American Indian and Alaska Native Youth in the Juvenile Justice System

Although there is a lack of comprehensive data to account for tribal, state, and federal justice systems, Native youth are overrepresented in the juvenile justice system. Although Native youth make up approximately 1% of the general youth population and comprise only 1% of juvenile arrests, Native youth are arrested at two to three times the expected rate for certain offenses, such as running away and liquor law violations. A 2008 study by the National Council on Crime and Delinquency (NCCD) also determined that Native youth are most likely to receive punitive sanctions such as transfer to the adult justice system and out-of-home placement. Further, Native youth are much more likely than their non-Native peers to receive harsh treatment while incarcerated (e.g., pepper spray, restraints, and isolation).

In 1992, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) began requiring state juvenile justice programs receiving funding to track and address the high number of minority youth in secure confinement. Unfortunately, “disproportionate minority contact” data is often limited to black, white, and Hispanic youth. However, some states with larger Native populations have collected and published data specific to Native youth, including Alaska, Arizona, Minnesota, Montana, Oklahoma, North Dakota, South Dakota, Washington, and Wisconsin. These studies indicate that in each of these states, Native youth are disproportionately more likely to be referred to the juvenile justice system, arrested, and placed in a secure juvenile correctional facility than their white peers. The most egregious finding comes from a 2005-2006 study in Fairbanks, Alaska, which determined that Alaska Native youth were nearly five times (4.96) more likely to be referred by the Division of Juvenile Justice than white youth.

Tribal, State, and Federal Jurisdiction

The complex arrangement of justice systems serving Indian Country has been described as a “tangled web of justice.” Depending on where the offense occurs, whether or not the tribal youth resides on the reservation, if there is a non-Native victim, and the gravity of the offense, a Native youth may be processed by the tribal, state, or federal juvenile justice system. Tribal courts have jurisdiction over acts that are committed on tribal land, with a few exceptions. Some states share jurisdiction with tribes (referred to as P.L. 280 states’). Federal courts have jurisdiction over major crimes, as defined by the U.S. Major Crimes Act, including murder, manslaughter, kidnapping, and sexual offenses, and others. However, when these major offenses occur on tribal lands, tribal courts may also process their youth through their justice system according to tribal law. Finally, if tribal youth commit offenses on tribal lands against non-Native individuals, these cases may be prosecuted through the state (or federal) system.
Although Native youth represent only 1% of the general youth population, about half of all juveniles in the federal system are tribal youth. A 2011 Urban Institute Justice Policy Center study identified factors that influence the federal prosecution of tribal juvenile offenders. Federal prosecution is given precedence in cases where tribal resources for prosecution or detention of juveniles may be limited. Also, in cases where tribal youth need treatment and services, prosecutors may decide that the interests of the youth are best served through federal prosecution if more rehabilitative resources and services are available. However, the increased number of treatment options available through the federal system may be offset by separation from their families and communities when tribal youth are placed in these facilities. Culture and spiritual practices are an important part of the healing process for tribal youth. Maintaining or building positive relationships with family, peers, and elders can be critical to the rehabilitation of tribal youth and strengthen the youth’s transition back to his or her home community. Well-developed tribal services and resources may provide the best option for tribal youth. Native youth that are able to maintain or create positive connections with family, community, and culture are more likely to develop positive cultural identity, which serves not only as a protective factor for youth at risk for delinquency, but also for behavioral and physical health issues.

Mental Health Issues and Access to Resource

Historical trauma—the cumulative impact of forced relocations, cultural assimilation, broken treaties, and termination—continues to influence Native communities, and the health disparities suffered by Native people are connected to these historical and current traumatic experiences.

 Compared to their non-Native peers, Native youth have more serious problems with behavioral health disorders; Native youth have significantly higher rates of anxiety, substance abuse, and depression. Native youth also have the highest rates of violent victimization, and are twice as likely to experience violence as their non-Native peers.

Nearly 70% of youth in contact with the juvenile justice system have a diagnosable mental health disorder; over 60% of youth with a mental health disorder also have a substance abuse disorder. In addition, youth in the juvenile justice system have higher rates of exposure to traumatic experiences: 93% of youth in detention reported exposure to adverse events including accidents, physical and sexual abuse, and domestic and community violence—and the majority of these youth were exposed to six or more events. (Abram et al., 2004; Ford et al., 2007)

Across Indian Country, mental health and substance abuse services vary by community. In 1955 the Indian Health Service (IHS) was established as a division of the U.S. Health and Human Services Department to provide medical and public health services to federally recognized tribal communities. The 1975 Indian Self-Determination and Education Assistance Act (P.L. 93-638) provided tribes the option of assuming the administration and operation of health services and programs in their communities from IHS, or to remain within the IHS administered health system. Today, many communities may experience long wait times to receive health services from regional providers through IHS. Community-based mental health systems are in development, but often lack extensive assessment resources or treatment services. To increase access to mental health and substance abuse resources for Native youth entering the juvenile justice system, tribes may enter into intergovernmental agreements with states to allow tribal youth to access state services.

Protections for Native Youth

Native youth involved with child welfare have certain protections in the juvenile justice system. The Indian Child Welfare Act of 1978 (ICWA) provides for Native youth who are facing out-of-home placement due to a status offense (an act that would not be considered a crime if committed by an

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adult, such as truancy or possession of alcohol or tobacco). If out-of-home placement is under consideration in the case of a Native youth who has committed a status offense, ICWA requires the state to notify the tribe when a child is taken into state custody and/or is at risk of removal from the home. The purpose of this notification is to give tribes, as well as parents, the opportunity to advocate for the best interests and outcomes for their youth. ICWA protections may require that the case be transferred to a tribal court, or that the youth be placed via ICWA preferences such as with a family member or tribal member, versus commitment in a state juvenile facility. However, a 2012 study by González determined that states continue to differ in their implementation and compliance of this law three decades after its enactment. ICWA protections do not extend to Native youth involved with state juvenile justice systems. Only one state in the U.S. - New Mexico - has such a requirement for Native youth entering the state’s juvenile justice system.

### Culture-Based Alternatives to Incarceration

In 2011, the U.S. Departments of Justice and the Interior released the congressionally mandated Tribal Law and Order Act Long Term Plan to Build and Enhance Tribal Justice Systems, intended to decrease the rates of incarceration and increase alternatives to detention in Indian Country. The plan supports tribal communities in implementing programs that create alternatives to incarceration and address detention and reentry through cultural approaches to helping and healing youth.

The Juvenile Detention Alternatives Initiative (JDAI), a project of the Annie E. Casey Foundation, aims to drastically reduce reliance on local confinement of court-involved youth. JDAI projects are underway in 40 states and 300 counties across the country. The Association on American Indian Affairs (AAIA) and The National Indian Child Welfare Association (NICWA) have been active in developing a tribal model for JDAI to address strengths and challenges pertaining to tribal communities, including access to federal funding for tribal programs. Currently, the Mississippi Band of Choctaw is in the process of implementing the first tribal JDAI site. AAIA and NICWA are documenting that process and will be producing guiding materials for other tribes interested in adopting the tribal JDAI model.
Selected Tribal Culture-Based Alternatives

The following are examples of culture-based alternatives to incarceration for youth in Indian Country, originally referenced in a 2011 joint publication from the Office of the Juvenile Justice and Delinquency Prevention and the Tribal Juvenile Detention and Reentry Resource Center.

Emerging Practices in Response to the Tribal Law and Order Act can be accessed via the following link: [http://www.tribalreentry.org/sites/tribalreentry.org/files/TLOA_FINAL.pdf](http://www.tribalreentry.org/sites/tribalreentry.org/files/TLOA_FINAL.pdf)

Anchorage Youth Courts
_Archorage, Alaska_

The Anchorage Youth Court (AYC) has served to discourage illegal behavior while encouraging understanding and respect for the law through positive peer pressure in a formal court setting. For more than 20 years, the AYC has been successful in significantly reducing the number of juvenile delinquency cases. The AYC provides legal training, a youth court bar association, and juvenile court operated by youth in grades seven through twelve, with adults serving as advisors. Youth ages 12 to 18 who are arrested for committing a criminal offense, but are not considered a threat to themselves or others are referred from the State of Alaska Juvenile Justice Division to the AYC. The AYC serves both non-Native and Alaska Native youth in the City of Anchorage.

For more information: [www.anchorageyouthcourt.org](http://www.anchorageyouthcourt.org)

Sac and Fox Nation
_Stroud Oklahoma_

The Sac and Fox Nation in Oklahoma created a juvenile detention program that provides a safe environment for Native youth between the ages of 12 and 18, as well as corresponding school and spiritual programs. The program was designed to create cultural healing spaces for talking circles (outdoor protected spaces for traditional healing) and indoor sanctuaries for multi-dimensional healing practices.


Rosebud Sioux Tribe
_Rosebud, South Dakota_

The Rosebud Sioux Tribe, a grantee of OJJDP’s Youth Green Reentry Program, provides traditional practices and healing ceremonies for youth reentering the community, including sweat lodges and pipe ceremonies. While in detention, youth work with traditional elders to address behavioral and health issues. Similar to other green reentry programs, the Rosebud program also has incorporated green technologies such as gardening, beekeeping, raising chickens, recycling, and environmental education into their reentry program. Sinte Gleska University, on South Dakota’s Rosebud Indian Reservation, provides community-based mental health services to Native youth in the juvenile justice system, including equine therapy. The services are funded by the Substance Abuse and Mental Health Services (SAMHSA) systems of care program.

For more information:
- [http://www.sintegleska.edu/tiwahe-glu-kini-pi.html](http://www.sintegleska.edu/tiwahe-glu-kini-pi.html) (Community-based children’s mental health program at Sinte Gleska University)
References

15. NICWA and the Association on American Indian Affairs (AAIA) are currently completing a case study of the tribal notification law in New Mexico. The results of this study will be released in 2015.

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ABOUT THE TECHNICAL ASSISTANCE NETWORK FOR CHILDREN’S BEHAVIORAL HEALTH

The Technical Assistance Network for Children’s Behavioral Health (TA Network), funded by the Substance Abuse and Mental Health Services Administration, Child, Adolescent and Family Branch, partners with states and communities to develop the most effective and sustainable systems of care possible for the benefit of children and youth with behavioral health needs and their families. We provide technical assistance and support across the nation to state and local agencies, including youth and family leadership and organizations.

ABOUT THE NATIONAL INDIAN CHILD WELFARE ASSOCIATION (NICWA)

This resource was produced by NICWA in its role as a partner in the national Technical Assistance Network for Children’s Behavioral Health. NICWA is dedicated to the well-being of American Indian and Alaska Native children and families. NICWA works to support the safety, health, and spiritual strength of Native children along the broad continuum of their lives. We promote building tribal capacity to prevent child abuse and neglect through positive systems change at the state, federal, and tribal level. To learn more about NICWA, visit: www.nicwa.org.