



National
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2019 CJJ National Racial and Ethnic Disparities Conference

Tribal Juvenile Justice:

Setting the Stage and Moving Forward

November 20, 2019

10:45 a.m. – 11:45 a.m.



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NATIONAL CONGRESS OF AMERICAN INDIANS,
POLICY COUNSEL



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TRIBAL NATIONS IN THE UNITED STATES

Tribal Nations in the United States

- Treaties and the Nation to Nation Relationship
 - 573 Federally Recognized Tribes
 - Every Tribal Nation is a separate sovereign government with distinct:
 - Governments;
 - Requirements for citizenship;
 - Histories;
 - Cultures;
 - Religions;
 - Languages; and
 - Much more.



Tribal Nations in the United States

- Tribal Nations and Governance
 - Councils, Boards, Presidents, Chiefs, and Governors
 - Courts, Legal Codes, Police, Hospitals, Administrative Departments



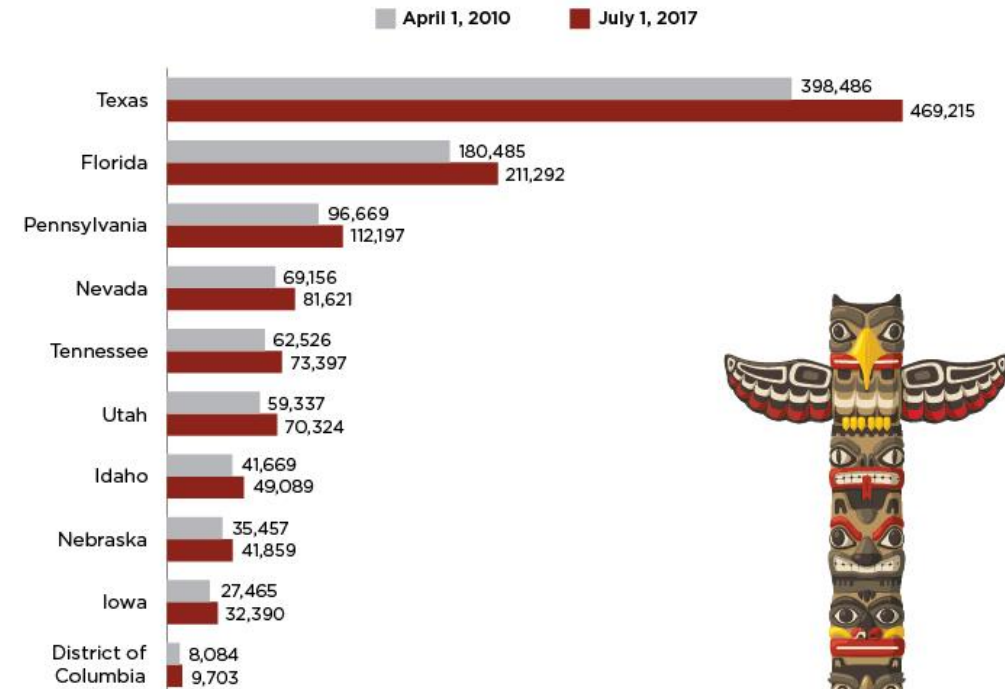
- Tribal Nations control 100 million acres of land in the United States today.
 - 42nd largest state in the United States.

AI/AN Population in the US Today

- In 2018 the U.S. Census Reported that 6.8 million people across the U.S. identified as American Indian or Alaska Native (AI/AN)
- Since 2000 there has been a 27% increase in the AI/AN population
- Many tribal citizens and tribal youth live outside of their tribal lands
 - 1952 BIA program to relocate Indian people off of reservations and into cities

American Indian and Alaska Native Populations Growing

2010 and 2017 Population by
Fastest Growth Between 2010 and 2017



Note: Populations include persons of this race alone or in combination with one or more other races.





AI/AN Youth Population in the US Today

INDIAN COUNTRY IS YOUNG

32%

About **32%** of Natives are under the age of 18.

24%

Compared to only **24%** of the total US population.

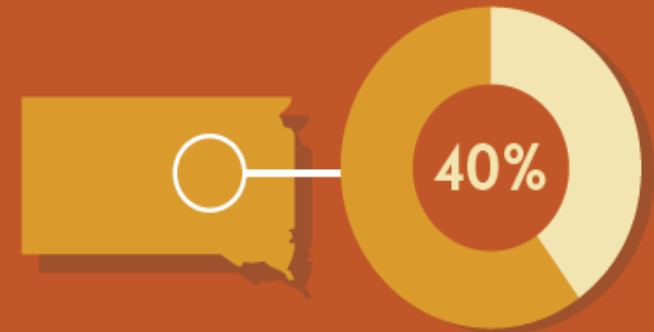
MEDIAN AGE

NATIVES ON
RESERVATIONS:

26

TOTAL US
POPULATION:

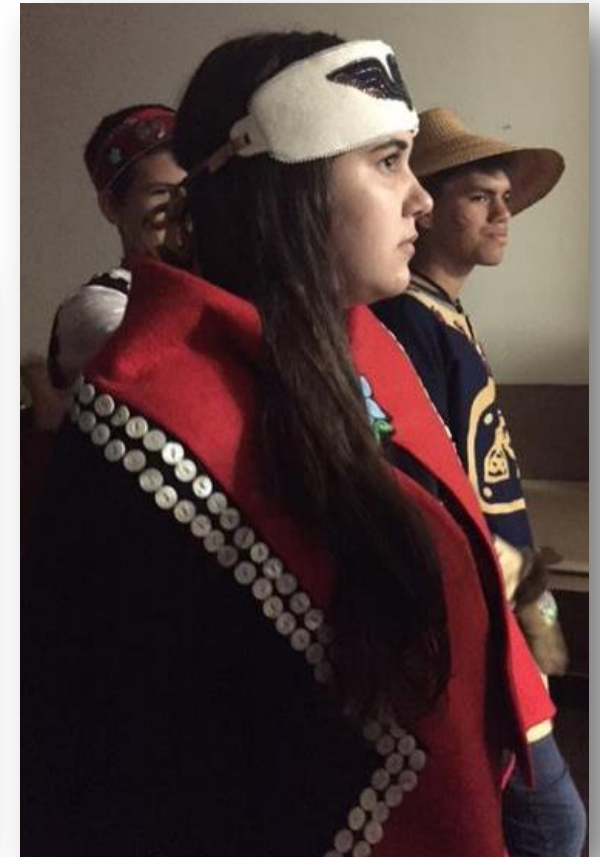
37



Some states have even higher proportions of young Native people. For example, in South Dakota nearly **40%** of the **71,817** American Indians are under 18 years old.

Tribal Nations in the United States

- Tribal Citizenship
 - What is it?
 - How do tribal nations determine it?
 - Why does it matter in the context of juvenile justice?





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JUVENILE JUSTICE AND AI/AN YOUTH



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Indian Boarding Schools: “Kill the Indian Save the Man.”



Lakota boys before boarding school



Lakota boys after



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Child Handcuffs Used By US Government to Send AI/AN Children To Boarding Schools



Source: <http://www.truth-out.org/news/item/34725-mass-incarceration-since-1492-native-american-encounters-with-criminal-injustice?tmpl=component&print=1>

TRIBAL YOUTH IN THE JUVENILE JUSTICE SYSTEM TODAY

Jurisdiction at a Glance

Location	Major Crime	Non-Major Crime with a AI/AN victim	Non-Major Crime with a Non-AI/AN victim	Federal Crime	Child Welfare or Status Offense Placement
Indian country	<i>Tribal</i> <i>Federal</i>	<i>Tribal</i>	<i>Tribal</i> <i>Federal</i>	<i>Federal</i>	<i>Tribal</i>
Indian country in Public Law 280 States	<i>Tribal</i> <i>State</i>	<i>Tribal</i> <i>State</i>	<i>Tribal</i> <i>State</i>	<i>Federal</i>	<i>Tribal</i> <i>State</i>
Outside of Indian country	<i>State</i>	<i>State</i>	<i>State</i>	<i>Federal</i>	<i>Tribal</i> <i>State</i>

* **Credit:** Addie C. Rolnick, UNLV School of Law.

AI/AN Disparities in Juvenile Justice

- Pre-Adjudication
- Post-Adjudication



Sources: OJJDP Statistical Briefing Book (2018); Coalition for Juvenile Justice and Tribal Law and Policy Institute, *American Indian/Alaska Native Youth & Status Offense Disparities: A Call For Tribal Initiatives, Coordination & Federal Funding* (2015).

2 Key Takeaways:

1. The available data for tribal youth in federal, state, and local facilities
2. A large gap in identifying and tracking tribal youth



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Identification and Tracking Tribal Youth





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BEST PRACTICES IN INDIAN COUNTRY

Culturally Appropriate Programs for Tribal Youth

- Restorative Justice is not new to Indian country
 - Ex parte Crow Dog, 109 U.S. 556 (1883)
- Every tribal nation wants to help their youth
 - Capacity
 - Flexible funding
- There is no one size fits all tribal youth cultural program



Catching Warning Signs



- **Pascua Yaqui Tribe's Attendance Achievement Program**
 - Truancy is a early warning sign
 - Intervention program to address tribal member truancy
 - Focus on education and empower youth
 - Individual agreements with schools to access records of tribal members

Working with Youth Who Have Stepped Off the Path

- **Mississippi Band of Choctaw Indians**

- Alternative to Detention Program**

- Green Reentry Program: *Osapausi Amasalichi*
 - “That little garden heals me”
- *Immannumpuli*
 - “a talking to”
- Peacemaking Court

- **White Earth Nation**

- Healing to Wellness Court**

- Culture heals trauma



State and Tribal Partnerships

New Mexico Tribal Notification

A. Juvenile probation and parole services shall be provided by the department.

B. To carry out the objectives and provisions of the Delinquency Act, but subject to its limitations, the department has the power and duty to:

(8) identify an Indian child for the purpose of contacting the Indian child's tribe in delinquency cases; and *(emphasis added)*

(9) contact an Indian child's tribe to consult and exchange information for the purpose of preparing a predisposition report when commitment or placement of an Indian child is contemplated or has been ordered and indicate in the report the name of the person contacted in the Indian child's tribe and the results of the contact. *(emphasis added)*



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Tribal Nations and Pueblos in New Mexico





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State of New Mexico
CHILDREN, YOUTH and FAMILIES DEPARTMENT

SUSANA MARTINEZ
GOVERNOR

JOHN SANCHEZ
LIEUTENANT GOVERNOR



MONIQUE JACOBSON
CABINET SECRETARY

JUVENILE JUSTICE SERVICES
PROBATION - TRIBAL NOTICE OF DELINQUENCY

Date: _____

This is notice that a delinquency referral has been made for the named child, who has been identified as a member of your Tribe. In the best interest of the child, we invite you to share information and suggestions about this child with the probation officer handling the case that may assist us to making treatment decisions with your involvement and input. It is our goal to collaborate with the (Pueblo/Tribe/Nation).

TRIBAL CONTACT INFORMATION:

Tribe/Nation/Pueblo: _____
Tribal Contact: _____ Telephone #: _____
Address: _____
City: _____ State: NM Zip: _____

NAME OF YOUTH:

Name: _____ Date of Birth (DOB): _____
Address: _____ TRIBE: _____
Parents: _____
Physical address _____
Alleged Offense _____
Disposition of Case: _____

CYFD CONTACT INFORMATION:

Juvenile Probation Officer (JPO): _____
Office Address: _____
Phone: _____ Fax: _____ E-Mail: _____@state.nm.us

Juvenile Justice Tribal Liaison:

Bernie Teba, Native American Liaison
NM Children, Youth and Families Department
Office of the Secretary
P.O. Drawer 5160
1120 Paseo de Peralta
Santa Fe, New Mexico 87502 E-mail: Bernie.Teba@state.nm.us

Please review the attached notification form and contact our office at your earliest convenience to discuss this case. Please contact me or Bernie Teba, CYFD Native American Liaison at 505-827-7612 with any questions you may have.

Sincerely,

CC: Bernie Teba

**The Original New Mexico
Notification Form**



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State of New Mexico
CHILDREN, YOUTH and FAMILIES DEPARTMENT

SUSANA MARTINEZ
GOVERNOR

JOHN SANCHEZ
LIEUTENANT GOVERNOR



BRIAN BLALOCK
CABINET SECRETARY

Date: _____

, Children Intervention Officer
Pueblo of Isleta
P.O. Box 729
Isleta, NM 87022

SUBJECT: NOTIFICATION OF TRIBAL YOUTH REFERRED TO NEW MEXICO JUVENILE JUSTICE SYSTEM

Dear Mr.:

This is notice that the below noted youth has been referred to the State of New Mexico youth justice system in the County of _____. The child has been identified as a member of your Tribe/Pueblo/Nation. It is our goal to collaborate with the (Pueblo/Tribe/Nation) to provide for the least restrictive prevention and/or intervention services and alternatives to detention as applicable. Your assistance to identify and provide intervention services and/or any other services, including alternatives to detention, is requested.

NAME OF YOUTH AND CONTACT INFORMATION:

Name: _____ Date of Birth (DOB): _____

Mailing Address: _____ TRIBE: _____

Parents: _____

Physical Address: _____

Alleged Offense: _____

Case Status: _____ PI scheduled for: _____

Child screened for detention: _____ Admitted/Date ____/____ Fast tracked _____

Please contact the assigned Juvenile Probation Officer noted below at your earliest convenience:

CYFD CONTACT INFORMATION:

Juvenile Probation Officer (JPO): _____

Office Address: _____

Phone: _____ Fax: _____ E-Mail: _____@state.nm.us

Sincerely,

Juvenile Probation Officer Supervisor

**The Updated New Mexico
Notification Form Created
with Tribal Partners**

Benefits of Notification

- Tribal notification—and most importantly, Tribal-State collaboration—increases opportunities for advocacy and may reduce the number of Native youth in state youth justice systems.
- Avoiding repetitive services
- Intervene with tribal services/culturally responsive alternatives to detention
- Disparities reduced



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RECOMMENDATIONS AND RESOURCES

Federal Policy Recommendations

1. Require the Accurate and Consistent Reporting of Tribal Youth in the Federal Justice System
2. Increase Funding for Tribal Juvenile Justice Programs
 - Need for flexibility and sustainable funding.
3. Amend Federal Law to Include Notice Requirement
4. Amend the Federal Juvenile Delinquency Act to Defer to Tribal Jurisdiction by Requiring a Waiver of Tribal Jurisdiction

State Policy Recommendations

1. Include a representative of a Tribal Nation on the State Advisory Group
 - Increase collaborative opportunities
2. Pass State Laws that Expand Notice Requirements
 - ICWA: requires notice if youth is removed from home for a status offense.
3. Consistently Track and Report AI/AN Youth in State Juvenile Justice System



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NCAI Tribal Juvenile Justice Resources

Tribal Juvenile Justice

Background and Recommendations



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2019 NCAI Tribal Juvenile Justice Policy Brief

NCAI Website

- **NCAI.org**
- **Talking Stick Podcast**
 - **2 Episodes**

Tribal Juvenile Justice Resources

1. NCAI, Tribal Juvenile Justice: Background and Recommendations
2. NCAI 2018 Mid-Year Conference, Breakout Session: Innovative Practices in Juvenile Justice
3. Indian Law & Order Commission, A Roadmap for Making Native America Safer, Chapter 6 - Juvenile Justice: Facing the Next Generation (2013)
4. Attorney General's Advisory Committee on American Indian and Alaska Native Children Exposed to Violence, Ending Violence So Children Can Thrive (2014)
5. United States Department of the Interior, United States Department of Justice, and United States Department of Health and Human Services, Model Indian Juvenile Code: 2016 Revision
6. Office of Juvenile Justice and Delinquency Prevention, Literature Review: Tribal Youth in the Juvenile Justice System (2016)
7. United States Government Accountability Office, Native American Youth Involvement in Justice Systems and Information on Grants to Help Address Juvenile Delinquency (2018)
8. United States Senate Committee on Indian Affairs, Oversight Hearing on "Justice for Native Youth: the GAO Report on 'Native American Youth Involvement in Justice Systems and Information on Grants to Help Address Juvenile Delinquency'" (2018)
9. United States Senate Committee on Indian Affairs, Oversight Hearing on "Juvenile Justice in Indian Country: Challenges and Promising Strategies" (2015)
10. NCAI Testimony for the Senate Committee on Indian Affairs Juvenile Justice in Indian Country (2015)
11. NCAI Policy Research Center, Supporting Our Native Boys & Young Men, Backgrounder (2014)
12. NCAI Policy Research Center, Are Native Youth Being Pushed Into Prison?
NCAI Policy Research Center, Resilience & Trauma (2015)
and the Department of Justice, Office of Juvenile Justice and Delinquency Prevention, The
"Resilience in Overcoming Adversity and Restoring Balance (2014) - Webinar 1



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Questions?



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Tribal Juvenile Justice: Setting the Stage and Moving Forward

Yakoke! **(Thank You!)**

- Kelbie Kennedy, Policy Counsel, National Congress of American Indians.
 - Email: kkennedy@ncai.org
 - Phone: 202-466-7767