alaska Natives contained in Chapter Five of the November 2014 Report of the Attorney General’s Advisory Committee on American Indian/Alaska Native Children Exposed to Violence, Ending Violence So Children Can Thrive. The ABA recently adopted the Report’s recommendations as policy.

Chapter Five of the Report, titled, “Empowering Alaska Tribes, Removing Barriers, and Providing Resources,” presents five recommendations with implementing strategies. For your ready reference, below is the Executive Summary of Chapter Five, which summarizes the Advisory Committee’s findings and presents its blackletter recommendations. Even though only some of the blackletter implementing strategies are directly addressed to Congress, we have included all of them for your examination because some that are not addressed to Congress nonetheless will require federal funding and others could be implemented by congressional mandate rather than by voluntary agency action.
Chapter 5 – Empowering Alaska Tribes, Removing Barriers, and Providing Resources

Problems with children exposed to violence in American Indian and Alaska Native (AI/AN) communities are severe across the United States—but they are systemically worse in Alaska. Issues related to Alaska Native children exposed to violence are different for a variety of reasons including regional vastness and geographical isolation, extreme weather, exorbitant transportation costs, lack of economic opportunity and access to resources, a lack of respect for Alaska tribal sovereignty, and a lack of understanding and respect for Alaska Native history and culture, all of which have contributed to high levels of recurring violence. Alaska Tribes are best positioned to effectively address these problems so long as the current barriers are removed and Alaska Tribes are empowered to protect Alaska Native children.

- 5.1 The federal government should promptly implement all five recommendations in Chapter 2 (Reforming Justice for Alaska Natives: The Time Is Now) of the Indian Law and Order Commission’s 2013 Final Report, A Roadmap for Making Native America Safer, and assess the cost of implementation. This will remove the barriers that currently inhibit the ability of Alaska Native Tribes to exercise criminal jurisdiction and utilize criminal remedies when confronting the highest rates of violent crime in the country.

  o 5.1.A (Indian Law and Order Commission Recommendation 2.1): Congress should overturn the U.S. Supreme Court’s decision in Alaska v. Native Village of Venetie Tribal Government, by amending the Alaska Native Claims Settlement Act (ANCSA) to provide that former reservation lands acquired in fee by Alaska Native villages and other lands transferred in fee to Native villages pursuant to ANCSA are Indian country.

  o 5.1.B (Indian Law and Order Commission Recommendation 2.2): Congress and the President should amend the definitions of Indian country to clarify (or affirm) that Native allotments and Native-owned town sites in Alaska are Indian country.

  o 5.1.C (Indian Law and Order Commission Recommendation 2.3): Congress should amend the Alaska Native Claims Settlement Act to allow a transfer of lands from Regional Corporations to Tribal governments; to allow transferred lands to be put into trust and included within the definition of Indian country in the Federal criminal code; to allow Alaska Native Tribes to put tribally owned fee simple land similarly into trust; and to channel more resources directly to Alaska Native Tribal governments for the provision of governmental services in those communities.

  o 5.1.D (Indian Law and Order Commission Recommendation 2.4): Congress should repeal Section 910 of Title IX of the Violence Against Women Reauthorization Act of 2013 and thereby permit Alaska Native communities and their courts to address domestic violence and sexual assault committed by Tribal members and non-Natives, just as in the lower 48. (Note: This recommendation was enacted into law by Pub. Law 113-275.)
5.1.E (Indian Law and Order Commission Recommendation 2.5): Congress should affirm the inherent criminal jurisdiction of Alaska Native Tribal governments over their members within the external boundaries of their villages.

The Advisory Committee agrees with each of the five Alaska-specific Indian Law and Order Commission (ILOC) recommendations and the Commission’s rationale for each recommendation. Until and unless these barriers are removed, the state of Alaska will continue to assert that Alaska Tribes do not have any criminal jurisdiction and thereby continue to contend that Alaska Tribes are only empowered to utilize civil courts and civil remedies when confronting the highest rates of violent crime in the country. The Advisory Committee recommends that these five ILOC recommendations be enacted as soon as possible in order to ensure that Alaska Tribes are also empowered to exercise criminal jurisdiction and criminal remedies when confronting such incredibly high rates of violent crime.

- 5.2 The Department of Justice (DOJ) and the Department of Interior (DOI) should provide recurring base funding for Alaska Tribes to develop and sustain both civil and criminal tribal court systems, assist in the provision of law enforcement and related services, and assist with intergovernmental agreements.
  - 5.2.A As a first step, the DOJ and the DOI should—within one year—conduct a current inventory and a needs/cost assessment of law enforcement, court, and related services for every Alaska Tribe.
  - 5.2.B The DOJ and the DOI should provide the funding necessary to address the unmet need identified, and ensure that each Alaska Tribe has the annual base funding level necessary to provide and sustain an adequate level of law enforcement, tribal court, and related funding and services.
  - 5.2.C Congress should enact legislation along the lines of the current bipartisan bill sponsored by both Alaska senators (S. 1474 to be titled Alaska Safe Families and Villages Act of 2014) that supports the development, enhancement, and sustainability of Alaska tribal courts including full faith and credit for Alaska tribal court acts and decrees and the establishment of specific Alaska tribal court base funding streams and grants to Alaska Native Tribes carrying out intergovernmental agreements with the state of Alaska.
  - 5.2.D The federal government should work together with Alaska Tribes and the state of Alaska to improve coordination and collaboration on a broad range of public safety measures that cause Alaska Native children to be exposed to high rates of violence.

The development, enhancement, and sustainment of Alaska tribal courts, and truly cooperative relationships between the state of Alaska and Alaska Tribes, are required to reduce violent crime and protect Alaska Native children from exposure to violence. Village-based tribal courts are the culturally appropriate provider. Alaska tribal courts must be developed, enhanced, and sustained in order to effectively address issues concerning Alaska Native children exposed to violence.
• 5.3 The state of Alaska should prioritize law enforcement responses and related resources for Alaska Tribes, and recognize and collaborate with Alaska tribal courts.
  o 5.3.A The state of Alaska should prioritize the state law enforcement response and resources for Alaska Tribes. At a minimum, there must be at least one law enforcement official onsite in each village.
  o 5.3.B The state of Alaska should prioritize the provision of needed village-based services including village-based women’s shelters (which allow children to stay with their mothers), child advocacy centers, and alcohol and drug treatment services.
  o 5.3.C The state of Alaska should recognize and collaborate with Alaska tribal courts including following existing federal laws designed to protect Alaska Native children and families such as VAWA protection order authority, which requires states to recognize and enforce tribal protection orders that have been issued by tribal courts—including Alaska Native tribal courts—without first requiring a state court certification of the tribal protection order.
  o 5.3.D The state of Alaska should enter into self-governance intergovernmental agreements with Alaska Tribes in order to provide more local tools and options to combat village public safety issues and address issues concerning Alaska Native children exposed to violence.

The state of Alaska must increase the level of protection in Alaska Tribes. Village-based services are needed in law enforcement and victim protection. Approximately 370 State Troopers have primary responsibility for law enforcement in rural Alaska, but have a full-time presence in less than half of the remote Alaska Tribes. Seventy-five villages lack any law enforcement at all.

• 5.4 The Administration for Child and Families (ACF) in the Department of Health and Human Services (HHS) and the State of Alaska Office of Children’s Services (OCS) should jointly respond to the extreme disproportionality of Alaska Native children in foster care by establishing a time-limited, outcome-focused task force to develop real-time, Native inclusive strategies to reduce disproportionality.

Issues of foster care disproportionality are huge problems for many tribes. Inadequate numbers of Native foster families to assure compliance with ICWA impacts most state child welfare agencies as well. But this problem takes on added dimensions and particular significance in Alaska—not only due to the high level of removals of Alaska Native children and the fact that it has been increasing at an alarming rate—but also due to many other factors including the remoteness of Alaska Tribes, Alaska’s vast size, the exorbitant cost of transportation, the financial limitations of subsistence economy, the lack of village-based foster care options, the lack of village-based services and resources, the lack of tribal courts, and the historic refusal of the state of Alaska to collaborate with Alaska Tribes and, until recently to recognize that Alaska Tribes even exist.

• 5.5 The Department of Interior (DOI) and the State of Alaska should empower Alaska Tribes to manage their own subsistence hunting and fishing rights, remove the current barriers, and provide Alaska Tribes with the resources needed to effectively manage their own subsistence hunting and fishing.
Regulations that limit the ability of Alaska Natives to conduct traditional subsistence hunting and fishing are directly connected to violence in Alaska Tribes and the exposure of Alaska Native children to that violence. Violence is essentially nonexistent during the times in which the communities are engaging in traditional subsistence hunting and fishing activities, and violence spikes during times when Alaska Natives are unable to provide for their families. Beyond providing basic food, subsistence fishing and hunting has been essential to Alaska Native families’ way of life for generations. Like language and cultural traditions, it has been passed down from one generation to the next and is an important means of reinforcing tribal values and traditions and binding families together in common spirit and activity. Interfering with these traditions erodes culture, family, a sense of purpose and ability to provide for one’s own, and a sense of pride.

The Executive Summary of the full report is available at:

The entire report may be accessed at:

We hope you will have an opportunity to review the report as you examine and take action to improve the state of justice for Alaska Natives.

Thank you for your consideration of the ABA’s views. We stand ready to assist you however we can.

Sincerely,

Thomas M. Susman
Director, Governmental Affairs Office