



BRIEF

AMERICAN INDIAN/ALASKA NATIVE YOUTH & STATUS OFFENSE DISPARITIES: A CALL FOR TRIBAL INITIATIVES, COORDINATION & FEDERAL FUNDING

INTRODUCTION

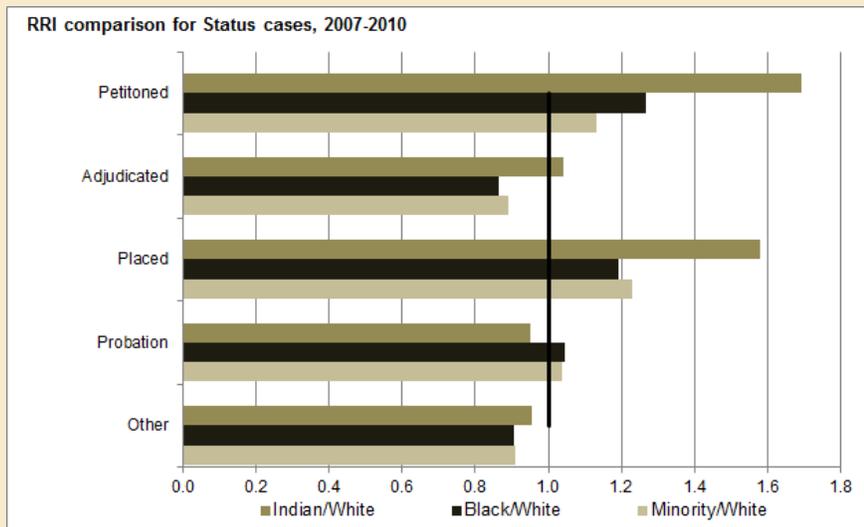
American Indian and Alaska Native (AI/AN) young people are almost twice as likely to be petitioned to state court for skipping school, violating liquor laws, and engaging in other behaviors that are only illegal because of their age (often known as status offenses). Once involved with the state court system, they are less likely to be placed on probation and experience higher rates of detention and residential placements. Although we do not know the exact reasons for these disparities, recent efforts to better serve these youth have focused on responding to trauma and exposure to violence, better addressing substance abuse issues and mental health needs, addressing family needs, and offering more diversion programs and youth leadership development opportunities. This brief looks at the disparities faced in the state system by AI/AN youth who are charged with status offenses, the ability of both state and tribal systems to respond to status offenses, and federal funding levels to support efforts to better serve these youth.

JUVENILE JUSTICE DISPARITIES

American Indian and Alaska Native (AI/AN) youth are overrepresented in the juvenile justice system. For all years between 1995 and 2011, AI/AN youth were more likely to be petitioned in state court for a status offense than other youth. In 2011, AI/AN youth were nearly twice as likely to be petitioned for a status offense than white youth.¹ Of the AI/AN youth petitioned in state court for status offenses in 2011, 34 percent were petitioned for a liquor law violation and 34 percent were petitioned for truancy.² It is important to note that these data only reflect tribal youth in the state system. Although tribal youth can be subject to tribal jurisdiction for status offenses, data from tribal systems are sparse.

When AI/AN youth are charged for status offenses in the state system, they also experience disparities in probation, detention, and residential placement. Between 2007 and 2010, AI/AN youth were less likely

than white youth to receive probation for committing a status offense.³ In the United States in 2011, AI/AN made up 1.8 percent of youth between 12 and 17 years old.⁴ Of the youth who were petitioned for a status offense⁵ and placed in a residential facility on the census date in 2011, 4.2 percent of these youth were AI/AN.⁶ 3.6 percent of youth detained⁷ for status offenses on the census date were AI/AN.⁸



As part of its ongoing collaboration with CJJ, the National Center for Juvenile Justice (NCJJ) analyzed and calculated relative rate indices for status offense cases petitioned to juvenile court between 2007 and 2010. A relative rate index (RRI) is “the rate of activity involving [youth of color] divided by the rate of activity involving [white youth].”

Recently, the Indian Law and Order Commission⁹ and the Attorney General’s Advisory Committee on American Indian and Alaska Native Children Exposed to Violence investigated mental health and juvenile justice disparities experienced by these youth. Some research suggests that mental health and juvenile justice disparities may be related, although further research is necessary to assess possible underlying drivers for these disparities. Specifically, some research indicates that youth who experience substance abuse and mental health issues are less likely to be diverted from and more likely to move deeper into the juvenile justice system (i.e., detention and residential placement).¹⁰ Given that, these youth may experience disparities in detention, residential placement, and probation. This happens, in part, because they lack access to effective diversion programs that assess and address their mental health and substance abuse issues and build upon their strengths.

Substance abuse prevention, early intervention programs, and healing from trauma may reduce the number of AI/AN youth who are petitioned for liquor law violations. However, further research is necessary to assess factors contributing to the high rate of liquor law violation petitions for AI/AN youth. In all instances, tribal, federal, state, local, and private stakeholders should coordinate their responses to

develop, implement, sustain, and evaluate these programs. A critical review of responses should include evaluating the degree to which these programs are responsive to Native populations by incorporating and being respectful of tribal culture. Coordinating responses requires trusting relationships based on mutual respect and an understanding of the mental health disparities, jurisdictional arrangements, fiscal realities, and strength-based programs for AI/AN youth.

INTERGENERATIONAL AND CURRENT TRAUMA

In the late nineteenth and early twentieth centuries, US federal policies called for the assimilation of native people and the termination of tribal nations. In addition to breaking up tribal land holdings, federal polices sought to accomplish these goals by undoing the kinship systems and familial relations that gave order to many tribal peoples. Boarding schools that forcibly removed native children from their family and strictly forbade native languages and customs were a central component of these policies. This left generations of native people who had lost their connection to tribal culture and were made to feel inferior. As the Advisory Committee on AI/AN Children Exposed to Violence reported, “This is a direct attack on the cultural fabric of a people and an assault on the essence of a community that has a lasting impact on an individual’s psyche, spiritual/emotional core, and well being.”¹¹ The Advisory Committee went on to report that this shattered the social fabric of Native Americans and contributed to historical trauma. The devastating effects of removal, relocation, assimilation, and boarding schools have compounded over generations within AI/AN communities and families.¹²

In addition, the erosion of tribal sovereignty that led to the diminishment of criminal jurisdiction has contributed to violence in the lives of AI/AN young people. The diminishment of tribal jurisdiction has seriously impeded tribes from exercising their full authority to protect their children.¹³ Today’s AI/AN youth are confronted with the legacies of these policies and practices.¹⁴ AI/AN youth experience higher rates of trauma and exposure to violence than other youth.

“These policies [of assimilation] left generations of parents and grandparents who were subjected to prolonged institutionalization and who do not have positive models of family life and family discipline. “

– Sarah Hicks Kastelic, Deputy Director, National Indian Child Welfare Association¹⁵

AI/AN youth may be exposed to violence by witnessing, learning of, or being the victim of violence. They are more than twice as likely to die from unintentional injuries than non-AI/AN youth.¹⁶ According to the Centers for Disease Control and Prevention, AI/AN youth experienced suicide rates 50 percent higher than non-AI/AN youth from 1999-2009.¹⁷ They are more likely to be a victim of violence and experience the loss of peers due to violence than other youth. AI/AN women experience the highest rates of intimate

partner violence among all racial and ethnic groups.¹⁸ Some research indicates that AI/AN youth may experience higher rates of trauma-related symptoms and Post Traumatic Stress Disorder (PTSD)¹⁹ than non-AI/AN youth.²⁰ The prevalence of trauma-related symptoms and PTSD among AI/AN youth reflects not only their higher rates of trauma exposure but also some of their unique mental health needs.²¹

“We must not accept the shameful reality that American Indians and Alaska Natives are disproportionately likely to be exposed to crime and violence – and that many who suffer exposure are children.”
 – Former U.S. Attorney General Eric H. Holder, Jr.²²

The Attorney General’s National Task Force on Children Exposed to Violence concluded, “when [children’s] trauma goes unrecognized and untreated, these children are at significantly greater risk than their peers for...drug and alcohol abuse...school failure...delinquency, and repeated victimization.”²³ AI/AN youth had the highest rate of liquor law violation petitions in each year between 1995 and 2011,²⁴ although recent national studies suggest it is unclear whether AI/AN youth experience higher rates of alcohol use, dependence, or use than other youth.²⁵

From 2002 to 2011, AI/AN youth experienced a smaller decrease (- 16%) in the number of status offense cases than Asian (- 57%), Black (- 26%), and White (- 44%) youth.²⁶ The smaller decrease for AI/AN youth may in part reflect a greater need for validated screening and risk/needs assessment tools and adequate, accessible services that address the trauma within AI/AN communities. Without sufficient resources, trauma will persist in AI/AN communities and AI/AN youth will continue to experience high status offense petition rates. Thus, tribal, federal, state, local, and private stakeholders must coordinate to identify, assess, and address the needs of AI/AN youth, families, and communities.

TRIBAL AUTHORITY AND ABILITY TO INTERVENE

Effective and coordinated responses can be impeded when state and tribal stakeholders are unsure of who has the authority to intervene in a particular case.²⁸ AI/AN youth who are charged with status offenses may be subject to state, tribal, or concurrent state and tribal jurisdiction.²⁹ This arrangement varies not just by state, but often by reservation within each state. Generally, AI/AN youth who commit a status offense outside Indian country³⁰ are subject to the state juvenile justice

Simplified Indian Country Status Offense Jurisdiction		
	State Jurisdiction	Tribal Jurisdiction
Status Offense committed within Indian country (Non-PL 280)		✓
Status Offense committed outside Indian country	✓	
Status Offense committed within Indian country in Public Law 280 (or Public Law 280-like) State ²⁷	✓	

systems. AI/AN youth who commit a status offense in Indian country within Alaska, California, Minnesota, Nebraska, Oregon, or Wisconsin may be subject to concurrent state and tribal jurisdiction depending on the reservation.³¹ Some AI/AN youth who commit a status offense in Indian country outside these six states may also be subject to state jurisdiction.

The Indian Law and Order Commission found that when AI/AN youth become involved in a state juvenile justice system, they can “effectively go missing” from the tribe. This is partly due to the lack of data collection, consideration of their unique circumstances, and adequate “cultural supports necessary for successful rehabilitation and reentry back into the tribal community.”³² In an effort to prevent AI/AN youth from going missing, the federal Indian Child Welfare Act (ICWA) requires states to notify and provide tribes with an opportunity to intervene and transfer the case to tribal court under the following conditions:

1. A young person is a member of or is eligible to be a member of a federally recognized tribe,
2. The youth is petitioned for a status offense by a state, and
3. The youth is being placed outside of his or her home, “whether or not that placement is a secure confinement.”³³

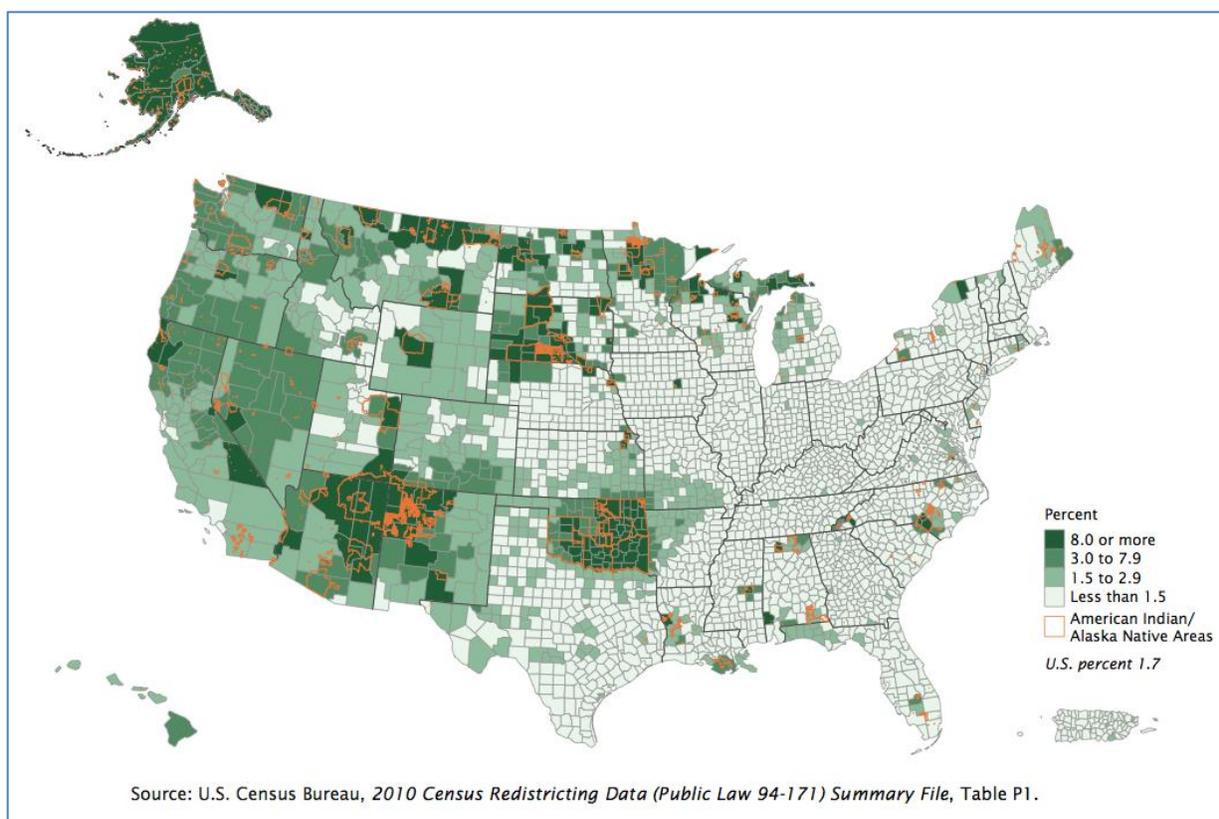
According to Section 3.2 of the *National Standards for Care of Youth Charged with Status Offenses*, courts should assess early whether the Indian Child Welfare Act (ICWA) applies. The Indian Child Welfare Act (ICWA) is a federal law that established minimum standards relating to the treatment and placement of Indian children. Congress passed ICWA after finding “that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions.” ICWA protects Indian children’s interests by, among other things, ensuring that when an out of home placement is deemed necessary, the setting chosen reflects Indian values and culture.

Although ICWA does not cover most juvenile delinquency proceedings, ICWA does apply to status offense cases. There are several critical junctures during a status offense case when courts should consider ICWA and its provisions, such as at the beginning of the case, when the child is placed out of home and when the child and family are offered services. If an Indian child is petitioned to court as an alleged status offender, the court should notify the tribe of the proceedings. This will allow the tribe to help identify culturally appropriate services and assistance for the child and family. If the child is detained, ICWA’s placement preference standards must apply, unless the placement qualifies as an “emergency removal,” in which case the placement must end as soon as the emergency subsides.

Many of ICWA’s most relevant provisions for status offense cases relate to when a youth is placed out of his or her home. ICWA gives tribes exclusive jurisdiction over custody proceedings involving Indian children living within their reservation or who are wards of the tribal court. For all other covered proceedings, the state should transfer jurisdiction to the tribe at the request of a parent, the tribe or the child’s custodian absent good cause or objection by a parent or child of a certain age. ICWA requires that any Indian child placed in foster care must be placed in “the least restrictive setting which most approximates a family and in which his special needs, if any, may be met.” The child should be placed reasonably close to his home and the law enumerates a series of placement preferences that must be followed unless the child’s tribe establishes a different order of preference. Prior to a foster care placement, the placing agency must prove that efforts were made to provide “remedial services and rehabilitative programs designed to prevent the breakup of the Indian family” and that those efforts were unsuccessful. If, however, an Indian child is held in contempt of court for a probation violation, ICWA does not apply if the contempt order results in an out-of-home placement, as ICWA does not consider contempt to be part of the original status offense case. Still, courts should refrain from placing Indian youth in secure confinement for a status offense.

However, the lack of regulations around ICWA make enforcement of these provisions difficult.³⁴ The Attorney General’s Advisory Committee on AI/AN Children Exposed to Violence found that “unfortunately, many states do not comply with the letter or spirit of ICWA.”³⁵ Recent research suggests that in practice, this non-compliance comes in the form of state courts not identifying Native youth as “Native” and failing to notify tribes pursuant to ICWA,³⁶ which ultimately adds to the problem of youth “going missing” from their tribe.

Map of American Indian and Alaska Native as a Percentage of County Population: 2010



When AI/AN youth commit a status offense in Indian country where no state jurisdiction exists, AI/AN youth are subject to the tribal system. While tribal courts have the authority to intervene, tribal juvenile justice officials told the Indian Law and Order Commission that insufficient resources have limited their ability to exercise their authority and address the underlying reasons for juvenile justice involvement.³⁷ Due to the fact that tribes do not have a tax base, the vast majority of tribes are largely dependent on federal authorizations and appropriations to fund their justice systems – this is most often in the form of competitive grants. The Advisory Committee on AI/AN Children Exposed to Violence found it unacceptable that many tribal programs that are funded are subject to competing for grants every three years to continue essential programming and long-term sustainability becomes a barrier to success.

In addition, many tribes have no juvenile court, docket, or code.³⁸ Still, other tribes may have outdated codes adopted from state codes that do not match tribal cultural values aimed at preventing, treating, and healing youth who have committed offenses. In the face of these obstacles, some promising strategies are emerging in Indian country to better serve AI/AN youth who are charged with status offenses.

TRIBAL INITIATIVES

The Attorney General’s Advisory Committee on AI/AN Children Exposed to Violence examined the issue of juvenile justice in Indian country, including status offenses, and developed the following vision for juvenile justice reform:

Only 22% of the AI/AN population lives in Indian Country. The following cities have the largest number of AI/AN*:

1. New York, NY (111,749);
2. Los Angeles, CA (54,236);
3. Phoenix, AZ (43,724);
4. Oklahoma City, OK (36,572);
5. Anchorage, AK (36,062);
6. Tulsa, OK (35,990);
7. Albuquerque, NM (32,571);
8. Chicago, IL (26,933);
9. Houston, TX (25,521);
10. San Antonio, TX (20,137);
11. Tucson, AZ (19,903);
12. San Diego, CA (17,865);
13. Philadelphia, PA (17,495)

*Based on 2010 census

“The Advisory Committee envisions a reformed juvenile justice system, based on the fundamental philosophy that children are sacred; a system with the resources to implement and support this philosophy. . . . Developing local capacity through training, education and funding is essential. Tribal cultural and family connections will ultimately save our children from the effects of exposure of violence through that development of their resiliency.”³⁹

Research suggests that AI/AN cultural and spiritual practices may build resiliency to substance abuse and suicide attempts.⁴⁰ The preliminary evidence indicates that prevention and intervention approaches that utilize AI/AN cultural traditions and spiritual practices are likely to produce positive outcomes, although more research is needed to determine how this would impact juvenile justice disparities. These strength-based approaches include tribal healing to wellness courts, tribal youth programs, and youth leadership development initiatives.

“Cultural activities are prevention activities. Youth need to connect not only to their families, to their peers, and to the community, but they need to connect to their heritage. Youth are susceptible to [risky behaviors] when they have a hole in their spirit and they are looking for something to fill that hole. If we do not address that hole, I think we’re missing the boat.”
– Angela Blackwell, former Grand Ronde Tribal Councilwoman⁴¹

As of May 2013, there were 28 tribal healing to wellness courts for AI/AN youth.⁴² These are cultural adaptations of drug courts, which have specialized dockets for drug-related offenses and provide intense, multi-disciplinary case management. Tribal healing to wellness courts apply traditional practices and emphasize the role of community and family in the healing process.⁴³ Depending on the practices of the tribe, healing to wellness court may adopt different cultural practices, ceremonies, and activities.⁴⁴ These courts may also use traditional dispute resolution practices such as “peacemaking, family conferencing, elder panels, and appearances before traditional or religious leaders.”⁴⁵ They provide culturally relevant incentives for participants.⁴⁶ Moreover, tribal elders, healers, medicine men, and other cultural leaders may be involved in the planning and implementation of tribal healing to wellness courts.

Last year, the United National Indian Tribal Youth (UNITY) launched the Today’s Native Leaders: National Tribal Youth Leadership Initiative (through funding from the Office of Juvenile Justice and Delinquency Prevention). This initiative will offer seven regional youth leadership trainings between 2014 and 2017.⁴⁷ Trainings will involve interactive leadership development workshops in hopes of expanding the number of UNITY youth councils and youth-led service projects. Past UNITY national conferences included workshops on community organizing, financial management, Indian law, and other leadership skills.

Healing to wellness courts and youth leadership development initiatives provide services that help AI/AN youth to cope with and build resiliency to historical and current trauma. In addition, the Substance Abuse and Mental Health Services Administration (SAMHSA)-MacArthur Foundation initiative and tribal youth programs may increase access to strength-based diversion programs that screen, assess and address the mental health and substance abuse needs of AI/AN youth who are charged with a status offense. While there is some evidence to suggest that these programs produce positive outcomes for AI/AN youth, future evaluations are needed to determine whether these programs reduce:

- The number of AI/AN youth who are petitioned for liquor law violations and
- Detention and residential placement disparities for AI/AN youth who are charged with status offenses.

While some tribes do not have juvenile justice codes and are lacking resources to develop and implement initiatives to address status offenses, other tribes are at the forefront of promising strategies in this area. The Tribal Law and Policy Institute has developed a Tribal Juvenile Justice Code Development Resource that assists tribes in developing laws and policies that are in line with cultural values and that do not seek to incarcerate youth who commit status offenses.⁴⁸ The Tribal Law and Policy Resources suggests that in

a tribal code, “Status offenses should be defined with available services in mind to avoid involving youth in the system where remedial services are lacking for their identified need areas.”

The Pascua Yaqui Tribe has a status offense statute that explicitly prohibits holding youth who are charged with status offenses in jail with adults, specifying that “interim care” be used up to 72 hours and youth may not be transported with adults who are in the criminal justice system.

Promising strategies are emerging in Indian country that focus on the “Family in Need of Services” (FINS) model. This approach seeks to address issues that may be present within the family unit. It incorporates a move toward healing and strengthening the family and away from incarcerating youth who are charged with status offenses. The Santee Sioux Nation, Puyallup Tribe, Pyramid Lake, Pascua Yaqui, Pit River Tribe, and the Winnebago Tribe are just a few examples of tribes that incorporate some version of the FINS approach to youth who are charged with status offenses. As an illustration of the tribal process, the Santee Sioux have developed a juvenile court that hears status offense cases transferred from state courts. One of the court’s goals is, “To separate clearly in the judicial and other processes affecting children under this code the ‘juvenile offender’ and the ‘family in need of services,’ and to provide appropriate and distinct dispositional options for treatment and rehabilitation of these children and families”⁴⁹

BUILDING & SUSTAINING EFFECTIVE COORDINATION

Federal, state, local, and tribal stakeholders should coordinate efforts to optimize limited resources, share information, resolve jurisdictional issues, and increase access to culturally relevant services for AI/AN youth who are charged with a status offense. Effective coordinated responses are especially important when AI/AN youth are charged with a status offense in a state court or in tribal courts that lack adequate resources to serve them.

Unfortunately, the relationships between some federal, state, local, and tribal stakeholders can be strained by mistrust, misunderstanding, or hostility. This can be due to historical tensions built up over generations. Tribes and states have different cultures and legal traditions and they can have very different views on tribal sovereignty. However, the necessity to interact and work together to resolve jurisdictional uncertainties and conflicts remains.⁵⁰ In some communities, there may be no relationship between state, local, and tribal stakeholders.⁵¹ Therefore, effective coordination requires building mutual respect and developing open communication lines between these stakeholders.⁵²

“A good test of whether an appropriate relationship [between state and tribal stakeholders] exists is whether each side understands the potential for learning from the other.”⁵³

– Justice Michael F. Cavanagh, Michigan Supreme Court

Stakeholders can take several steps to build mutual respect and open communication lines. For example, state and local stakeholders can identify tribes within and outside the state whose members are represented in their juvenile justice system.⁵⁴ Once tribes are identified, state and local stakeholders can research and begin to learn about the histories of the tribes. State, local, and tribal stakeholders can reach out to their professional counterparts and ask to visit and learn about each other’s successes and challenges to better serve AI/AN youth who are charged with status offenses. The National Council of Juvenile and Family Court Judges (NCJFCJ) has proposed the following steps:

- When state and local stakeholders visit the tribal community, they should ask how to follow tribal protocols.⁵⁵
- Joint-trainings may provide a forum to build an understanding of historical and fiscal realities among stakeholders.⁵⁶
- After stakeholders develop some rapport, stakeholders may establish a task force or committee to foster an ongoing relationship, assess current practices, and develop an action plan.⁵⁷

While interpersonal relationships may form the basis for coordinated responses, it is important to consider how coordinated responses may continue through leadership changes.⁵⁸ Court rules, written agreements between agencies, and legislation may help to sustain coordinated responses. For example, the Michigan Supreme Court adopted a court rule that made tribal court judgments enforceable in state court when the tribe enters a binding agreement to enforce state court judgments.⁵⁹ Because some stakeholders may perceive that tribal courts lack capacity or authority,⁶⁰ the court rule addressed some misconceptions regarding the legitimacy of tribal courts. In addition, the court rule laid the groundwork for localities and tribes to develop and sustain ongoing relationships.

Several states have developed tribal-state court forums, wherein state and tribal court judges come together for relationship building and to share common concerns. These forums can be formalized through rules of the court and work well when they meet regularly. Juvenile court judges in both jurisdictions often find common ground when it comes to youth.

In California, relationships formed and fostered through the tribal-state court forum laid the foundation for the Yurok Tribal Court and Del Norte County juvenile court memorandum of understanding. The

MOU established protocol for sharing information and determining jurisdictional issues.⁶¹ The agreement takes advantage of the concurrent jurisdiction that exists with Yurok and the State of California. This agreement allows for diversion; shared jurisdiction so that a juvenile found to have committed an offense can be transferred for disposition; and/or a juvenile can be transferred post-disposition for the purpose of supervision. When the tribal court assumes jurisdiction and the youth is completing conditions of an accountability agreement and any other conditions ordered by the tribal court, the state court action is stayed pending completion or notification of failure to comply. The Yurok tribal court creates an intensive supervision/support system for the youth and their family, which aligns with the rehabilitative goals of both courts.

In Oregon, the state agency and tribes entered into a memorandum of agreement (MOA) that provided the framework for the state agency and tribes to coordinate the enrollment of youth with their tribes and to develop and implement culturally relevant services for AI/AN youth.⁶² The MOA also established protocols for sharing information and notifying each other when AI/AN youth become involved in the state juvenile justice system.⁶³ Under SB 770, the Oregon state legislature created state agency liaisons to the tribes.⁶⁴ State agency liaisons provide technical assistance to tribes on identifying funding, evaluating programs, and managing grants.⁶⁵ State agency liaisons also work to build trusting relationships with tribes, facilitate problem solving, and train agency staff on tribal culture.⁶⁶

In Minnesota, the Leech Lake Band of Ojibwe Tribal Court and the Minnesota 9th District Court created the country's first joint-jurisdiction court to address the substance abuse epidemic on the Leech Lake reservation.⁶⁷ "The Leech Lake Tribal Council passed a resolution in support of a multi-jurisdictional juvenile delinquency court in collaboration with the counties overlapping the Leech Lake Reservation."⁶⁸ The resolution enabled the tribal court and district court to develop and implement a restorative justice program. Moreover, the tribal court and Cass County established a probation delivery system for the tribal court, which previously had no probation delivery system.⁶⁹ The probation system involves a Cass County probation officer maintaining office space at the tribal court and reporting directly to the tribal court judge.⁷⁰

Local agencies and private and public stakeholders may also work together to coordinate limited resources and improve outcomes for AI/AN youth. On the local level, "successful [federally-supported tribal youth programs] leverage resources and promote coordination among local programs within their community and are required, as part of their grant agreement, to assemble an advisory group of local stakeholders to guide the program."⁷¹ For example, the Old Harbor Village, Alaska tribal youth program coordinated with Kodiak Island Borough School District to provide after-school prevention programming.⁷² On the national level, SAMHSA and the MacArthur Foundation are collaborating with

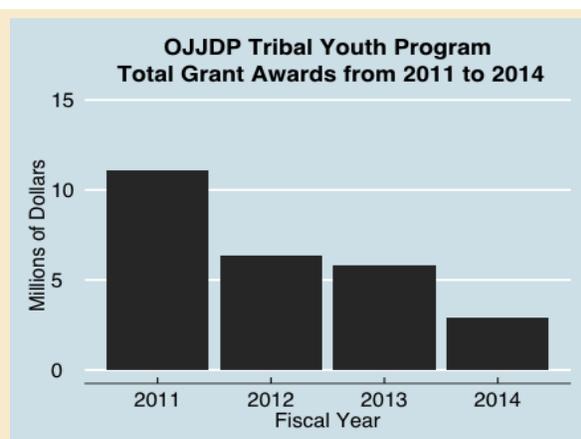
four tribes (Cheyenne River Sioux, Lower Brule Sioux, Red Lake Band of Chippewa, and Ute Mountain Ute) to convene tribal stakeholders, develop strategic plans, coordinate services, and create culturally relevant community-based diversion programs that address behavioral health needs of AI/AN youth.⁷³

Coordinated responses enable stakeholders to optimize limited resources, promote information sharing, identify AI/AN youth within state juvenile justice systems, resolve jurisdictional issues, and increase access to culturally relevant services for AI/AN youth who are charged with a status offense in state and tribal juvenile justice systems. To encourage coordination, federal funding should require states and territories to engage in “meaningful and consensual consultation with tribes” in developing, operating, and evaluating culturally relevant services and practices for AI/AN youth.⁷⁴

FEDERAL FUNDING

Some responses from both the coordinated approach and the tribal-run initiatives have floundered because there has been inadequate funding to overcome the fiscal realities facing communities.⁷⁵ There are two primary federal funding sources to support juvenile justice, mental health, and substance abuse programs for AI/AN youth: Office of Juvenile Justice and Delinquency (OJJDP) and Substance Abuse and Mental Health Services Administration (SAMSHA).⁷⁶

Under the Tribal Law and Order Act of 2010, Congress authorized OJJDP to administer \$25 million to support tribal youth programs⁷⁷ (TYP) for each fiscal year between 2011 and 2015.⁷⁸ From 2011 to 2014, OJJDP has awarded 86 tribes⁷⁹ TYP grants totaling \$38.59 million.⁸⁰ Each year the number of TYP grantees and amount of TYP funding has decreased. During this period, TYP grants accounted for almost 64 percent of OJJDP awards to tribal juvenile justice systems.



See Appendix for a chart on OJJDP Tribal Grant Awards for Programing, TTA, & Research and Evaluation, 2010-2014.

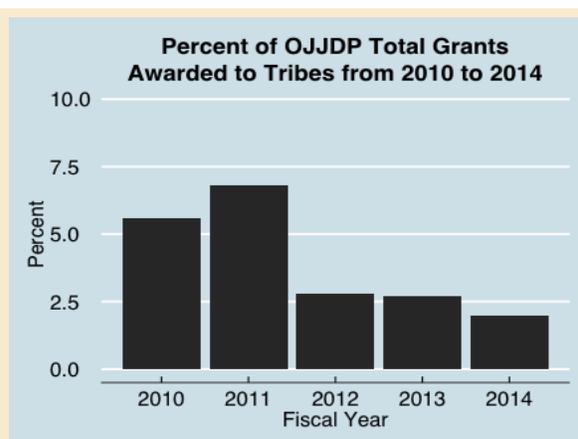
TYP grants provide support to federally recognized tribes for prevention and intervention services and system improvements. Specifically, grantees may provide substance abuse prevention and treatment services, mental health services, youth leadership development and mentoring programs, parenting classes⁸¹, and culturally-based programs.⁸² In 2014, OJJDP launched a new initiative to support specialized courts that address underage drinking.⁸³ Although these specialized courts and grantees may provide culturally-relevant services for AI/AN youth who are charged with or at-risk of being charged with a status offense, outcome and impact evaluations are needed to determine whether these specialized

courts and other TYP programs reduce disparities and improve outcomes for AI/AN youth. If programs demonstrate effectiveness, funding levels should be assessed to determine how to sustain the programs and how to bring the programs on a larger scale. Evaluations might also reveal to what extent, if any, local circumstances and certain program elements contribute to producing positive results, which could ultimately inform efforts to bring programs on a larger scale.

In 2012, SAMHSA and the US Department of Health and Human Services acknowledged the Wind River Tribal Youth Program (Northern Arapahoe Tribe, Wind River Reservation, Wyoming) with its Voices of Prevention Award.⁸⁴ The program uses culture as a coping mechanism in substance abuse and violence prevention and intervention.⁸⁵ Each week youth participate with elders in talking circles, as well as sweat lodge ceremonies preparing meals.⁸⁶ These activities are intended to provide regular, continuous support for healing.⁸⁷ Staff members are accessible 24/7 for crisis intervention and ensure that participants receive program-related messages.⁸⁸ Since the program began, there have been no suicides of youth on the Wind River Reservation.⁸⁹

Based on recent funding levels, it appears that SAMHSA is leading efforts to address the mental health needs of AI/AN youth and prevent juvenile justice involvement. In 2014, SAMSHA made \$12.5 million in grants available specifically for AI/AN youth programs and initiatives.⁹⁰ These grants include: \$4 million for the “Circle of Care” public health approaches to substance abuse, mental illness, and trauma⁹¹; \$4.0 million for suicide prevention⁹²; and \$4.5 million to expand and enhance existing juvenile drug courts⁹³.

SAMHSA funding may provide mechanisms to develop and sustain prevention programs that reduce the number of AI/AN youth who are charged with status offenses, especially the number of youth who are charged with liquor law violations. SAMHSA funding may also provide mechanisms to develop and sustain diversion programs that assess and address mental health and substance abuse issues of AI/AN youth.



See Appendix for a chart on OJJDP Tribal Grant Awards for Programing, TTA, & Research and Evaluation, 2010-2014.

Both OJJDP and SAMHSA direct resources to federally-recognized tribes. These resources may help some tribal communities overcome barriers to exercise their authority to intervene. However, the Attorney General’s Advisory Committee found that the three-year grant programs inhibit stable funding for tribal communities partly because they must “compete for grant funds to support the most basic components of

a juvenile justice system.”⁹⁴ To address the unstable inadequate funding mechanism for tribal juvenile justice systems, the Advisory Committee recommended that a minimum 10 percent of OJJDP’s total funding should be set aside for tribal communities.⁹⁵

Because 78 percent of AI/AN people live outside of Indian country, states and localities must assess their needs and set aside appropriate funding levels to support culturally-competent services for AI/AN youth within their juvenile justice systems. Moreover, state, local, and tribal stakeholders should become familiar with each other’s fiscal realities. They must identify opportunities to coordinate service

delivery and resources to ensure AI/AN youth who are charged with status offenses receive culturally-competent diversion programs that address their mental health needs.

Section 1.8 of *National Standards for Care of Youth Charged with Status Offenses* calls for the elimination of “racial and ethnic disparities by being culturally aware and ensuring impartial and equal access to culturally-competent prevention and intervention services and treatment for youth charged with status offenses and their families.” There are many things system professionals, from law enforcement to social service providers and courts, can do to reduce racial and ethnic disparities, including:

- Collect and analyze data at all decision points so intentional strategies can be developed to reduce racial and ethnic disparities.
- Use culturally competent screening and assessment tools at appropriate points and throughout a status offense case.
- Implement family engagement and alternative dispute resolution strategies during status offense cases.
- Provide access to family-connected and community-based services in youths’ home communities, especially where a community may have disproportionately high involvement in the status offense system.

CONCLUSION

AI/AN youth are more likely to be petitioned to state courts for a status offense, especially liquor law violations, than other youth. They experience higher rates of detention and residential placement and are more likely to experience trauma, violence, and alcohol abuse than other youth. Research suggests that AI/AN youth experience a higher rate of detention and residential placement because they lack access to effective, strengths-based diversion programs that address their mental health and substance abuse issues. Tribal, federal, state, local, and private stakeholders must coordinate their responses to better serve these youth.

“Let us put our minds together and see what life we can make for our children.”
-- Chief Sitting Bull, Hunkpapa Lakota

AI/AN youth who are charged with status offenses often encounter tribal systems with insufficient resources and state systems that lack culturally-competent services. Fully resourced tribally-driven responses to address status offenses are the best practice, but funding is a barrier. OJJDP AI/AN youth-specific grants have decreased from \$24.2 million in 2010 to less than \$4.9 million in 2014. SAMHSA has

recently made \$12.5 million in grants available for programs and initiatives serving AI/AN youth with mental health and substance abuse issues. Congress should increase the funding levels of SAMSHA and OJJDP to support culturally-competent services for AI/AN youth.

Tribally driven initiatives should be supported through federal funding, capacity building support, and evaluation research. Ultimately, tribes should direct the future of their children. Those that are able to assist and coordinate should do so while respecting the unique legal status, historical realities, and cultural values of tribal Nations.

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APPENDIX

Office of Juvenile Justice and Delinquency Prevention (OJJDP) - Tribal Grant Awards, 2010-2014						
Grant Type	2010	2011	2012	2013	2014	TOTAL
Tribal Youth Programs	\$13,419,659	\$11,167,890	\$6,338,962	\$4,779,939	\$2,887,873	\$38,594,323
Tribal Youth National Mentoring Program	\$5,199,507	\$2,999,854	-	-	-	\$8,199,361
Tribal Juvenile Accountability Discretionary Program	\$1,074,686	\$753,720	-	\$796,737	\$300,000	\$2,925,143
Demonstration Program Division Grants	\$599,995	\$1,000,000	-	-	-	\$1,599,995
Juvenile Justice Programs	-	\$1,053,637	-	-	-	\$1,053,637
National Intertribal Youth Summit [^]	*\$299,987	*\$500,000	\$500,000	***\$849,722	-	\$2,149,709
Tribal Healing to Wellness Court Responses to Underage Drinking Initiative	-	-	-	-	****\$192,000	\$192,000
Tribal Programming Total	\$20,593,834	\$17,475,101	\$6,838,962	\$6,426,398	\$3,379,873	\$54,714,168
Tribal Youth Program Training and Technical Assistance	\$3,149,825	-	-	\$987,998	\$987,998	\$5,125,821
Tribal Healing to Wellness Court Responses to Underage Drinking Initiative TTA	-	-	-	-	*****\$600,000	\$600,000
Tribal Training and Technical Assistance Total	\$3,149,825	-	-	\$987,998	\$1,587,998	\$5,725,821
Tribal Youth Field Initiated Research and Evaluation Programs	\$500,000	\$500,000	\$437,261	-	-	\$1,437,261
Tribal Gang Field Initiated Research and Evaluation Programs	-	**\$898,714	-	-	-	\$898,714
Tribal Research and Evaluation Total	\$500,000	\$1,398,714	\$437,261	-	-	\$2,335,975
TOTAL OJJDP Tribal Grant Awards	\$24,243,659	\$18,873,815	\$7,276,223	\$7,414,396	\$4,967,871	\$62,775,964
TOTAL OJJDP Grants*****	\$432,500,000	\$276,000,000	\$262,500,000	\$279,500,000	\$244,000,000	\$1,494,500,000
Percent of OJJDP Funding for Tribal Grant Awards	5.6%	6.8%	2.8%	2.7%	2.0%	4.2%

[^] National Intertribal Youth Leadership Initiative

* Grant was awarded as a demonstration program division grant.

** The length of the award is up to 4 years.

*** The length of the award is 48 months.

**** Based on grant solicitation, OJJDP will award up to six grants of as much as \$320,000 for a 24-month project.

***** Based on grant solicitation, OJJDP will award up to one cooperative agreement of as much as \$600,000 for 36-month project.

***** Based on JJDPA Title II, JJDPA Title V, JABG, Mentoring, and other grant-making programs

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- ⁵ In 2011, 1,876 youth were petitioned for a status offense.
- ⁶ Coalition for Juvenile Justice, *supra* note 3.
- ⁷ In 2011, 220 youth who were charged with a status offense were detained.
- ⁸ Coalition for Juvenile Justice, *supra* note 3.
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- ²¹ *Id.*
- ²² Mason, Karol V. (2013). *Understanding the Impact of Children's Exposure to Violence in American Indian/Alaska Native Communities*. US Department of Justice, Office of Justice Programs. Available at: [blogs?topic=All&component=All&text=&date\[value\]=&page=2&promote=Allarchives/3417](https://www.justice.gov/defendingchildhood/cevr-rpt-full.pdf)
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- ²⁴ In 2011, the liquor law violation case rate for AI/AN youth was nearly 3 times the white rate, 7 times the rate for black youth, and 11 times the rate for Asian youth. Puzzanchera, Charles & Hockenberry, Sarah, *supra* note 1, at 75.
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further statistical analysis is necessary to determine whether these differences are significant. In addition, difference may vary by community.

²⁶ Puzanchera, Charles & Hockenberry, Sarah, *supra* note 1, at 75.

²⁷ In 1953 Congress enacted Public Law 280, transferring federal criminal and limited civil jurisdiction to the states in 6 “mandatory states” – California, Minnesota, Wisconsin Oregon Nebraska, and Alaska at statehood. States were later allowed to opt into this jurisdictional arrangement for all or partial jurisdiction. Some states, like Washington State, opted for jurisdiction over status offenses arising within Indian country, within specified reservations.

²⁸ Arnold, Aaron F., Reckess, Sarah Cumbie & Robert V. Wolf. (2011). *State and Tribal Courts: Strategies for Bridging the Divide*. Center for Court Innovation. Available at: <http://www.courtinnovation.org/sites/default/files/documents/StateAndTribalCourts.pdf>.

²⁹ Neelum, Arya & Rolnick, Addie C. “A Tangled Web of Justice: American Indian and Alaska Native Youth in Federal State, and Tribal Justice Systems.” The Campaign for Youth Justice, Page 13. Available at: <http://www.modelsforchange.net/publications/212>

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³¹ P.L. 83-280; Indian Law & Order Commission. (November 2013). “A Roadmap for Making Native America Safer: Report to the President & Congress of the United States,” Chapter 6, *Juvenile Justice: Failing the Next Generation*. Available at: <http://www.aisc.ucla.edu/iloc/report/index.html>.

³² Indian Law & Order Commission. *supra* note 12, at 157.

³³ 44 Fed. Reg. 67584 at 67587; American Bar Association. (2010). “The Indian Child Welfare Act and Advocacy for Status Offenders.” Available at: http://www.americanbar.org/content/dam/aba/migrated/child/PublicDocuments/ICWA_factsheet.authcheckdam.pdf. Indian Law & Order Commission. (November 2013). “A Roadmap for Making Native America Safer: Report to the President & Congress of the United States,” Chapter 6, *Juvenile Justice: Failing the Next Generation*, Page 173. Available at: <http://www.aisc.ucla.edu/iloc/report/index.html>; American Bar Association. (2010). “The Indian Child Welfare Act and Advocacy for Status Offenders.” Available at: http://www.americanbar.org/content/dam/aba/migrated/child/PublicDocuments/ICWA_factsheet.authcheckdam.pdf. (transfer may be stayed by parental objection or for good cause, 25 US § 1911) State law may require additional requirements.

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³⁵ Attorney General’s Advisory Committee on American Indian and Alaska Native Children Exposed to Violence, *supra* note 11, at 75.

³⁶ *Id.*, at 79.

³⁷ Indian Law & Order Commission. *supra* note 12, at 161.

³⁸ Neelum & Rolnick, *supra* note 29, at 13 [citing US Department of Justice, Bureau of Justice Statistics. (December 2005). *Census of Tribal Justice Agencies in Indian Country, 2002*].

³⁹ Attorney General’s Advisory Committee on American Indian and Alaska Native Children Exposed to Violence, *supra* note 11, at 114.

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⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Office of Juvenile Justice Delinquency Prevention. (July-August 2014). *OJJDP News @ a Glance: OJJDP and UNITY Promote “Today’s Native Leaders” Initiative at National Conference*. Available at: http://www.ojdp.gov/newsletter/247631/sf_3.html.

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⁵⁸ Arnold et al., *supra* note 50.

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⁶¹ Indian Law & Order Commission. *supra* note 12, at 172.

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⁸² *Id.* ("Some TYPs use cultural advisors to serve as role models and resources for language and tribal traditions. Cultural advisors integrate cultural knowledge through lessons on basketry, carving, regalia making, language, and traditional songs.")

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⁸⁷ *Id.*

⁸⁸ *Id.*

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