



[REDACTED]

**Public Safety and Justice, February 12, 2020 at 9:00 a.m.
Department of Justice, Office of Violence Against Women, Office of Victims of Crime,
Justice Services and Federal Bureau of Investigations, Criminal Justice Information
Services**

My name is Michelle Demmert, and I am an enrolled citizen of the Central Council of Tlingit and Haida Indian Tribes of Alaska (Tlingit & Haida), and the elected Chief Justice of our Supreme Court. I am also the co-chair of the National Congress of American Indians’ Task Force on Violence Against Women and the Alaska Native Women’s Resource Center’s Law and Policy Director. Public Safety in Alaska continues to suffer as a result of many factors, the largest factors being the complex jurisdictional structure, the vast geographic challenges and Public Law 280 issues. I plan to address the issues created as a result of PL 280. In addition, I will be making a suggested amendment to an Appropriations statute from the 90’s regarding legislating background checks.

The 2013 Indian Law and Order Commission (ILOC) issued the Report, “A Roadmap for Making Native America Safer” and devoted a chapter to the unique issues in Alaska.¹ The Report found that the absence of an effective justice system has disproportionately harmed Alaska Native women who are continually targeted for all forms of violence. The Commission found that Alaska Native women are over-represented in the domestic violence victim population by 250%; they comprise 19% of the state population but are 47% of reported rape victims. And among other Indian Tribes, Alaska Native women suffer the highest rates of domestic and sexual violence in the country.

An instructive statement contained in the ILOC report states: “The strongly centralized law enforcement and justice systems of the State of Alaska . . . do not serve *local* and Native communities adequately, if at all. The Commission believes that devolving authority to Alaska Native communities is essential for addressing local crime. Alaska Native governments are best positioned to effectively arrest, prosecute, and punish, and they should have the authority to do so—or to work out voluntary agreements with each other, and with *local* governments and the State on mutually beneficial terms.”—Indian Law and Order Commission Report, 2013 (emphasis added). Historically, Alaska tribes have been treated differently than lower 48 tribes, confusing the fundamentals of tribal court jurisdiction resulting in recognized disparities.

¹A *Roadmap for Making Native America Safer: Report to the President and Congress of the United States* (November 2013), available at <http://www.aisc.ucla.edu/iloc/report/>.

While violence against Native American women occurs at higher rates than in any other ethnic group in the United States, it is even worse in Alaska. According to the Alaska Native Tribal Health Consortium, 50% of Alaska Native women experience physical or sexual violence in their lifetime. In 2017, Alaska ranked first as the state with the highest homicide rate among female victims killed by male offenders in single victim/single offender incidents. Its rate of 3.96 per 100,000 was three times the national rate and of the victims murdered, 40 % were Alaska Native or American Indian.² These staggering statistics have to stop; they need to reside in the past.

There are many barriers that make it difficult for Tlingit & Haida to adequately protect our Alaska Native women residing in what are often remote communities. These include extreme weather, limited police and public safety protection, lack of access to necessary resources and limited counseling and support services. This situation is compounded by insufficient and restrictive federal funding opportunities that do not even begin to meet the needs of Alaska Natives. We suffer from inadequate data reporting that makes it difficult to tailor programs to the needs of our women. We face a challenging lack of coordination between state and tribal officials, and a lack of training and resources in villages where neighbors are often the first, and only, responders who lack training beyond their compassionate hearts.

The geographical remoteness, extreme weather, and the lack of adequate transportation present serious challenges in responding to crime in Alaska Native villages and in accessing state judicial systems in a timely matter. Tlingit & Haida serves 20 villages and communities spread over 43,000 square miles within Southeast Alaska. Our service population is among the largest, most isolated, and most geographically dispersed tribal population in Indian Country.

To make matters worse, Alaska is a mandatory Public Law 83- 280 (PL 280). It enabled states to assume criminal, as well as civil, jurisdiction in matters involving Indians.³ PL 280 drastically altered criminal justice in American Indian and Alaska Native communities. The National Institute of Justice has observed the impact of PL 280.

“PL 280 has had a number of negative consequences for tribes:

- The act violates tribal sovereignty by giving states criminal jurisdiction.
- The act is often cited as a rationale for denying PL 280 tribes funding for law enforcement.
- The act gives nontribal law enforcement greater authority on tribal reservations. For example, prior to PL 280, minor crimes committed by American Indian and Alaska Natives were the responsibility of the tribes. Under PL 280, minor crimes can be penalized under state laws as well.

Public Law 280’s impact on crime is largely unknown. This is because crime in associated jurisdictions is often underreported or not reported, according to a study released in 1998.”⁴

The State of Alaska realizes that it has a problem but with each session, new initiatives get advanced and few succeed. For example, there is current State legislation for the 2020 session to

² “When Men Murder Women: An Analysis of 2017 Homicide Data,” The Violence Policy Center (2019)

³ 18 U.S.C. § 1162, 28 U.S.C. § 1360

⁴ <https://nij.ojp.gov/topics/articles/tribal-crime-and-justice-public-law-280>

address untested victim sexual assault kits. There is an estimate that there are nearly 2000 untested kits. There is a pending State bill that would require these to be tested with a 6 month limit for testing to be complete.⁵ While these issues are promising, it goes to show the disservice to our communities and just how ineffective PL 280 has been to Alaska.⁶

Legal Scholars point out the issues with PL 280:

the Department of the Interior largely failed to include tribes in Public Law 280 states in its growing support for tribal police and courts during the 1970s and 1980s, leaving Public Law 280 states unable to rely on tribal agencies to shoulder the financial responsibility....

Although data were difficult to obtain from the BIA, we did determine that for FY 1998...mandatory Public Law 280 tribes received less than 20% per capita of what non-Public Law 280 tribes received.⁷

The reality is that no matter how much the Tribe's advocate on the Federal level, our State is failing us. The answer is to empower the Tribes in the rural communities to care for themselves. The Law and Order Commission recommended just this solution. Direct funding to Tribe's who are providing the solutions in their communities. Even with some of the State bills up for 2020, we are such a divided legislature that we are not likely to see much make it through. The feds are in a unique position to show through multiple micro projects that Tribes are successful at caring for their people. We need regular funding for this effort that we can count on from year to year.

One specific suggestion is to find a creative way to fund law enforcement in rural communities – another recommendation is to fund fully trained advocates to be paired with law enforcement for data collection and case management for victims and their families. The Office of Victims of Crime has such a grant program available. However, because our Village Public Safety Officers (VPSO) do not qualify as “Law Enforcement” we are ineligible for this funding.⁸

While U.S. DOJ has attempted to direct funding towards domestic violence and sexual assault, many federal grant programs do not allow us to spend money on prevention, enforcement, or policing and few programs are available to help us provide counseling services to victims of domestic violence and child witnesses. No Funding is allowed to serve the perpetrators.

In 2015 DOJ announced the Tribal Access Program (“TAP”) for the National Crime Information Center (“NCIC”), which provides eligible tribes with access to the Criminal Justice Information Services systems. There are now around 50 tribes participating in TAP, and Tlingit and Haida is one of the 2020 selectees, which will greatly facilitate our ability to enter protection orders and ensure those that are caring for our most vulnerable, our children are safe. However, a dedicated funding stream should be created for expanding the TAP program and making it available to all interested tribes who meet the requirement. All tribes should have the ability to access federal

⁵ <https://www.usatoday.com/videos/news/2019/06/23/alaska-most-dangerous-state-women/1440272001/>

⁶ <https://www.usatoday.com/videos/news/2019/06/23/alaska-most-dangerous-state-women/1440272001/>

⁷ Goldberg and Singleton, “Final Report Law Enforcement and Criminal Justice Under Public Law 280, (May 2008)

⁸ https://www.ovc.gov/grants/pdf/FY19_Law-Enforcement-Based-Victim-Specialist-Program.pdf

databases not only for obtaining criminal history information for criminal or civil law purposes, but also for entering protection orders, missing person's reports, and other relevant information, including National Instant Criminal Background Check System disqualifying events, into the databases. In addition, we need an amendment to what was originally an appropriations statute—PL 92-544, but has been codified in 34 U.S.C.A. § 41101. This statute allows states to legislate for legitimate government purposes to access the criminal database. We need the following amendment: (additional language is underlined)

The funds provided for Salaries and Expenses, Federal Bureau of Investigation, may be used hereafter, in addition to those uses authorized thereunder, for the exchange of identification records with officials or federally chartered or insured banking institutions to promote or maintain the security of those institutions, and, if authorized by State or Tribal statute and approved by the Attorney General, to officials of State, Tribal, and local governments for purposes of employment and licensing, any such exchange to be made only for the official use of any such official and subject to the same restriction with respect to dissemination as that provided for under the aforementioned appropriation. 34 U.S.C.A. § 41101, Formerly cited as 28 USCA § 534 note, § 41101. Funds for exchange of identification records.

Tribes have the same legitimate governmental needs for access to these records, whether it is a possible elected official, a person overseeing the finances, or caretaking for our elders, we need to be able to create these laws and put them in place to ensure the safety and health of our communities like any other sovereign!

Recommendations for Protecting Alaska Native Women and Children

In Summary, we recommend the following:

1. Fully fund all tribal governmental needs regardless of whether a tribe is located in a PL 280 state.
2. Expand grant programs that take account of the unique circumstances of Alaska Tribes.
3. Direct DOJ to create funding for perpetrators of gender-based violence.
4. Amend 34 U.S.C.A. § 41101

Gunalchéesh – Háw'aa- Thank you-for taking the time to listen to our concerns. We believe in the continuation of building alliances to enhance and promote the voice of Alaska Native survivors, advocates, and tribal leaders at the village, state, federal, and international levels. By working together we stand stronger in our advocacy efforts for equal access to justice, local village-based solutions to local village problems, and access to services and advocacy designed by and for Native women. We look forward to the results of this committee.