



# A TANGLED WEB OF JUSTICE

American Indian and Alaska Native Youth  
in Federal, State, and Tribal Justice Systems

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**POLICY BRIEF RACE AND ETHNICITY SERIES**

VOLUME

**1**

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OF JUSTICE:  
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NATIVE YOUTH IN FEDERAL,  
STATE, AND TRIBAL JUSTICE  
SYSTEMS**

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\* The views expressed herein are the author's own and do not necessarily represent the position of Sonosky, Chambers, Sachse, Endreson & Perry, LLP.

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“Let us put our minds together and see what life  
we will make for our children.”

Tatanka Iotanka—Sitting Bull

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## INTRODUCTION

**When** people refer to the juvenile justice “system” (i.e., law enforcement, prosecution, adjudication/conviction in courts, and corrections or sanctions) in this country, most are referring to state juvenile justice systems, where the overwhelming majority of youth in the United States are prosecuted. In contrast, Native American youth<sup>i</sup> are regularly prosecuted in three distinct justice systems – federal, state<sup>ii</sup>, and tribal. Adding to the complexity, these youth may be transferred to the adult criminal system in all three types of justice systems in certain circumstances.

Our research found that most delinquent acts committed by Native American youth are low-level offenses, many involving alcohol. We also found that many Native youth receive either no court intervention at all or disproportionately severe sanctions, such as secure confinement and transfer to the adult criminal system. Many factors contribute to this situation, such as: a general lack of law enforcement resources in Indian country; a lack of cultural competence and inattention to the needs of Native youth in state and federal systems; an over-reliance on incarceration; and a lack of support and resources for tribal justice systems. To address these concerns, we must all work together to ensure that Native youth are provided adequate and appropriate services and, if youth are removed from their homes, they are placed in safe environments close to their communities.

This policy brief is intended to serve as a resource for tribes, juvenile justice professionals, and other stakeholders interested in improving outcomes for Native youth by presenting the current state of knowledge on Native youth and their involvement in justice systems across the country.

<sup>i</sup> This policy brief concerns juvenile delinquency among American Indian and Alaska Native youth. We use the terms “Native American” or “Native youth” to refer to this population. We also use the term “Indian” to reflect its usage in federal law.

<sup>ii</sup> We use the term “state systems” to include local and county juvenile justice systems as well.

We start by explaining the demographics, risk factors, and national juvenile delinquency statistics for Native communities. Second, we provide an overview of tribal, federal, and state justice systems with a brief discussion of some of the issues Native youth face in each system. Third, we provide examples of promising solutions to address the needs of Native youth. Finally, we offer recommendations for tribal, state, and federal policymakers and juvenile justice professionals that may help address some of the more alarming findings, such as the use of secure detention at the expense of other programs, unsafe detention conditions, disproportionate use of the most severe sanctions for Native youth, and the failure of state and federal laws and policies to adequately take Native youth into account.

Tribal communities have raised and educated their youth since before the arrival of Europeans. It is important to remember that tribal culture and tradition are a source of strength, and strong tribal juvenile justice systems are key to helping delinquent youth succeed. We hope the information presented here will inform, energize, and help mobilize efforts to ensure all three justice systems are fair and effective for Native youth so that more Native youth achieve their dreams and assume their role as the future of their communities.

## DEMOGRAPHICS

There are 562 federally recognized Indian tribes in the country, including more than 200 Alaska Native villages.<sup>1</sup> Thirty-six percent of the Native American population lives on reservations or in Alaska Native villages, most of which are tribally governed enclaves; the other 64% live in cities and towns across the country, where they are subject to general state law jurisdiction.<sup>2</sup> American Indian and Alaska Native people live in every state, but certain states have either particularly high proportions or high numbers of Native American residents (see Tables 1 and 2). These states either contain several Indian reservations or include cities that were relocation centers during the 1950s, when federal policy sought to relocate Indians from reservations to cities as part of an effort to assimilate them and eventually do

away with the reservation system. While this policy has long since been rejected, large Indian communities remain in many cities such as Los Angeles, San Francisco, Seattle, Denver, Portland, and Chicago.

TABLE 1. AMERICAN INDIAN, ALASKA NATIVE (AI/AN) POPULATION, 2006<sup>3</sup>

Top 10 Highest Proportion States			
State	Number	Percent of state population that is AI/AN	Percent of national AI/AN population
Alaska	103,000	15.4%	3.5%
New Mexico	191,000	9.8	6.6
South Dakota	67,000	8.6	2.3
Oklahoma	288,000	8.0	9.9
Montana	61,000	6.5	2.1
North Dakota	34,000	5.3	1.2
Arizona	294,000	4.8	10.1
Wyoming	13,000	2.5	0.4
Washington	104,000	1.6	3.6
Nevada	35,000	1.4	1.2

TABLE 2. AMERICAN INDIAN, ALASKA NATIVE (AI/AN) POPULATION, 2006<sup>4</sup>

Top 10 Highest Population States			
State	Number	Percent of state population that is AI/AN	Percent of national AI/AN population
California	421,000	1.2%	11.5%
Arizona	294,000	4.8	10.1
Oklahoma	288,000	8.0	9.9
New Mexico	191,000	9.8	6.6
Texas	163,000	0.7	5.6
North Carolina	111,000	1.3	3.8
New York	105,000	0.5	3.6
Washington	104,000	1.6	3.6
Alaska	103,000	15.4	3.5
Florida	80,000	0.4	2.8

The Native American population is very young. Forty-four percent of the American Indian and Alaska Native population is under the age of 25, compared to 36% percent of the overall U.S. population.<sup>5</sup> In 2006, there were nearly one million (902,000) American Indian and Alaska Native youth under the age of 18 in the United States.<sup>6</sup> American Indian and Alaska Native people account for 1% of the general population and youth population nationwide.<sup>7</sup>

## RISK AND PROTECTIVE FACTORS

Native youth suffer disproportionately from risk factors known to be common precursors to delinquency, including poor health, poverty, low educational attainment, violence, depression, and substance abuse. While the statistics below demonstrate the intense needs that Native youth have, they do not do justice to the investments that tribes have made in their youth or the hope that youth have for their own futures.

**Health.** American Indians and Alaska Natives have a life expectancy that is 2.4 years less than the general population, and American Indian and Alaska Native infants die at a rate of 8.5 per 1,000 live births, compared to 6.8 per 1,000 for the general population. In addition, American Indians and Alaska Natives die at higher rates than other Americans from alcoholism (510% higher), diabetes (189% higher), homicide (61% higher), and suicide (62% higher).<sup>8</sup>

**Poverty.** A quarter of Native American youth are growing up in poverty. According to the U.S. Census Bureau, in 2005, 25% of Native American people were living below the poverty level, compared with 10% of whites and 13% of the population generally.<sup>9</sup>

**Education.** Just over half (51%) of Native American students complete high school, versus 68% of the general youth population.<sup>10</sup> Insufficient schooling during childhood has significant ramifications for the community as these youth transition into adulthood. By the age of 25, nearly a quarter (24%) of Native



Americans have not graduated from high school or obtained a GED, compared with 16% of the general population.<sup>11</sup> In addition, 14% have obtained a bachelor's degree or higher, which is only half the percentage of people in the general population with these degrees (27%).<sup>12</sup>

**Victimization.** Native youth experience much higher rates of violent victimization than non-Native youth.<sup>13</sup> According to the U.S. Bureau of Justice Statistics, between 2001 and 2005, American Indians experienced violence at rates more than twice that of blacks, two and a half times that of whites, and more than five times that of Asians.<sup>14</sup> American Indian and Alaska Native youth also experience high rates of child abuse (15.9 per 1,000 compared to 10.7 for white youth).<sup>15</sup>

**Mental Health.** Native American youth are twice as likely as white youth and three times as likely as other minority youth to commit suicide.<sup>16</sup> In fact, in 2005, suicide ranked as the second leading cause of death for Native Americans ages 10 to 25.<sup>17</sup> From 1999 to 2005, the incidence of suicide for Native American males ages 15 to 24 (28.72 per 100,000) was nearly triple the rate in the overall U.S. population (10.79 per 100,000).<sup>18</sup> Regional variations in suicide rates have also been observed. The highest suicide rates (ranging from 5 to 7 times higher than the overall U.S. rates) are documented in the Tucson, Arizona, Aberdeen, South Dakota, and Alaska service areas.<sup>19</sup>

From November 2004 to February 2005, the Standing Rock Sioux Reservation in North Dakota and South Dakota was the site of a major suicide cluster, in which eight young adults committed suicide by hanging during a 12-week period.<sup>20</sup> These youth suicides were part of a high overall suicide rate at Standing Rock and an even higher rate of suicide attempts. On March 21, 2005, a 16-year-old boy on the Red Lake Reservation in Minnesota opened fire at Red Lake High School in one of the deadliest school shootings in U.S. history, killing ten people including himself, and injuring many more.<sup>21</sup> Events like these devastate the entire reservation community.

**Substance Abuse and Delinquency.** Native Americans suffer disproportionately from substance abuse disorders compared with other racial groups in the United States.<sup>22</sup> From 2002 to 2003, the rates of past month cigarette use, binge drinking, and illicit drug use among American Indian and Alaska Native youth ages 12 to 17 were higher than those for any other racial/ethnic group.<sup>23</sup> From 2002 to 2005, more than one-third (35.2%) of Native youth ages 12 to 17 reported using alcohol, and 27.2% reported using an illicit drug in the previous year.<sup>24</sup> Nearly one in ten (8.5%) reported having an alcohol use disorder, compared with 5.8% of youth from other racial groups.<sup>25</sup> Slightly fewer (8.2%) reported having an illicit drug use disorder, compared with 5.1% of youth from other racial groups.<sup>26</sup> Although Native youth make up only 1% of the population nationwide, they make up 2% of youth arrested for public drunkenness and driving under the influence, and 3% of youth arrested for liquor law violations.<sup>27</sup>

Recent years have seen a significant increase in the manufacture and use of methamphetamines on reservations, partly due to the drug's low cost and highly addictive nature. Native Americans have the highest rates of methamphetamine use compared with whites, Asians, blacks, and Hispanics.<sup>28</sup> The epidemic of methamphetamines in tribal communities is in many ways similar to what other rural communities are facing across America; the main difference is that most tribal communities do not have the resources, personnel, or infrastructure necessary to address methamphetamine use.

**Gangs.** A 2000 survey of youth gangs in Indian country found that 23% of Indian country respondents had active youth gangs in their communities. A field study on gangs in the Navajo Nation found the spread of youth gangs was facilitated by specific structural factors in the community including: frequency with which families move off and onto the reservation; poverty, substance abuse, and family dysfunction; the development of cluster housing instead of traditional single-family housing; and a declining connection to Native American culture. In particular, youth cited friendship and the sense of belonging as signif-

icant benefits derived from being in a gang. Despite the perception that gang crime is violent crime, gang members were most frequently involved in graffiti, vandalism, drug sales, and to a lesser extent aggravated assault.<sup>29</sup>

**Protective Factors.** Focusing exclusively on problem behaviors creates a skewed picture of Native youth. One recent study attempted to correct the imbalance by examining the environmental and cultural factors related to successful functioning in youth. Using data from interviews with 401 Southwestern urban and reservation-based youth in 2001, researchers found that over one-half of the youth had a clean police record (56.8%) and also reported no serious misbehavior that had gone undetected by law enforcement (54.2%). Nearly one-half of the youth received good grades (45.6%) and one-third reported hardly any involvement with alcohol or drugs (32.0%). However, less than a quarter of youths qualified as successful in the domains of positive psychosocial functioning (23.6%), good mental health (20.2%), and positive behavior and emotions (16.8%).<sup>30</sup>

## NATIONAL JUVENILE DELINQUENCY STATISTICS

Given the overlapping jurisdictional issues and the lack of comprehensive data sources tracking federal, state, and tribal justice systems, little is known about the nature and severity of delinquent behaviors of Native youth both on and off reservations. Statistics on Native youth involved in juvenile justice systems typically do not specify the source of the data, so it is unclear whether the numbers include youth prosecuted under state and federal law, or, if tribal data are included, how many tribes are included in the survey.

Despite these data limitations, we know that nationwide American Indian and Alaska Native youth are overrepresented in the juvenile justice system.<sup>31</sup> According to a 2008 report by the National Council on Crime and Delinquency (NCCD) using aggregate data from the national and state levels, disproportion-

ality exists at each stage of the juvenile justice system (i.e., referrals, detention pending adjudication, formally processed, adjudicated, waived to adult court, and sent to residential placement), with the exception of arrests.<sup>32</sup>

Although Native American youth account for 1% of the national youth population and 1% of total juvenile arrests, these aggregate numbers mask significant disparities.<sup>33</sup> For example, Native youth are arrested at two to three times the expected rates (based on population) for certain offenses, such as running away and liquor law violations.<sup>34</sup> In addition, Native youth are more likely to receive the most punitive sanctions.<sup>35</sup> NCCD found that disproportionality for Native youth is greatest for the two most punitive sanctions: waivers to the adult system and out-of-home placement.<sup>iii</sup> In both cases, these sanctions were applied to Native American youth 1.5 times more than to white youth.<sup>36</sup> Nationwide, the average rate of new commitments to adult state prison for Native youth is 1.84 times that of white youth.<sup>37</sup>

While press accounts tend to sensationalize serious juvenile offenses, the reality is that the top five crimes American Indian youth were arrested for were liquor law violations, larceny-theft, disorderly conduct, running away, and drug abuse violations (see Table 3). Although intervention is certainly warranted for these offenders, media sensationalism may contribute to unnecessary fear of youth, skewing policy decisions. For example, participants in the Comprehensive Indian Resources for Community and Law Enforcement (CIRCLE) Project noted that the most common juvenile crimes on tribal lands were not serious crimes, but low-level offenses such as public intoxication and curfew violations. Unfortunately, “the challenge violent crime presented to the community was less one of frequency than one of fear – fear that was amplified by a community-wide tendency to associate violent crime with the much more frequent low-level crimes.”<sup>38</sup>

<sup>iii</sup>Given the historic legacy of removal of Native children from their homes, a question to be answered in future research is how many of these children are placed in non-Native homes and whether these out-of-home placements should be subject to Indian preference guidelines similar to those required by the Indian Child Welfare Act (ICWA).

**TABLE 3. AMERICAN INDIAN JUVENILE ARREST RATES, 2000-2006**<sup>39</sup> Number of Arrests of American Indians Ages 10 to 17 per 100,000 American Indians Ages 10 to 17.

Offense	2000	2006	Change from 2000 to 2006
Total including suspicion	6190.9	5463.3	-12%
Violent crime index*	198.4	173.7	-12%
Property crime index**	1513.2	953.8	-37%
Aggravated assault	148.5	129.0	-13%
Arson	17.7	14.4	-19%
Burglary	212.8	193.1	-9%
Curfew and loitering	382.0	239.2	-37%
Disorderly conduct	314.1	528.6	68%
Driving under the influence	62.0	68.2	10%
Drug abuse violations	323.3	330.9	2%
Drunkenness	28.2	58.8	109%
Forcible rape	7.9	8.8	11%
Larceny-theft	1140.7	668.5	-41%
Liquor laws	926.3	774.3	-16%
Motor vehicle theft	142.0	77.9	-45%
Murder and nonnegligent manslaughter	1.3	1.8	38%
Other assaults	583.6	558.0	-4%
Robbery	40.7	34.1	-16%
Runaways	418.1	437.5	5%
Vandalism	290.5	250.9	-14%
Weapons carrying, possessing, etc.	64.9	83.7	29%

\* Violent crime index includes murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault.

\*\* Property crime index includes burglary, larceny-theft, motor vehicle theft, and arson.

Note: Lack of consistent data collection and incomplete reporting by tribes may make these rates unreliable.

(iii continued...) Because courts have held that Public Law 280 (see note viii) did not grant states civil regulatory jurisdiction over Indian country, characterizing a juvenile delinquency proceeding as a civil proceeding could change the jurisdictional analysis discussed in this brief for Public Law 280 states. See *Bryan v. Itasca County*, 426 U.S. 373 (1976); *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

## JURISDICTION – THREE DIFFERENT JUSTICE SYSTEMS

Native American tribes governed themselves for centuries before the arrival of Europeans in North America. One aspect of this governance is that tribes exercised control over juvenile justice – disciplining, controlling, teaching and caring for youth – but over the last century tribal jurisdiction and resources have been eroded by shifting federal policies. As a result, many American Indian and Alaska Native youth are now tried in state and federal justice systems. In this section, we discuss the basis and extent of tribal, federal, and state jurisdiction over juvenile delinquency.<sup>iv</sup> The simple explanation (see Table 4) is that criminal jurisdiction depends on the location of the crime (whether it occurred in “Indian country” or state land), the type of crime (misdemeanor or felony), the perpetrator’s identity (Indian or non-Indian), and the victim’s identity (Indian, non-Indian, or victimless crime).<sup>v</sup>

<sup>iv</sup>Although juvenile delinquency proceedings are often treated as a subset of criminal jurisdiction for purposes of the Indian country jurisdictional analysis, it can be argued that juvenile delinquency jurisdiction, particularly jurisdiction over low level and status offenders, is civil rather than criminal in nature.

<sup>v</sup>“Indian country” is a legal term that refers to lands over which Indian tribes exercise jurisdiction, including reservation land, dependent Indian communities, and trust allotments. 18 U.S.C. § 1151. Alaska Native lands held pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 et seq., do not qualify as Indian country.

<sup>vi</sup>The Indian Civil Rights Act, 25 U.S.C. § 1302(7), limits tribal courts to sentences of one year and fines of \$5,000, although tribal courts may impose several consecutive one-year sentences for different offenses. *Alaska v. Native Village of Venetie*, 522 U.S. 520 (1998). With the exception of trust allotments and the Annette Island Reserve, tribal land in Alaska is subject to different jurisdictional rules.

**Tribal jurisdiction.** Tribes have inherent jurisdiction over their land and their members, unless their jurisdiction has been expressly limited or stripped away by Congress or the federal courts.<sup>40</sup> In general, tribes retain criminal jurisdiction over Indian people on land that qualifies as Indian country.<sup>41</sup> While tribal jurisdiction is often concurrent with state or federal jurisdiction, it is important to realize that the existence of concurrent jurisdiction does not negate the tribe's jurisdiction. As further discussed below, the federal courts have jurisdiction over certain crimes committed by Indians. Tribal courts retain jurisdiction to prosecute the same conduct under tribal law, but as federal law limits the sentences that tribal courts may impose to one year in jail and a \$5,000 fine, federal enforcement of these crimes is important in practice.<sup>vi</sup>

**Federal jurisdiction.** On most reservations, the federal government has concurrent jurisdiction over crimes committed in Indian country. Various federal criminal statutes establish this jurisdiction, including the Major Crimes Act, the Indian Country Crimes Act, and the Assimilative Crimes Act.<sup>vii</sup> These statutes, however, do not cover non-major crimes committed by one Indian against another Indian or victimless crimes committed by Indians.<sup>42</sup>

<sup>vii</sup>The Major Crimes Act, 18 U.S.C. § 1153, established federal jurisdiction over 15 specific crimes when committed by one Indian against another Indian within Indian country. The Indian Country Crimes Act (or the General Crimes Act), 18 U.S.C. § 1152, established federal jurisdiction over crimes committed against Indians by non-Indians and over certain crimes committed by Indians against non-Indians, but it does not apply to crimes committed by one Indian against another Indian, or any crimes committed by an Indian who has already been punished by the local law of the tribe. Finally, the Assimilative Crimes Act (ACA), which applies to Indian country through the General Crimes Act, simply supplements federal criminal law by adopting substantive state law crime definitions where no federal crime has been defined. 18 U.S.C. § 13. This means that non-major crimes committed by one Indian against another Indian are not covered by these statutes. It is also questionable whether these laws cover victimless crimes. *United States v. Quiver*, 241 U.S. 602, 605-06 (1916). Of course, the federal government also has jurisdiction over general federal crimes, such as federal drug or racketeering offenses.

For acts of juvenile delinquency, federal jurisdiction is established by the Federal Juvenile Delinquency Act.<sup>43</sup> This law allows the federal government to prosecute juveniles who have committed acts that would be covered under the Indian country criminal statutes if the offender were an adult, but it does not create a separate substantive offense. This means that for juveniles accused of low-level offenses where the victim is another Indian or where there is no victim, the federal government lacks jurisdiction. Only the tribal government has jurisdiction over these youth.

**State jurisdiction.** If a Native American youth lives off the reservation or commits an offense off the reservation, he or she will fall under the jurisdiction of the state juvenile justice system and will likely be treated like any other youth prosecuted in that state. Indeed, many states have significant populations of Native youth within their systems. However, states have little or no authority over delinquency offenses committed by Indians on reservations within the state. There is one exception: in a few states, federal statutes such as Public Law 280 have specifically delegated federal jurisdiction over Indian country to the state.<sup>viii</sup> Like federal power, however, the existence of state power does not automatically extinguish tribal jurisdiction. Rather, those states share concurrent jurisdiction with the tribes.

<sup>viii</sup>Public Law 280, a statute passed in 1953, granted certain states full criminal and some civil jurisdiction in Indian country and permitted other states to assume jurisdiction with the consent of the tribe. 18 U.S.C. § 1162; 25 U.S.C. § 1360; 25 U.S.C. § 1321. The mandatory states were Alaska, California, Minnesota (except Red Lake) Nebraska, Oregon (except Warm Springs), and Wisconsin. States voluntarily assuming jurisdiction over some or all reservations pursuant to § 1321 were Nevada, Florida, Idaho, Iowa, Washington, South Dakota, Montana, North Dakota, Arizona and Utah. In the voluntary states, the exact scope of this jurisdiction is defined by state statute.



**TABLE 4. CRIMINAL JURISDICTION OVER CRIMES COMMITTED BY INDIAN PEOPLE**

	Crimes on Indian Country		Crimes on Indian Country – P.L. 280 States	Crimes on State land
	Major Crimes*	Other Crimes		
Non-Indian victim	Federal & Tribal	Federal & Tribal	State & Tribal	State
Indian victim	Federal & Tribal	Tribal	State & Tribal	State
Victimless crime	Tribal	Tribal	State & Tribal	State

\* The 15 enumerated offenses in the Major Crimes Act are: murder, manslaughter, kidnapping, maiming, a felony under chapter 109A (sexual abuse offenses), incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, assault against a minor under 16 years of age, felony child abuse or neglect, arson, burglary, robbery, and certain embezzlement or theft offenses. 18 U.S.C. § 1153. Tribes do not have jurisdiction to prosecute federal offenses, but they may prosecute the same conduct under tribal law.

#### **TRIBAL JUVENILE JUSTICE SYSTEMS AND THE ROLE OF THE BUREAU OF INDIAN AFFAIRS**

According to a 2002 U.S. Bureau of Justice Statistics (BJS) Survey of Tribal Justice Agencies in Indian Country,<sup>43</sup> approximately 60% of tribes have some form of modern tribal judicial system, and of these at least 25% have a juvenile court, delinquency docket, or juvenile code.<sup>44</sup> While the actual numbers of tribal courts are probably higher, these numbers reflect in part a lack of funding for tribal justice systems and the impact of Public Law 280, which greatly hindered the development of tribal courts.<sup>45</sup> Some tribes also elect to exercise jurisdiction over juvenile offenses through an inter-tribal court, in which several tribes in a given geographic area use a single court.

Other tribes use rotating circuit judges that serve multiple tribes. Some tribes have well-established systems; others are forming their juvenile justice systems. In the absence of a tribal justice system, court services may be provided directly by the Bureau of Indian Affairs (BIA) through a Court of Indian Offenses (U.S. court).

Youth charged and adjudicated in tribal courts may receive a range of disposition options. As in state systems, disposition options are generally outlined in the tribal juvenile code. For example, many tribes have some form of probation, although the use of probation is less common than in other juvenile justice systems; according to the BJS survey only 39% of tribal justice systems ordered probation for juveniles.<sup>46</sup>

**Detention Facilities.** Although most Native youth are charged with low-level offenses, many tribes detain youth who may not otherwise require detention because alternatives to detention are often unavailable on the reservation. On some reservations, detention services are provided directly by the BIA. Some tribes enter into agreements with the BIA, called Self-Determination Contracts or Self-Government Compacts, to operate their own facilities. Under these agreements, authorized by the Indian Self-Determination and Education Assistance Act,<sup>47</sup> the tribe receives a share of the BIA's funding for detention programs in exchange for operating the facility in place of the BIA.<sup>x</sup> Other out-of-home placement options (including youth residential treatment centers or halfway houses) may be operated directly by the BIA or the U.S. Indian Health Service (IHS) or by the tribe pursuant to a contract or compact. However, the BIA provides very few non-detention options, and construction grants are typically limited to building secure facilities.

<sup>ix</sup>Alaska Native tribes were not included in the survey so the data reported here represents data collected from 314 of the 341 tribes (92%) located in the lower 48 states.

<sup>x</sup>As of March 2008, there were a total of 84 detention facilities across Indian country. Of these, 38 were owned and operated by the BIA, five were owned by tribes and operated by the BIA, and 41 were owned and operated by tribes pursuant to contracts or compacts. Testimony of Jack Rever, P.E., Director of Facilities, Environmental, Safety and Cultural Resources – Indian Affairs, Oversight Hearing on the State of Facilities in Indian Country: Jails, Schools, and Health Facilities: Hearing before the Senate Committee on Indian Affairs, 110th Cong., 2d Sess. (2008).

Tribes also enter into agreements with state or local detention facilities or treatment programs to allow youth under tribal jurisdiction to be housed there. According to the 2002 BJS survey, only 7% of tribes had their own juvenile residential facility available and over two-thirds (68%) placed juveniles in neighboring non-Indian detention facilities.<sup>48</sup> A full 57% of tribal justice agencies ordered treatment in juvenile and family cases using county or municipal social service agencies.<sup>49</sup>

A BJS Survey of Jails in Indian Country in 2004 found that juveniles accounted for 11% of the total custody population in Indian country jails and detention facilities. The one-day count on June 30, 2004 indicated that 198 youth were being held; with three youth being held as adults. Sixty-three percent of the youth were male; 37% were female. Of the 68 jails in the survey, nine were juvenile detention facilities. These nine facilities held only 64% of the youth in custody, meaning that over one-third were being held in adult facilities. Of the youth held in juvenile facilities, 58% of youth were convicted and 42% were not convicted. Thirty percent were held for felony offenses, 63% for misdemeanors, and 6% as other.<sup>50</sup>

Where tribes have taken over responsibility for youth detention and treatment programs, the results have been encouraging. For example, the Gila River Juvenile Detention and Rehabilitation Center in Arizona has established a program in which juveniles receive counseling and education as they progress through a program of self-improvement.<sup>51</sup> Unfortunately, too many other detention facilities on tribal lands have been found to be understaffed, overcrowded, and underfunded.

**Inspector General Report.** In response to federal and tribal concern over the “chronic lack of law enforcement resources in Indian Country,” the Executive Committee for Indian Country Law Enforcement Improvements issued a report in 1997 finding “few detention facilities exist in Indian Country that are suitable for juveniles.”<sup>52</sup> In response, the President’s Initiative on Law Enforcement in Indian Country provided funding for thirteen new detention facilities. Despite this effort, little has changed. The Office of the Inspector General (OIG) issued a report in 2004 assessing the BIA’s detention program.<sup>53</sup> Nearly all of the

facilities inspected were operating at below minimum staffing levels and all faced a significant maintenance backlog.<sup>54</sup>

The Inspector General specifically found that youth were too often held in unsafe conditions with disastrous consequences. In particular, the report documented an alarmingly high number of suicides, including several youth suicides. In one instance, a 16-year-old girl died of alcohol poisoning while being held in a detention cell within a school. The cell was used only for temporary detention of intoxicated students, meaning she was probably not adjudicated as a delinquent before being placed there. Another 16-year-old girl hanged herself while in detention, and the report suggested that detention officers had not been properly overseeing the cell population.<sup>55</sup>

The report also identified particular problems in separating juveniles from adults. Youth were sometimes held in makeshift quarters within adult facilities, or were kept in with the adult population. A 13-year-old boy was raped by another inmate at one facility in 1997; the 13-year-old victim was being held in the jail for social services because there was no other place to hold him.<sup>56</sup> After the OIG investigation, the BIA implemented a special order in 2004 to remove all juveniles from those adult<sup>57</sup> facilities that were not able to keep youth separate from adults. It is not clear, however, how well that policy is being implemented. For example, a youth attempted suicide in one tribal jail five months after the jail was ordered to stop housing juveniles in the same facilities as adults.<sup>58</sup> It is also possible that the lack of appropriate juvenile facilities may create an incentive to formally transfer youth into the adult system in order to avoid the Department of Justice's juvenile sight and sound separation requirements, which is not a valid reason for such a transfer.

**Continuing Difficulties.** According to testimony by the Tribal Chairman of the Colorado River Indian Tribes (CRIT), CRIT had been operating a juvenile detention facility connected to an adult detention facility that did not meet the sight and sound separation requirements. As a result, BIA removed the youth and CRIT juveniles were placed at the Gila County Juvenile Detention Center in Arizona, five hours and 250 miles away from the reservation, so far from home that many families were

unable to visit youth. Lack of a separate juvenile facility near the Tribes meant that BIA was put in the position of violating federal guidelines that youth be placed close to their homes.<sup>59</sup>

The BIA's administration of its detention program has also made it more difficult for tribes to improve services for youth. For example, the Shoshone Paiute Tribes of the Duck Valley Reservation in Idaho and Nevada provided testimony to the Senate Indian Affairs Committee that a youth services center constructed on the reservation with tribal grant funds has remained unopened and unused for several years. The BIA, which would operate the facility, has been unable to secure adequate staff and has insisted that the tribes make costly improvements to the facility in order to make it more like an adult jail, despite the Tribes' intention that it be used as a facility for low-level offenders. Without a functioning local facility, youth are now sent several states away to a facility in Colorado.<sup>60</sup>

The San Carlos Apache Tribe also testified before Congress about a similar experience in which the Tribe built a juvenile detention and rehabilitation facility with a Department of Justice grant, only to find that the BIA had not provided any funding for the facility's operation, maintenance, and staffing. The Tribe was eventually able to secure some funding from the BIA, but only for the detention portion, not the rehabilitation portion. Despite the Tribe's goal of providing rehabilitation services for juveniles, the facility has ended up functioning as "little more than a jail."<sup>61</sup>

**Funding Challenges.** The federal government is responsible, through treaties, statutes, and the trust relationship, for providing law enforcement and justice services in Indian country. This responsibility is carried out by the BIA, with assistance from the Department of Justice (DOJ). Other agencies, such as the IHS and the Substance Abuse and Mental Health Services Administration, provide related services such as drug and alcohol treatment and mental health treatment. Tribes wishing to provide law enforcement and justice services (e.g., courts, detention centers, police, rehabilitation services) for their own people may enter into contracts with the BIA or the IHS. Even where tribes elect to enter into contracts to provide these serv-

ices, the federal government is still responsible for providing base funding, collecting and managing data, providing support and technical assistance, and promulgating broad policies governing how juvenile justice is administered in Indian country. Tribes may also supplement these core services with community-based juvenile services, such as mentoring programs, cultural education programs, teen courts, drug courts, diversion programs, or Boys and Girls Clubs.

Tribal courts and tribal justice systems have historically been severely underfunded and therefore understaffed. Although tribes are directly eligible for some assistance grants from the federal government and may apply through states for others, they typically receive a very small portion of these funds. Due to judicial limits on tribal taxing power, tribes cannot depend on a tax base to fund these programs either. Furthermore, because many tribes are located in remote rural areas, ancillary services sponsored by nonprofit organizations or faith-based groups are often unavailable in tribal communities.

**Tribal Youth Program.** Since 1999, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) has administered the Tribal Youth Program (TYP) to improve juvenile justice systems among federally recognized tribes. TYP is the first OJJDP program dedicated to prevention, intervention, and juvenile justice system improvement in Native communities. According to a 2005 assessment of TYP grantees, common themes emerging from improving tribal juvenile justice systems are:

- **The tribal justice system is an important expression of sovereignty.** Communities not subject to Public Law 280 have developed comprehensive justice systems. However, in Public Law 280 states, tribal justice systems tend to be fragmented.

- **Tribes have limited resources for their justice systems.** Inadequate pay and benefits create problems in staff recruitment and retention. Training and technical assistance needs are many, again being limited by the inadequate funding available. In addition, tribes often rely on external funding sources leading to programs matched to funding criteria rather than actual community need.
- **Tribal juvenile justice advocates need a “seat at the table” to ensure the needs of Native youth are being met.** Resources and jurisdictional issues require working relationships with neighboring communities to provide services for Native youth. Agreements with surrounding jurisdictions are especially critical in Public Law 280 states.
- **Programs and activities should provide youth with increased opportunities to learn about their culture and to connect with their community, especially with tribal elders.** Many tribal youth are not connected with their native culture or knowledgeable about their tribal traditions. Tribal culture is key to identity, self-confidence, and membership.
- **Tribes need adequate secure and non-secure facilities for youth.** The ability to detain juveniles is necessary to demonstrate that the system has the resources to enforce the law; however, more alternatives to detention, and positive activities and education within secure confinement are needed.<sup>62</sup>

## NATIVE YOUTH IN STATE SYSTEMS

Native youth may become part of state juvenile justice systems if they live off the reservation (as 64% of Native Americans do), are arrested off the reservation, or live in areas where state criminal jurisdiction extends to Indian country under Public Law 280. Unlike in the child welfare system, there is no federal requirement that a child's tribe be contacted if the child is involved in the juvenile justice system, so tribes have little control over what happens to their youth.<sup>xi</sup> Once Native youth are in state systems, their unique circumstances and issues are often overlooked and their outcomes are difficult to track.

The federal Juvenile Justice and Delinquency Prevention Act (JJDP) of 1974 provides federal funds to improve juvenile justice systems at both state and local levels. To receive these funds, states are required to submit three-year plans to the Office of Juvenile Justice and Delinquency Prevention (OJJDP). Starting in 1992, states were required to address the high proportion of minority youth in secure confinement in state plans. In 2002, the concept of "disproportionate minority confinement" was broadened to address "disproportionate minority contact," to acknowledge the disproportionate numbers of minority youth who come into contact with the juvenile justice system at multiple points, including arrest, referral to court, probation, detention, and waiver to the adult system. Now states are required to "address juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of the minority groups, who come into contact with the juvenile justice system."<sup>63</sup>

As a result of these changes, data systems at both the federal and state levels have been improved to allow for disaggregated data. Unfortunately, public releases of data continue to be limited to black, white, and sometimes Hispanic youth. Many times Asian youth and Native American youth are combined and presented as "other." To our knowledge, no state publishes the data disaggregated by tribe. In addition, OJJDP does not



require data collection where a specific minority group does not constitute at least one percent of the jurisdiction's total population.<sup>64</sup> As a result, some states with large Native American populations, such as New York, Texas, and Florida, are not required to collect data on disparities faced by Native youth because Native youth make up less than 1% of the population.

The following are examples of the harsh treatment that youth receive in states across the country that collect and publish data on Native American or Alaska Native youth.

- **Alaska:** According to a 2006 study using Anchorage and Fairbanks data from 1999 to 2001, in Anchorage, Alaska Native youth are referred to juvenile court 3.28 times more than white youth. In Fairbanks, Alaska Native youth are 4.85 times more likely to be referred to juvenile court than white youth. Alaska Native youth are held in secure detention at a rate of about one and a half times the rate of white youth in Anchorage, and at more than twice the rate in Fairbanks.<sup>65</sup> A study using 2005 data from Anchorage found that Alaska Native youth were referred to the Division of Juvenile Justice (DJJ) 3.83 times more frequently than for white youth.<sup>66</sup> This study also found that the percentage of Native girls referred for probation or conduct violations (53%) was more than three times the percentage of Native boys referred for the same violations (17%) and more than twice the percentage of Native girls referred for new offenses (20%).<sup>67</sup> In a separate study of Fairbanks during fiscal years 2005 and 2006, Alaska Native youth were nearly five times (4.96) more likely to be referred to the DJJ than white youth. The two highest levels of disproportionate minority contact were found for both Native boys and girls referred for probation or conduct violations.<sup>68</sup>

<sup>64</sup>The Indian Child Welfare Act (ICWA), 25 U.S.C. § 1900, sets federal requirements that apply to state child custody proceedings involving an Indian child who is a member of or eligible for membership in a federally recognized tribe.

- Arizona:** Native American youth do not appear to have statistically significant differences compared with white youth for rates of referrals, formal and informal court processing, and disposition decisions. In 2004, Native American youth were 1.46 times more likely to be brought to detention as white youth. However, Native youth also had a higher rate of release from detention (1.54 times as likely to be released as white youth).<sup>69</sup> Also, Arizona tribes have the highest number of tribal detention centers in the country (8).<sup>70</sup>
- Minnesota:** According to a 2005 study, Native youth represent less than 1% of the total population in Minnesota, but represented 15.7% of all juveniles committed to the Minnesota Correctional Facility at Red Wing. Native youth show up in high numbers at juvenile facilities throughout the state as well.<sup>71</sup> Recidivism for Native youth is high, evidencing a need for an appropriate re-entry program for these youth.<sup>72</sup>
- Montana:** In 2003, Native American youth were 2.3 times more likely to be arrested and referred to youth court than were white youth. They were slightly less likely (0.85 times) to be diverted and one and a half times more likely than white youth to be securely detained. This disproportionality is particularly pronounced for girls. Native girls made up 6.5% of the general population but 37% of all girls in secure custody. Native girls were also nearly three times as likely to be detained for aftercare (parole) violations as white youth.<sup>73</sup>
- Oklahoma:** Native American youth accounted for 11% of the state's population in fiscal year 2001, but 16% of the youth sentenced to an institution, and 28% of the youth prosecuted as adults. Native American youth who were detained were 2.5 times more likely to have their cases petitioned for court involvement, 2.4 times more likely to be transferred to the adult criminal system, and 1.6 times more likely to be placed in secure custody.<sup>74</sup>

- North Dakota:** The arrest rate for Native American youth was about twice that of the overall population in 1999. In Burleigh County, which has the highest percentage of Native American youth of the four urban counties in the state, the arrest rate for Native youth was about four times the arrest rate for the overall youth population in the county. The detention rate for Native American juveniles was about three times the overall juvenile detention rate from 1995 to 2000, and the commitment rate in Burleigh County to the state's secure facility was seven times higher than for the overall population in 2000. Further, once in custody, Native American youth remained in custody longer than the overall population. Researchers also found that the severity of offense did not seem to be a factor in the decision to detain a youth. The majority of detentions were for property, drug, or alcohol-related offenses, or in 6% to 10% of the cases, for status offenses.<sup>75</sup>
- South Dakota:** According to the 2006 Disproportionate Minority Contact Report, Native American youth were 2.39 times more likely to be arrested, 1.39 times more likely to be detained, and 3.61 times more likely to be confined in a secure correctional facility than were white youth.<sup>76</sup>
- Washington:** From 2004 to 2005, Native American youth were sentenced by juvenile courts two and a half times their percentage in the state, and were committed to residential care at almost three times their percentage in the state.<sup>77</sup>
- Wisconsin:** According to 2002 data, Native American youth were 254% more likely to be arrested, 177% more likely to be detained, and 373% more likely to be confined in a secure juvenile correctional facility compared to white youth.<sup>78</sup> In counties with relatively large Native American populations, the disparities were even greater. In Vilas County, which has one reservation, Native youth made up 18% of the youth population, but comprised 48% of the youth arrested and 54% of the youth in secure detention. In Forest County, where two tribes have reservations, Native youth were 21% of the youth population, but 60% of the youth arrested and 80% of the youth in secure detention.

In Bayfield County, where one tribe's reservation is located, Native youth were 16% of the youth population, but 54% of the youth arrested and 75% of the youth in secure detention.<sup>79</sup>

The state statistics suggest that many Native youth are incarcerated in secure facilities. Unfortunately, the conditions of confinement in state or county facilities are not much better, and in some cases worse, than the conditions of Indian country detention facilities mentioned previously. For example, the South Dakota State Training School in Plankinton, South Dakota, was the subject of a lawsuit in 2000 based on abusive staff practices, including restraining and isolating youth. Staff regularly used excessive force against youth, many of whom were suicidal or suffering from other mental health problems. Native youth, who accounted for 10% of the youth population in South Dakota, constituted 40% to 45% of youth in this facility, yet the facility made no effort to employ Native staff or train staff in cultural sensitivity, and even prohibited youth from speaking their Native language. Native youth were also disproportionately placed in isolated or high-security areas. While Native youth made up less than half the youth in the facility, they comprised 90% to 95% of those locked in the most secure units.<sup>80</sup> As a result of the lawsuit, that training school has been closed.

## NATIVE YOUTH IN THE FEDERAL SYSTEM

The federal criminal law and various federal agencies (e.g., U.S. Marshals Service, Federal Bureau of Investigation, and Federal Bureau of Prisons) are involved when youth are prosecuted in the federal system. Recall that even in cases in which tribes run their own juvenile justice programs, some offenders may be prosecuted federally because of limits on the ability of tribal courts to impose long sentences. Once in the federal system, the needs of youth go largely unnoticed because they make up such a small portion of the system. Approximately 300 to 400 juveniles under the age of 18 are arrested each year under the federal system, which is about 2 percent or less of the total arrests under the federal system.<sup>81</sup>

**Prosecution.** The federal government's role in law enforcement in Indian country seems to result in either too little or too much intervention for youth. A 2007 series of articles in the *Denver Post* documented the inadequate federal response to crimes in Indian country, citing the high rates at which some U.S. Attorneys declined to prosecute cases, even very serious ones.<sup>82</sup> Tribal governments are left to fill this void, prosecuting offenses that federal prosecutors decline as well as those offenses that fall exclusively under tribal jurisdiction. With high caseloads, under-funded police and courts, and overcrowded detention facilities, many youth simply fall through the cracks, getting no intervention at all.

On the other hand, Native American youth prosecuted in the federal courts may spend more time in secure confinement than youth prosecuted in state systems. First, there is concern that youth tried in the federal system (i.e., "federal holds") may spend a much longer time in detention than other youth, in some cases several years.<sup>83</sup> Second, like Native American adults in the federal system, youth face tougher and longer sanctions when tried in federal court because federal sentences are usually longer than state sentences for identical crimes. The Federal Juvenile Delinquency Act (FJDA) has a strong presumption against federal courts handling juvenile cases. Before federal authorities may proceed against a juvenile under the FJDA for crimes other than serious violent crimes and drug offenses, the Attorney General must certify that the state lacks jurisdiction or does not have adequate programs.<sup>84</sup>

When a Native American youth is charged for an offense occurring in Indian country, the Attorney General is not required to certify that the tribal government lacks jurisdiction.<sup>85</sup> This means that a juvenile may face prosecution by both the tribal and federal governments for the same offense. For example, a 2002 case involved a 14-year-old youth who was arrested by tribal police for two incidents in which he stole a VCR, Super Nintendo, video games, and compact discs from two houses. He was sentenced to 6 months by the tribal court but received another 24 months by a federal court, for a total of two and a half years.<sup>86</sup> In another case, a 17-year-old girl was

arrested after a drunk driving accident in which a passenger in the other car was killed. It was determined at a meeting between the Chief Tribal Judge, an FBI agent, and a BIA agent that the tribal court would assume jurisdiction. The girl was given probation and ordered to complete an alcohol treatment program, psychological counseling, community service, and cultural activities. The Assistant U.S. Attorney later decided federal prosecution was appropriate and she was charged again in federal court.<sup>87</sup> While prosecution by each sovereign is legal, it is questionable whether the examples described here represent an efficient allocation of tribal and federal resources.

**Secure Detention.** Youth convicted in the federal system are in the custody of the Federal Bureau of Prisons (BOP) for placement. From 1994 through 2001, almost 3,000 youth were committed to the BOP for offenses committed while younger than 18.<sup>88</sup> A one-day count in February 2008 showed a total of 188 youth in custody but the BOP does not disclose the race or ethnicity of these youth or where they are placed.<sup>89</sup> Although Native youth are only one percent of the national youth population, 70% of youth committed to the BOP as delinquents are Native American, as are 31% of youth committed to the BOP as adults.<sup>90</sup>

The BOP does not operate its own juvenile facilities but contracts with state and local facilities. As of January 2007, the BOP had contracts with 11 secure facilities in nine states (AZ, ID, ME, MT, ND, PA, SD, TN, and WI) and 12 non-secure facilities in six states (AZ, MN, ND, NM, PA, and SD).<sup>91</sup> While the IJDA specifies that juveniles should be committed whenever possible to “a foster home or community-based facility located in or near the home community,” in practice many youth are placed wherever there is bed space, which means that youth are placed in facilities far from their families and loved ones.<sup>92</sup>

The federal juvenile system exists almost as an afterthought, yet this “system” has been applied to youth in Indian country without any real consideration of the circumstances of Native American juvenile delinquents. The IJDA places a premium on state jurisdiction, but not tribal jurisdiction, so most routine cases involving non-Native youth remain at the state level and are subject to state sanctions, while Native youth end up facing federal sanctions for the same types of cases.

When new laws are passed to provide tougher penalties for young offenders in the federal system, such as anti-gang laws, policymakers have in mind the typical non-Native federal juvenile offender – usually someone involved in very serious drug trafficking or gang crimes. Yet because the majority of youth prosecuted in the federal system are there by virtue of the federal government’s jurisdiction over Indian country, Native youth are greatly affected by those tougher penalties.

## PROMISING APPROACHES

There are many ways to meet the needs of Native youth starting with strengthening tribal juvenile justice systems, establishing relationships between tribes and state and local juvenile justice agencies, reducing the use of secure detention and placement in adult facilities, and increasing access to substance abuse and mental health treatment. The following are examples of programs working in Native communities to reduce delinquency and assist youth.

**Tribal Wellness Courts/Drug Courts.** Drug courts are special court dockets to which cases involving alcohol and other substance abusing offenders are assigned for intensive supervision and treatment. The drug court concept involves leveraging the coercive power of the criminal justice system to achieve abstinence and alter criminal behavior. However, a Tribal Wellness Court is more than just a drug court, it is a component of the tribal justice system. It provides an opportunity for the Native community to address the devastation of alcohol or other drug abuse by establishing more structure and a higher level of

accountability through comprehensive supervision, drug testing, treatment services, immediate sanctions and incentives, team-based case management, and community support.<sup>93</sup> There are 58 tribal juvenile drug courts operating or being planned as of March 2008.<sup>94</sup> Preliminary results show that drug courts are cost-effective. A study of Wyoming's nine adult, six juvenile, and two tribal drug courts found that drug courts are less costly alternatives to incarceration. The average cost per day for a drug court client was \$18.59 to \$25.63, while the average daily cost to incarcerate a juvenile client was \$149.52. The tribal juvenile substance abuse court also had only a 5% recidivism rate compared to the national drug court recidivism rate of 29 percent.<sup>95</sup>

**Residential Treatment Programs.** Given the large numbers of Native youth with serious alcohol and substance abuse issues, many youth may need out-of-home placements to address their needs. Rather than incarceration, residential treatment facilities could provide the necessary services. One example is Raven's Way, a youth substance abuse treatment program run by the SouthEast Alaska Regional Health Corporation, which has been recognized by the Department of Justice, the Indian Health Service, and the State of Alaska as a promising practice for treating youth substance abuse among Native American youth. Raven's Way combines conventional treatment, adventure-based therapy, and Native cultural activities within a residential treatment program. Funded under a compact with the Indian Health Service, with supplemental funding from the State of Alaska and Medicaid, Raven's Way provides drug and alcohol treatment services to youth, the majority of whom are referred to the program as part of a probationary arrangement.<sup>96</sup> The program focuses on developing each youth's physical, emotional, mental and spiritual strengths, as well as their communication and problem-solving skills.



**Peacemaking Programs.** Peacemaking is an indigenous Native American form of dispute resolution and a leading example of restorative justice.<sup>97</sup> Originally implemented in Navajo courts, peacemaking creates a respectful space in which all interested community members, victim, victim supporters, offender, offender supporters, judge, prosecutor, defense counsel, police, and court workers can obtain a shared understanding of an event to identify steps to heal the affected parties and prevent future occurrences. One example is the Nez Perce Peacemaker Project. The Nez Perce Peacemaker Project offers tribal members a more traditional, culturally appropriate alternative to court. The project trains law students and tribal members to mediate disputes. Cases are referred by the Nez Perce Tribal Court to the project, where they are screened and the involved parties are prepared for the eventual mediation session. Tribal mediations include victims, offenders, and other family and tribal members who are affected by the conflict. Agreements to restore victim losses are mutually determined by all parties.<sup>98</sup>

**Hold-Over Sites in Lieu of Jail.** Rural areas across the country, including Indian reservations, often lack juvenile detention facilities. As a result, many youth are locked in adult jails. An alternative is to develop “hold-over” sites. Hold-over centers are short-term, non-secure sites — such as youth centers or unused hospital spaces — where youth awaiting court hearings may be given one-on-one attention from trained adults, such as teachers and social work students. The most effective hold-over centers strive to return a young person home or to a more appropriate community setting within 8–12 hours. As an example, before the use of hold-overs in North Dakota, 87 percent of youth awaiting court hearings were held in adult jails. Now, fewer than one percent remain in adult jails.<sup>99</sup>

**Cultural Translator/Tribal Liaison.** Many states and localities use tribal liaisons or cultural translators to ensure that tribes are informed about their youth. Cultural translators work with

Native American children and their families upon entrance of the child to the juvenile justice system in order to help the juvenile and the family understand the juvenile justice system, realize rights and responsibilities, and provide a better understanding of the youth's and family's needs to those people working within the juvenile justice system. Other liaisons serve as the main point of contact for the tribes and help develop inter-governmental agreements or contracts.

**The Juvenile Detention Alternatives Initiative.** For fifteen years, the Juvenile Detention Alternatives Initiative (JDAI), a project of the Annie E. Casey Foundation, has demonstrated that jurisdictions can safely reduce reliance on secure detention and generally strengthen their juvenile justice systems through a series of inter-related reform strategies. JDAI is now being replicated in over 80 jurisdictions across the country. Many of the jurisdictions participating in JDAI have been working to address the needs of Native youth. Examples of new innovations that are occurring in JDAI sites include;

- Native people are stakeholders on JDAI steering committees;
- Protocols are in place to alert the tribal health service when a Native youth is arrested or detained by the county;
- Court data is disaggregated by tribal affiliation to ensure the juvenile court is providing culturally sensitive services;
- Spiritual services are offered to Native youth in detention. Local Native elders conduct one-on-one visits with youth and hold talking circles;
- Transparency between tribal and county court staff allows sharing of court data, court orders, and management reports;

- Sharing case management of Native youth or transferring jurisdiction when tribal services are deemed more appropriate; and
- Tribal liaison positions work through issues, bridge services, and help with problem solving in an attempt to create equity while respecting sovereignty.<sup>100</sup>

**Evidence-based Practices.** In the last decade, the juvenile justice field has greatly expanded its knowledge of programs and approaches that have been proven to reduce the re-offending rates of juveniles, and programs that have the opposite effect.<sup>xii</sup> For example, we now know that youth who have been previously prosecuted as adults are, on average, 34% more likely to commit crimes than youth retained in the juvenile justice system.<sup>101</sup> We also know evidence-based programs are more cost-effective; every dollar spent on evidence-based programs can yield between \$6 to \$13 in cost savings.<sup>102</sup> While evidence-based programs have been successful with Native youth, many have not been tested in Native communities. In addition, some of the proven intensive treatment services, such as Functional Family Therapy or Multisystemic Therapy, may be difficult to implement in remote communities which often lack appropriate mental health professionals. Therefore, tribes should consider adapting the existing evidence-based practices to meet their needs and the resources available, creating their own evidence of what works for their communities.

<sup>xii</sup>The Washington State Institute of Public Policy has analyzed 571 rigorous comparison group evaluations of adult corrections, juvenile justice, and prevention programs, to identify programs that have demonstrated statistically significant reductions in crime outcomes. Aos, S., Miller, M., and Drake, E. (2006). *Evidence Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates*. Olympia: Washington State Institute for Public Policy.

## SOLUTIONS AND RECOMMENDATIONS

**Strengthen tribal juvenile justice systems.** Tribal governments have primary responsibility for addressing juvenile delinquency in Native American communities, particularly low-level offenses characteristic of adolescent delinquent behaviors. They may work together with state and federal agencies, but tribes are still the primary law enforcement presence in the community. While recognizing that each tribe must independently determine its own needs and priorities, tribes should consider developing separate juvenile components to their justice systems.

- Congress should make more flexible funding available to strengthen tribal juvenile justice systems, increase funding for the Tribal Youth Program, and make tribes directly eligible for more general funding sources such as local law enforcement assistance grants and alcohol and substance abuse grants.
- Juvenile justice professionals, advocacy organizations, and foundations should establish relationships with tribal governments to make tools, training, and technical assistance available to tribal justice systems and assist tribal governments in identifying reforms that will work in Indian country.

**Reduce reliance on secure detention in tribal justice systems.** Tribal juvenile justice systems may benefit from an assessment of their use of secure detention, particularly in adult facilities, and identification of alternatives to avoid the unnecessary detention of youth. Tribes may wish to explore other models for their juvenile justice systems, such as a probation-based model, a foster care-based model, or a health and treatment-based model. These approaches may also enable tribes to use alternative sources of federal funding, such as Title IV-E or Medicaid.

- BIA and DOJ funding to tribes should have greater flexibility so tribes can construct and operate juvenile facilities without being tied to a prison model. In particular, these agencies should fund multipurpose facilities for youth involved in the tribal justice system that would include 24-hour attendant care, detoxification rooms, and non-secure holding beds.
- The BIA should revise juvenile justice standards, policies, and practices to reflect these juvenile justice reform efforts, including placing a greater emphasis on community-based alternatives to detention, removing youth from adult facilities, and providing services for low-level offenders.
- Tribal assessments of state or local facilities which house Native youth under tribal jurisdiction should consider whether youth are housed in safe conditions and are provided with appropriate education and support services.

**SUPPORT NATIVE YOUTH IN STATE SYSTEMS.** States should ensure fair treatment of Indian youth and work to facilitate cooperation and communication with tribes in order to provide the best possible services to youth in state systems and ensure that youth receive authentic tribal support (e.g., spirituality, mental health, drug and alcohol treatment, counseling, re-entry programming and planning).

- State and local governments should ensure tribal participation on juvenile justice advisory committees or commissions.
- A child's tribe should be contacted when a tribal youth is detained in a state or local facility so the tribe can intervene by providing support and services. In this context, it is important that the tribe be treated as an independent government, not simply as a social services provider.

- States should collect and publish data about Native American youth even if Native youth are less than 1% of population. State and local juvenile justice systems should conduct regular audits of their systems to identify disparities and work to address them, with a particular focus on the use of secure confinement and transfer to the adult criminal system.

#### **Increase Attention to Native Youth in the Federal System.**

Native youth comprise the majority of youth in federal custody, yet the laws and practices of the system have been developed with little attention to the needs of Native youth.

- Congress should carefully consider the impact of federal juvenile or criminal laws on Native American youth, including laws which provide for longer sentences for youth in the federal system, or which increase the number of youth who may be tried as adults.
- The Federal Bureau of Prisons should collect and publish data about Native American youth, including data on arrest, prosecution in the juvenile or adult system, declination of jurisdiction, placement, and outcomes.
- The Federal Bureau of Prisons should follow its own policies with respect to Native American youth in its custody. In particular, the BOP should adhere to the federal requirement that juveniles not be placed far from home.

**Comprehensive Data Collection.** In order to design effective interventions, more information is needed on Native youth in the juvenile justice system.

- In the reauthorization of the federal Juvenile Justice and Delinquency Prevention Act of 1974 and other bills, Congress should fund new comprehensive research on Native American youth and delinquency, beginning with a baseline study of Native American juvenile delinquents in tribal, state, and federal systems, including youth transferred to the adult system.

- The BIA and the DOJ, working together with tribes, should keep accurate and updated data on juveniles in tribal and federal custody, including the location of juveniles in out- of-home placement and average lengths of stay, and this data should be made readily available to the public.
- Juvenile justice professionals should increase efforts to identify, evaluate and improve intervention and treatment models for Native youth. In addition, tribes should create their own evidence-based programs.

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- <sup>6</sup> *Ibid.*
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## *NOTES*



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