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
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.
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
AI/AN Youth Population in the US Today

**Indian Country is Young**

32% of Natives are under the age of 18.

24% of the total US population are under the age of 18.

**Median Age**

- **Natives on Reservations:** 26 years old
- **Total US Population:** 37 years old

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?
JUVENILE JUSTICE AND AI/AN YOUTH
Indian Boarding Schools: “Kill the Indian Save the Man.”

Lakota boys before boarding school

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

TRIBAL YOUTH IN THE
JUVENILE JUSTICE SYSTEM
TODAY
## Jurisdiction at a Glance

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*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

Identification and Tracking Tribal Youth
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)
Tribal Nations and Pueblos in New Mexico
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 in making treatment decisions with your involvement and input. It is our goal to collaborate with the (Pueblo/Nation/ Tribe).

TRIBAL CONTACT INFORMATION:

Tribal Nation/Pueblo:
Tribal Contact: _______ Telephone #: _______
Address: _______ State: _______ NM: _______ Zip: _______

NAME OF YOUTH:

Name: _______ Date of Birth (DOB): _______
Address: _______ TRIBE: _______
Parent(s):
Physical address
Alleged Offense: _______
Disposition of Case: _______

CYFD CONTACT INFORMATION:

Juvenile Probation Officer (JPO):
Office Address:
Phone: _______ Fax: _______ E-Mail: _______

Juvenile Justice Tribal Liaison:
Bernice Taba, Native American Liaison
NM Children, Youth and Families Department
Office of the Secretary
P.O. Drawer 3160
1120 Paseo de Peralta
Santa Fe, New Mexico 87502
E-mail: Bernice.Taba@state.nm.us

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

Sincerely,

CC: Bernice Taba

The Original New Mexico Notification Form
State of New Mexico
CHILDREN, YOUTH and FAMILIES DEPARTMENT

SUSANA MARTINEZ
GOVERNOR

JOHN SANCHEZ
LIEUTENANT GOVERNOR

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
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
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
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
American Indian and Alaska Native youth are at a much greater risk of being placed in the juvenile justice system than their non-native peers. Tribal youth are over-represented in federal and state detention facilities, which are not equipped to address or meet their needs. Due to the complex civil and criminal jurisdiction in Indian Country, many times tribal youth are lost in a system that tends to re-traumatize rather than heal them.

The Attorney General’s National Taskforce on American Indian and Alaska Native Children Exposed to Violence used the following phrases to describe the status quo in American Indian and Alaska Native youth support services: “an exceptional degree of unmet need.” Tribal youth are one of the most vulnerable populations in the United States and have an enormous amount of trauma to overcome. Time and again, advocates, researchers, and federal reports have made clear that this is a population that needs support, treatment, and rehabilitation, instead of incarceration and punishment.

Tribal youth also draw on community strengths including inter-generational resilience—a resource that we are just now beginning to appropriately recognize and study. American Indians and Alaska Natives draw strength from their traditions, culture, kinship and other relationships, ceremonies, humor, and collective successes. The use of traditionally grounded, trauma aware programs to foster resilience in could provide the most effective teaching and support of vulnerable Tribal youth.

Some tribes have focused their efforts to develop culturally appropriate healing methods for their youth. Since tribal youth offenses in the juvenile justice system have demonstrated better outcomes when they receive targeted, culturally and community-based services, NCAI has highlighted the complex difficulties that American Indian and Alaska Native youth face in the juvenile justice system and emphasized real practices from tribes who work to heal their youth.

NCAI Website
• NCAI.org
• Talking Stick Podcast
  • 2 Episodes

2019 NCAI Tribal Juvenile Justice Policy Brief
Questions?
Yakoke!
(Thank You!)

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