

# Meeting Basic Law Enforcement & Judicial Needs

Note: The Tundra Times is reprinting the Alaska Natives Commission Report over the next several months.

## The Situation

Alaska's prisons hold an inordinate number of Alaska Natives, but the inescapable fact remains that Natives did something to bring themselves into the system. An offense occurred and, more likely than not, the victim was a fellow Alaska Native: a dead cousin, a beaten wife, a sexually abused child.

Although it appears from data reviewed by the Commission that some mechanisms are in place to resolve disputes and even serious social infractions at the village level without involving the State of Alaska judicial regime, they are not being used effectively. Much of the problem stems from the State's unwillingness to cede in village councils and village courts the authority to handle local cases.

Unfortunately, there is a conviction among many State officials that any release of State authority to tribes is a threat to State's authority. This is unnecessary and leads away from the solution, which is the exercise of self-governance to achieve self-determination.

In many cases, the problem is a crippling perception among Natives themselves that Alaska Natives are powerless. In far too many instances, this perception has become a self-fulfilling prophecy.

If there is a glaring weakness in the current system it lies in the fact that Native villages are seldom, if ever, involved. Once a village member is arrested he or she is taken out of the village. In effect the village is robbed of the opportunity and the obligation of facing and dealing with very real problems.

## Recommendations

1. Alaska Native tribes should be encouraged to establish dispute resolution bodies (including tribal courts) and procedures that are consistent with the predominant tradition and culture of the village, and the State of Alaska and the federal government should provide training and technical assistance to further the establishment and functioning of these bodies.

## Discussion

Tribes need to be empowered to

handle a broad variety of cases and infractions if a return to self-determination and self-reliance is ever to become a reality. Jurisdiction and authority are also prerequisites for solving village social problems because, as evidence clearly suggests, these problems will likely never be solved until Alaska Natives and their institutions of government have taken responsibility for change.

It can be argued that the greatest weakness in the "system" as it currently exists is that by taking away both authority and responsibility from Native villages, the critical need for Alaska Natives to face and deal with their very real social problems is only compounded.

For tribal governments in Alaska to have their rights and responsibilities in this area honored, the federal and state governments have critical decisions to make. The State of Alaska must recognize that tribes exist in Alaska and the federal government must confirm the rights and abilities possessed by Alaska Native tribes.

2. The State of Alaska should enter into formal agreements with each tribal council to determine which infractions or classes of infractions will be the domain of tribal courts and which will continue to be under the authority of state government. Such agreements should specify that Village Public Safety Officers will enforce all tribal ordinances as well as state statutes.

## Discussion

Although it appears from data reviewed by the Commission that some mechanisms are in place to resolve disputes at the village level without involving the state judicial system, they are not being used effectively. Probable causes of this seeming discrepancy between what could be accomplished locally and what is, in reality, being accomplished include the State of Alaska's unwillingness to cede to village councils and village courts the authority to handle local cases. The continuing confusion and conflicts over tribal sovereignty, which embed even more deeply the State's conviction that any release of it's authority to tribes is a threat to

it's authority, also stand in the way of effective local judicial control.

Alaska Native tribes and the State of Alaska need to put their conflicts and concerns aside and begin designing and implementing local community dispute resolution bodies, policies and procedure. This should be accomplished without engaging in futile arguments over tribal sovereignty or loss of the State's authority.

3. Native organizations, such as regional non-profit corporations, the Native American Rights Fund and similar institutions possessing financial and technical capabilities should, in addition to pressing for resolution of tribal claims to authority and jurisdiction, examine the existing governmental entities available to Native communities in order to identify ways to increase their effectiveness in addressing village problems and achieving village goals.

## Discussion

The exercise of Native self-governance is hindered by the lack of knowledge and precedents in exercising authorities that currently exist. Over the course of several generations, Alaska Natives have lost the ability to influence and shape local government to successfully respond to problems in the villages.

In sheer numbers Natives constitute the overwhelming majority of citizens in communities throughout village Alaska. It follows that they should be able to control the election of governmental positions and pass and enforce ordinances consistent with the culture and traditions of the locale. The reality is, instead, a crippling perception of powerlessness. In far too many instances, this percep-

tion has become a self-fulfilling prophecy.

4. The State of Alaska should establish means by which probation and parole can be carried out in the home village of the offender, utilizing the cultural and social structure of the community to both monitor and support the individual in the spirit of rehabilitation and community healing.

## Discussion

Statistics clearly show a disproportionately high percentage of Natives reincarcerated due to revocation of their probation or parole. The tilt of the State system toward urban rather than village options can be seen in the failure of the correctional system to develop probation and parole alternatives that return village offenders to villages. The results are new problems for Native offenders who lack many of the capabilities needed to meet the terms of probation or parole in an urban setting.

Village dispute resolution bodies should have the authority to establish monitoring and assistance teams to supervise parolees and probationers in the village. Some villagers might resist having offenders returned to the village. In some of those instances there are serious misgivings about having someone convicted of a crime living in the village again. In most cases, however, resistance will be due to villagers' inability to confront and deal with the very real family and community problems that breed Native socio-pathologies and criminality. A village-based support system would help Native offenders. It would also provide Native options for dealing forthrightly with social mediation issues in a culturally relevant manner.

5. Regional and, where practical, village alternative corrections programs should be established by the State of Alaska for all but the most violent Native offenders; the programs, to be successful, must have adequate and culturally appropriate alcohol treatment components and be administered and/or overseen by local Native organizations.

## Discussion

This recommendation relates closely to the previous recommendation. Villages need to confront and deal not only with offenders, but also the situations giving rise to Native violence. This can only happen if the system is changed so that social problems, including the need for punishment and rehabilitation of Native offenders, are dealt with locally. Punishment can be achieved through the use, where appropriate, of alternatives to incarceration. When incarceration is needed, it can be accomplished closer to the offender's home village if adequate means are provided regionally and sub-regionally.

Most crimes (estimated to be as high as 80%) for which Native people serve prison sentences are committed under the influence of alcohol. Rehabilitation of Native offenders, it follows, rests largely in the ability to bring about successful alcohol abuse treatment. The limited substance abuse treatment programs currently available within the correctional system are fundamentally ineffective. To succeed, treatment approaches for Alaska Native offenders must be appropriate with respect to Native cultures and also in relation to the types of drinking patterns and alcohol-induced behaviors common among Alaska Natives.