

Attorney General's Advisory Committee on
American Indian/Alaska Native Children Exposed to Violence

Briefing Materials

Hearing #2: February 11, 2014 - Scottsdale, Arizona
Theme: Juvenile Justice Response to American Indian
Children Exposed to Violence

Salt River Talking Stick Hotel



Innovation • Partnerships
Safer Neighborhoods



Table of Contents

Agenda	1
Panel #1: Overview of American Indian Children and Youth in Tribal, State, and Federal Juvenile Justice Systems	11
Potential Questions for Panelists.....	15
Written Testimony for Addie Rolnick.....	16
Written Testimony for Judge Theresa Pouley & Carol Goldberg.....	65
Panel #2: Tribal Leaders’ Panel	139
Potential Questions for Panelists.....	143
Written Testimony for Governor Gregory Mendoza.....	144
Written Testimony for Chairwoman Erma J. Vizenor.....	151
Written Testimony for Chairman Ned Norris, Jr.....	152
Panel #3: Juvenile Court Judges Panel	153
Potential Questions for Panelists.....	157
Written Testimony for Judge William Thorne, Jr.....	158
Written Testimony for Judge Abby Abinanti.....	163
Written Testimony for Justice Herb Yazzie.....	168
Panel 4: Components of the Juvenile Justice System Impacting American Indian Youth	169
Potential Questions for Panelists.....	173
Written Testimony for Sheri Freemont.....	175
Written Testimony for Nadia Seeratan.....	190
Written Testimony for Ethleen Ironcloud-TwoDogs.....	191
Written Testimony for Lea Geurts.....	196
Panel 5: Promising Approaches in Juvenile Justice	199
Potential Questions for Panelists.....	203
Written Testimony for Candida Hunter.....	205
Written Testimony for Carole Justice.....	210
Written Testimony for Jessie Deerdorff.....	222
Written Testimony for Daniel Cauffman.....	225
Written Testimony for Jose Martinez.....	229

Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence

Hearing #2: Salt River Talking Stick Hotel, Scottsdale, AZ
Theme: *Juvenile Systems' (Tribal, State, Federal) Response to
American Indian/Alaska Native (AI/AN) Children Exposed to Violence*

February 11, 2014

Agenda

- 8:30AM - 8:45AM **Opening Invocation & Cultural Presentation**
- Invocation: Delbert Ray, Sr. (*Salt River Pima-Maricopa*), Councilman, Salt River Pima-Maricopa Indian Community
 - Cultural Presentation: *Dancing By The River*
- 8:45AM – 9:10AM **Welcome and Introductions**
- Diane Enos, (*Salt River Pima-Maricopa*), President, Salt River Pima-Maricopa Indian Community
 - Tony West, Associate Attorney General, U.S. Department of Justice
 - Kevin Washburn, (*Chickasaw Nation of Oklahoma*), Assistant Secretary for Indian Affairs, U.S. Department of Interior
- 9:10 AM -9:15 AM **Comments from Attorney General's Advisory Committee Co-Chairs**
- Senator Byron Dorgan, Chairman of the Board of Advisors, Center for Native American Youth
 - Joanne Shenandoah, (*Iroquois Nation*), Composer and Singer
- 9:15AM – 10:30AM **Panel #1: Overview of American Indian Youth in Tribal, State, and Federal Juvenile Justice Systems**
- Outcome:** *Provide a general overview of current research on American Indian youth in the juvenile justice system and the relationship between American Indian children exposed to violence and youth engaged in the juvenile system. Highlight common systemic challenges in federal, state, and tribal systems and offer recommendations to address them. Analyze the justice systems (tribal, state, and federal) to determine how, when, and if Native children's exposure to violence is identified, screened, assessed or treated. Identify practices in tribal, state and federal systems that re-traumatize Native youth and best practices.*

(20 minutes for each speaker followed by 15 minutes of questioning by the Advisory Committee)

Witnesses for Panel #1: (Overview)

- **Addie Rolnick**, Professor William S. Boyd School of Law, Author of Tangle Web of Justice, American Indian and Alaska Native Youth in Federal, State, and Tribal Justice Systems

Suggested focus: Presenting key findings and key recommendations from the Tangled Web of Justice, http://www.campaignforyouthjustice.org/documents/CFYJPB_TangledJustice.pdf

Addie C. Rolnick teaches federal Indian law, criminal law, and critical race theory at the William S. Boyd School of Law at the University of Nevada, Las Vegas. Before joining this faculty, she was the inaugural Critical Race Studies Fellow at the UCLA School of Law, where she taught critical race theory and a seminar on indigenous peoples and American law. Her 2011 article, “The Promise of Mancari: Indian Political Rights as Racial Remedy,” focused on bridging gaps between civil rights law, federal Indian law, and indigenous rights. Her other research interests include tribal criminal and juvenile justice systems and race and crime. Her 2008 policy brief, “A Tangled Web of Justice: American Indian and Alaska Native Youth in Federal, State, and Tribal Justice Systems” (co-authored with Neelum Arya), remains one of the most important national assessments of Native youth and juvenile justice. She received her JD and MA in American Indian studies from UCLA and is a graduate of Oberlin College.

- **Theresa M. Pouley** (*Confederated Tribes of the Colville Reservation*), Chief Judge, Tulalip Tribal Court, and Member, Indian Law and Order Commission

Suggested focus: *Overview of findings and recommendations in the Indian Law and Order Commission Report on juvenile courts coordinated with Carole Goldberg.*

The Honorable Theresa M. Pouley is a member of the Colville Confederated Tribes in eastern Washington and a judge of the Northwest Intertribal Court System, through which she serves as the Associate Justice of the Colville Court of Appeals and Chief Judge of the Tulalip Tribal Court. President Barack Obama appointed Judge Pouley to the commission. Formerly, she served as Chief Judge of the Lummi Tribal Court, as President of the Northwest Tribal Court Judges Association, and on the Board of Directors for the National American Indian Court Judges Association. She presented to U.S. Supreme Court Justices O’Connor and Breyer on indigenous justice paradigms. On numerous occasions, she testified before the U.S. Senate Committee on Indian Affairs. For the last several years, she has worked and lectured with the Administrative Office of the Washington State Courts and local, state, and national conferences regarding domestic violence and Indian law. She earned her BA from Gonzaga University and her JD from Wayne State College of Law.

- **Carole Goldberg**, Vice Chancellor, UCLA Academic Personnel, Professor, UCLA School of Law and Member, Indian Law and Order Commission

Suggested focus: *Overview of findings and recommendations in the Indian Law and Order Commission Report on juvenile courts coordinated with Theresa M. Pouley.*

Carole E. Goldberg is the Jonathan D. Varat Distinguished Professor of Law at UCLA and UCLA's Vice Chancellor, Academic Personnel. Since 2007 she has served as a Justice of the Hualapai Court of Appeals. She also serves as one of President Barack Obama's appointees to the Indian Law and Order Commission. Professor Goldberg has written widely about federal Indian law and tribal law, and is co-author of *Cohen's Handbook of Federal Indian Law* (1982, 2005, and 2012 editions). Her most recent books are *Defying the Odds: The Tule River Tribe's Struggle for Sovereignty in Three Centuries* (Yale University Press, 2010), *Indian Law Stories* (Foundation Press, 2011), and *Captured Justice: Native Nations and Public Law 280* (Carolina Academic Press, 2012). She also serves as a member of the Tribal Law and Policy Institute's Advisory Board. In 2013 she received the Lawrence Baca Lifetime Achievement Award from the Federal Bar Association's Indian Law Section.

10:30AM – 10:45AM *Break*

10:45AM – 11:45AM **Panel #2: Tribal Leaders' Panel**

Outcome: *Examine the issue of children exposed to violence in Indian nations through the eyes of the leaders. Identify issues with the state, federal and tribal systems that negatively or positively impact American Indian youth and recommend solutions.*

(10 minutes for each speaker followed by 30 minutes of questioning by the Advisory Committee)

Witnesses for Panel #2 (Leaders' Panel)

- **Gregory Mendoza**, (*Gila River Indian Community*), Governor, Gila River Indian Community

Suggested focus: *Examine the issue of children exposed to violence in the Gila River Indian Community. Identify issues and problems and recommend solutions.*

Gregory Mendoza is the twenty-first Governor of the Gila River Indian Community and the youngest elected to this office. He is the son of Joseph Mendoza and the late Brenda Mendoza and resides in the village of Valin Thak (Goodyear) located in District Four of the Gila River Indian Reservation. Gregory served on the Gila River Indian Community Council for seven months prior to being elected governor. During his tenure as councilman, he was appointed as Chairman of the Education Standing Committee and a member of the Legislative Standing Committee. Preceding his Community Council service Mendoza was Chief of Staff to Governor William R. Rhodes, a position he held for almost six years. Gregory holds an associate degree in tribal management and BS in business administration. Gregory has spent his entire professional

life in community service and is dedicated to promoting education and creating new opportunities for the Gila River Indian Community tribal members to flourish.

- **Erma J. Vizenor**, (*White Earth Nation*), Chairwoman, White Earth Nation

Suggested focus: *Examine the issue of children exposed to violence in the White Earth Nation and other PL 280 affected tribes. Identify issues and problems and recommend solutions.*

Erma J. Vizenor was elected as the Chairwoman of the White Earth Reservation in 2004 and is the first woman to lead the largest tribe in Minnesota. As Chairwoman she represents all districts on and off the White Earth Reservation. Erma has worked her entire career in education on the White Earth Reservation. She holds an undergraduate degree in elementary education; a master's degree in guidance and counseling; and a specialist degree in education administration from Minnesota State University Moorhead. A Bush Leadership fellowship gave Erma the opportunity to earn a master's degree in community decision making and lifelong learning and a doctoral degree in administration, planning, and social policy from Harvard University. Erma is committed to building a strong infrastructure within the White Earth Reservation, which is necessary in order to exercise sovereignty, self-governance, and service to the tribal citizens. Erma has two daughters: Jody, a tribal coordinator for Minnesota State University in Moorhead, and Kristi, a pharmacist in Duluth. She is the proud grandmother of Addie, Bethany, Marina, and Cedar.

- **Ned Norris Jr.**, (*Tohono O'odham Nation*), Chairman, Tohono O'odham Nation

Suggested focus: *Examine the issue of children exposed to violence in the Tohono O'odham Nation. Identify issues and problems and recommend solutions.*

Ned Norris Jr. is an enrolled member of the Tohono O'odham Nation from the remote village of Fresnal Canyon in the Baboquivari District. He was elected to a four-year term as the Chairman of the Tohono O'odham Nation in May 2007 and reelected to a second four-year term in May 2011. Chairman Norris has served the people of his nation for more than three decades. In October 2011, Chairman Norris was elected to serve a term as the Western Area (Arizona, Nevada, and Utah) Vice President for the National Congress of American Indians and is a board member of Chicanos Por La Causa in Tucson, the American Indian Association of Tucson, Inc., the University of Arizona Arthritis Center Advisory Board, the Tucson Airport Authority Advisory Board, and the Pima Association of Governments. He was inducted to the Sunnyside Unified School District Hall of Fame and is a former Commissioner for the Tohono O'odham Nation's Tribal Employment Rights Office. In May 2009, Chairman Norris was conferred an Honorary Doctorate Degree of Humane Letters from the University of Arizona.

11:45AM – 12:30PM **Public Testimony**

Public may register online prior to the February 11th hearing and/or onsite to provide oral testimony (testimony limited to 5 minute maximum)

12:30PM – 1:45PM **Lunch** - *Provided by Salt River Pima-Maricopa Indian Community*

1:45PM – 2:45 PM **Panel #3: Juvenile Court Judges Panel**

Outcome: *Examine tribal, federal, and state justice systems from the judges' perspectives relative to American Indian children exposed to violence; identify obstacles, cultural components, and good practices; and make recommendations on improvements to better respond to American Indian children exposed to violence in the juvenile justice system.*

(10 minutes for each speaker followed by 30 minutes of questioning by the Advisory Committee)

Witnesses for Panel #3 *(Juvenile Court Judges Panel)*

- **William A. Thorne Jr.**, *(Pomo/Coast Miwok)*, Appellate Court Judge, Utah Court of Appeals (retired)

William A. Thorne Jr. is a Pomo/Coast Miwok Indian from northern California and is enrolled at the Confederated Tribes of the Graton Rancheria. He received his BA from the University of Santa Clara in 1974 and received his JD from Stanford Law School in 1977. He practiced law for several years at Echo Hawk & Thorne, specializing on Federal Indian Law. Judge Thorne has served as a tribal court judge in Utah, Idaho, Colorado, New Mexico, Arizona, Nevada, Montana, Wisconsin, Washington, Michigan, and California. After 14 years as a Utah state trial court judge, he was appointed in 2000 to the Utah Court of Appeals where he served until retiring in 2013. Judge Thorne has served as board member of numerous non-profits, focusing on child welfare and adoption, juvenile justice, education, racial and ethnic fairness, and American Indian issues. He continues to serve on the board for many national organizations, including the National Indian Justice Center, the National Child Welfare Resource Center for Tribes (NRC4Tribes), Child Trends, the Center for Study of Social Policy and the National Council of Juvenile and Family Court Judges. Judge Thorne is the 2010 Native Inductee into the Stanford University Minority Alumni Hall of Fame.

- **Abby Abinanti** *(Yurok Tribe)*, Chief Judge, Yurok Tribal Court

Abby Abinanti is a graduate of Humboldt State College and the University of New Mexico School of Law. When Abby was admitted to the California State Bar in 1974, she was the first California Native admitted to the California State Bar. Abby is one of a very limited number of attorneys who have been practicing tribal child welfare law since prior to the 1978 enactment of the Indian Child Welfare Act. Abby served as a California Superior Court Commissioner for the city and county of San Francisco assigned to the Unified Family Court for most of the last twenty years. Judge Abinanti has also served as a tribal court judge for many tribes and as Chief Judge for the Yurok Tribal Court since her appointment in March 2007. Judge Abinanti has served as the President of the Board of Directors of the Tribal Law and Policy Institute since its establishment in 1996. She also serves as a member of National Child Welfare Resource Center for Tribes (NRC4Tribes) National Advisory Council and as a board member for the San Francisco Friendship House Association of American Indians, Inc., and has served as a board member for

California Indian Legal Services and the National Court Appointed Special Advocate (CASA) Association and its Tribal Court CASA Advisory Council.

- **Herb Yazzie**, (*Navajo Nation*), Chief Justice, Navajo Nation Supreme Court

The Honorable Chief Justice Herb Yazzie was confirmed as Chief Justice by the Navajo Nation Council on April 21, 2005. Chief Justice Yazzie comes from the community of Dennehotso, Tábaqáhi clan, born for Kintichí'í'nii, Tó'áhaní (maternal grandparents) and Tódích'í'í'nii (paternal grandparents). Chief Justice Yazzie has always worked with the Diné in public service. He served as attorney for DNA People's Legal Services and was legal counsel for the Kayenta Township. He was a school board member of the school at his community and later a member of the Executive Board of the Navajo Area School Board Association. Chief Justice Yazzie has also served the Navajo Nation as its Attorney General and as its Chief Legislative Counsel and was an attorney for the Yavapai-Apache Nation. Chief Justice Yazzie is a military veteran, serving a tour in Vietnam as an Army lieutenant. He is a 1975 graduate of Arizona State University College of Law. He has been a Utah State Bar member since 1976 and is a member of the Navajo Nation Bar Association.

2:45PM – 3:45 PM **Panel #4: Components of the Juvenile Justice System Impacting American Indian Youth**

Outcome: *Examine the components of the juvenile justice systems that impact American Indian youth and describe the system's impact on trauma affected youth. Review investigation, prosecution, criminal defense, and probation in rural and urban settings identifying key issues and recommending changes that support youth involved in the juvenile justice system.*

(10 minutes for each speaker followed by 20 minutes of questioning by the Advisory Committee)

Witnesses for Panel #4 (*Components of the Juvenile Justice System Impacting American Indian Youth*)

- **Sheri Freemont**, (*Turtle Mountain Band of Chippewa Indians/Omaha Tribe of Nebraska*), Director, Salt River Pima-Maricopa Indian Community Family Advocacy Center

Suggested Focus: *Based on her experience in a child advocacy center and as a prosecutor, the speaker will identify the challenges in the investigation and prosecution of American Indian juvenile cases in the juvenile court system and make recommendations to ensure that traumatized American Indian youth will be supported, rather than re-traumatized, by the juvenile system.*

Sheri Freemont, Director of the Salt River Pima-Maricopa Indian Community (SRPMIC) Family Advocacy Center, was the previous Chief Prosecutor at SRPMIC for more than seven years. She is an active member and past president of the Arizona Tribal Prosecutors' Association, immediate past chair of the Executive Council of the Indian Law Section, and President-Elect of the Native American Bar Association—Arizona. She served as felony prosecutor in Maricopa County where she was assigned the division that handles child abuse. As Chief Prosecutor at SRPMIC, Sheri devoted a large part of her time working on crimes against children, coordinating projects that focus on improving criminal prosecution practice, training the police department and the Child Protection Team, and creating legislative initiatives to better serve children within Salt River. She also serves on the Board of Directors of the Child Crisis Center of Mesa, a nonprofit children's shelter and resource center for families in need where she provides valuable insight regarding tribal children's issues.

- **Nadia Seeratan**, Senior Staff Attorney and Policy Advocate, National Juvenile Defender Center

Suggested Focus: Identify barriers and challenges faced by American Indian youth in the juvenile justice systems (rural/urban) from a defender's perspective. Recommend solutions

Nadia Seeratan is the Senior Staff Attorney and Policy Advocate with the National Juvenile Defender Center (NJDC). Prior to joining NJDC, Nadia served as the Racial Justice Attorney for the American Civil Liberties Union (ACLU) of New Jersey where she engaged in advocacy, public education, and lawsuits designed to positively impact communities of color. Nadia came to the ACLU from New York City's Legal Aid Society Juvenile Rights Division where she represented children in child protective and juvenile delinquency proceedings. Ms. Seeratan works to build the capacity of the juvenile defense bar through national, state, and local advocacy. She provides training and technical assistance to juvenile justice system professionals, conducts appellate advocacy, is involved in assessment of state juvenile justice systems, and participates in various other aspects of juvenile indigent defense advocacy and reform efforts. She is committed to challenging racial and ethnic disparities in the justice system. She received her JD from St. Mary's University School of Law and her Honours BA from the University of Toronto.

- **Ethleen Iron Cloud-Two Dogs** (*Oglala Sioux Tribe*), Technical Assistance Specialist, Tribal Defending Childhood Initiative, Education Development Center, Inc.

Suggested Focus: Identify barriers and challenges faced by American Indian girls in the juvenile justice systems (rural/urban). Recommend solutions.

Sina Ikkicu Win (Takes the Robe Woman), Ethleen Iron Cloud-Two Dogs, is enrolled as a citizen of the Oglala Sioux Tribe and has Crow ancestry on her mother's side. The late Pehin Sapa Win (Black Hair Woman), Mary Locke Iron Cloud, and Isto Wanjila (One Arm), Eddie Iron Cloud Jr., are her parents and her Tiospaye (extended family) include Taopi Sica (Bad Wound), Locke, and Mila Yatan Pika (Knife Chief). Ethleen provides training and technical assistance nationally to tribal programs and tribal juvenile detention centers in the area of tribal youth programming. Ethleen is a past Bush Foundation Fellow and serves as a volunteer on the Knife Chief Buffalo

Nation Organization Board of Directors, the First Nations Behavioral Health Association, Rosalyn Carter Mental Health Task Force, and the Bureau of Indian Education Advisory Committee for Children with Exceptional Education Needs. Ethleen is a doctoral student at Colorado State University.

- **Lea Geurts**, Court Administrator, Pyramid Lake Paiute Tribal Court and Instructor, Fox Valley Technical College

Suggested Focus: *Identify issues and challenges faces by American Indian youth on probation in the Pyramid Lake community and other Native communities. Describe changes needed and make recommendations for improvements.*

Lea Geurts has dedicated her career to the enhancement of Indian country justice systems. Lea began her career with Pyramid Lake Paiute Tribe working with juvenile and adult offenders. During this time, Lea developed and implemented the current probation system with an emphasis on building a stronger tribal community, enhancing community safety, and reducing recidivism by bridging “best practice” concepts with the utilization of local tribal resources. Recently, Lea was promoted to the role of Court Administrator where she has been provided the opportunity to further develop the tribe’s judicial system. Lea continues to actively promote and work on creating collaborative relationships with other departments and jurisdictions to provide resources that will enhance all aspects of the judicial services provided by the court. Lea holds her BS degree in criminal justice administration. Additionally, Lea has worked with multiple tribal technical assistance providers as a consultant and instructor on an array of different topics. Lea continues to be passionate and committed to the enhancement and development of tribal justice programs.

3:45 PM-4:00 PM *Break*

4:00 PM-5:10PM **Panel #5: Promising Approaches in Juvenile Justice**
Outcome: *Examine culturally sensitive programs and services for American Indian youth in the juvenile justice system or for youth at risk of entering the juvenile justice system. Listen to the youth’s perspective of challenges and recommendations for change.*

Witnesses for Panel #5 (*Promising Approaches in Juvenile Justice*)

(*10 minutes for each speaker followed by 20 minutes of questioning by the Advisory Committee*)

- **Candida Hunter** (*Hualapai Tribe*), Manager, Hualapai Green Reentry Program, Hualapai Juvenile Detention and Rehabilitation Center

Suggested Focus: *Describe the Hualapai Green Re-entry Program and the Juvenile Detention and Rehabilitation Center. Highlight good practices and positive outcomes and those that could benefit other communities. Offer suggestions for improvements.*

Candida Hunter is an enrolled member of the Hualapai Tribe and received her BA in psychology from Chapman University. She is the Education Coordinator at the Department of Hualapai Education and Training and was the Green Reentry Program Manager at the Hualapai Juvenile Detention and Rehabilitation Center. She believes children need a strong foundation that starts with parents and family members, and extends to the community. She is the Vice-Chairperson of the First Things First Hualapai Regional Partnership Council and an Advisory Board Member of the Peach Springs Boys and Girls Club. She served as a Hualapai Tribal Council Member, Chair of the Hualapai Education Committee, Chair of the Hualapai Justice Systems Advisory Board, and the Phoenix Area Representative on the Tribal Consultation Advisory Committee for the Center of Disease Control. As a proud mother of a seven-year-old daughter, she promotes health, education, and capacity building in her community.

- **Carole Justice** (*Northern Arapaho*), Coordinator, Indian Country Methamphetamine Program, Shoshone and Arapaho Tribes

Suggested Focus: *Describe the Methamphetamine Program as it relates to youth and positive outcomes and good practices. Highlight practices that could be used by other Indian communities to support the healing of AI/AN children exposed to violence. Provide suggestions for improvements.*

Carole Justice began working in juvenile justice as a VISTA worker in 1972. Since that time, she has been involved in the development of service programs for children and youth with more than twenty years of service to the tribal governments and programs of the Wind River Indian Reservation. In 1994, she became the tribal prosecutor for the Shoshone and Arapaho Tribes. Ms. Justice is providing integrated health services planning for the Wind River Service Unit–Indian Health Services in creation of a comprehensive, integrated health delivery system on the reservation. She has taught for the Wind River Tribal College and at Central Wyoming College and is a certified trainer for National Center for Prosecution of Child Abuse, National District Attorney’s Association. Ms. Justice holds a BA in social work; a BS in secondary education–social studies; a master’s degree in educational administration, counseling, and personnel services (all from Kent State University); and a JD from the University of Denver, College of Law. She is also the proud mother of soon-to-be eighteen-year-old son Preston Joseph Justice and adopted daughter Nichole.

- **Jessie Deardorff** (*Lummi Nation*) Manager, Lummi Safe House

Suggested Focus: *Highlight practices, programs and positive outcomes of the Lummi Youth Safe house, which is one of only a few tribal safe houses in the Nation. Provide concrete recommendations to the Advisory Committee with respect to addressing the needs of AI/AN children exposed to violence.*

Jessie Deardorff is the manager for the Lummi Youth Safe House. She holds a master’s degree in continuing and college education; a BA in education; and an AAS transfer degree from Northwest Indian College. She formerly served as director for Lummi Systems of Care, Lummi

Head Start, and Title IX Indian Education for the Ferndale School District; and she served as a representative on the National Indian Head Start Directors Association for a number of years. She serves as a member of the Board of Trustees for Northwest Indian College and as a Committee Officer for Whatcom County Democratic Party Region 137.

- **Daniel Cauffman**, (*Pokagon Band of Potawatomie Indians*), Student, Grand Valley State University

Suggested Focus: *Speakers will share their stories of exposure to violence, system responses, and their survival that lead to a life of quality. They will share what helped and hindered them on their path to become outstanding young men.*

Daniel Cauffman is 21 years of age and an enrolled member of the Pokagon Band of Potawatomie Indians. Daniel is a student at Grand Valley State University in Allendale, Michigan.

- **Jose Martinez**, (*Salt River Pima-Maricopa Indian Community*), Student, Arizona State University

Suggested Focus: *Speakers will share their stories of exposure to violence, system responses, and their survival that lead to a life of quality. They will share what helped and hindered them on their path to become outstanding young men.*

Jose Martinez is 20 years of age and an enrolled member of the Salt River Pima Maricopa Indian Community. Jose is a student at Arizona State University in Tempe, AZ.

5:00PM - 6:15PM **Public Testimony**

Presenters may register online prior to the February 11th hearing and/or onsite to provide oral testimony (testimony limited to a 5 minute maximum).

6:20 PM – 6:30PM **Closing Remarks**

- Joanne Shenandoah, (*Iroquois Nation*), Composer and Singer
- Eddie F. Brown, DSW (*Pascua Yaqui and Tohono O’odham*), Executive Director, American Indian Policy Institute and Professor of American Indian Studies and School of Social Work, Arizona State University

**Panel #1: Overview of American Indian Children
and Youth in Tribal, State, and Federal Juvenile
Justice Systems**

Panel #1: Overview of American Indian Children and Youth in Tribal, State, and Federal Juvenile Justice Systems

Introduction: Provide a general overview of current research on American Indian youth in the juvenile justice system and the relationship between American Indian children exposed to violence and youth engaged in the juvenile system. Highlight common systemic challenges in federal, state, and tribal systems and offer recommendations to address them. Analyze the justice systems (tribal, state, and federal) to determine how, when, and if Native children's exposure to violence is identified, screened, assessed or treated. Identify practices in tribal, state and federal systems that re-traumatize Native youth and best practices.

Panelists:

Addie Rolnick, Professor, William S. Boyd School of Law, and Author, *Tangled Web of Justice: American Indian and Alaska Native Youth in Federal, State, and Tribal Justice Systems*

Addie C. Rolnick teaches federal Indian law, criminal law, and critical race theory at the William S. Boyd School of Law at the University of Nevada, Las Vegas. Before joining this faculty, she was the inaugural Critical Race Studies Fellow at the UCLA School of Law, where she taught critical race theory and a seminar on indigenous peoples and American law. Her 2011 article, "The Promise of Mancari: Indian Political Rights as Racial Remedy," focused on bridging gaps between civil rights law, federal Indian law, and indigenous rights. Her other research interests include tribal criminal and juvenile justice systems and race and crime. Her 2008 policy brief, "A Tangled Web of Justice: American Indian and Alaska Native Youth in Federal, State, and Tribal Justice Systems" (co-authored with Neelum Arya), remains one of the most important national assessments of Native youth and juvenile justice. She received her JD and MA in American Indian studies from UCLA and is a graduate of Oberlin College.

Judge Theresa Pouley, (*Confederated Tribes of the Colville Reservation*), Chief Judge, Tulalip Tribal Court, and Member, Indian Law and Order Commission

The Honorable Theresa M. Pouley is a member of the Colville Confederated Tribes in eastern Washington and a judge of the Northwest Intertribal Court System, through which she serves as the Associate Justice of the Colville Court of Appeals and Chief Judge of the Tulalip Tribal Court. President Barack Obama appointed Judge Pouley to the commission. Formerly, she served as Chief Judge of the Lummi Tribal Court, as President of the Northwest Tribal Court Judges Association, and on the Board of Directors for the National American Indian Court Judges Association. She presented to U.S. Supreme Court Justices O'Connor and Breyer on indigenous justice paradigms. On numerous occasions, she testified before the U.S. Senate Committee on Indian Affairs. For the last several years, she has worked and lectured with the Administrative Office of the Washington State Courts and local, state, and national conferences regarding domestic violence and Indian law. She earned her BA from Gonzaga University and her JD from Wayne State College of Law.

Carole Goldberg, Vice Chancellor, UCLA Academic Personnel, Professor, UCLA School of Law and Member, Indian Law and Order Commission

Carole E. Goldberg is the Jonathan D. Varat Distinguished Professor of Law at UCLA and UCLA's Vice Chancellor, Academic Personnel. Since 2007 she has served as a Justice of the Hualapai Court of Appeals. She also serves as one of President Barack Obama's appointees to the Indian Law and Order Commission. Professor Goldberg has written widely about federal Indian law and tribal law, and is co-author of *Cohen's Handbook of Federal Indian Law* (1982, 2005, and 2012 editions). Her most recent books are *Defying the Odds: The Tule River Tribe's Struggle for Sovereignty in Three Centuries* (Yale University Press, 2010), *Indian Law Stories* (Foundation Press, 2011), and *Captured Justice: Native Nations and Public Law 280* (Carolina Academic Press, 2012). In 2013 she received the Lawrence Baca Lifetime Achievement Award from the Federal Bar Association's Indian Law Section.

Potential Questions for Panelists

Addie Rolnick

1. When you did your research for your report, did you find positive examples of states and tribes working together on juvenile justice issues? What would be the best example?
2. Did you find positive examples of juvenile wellness courts in tribal communities? States? Could you describe them?
3. You mention tribes using peacemaker courts for juveniles. Where did you find examples of these, and what made them effective?
4. What changes do you believe need to take place to better respond to Native juvenile in the federal justice system?

Judge Theresa Pouley and Carole Goldberg

1. What information did you find on the needs of girls in the juvenile justice system that were currently not being met?
2. When you were doing your research on LGBTQ juveniles in the juvenile justice system, what were some of the most meaningful findings? What needs were unmet?
3. Could you describe any programs in the juvenile justice systems that provided the type of screening and services needed by juvenile exposed to violence?
4. The lack of educational programs in detention facilities seems problematic. What suggestion did the commission have to resolve this omission.
5. Were you satisfied with the data that was available to you on the issues related to the juvenile justice system?
6. What were practices in the juvenile justice systems that the commission found re-traumatized youth?
7. When you reviewed children being represented by legal counsel in the state and tribal juvenile systems, what did you find? How does the lack of representation impact youth?
8. Did you find that practices in juvenile courts negatively impacted children who had been trafficked? How?
9. Your report recommends that tribes consent to the prosecution of any juvenile in federal court. Could you explain the reasoning behind that recommendation and what kind of tribal review process would need to be established?
10. When you researched juvenile justice, did you see much cooperation between state and tribal courts on diversion, treatment or other programing for Native youth in the juvenile justice systems?

Written Testimony for Addie Rolnick

Addie Rolnick, Professor, William S. Boyd School of Law, and Author, *Tangled Web of Justice: American Indian and Alaska Native Youth in Federal, State, and Tribal Justice Systems*

Addie C. Rolnick teaches federal Indian law, criminal law, and critical race theory at the William S. Boyd School of Law at the University of Nevada, Las Vegas. Before joining this faculty, she was the inaugural Critical Race Studies Fellow at the UCLA School of Law, where she taught critical race theory and a seminar on indigenous peoples and American law. Her 2011 article, “The Promise of Mancari: Indian Political Rights as Racial Remedy,” focused on bridging gaps between civil rights law, federal Indian law, and indigenous rights. Her other research interests include tribal criminal and juvenile justice systems and race and crime. Her 2008 policy brief, “A Tangled Web of Justice: American Indian and Alaska Native Youth in Federal, State, and Tribal Justice Systems” (co-authored with Neelum Arya), remains one of the most important national assessments of Native youth and juvenile justice. She received her JD and MA in American Indian studies from UCLA and is a graduate of Oberlin College.

A Tangled Web of Justice: American Indian and Alaska Native Youth in Federal, State, and Tribal Justice Systems

[Neelum Arya](#)

Campaign for Youth Justice

[Addie Rolnick](#)

University of Nevada, Las Vegas, William S. Boyd School of Law

July 1, 2008

Campaign for Youth Justice Policy Brief, Vol. 5, 2009

Abstract:

This report examines how Native American youth are disproportionately affected by transfer laws. Key findings include that many Native American youth commit low-level offenses and receive either no court intervention or disproportionately severe sanctions. The report also examines the interaction of the tribal justice system with the state and federal justice systems and how that impacts youth transfer.

Number of Pages in PDF File: 25

Keywords: juvenile justice, Native American, youth, racial disparities, DMC

Accepted Paper Series



A TANGLED WEB OF JUSTICE

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

By NEELUM ARYA and ADDIE C. ROLNICK

POLICY BRIEF RACE AND ETHNICITY SERIES

VOLUME

1

The Campaign for Youth Justice would like to gratefully acknowledge our funders who support our work: the Chasdrew Fund, the Open Society Institute, the Eckerd Family Foundation, the John D. and Catherine T. MacArthur Foundation, the Meyer Foundation, the Public Welfare Foundation and individual anonymous donors.

Special thanks to Michael Guilfoyle and Marcia Rincon-Gallardo for their assistance with this policy brief.

**A TANGLED WEB
OF JUSTICE:
AMERICAN INDIAN AND ALASKA
NATIVE YOUTH IN FEDERAL,
STATE, AND TRIBAL JUSTICE
SYSTEMS**

NEELUM ARYA

*Director of Policy and Research
Campaign for Youth Justice*

ADDIE C. ROLNICK

*Attorney
Sonosky, Chambers, Sachse, Endreson & Perry, LLP**

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

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

Tatanka Iotanka—Sitting Bull

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 youthⁱ are regularly prosecuted in three distinct justice systems – federal, stateⁱⁱ, 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.

ⁱ 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.

ⁱⁱ 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.¹ 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.² 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, 2006³

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, 2006⁴

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.⁵ In 2006, there were nearly one million (902,000) American Indian and Alaska Native youth under the age of 18 in the United States.⁶ American Indian and Alaska Native people account for 1% of the general population and youth population nationwide.⁷

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).⁸

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.⁹

Education. Just over half (51%) of Native American students complete high school, versus 68% of the general youth population.¹⁰ 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.¹¹ 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%).¹²

Victimization. Native youth experience much higher rates of violent victimization than non-Native youth.¹³ 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.¹⁴ 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).¹⁵

Mental Health. Native American youth are twice as likely as white youth and three times as likely as other minority youth to commit suicide.¹⁶ In fact, in 2005, suicide ranked as the second leading cause of death for Native Americans ages 10 to 25.¹⁷ 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).¹⁸ 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.¹⁹

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.²⁰ 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.²¹ 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.²² 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.²³ 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.²⁴ Nearly one in ten (8.5%) reported having an alcohol use disorder, compared with 5.8% of youth from other racial groups.²⁵ Slightly fewer (8.2%) reported having an illicit drug use disorder, compared with 5.1% of youth from other racial groups.²⁶ 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.²⁷

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.²⁸ 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.²⁹

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%).³⁰

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.³¹ 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.³²

Although Native American youth account for 1% of the national youth population and 1% of total juvenile arrests, these aggregate numbers mask significant disparities.³³ 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.³⁴ In addition, Native youth are more likely to receive the most punitive sanctions.³⁵ 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.ⁱⁱⁱ In both cases, these sanctions were applied to Native American youth 1.5 times more than to white youth.³⁶ Nationwide, the average rate of new commitments to adult state prison for Native youth is 1.84 times that of white youth.³⁷

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.”³⁸

ⁱⁱⁱGiven 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, 2000-2006³⁹ 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.^{iv} 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).^v

^{iv}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.

^v“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.

^{vi}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.⁴⁰ In general, tribes retain criminal jurisdiction over Indian people on land that qualifies as Indian country.⁴¹ 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.^{vi}

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.^{vii} These statutes, however, do not cover non-major crimes committed by one Indian against another Indian or victimless crimes committed by Indians.⁴²

^{vii}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.⁴³ 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.^{viii} Like federal power, however, the existence of state power does not automatically extinguish tribal jurisdiction. Rather, those states share concurrent jurisdiction with the tribes.

^{viii}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,⁴³ 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.⁴⁴ 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.⁴⁵ 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.⁴⁶

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,⁴⁷ the tribe receives a share of the BIA's funding for detention programs in exchange for operating the facility in place of the BIA.^x 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.

^{ix}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.

^xAs 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.⁴⁸ A full 57% of tribal justice agencies ordered treatment in juvenile and family cases using county or municipal social service agencies.⁴⁹

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.⁵⁰

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.⁵¹ 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.”⁵² 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.⁵³ Nearly all of the

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

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.⁵⁵

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.⁵⁶ After the OIG investigation, the BIA implemented a special order in 2004 to remove all juveniles from those adult⁵⁷ 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.⁵⁸ 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.⁵⁹

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.⁶⁰

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."⁶¹

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.⁶²

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.^{xi} 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."⁶³

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.⁶⁴ 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.⁶⁵ 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.⁶⁶ 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%).⁶⁷ 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.⁶⁸

⁶⁴The 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).⁶⁹ Also, Arizona tribes have the highest number of tribal detention centers in the country (8).⁷⁰
- 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.⁷¹ Recidivism for Native youth is high, evidencing a need for an appropriate re-entry program for these youth.⁷²
- 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.⁷³
- 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.⁷⁴

- 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.⁷⁵
- 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.⁷⁶
- 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.⁷⁷
- 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.⁷⁸ 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.⁷⁹

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.⁸⁰ 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.⁸¹

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.⁸² 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.⁸³ 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.⁸⁴

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.⁸⁵ 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.⁸⁶ 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.⁸⁷ 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 18.⁸⁸ 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.⁸⁹ 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.⁹⁰

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).⁹¹ 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.⁹²

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.⁹³ There are 58 tribal juvenile drug courts operating or being planned as of March 2008.⁹⁴ 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.⁹⁵

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.⁹⁶ 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.⁹⁷ 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.⁹⁸

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.⁹⁹

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.¹⁰⁰

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.^{xii} 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.¹⁰¹ 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.¹⁰² 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.

^{xii}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.

REFERENCES

- ¹ *Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 73 Fed. Reg. 18,553 (Apr. 4, 2008).
- ² U.S. Census Bureau. (February 2006). *We the People: American Indians and Alaska Natives in the United States* (Census 2000 data).
- ³ U.S. Census Bureau. (2008). *Statistical Abstract of the United States*. Table 18. This table refers to the percentage of the population who identified as American Indian or Alaska Native alone. Beginning in 2000, the census permitted respondents to identify as "one or more race," and this table does not include those respondents who identified as American Indian or Alaska Native in combination with another race.
- ⁴ *Ibid.*
- ⁵ U.S. Census Bureau. (2008). *Statistical Abstract of the United States*. Table 8.
- ⁶ *Ibid.*
- ⁷ U.S. Census Bureau. (2008). *Statistical Abstract of the United States*. Table 18.
- ⁸ U.S. Department of Health and Human Services, Indian Health Service. (2006). *Facts on Indian Health Disparities*. Retrieved May 10, 2008 from <http://info.ihs.gov/Files/Disparities/facts-Jan2006.pdf>.
- ⁹ U.S. Census Bureau. (2008). *Statistical Abstract of the United States*. Table 36.
- ¹⁰ Orfield, G., Losen, D., Wald, J. & Swanson, C. (2004). *Losing Our Future: How Minorities Are Being Left Behind by the Graduation Rate Crisis*. Retrieved May 10, 2008 from <http://www.urban.org/url.cfm?ID: 410936>.
- ¹¹ U.S. Census Bureau. (2008). *Statistical Abstract of the United States*. Table 36.
- ¹² *Ibid.*
- ¹³ U.S. Department of Justice, Bureau of Justice Statistics. (2004, December). *American Indians and Crime: A BJS Statistical Profile, 1992-2002*.
- ¹⁴ U.S. Department of Justice, Bureau of Justice Statistics. *Victim Characteristics*. Retrieved May 10, 2008 from http://www.ojp.usdoj.gov/bjs/cvict_v.htm#race.
- ¹⁵ U.S. Department of Health and Human Services, Administration for Children and Families. (2008). *Child Maltreatment 2006*.

- ¹⁶ U.S. Department of Justice, Office of Justice Program. (2006, March). *Juvenile Offenders and Victims: 2006 National Report*.
- ¹⁷ U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control. *Web based Injury Statistics Query and Reporting System (WISQARS)*. Retrieved May 4, 2008 from: <http://www.cdc.gov/nceip/wisqars>.
- ¹⁸ *Ibid.*
- ¹⁹ U.S. Department of Health and Human Services, Centers for Disease Control and Prevention. (2003). Injury Mortality Among American Indian and Alaska Native Children and Youth. *Morbidity and Mortality Weekly Report*, 52, 697-701.
- ²⁰ Testimony of R. Dale Walker, MD, Director of One Sky Center. *Oversight Hearing on Suicide in Indian Country: Hearing before the Senate Committee on Indian Affairs*. 109th Cong., 1st Sess. (2005).
- ²¹ Testimony of A. Kathryn Power, M.Ed, Director, Center for Mental Health, Substance Abuse and Mental Health Services Administration. *Oversight Hearing on Indian Health: Hearing before the Senate Committee on Indian Affairs*. 109th Cong., 1st Sess. (2005).
- ²² U.S. Department of Human Services, Substance Abuse and Mental Health Administration, Office of Applied Studies (2007). Substance Use and Substance Use Disorders among American Indians and Alaska Natives. *The NSDUH Report*.
- ²³ U.S. Department of Health and Human Services, Substance Abuse and Mental Health Administration. (2004). Risk and Protective Factors for Substance Use among American Indian or Alaska Native Youths. *The NSDUH Report*.
- ²⁴ U.S. Department of Human Services, Substance Abuse and Mental Health Administration, Office of Applied Studies (2007). Substance Use and Substance Use Disorders among American Indians and Alaska Natives. *The NSDUH Report*.
- ²⁵ *Ibid.*
- ²⁶ *Ibid.*
- ²⁷ U.S. Department of Justice, Office of Justice Program. (2006, March). *Juvenile Offenders and Victims: 2006 National Report*.
- ²⁸ U.S. Department of Health and Human Services, Substance Abuse and Mental Health Administration, Office of Applied Studies. (2005). Methamphetamine Use, Abuse, and Dependence: 2002, 2003, and 2004. *The NSDUH Report*.

- ²⁹ Major, A.K., Egley, Jr., A., Howell, J.C., Mendenhall, B. & Armstrong, T. (2004). Youth Gangs in Indian Country. *Juvenile Justice Bulletin*.
- ³⁰ Silmere, H., & Stiffman, A.R. (2006). Factors Associated with Successful Functioning in American Indian Youths. *American Indian and Alaska Native Mental Health Research: The Journal of the National Center*. 13 (3), 23-47.
- ³¹ National Council on Crime and Delinquency. (2008, March). *Native American Youth and the Juvenile Justice System*.
- ³² Ibid.
- ³³ U.S. Department of Justice, Office of Justice Programs. (2006, March). *Juvenile Offenders and Victims: 2006 National Report*.
- ³⁴ Ibid.
- ³⁵ National Council on Crime and Delinquency. (2008, March). *Native American Youth and the Juvenile Justice System*.
- ³⁶ Ibid.
- ³⁷ Ibid.
- ³⁸ Wakeling, S. & Jorgenson, M. (2007, September). *Strengthening and Rebuilding Tribal Justice Systems. A Participatory Outcomes Evaluation of the U.S. Department of Justice Comprehensive Indian Resources for Community and Law Enforcement (CIRCLE) Project*.
- ³⁹ National Center for Juvenile Justice. Juvenile Arrest Rates by Offense, Sex, and Race (1980-2006). *OJJDP Statistical Briefing Book*. Retrieved May 11, 2008 from <http://ojjdp.ncjrs.org/ojstatbb/crime/data.html>.
- ⁴⁰ *United States v. Wheeler*, 435 U.S. 313, 323 (1978).
- ⁴¹ *Wheeler*, 435 U.S. at 325; *United States v. Lara*, 541 U.S. 193, 198 (2004).
- ⁴² *United States v. Quiver*, 241 U.S. 602, 605 06 (1916).
- ⁴³ 18 U.S.C. §§ 5031-5040.
- ⁴⁴ U.S. Department of Justice, Bureau of Justice Statistics. (2005, December). *Census of Tribal Justice Agencies in Indian Country, 2002*.
- ⁴⁵ See Goldberg-Ambrose, C. (1997). *Planting Tail Feathers: Tribal Survival and Public Law 280*. Los Angeles: UCLA American Indian Studies Center, 8-12.
- ⁴⁶ U.S. Department of Justice, Bureau of Justice Statistics. (2005, December). *Census of Tribal Justice Agencies in Indian Country, 2002*.

- 47 25 U.S.C. § 450 et seq.
- 48 U.S. Department of Justice, Bureau of Justice Statistics. (2005, December). *Census of Tribal Justice Agencies in Indian Country, 2002*.
- 49 Ibid.
- 50 Minton, T.D. (2006, November). Jails in Indian Country. *Bureau of Justice Statistics Bulletin*, NCJ 214257.
- 51 U.S. Department of the Interior, Office of Inspector General. (2004, September). *Neither Safe Nor Secure: An Assessment of Indian Detention Facilities*.
- 52 U.S. Department of Justice, Criminal Division (1997). *Report of the Executive Committee for Indian Country Law Enforcement Improvement: Final Report to the Attorney General and the Secretary of the Interior*.
- 53 U.S. Department of The Interior, Office of the Inspector General. (2004, September). *Neither Safe Nor Secure: An Assessment of Indian Detention Facilities*.
- 54 Ibid.
- 55 Ibid.
- 56 Ibid.
- 57 Presentation of Waller Lamar, Acting Director of Law Enforcement Services, Bureau of Indian Affairs. *Coordinating Council on Juvenile Justice and Delinquency Prevention, Quarterly Meeting Summary* (September 10, 2004). Retrieved May 12, 2008 from <http://www.juvenilecouncil.gov/summary/091004sum.html>.
- 58 Ferolito, P. (2007, February 1). Lawsuit over suicide at tribal jail settled. *Yakima Herald Republic*, pp. 1B, 4B.
- 59 Testimony of Dan Eddy, Chairman of the Colorado River Indian Tribes. *Field Hearing on Law and Order in Indian Country: Hearing before the Senate Committee on Indian Affairs*. 110th Cong., 2nd Sess. (2008).
- 60 Written Testimony of Kyle Prior, Chairman of the Shoshone Paiute Tribes of the Duck Valley Reservation. *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., 2nd Sess. (2008).
- 61 Testimony of Wendsler Nasic, Chairman of the San Carlos Apache Tribe. *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., 2nd Sess. (2008).

- ⁶² Petoskey, M., Cornell, G., Davidson, W., Stelizer, M., & Bonter, Freya. (2005). *Tribal Youth Evaluation Project: Juvenile Justice System Analysis*. (NCJ Publication No. 212432). Okemos, MI: Michigan Public Health Service; Guilfoyle, M., Technical Assistance Specialist, FirstPic, Inc.. Personal communication, May 2008.
- ⁶³ 42 U.S.C. 5633 Sec. 223(a)(22).
- ⁶⁴ U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention. (2006, August). *Disproportionate Minority Contact Technical Assistance Manual Third Edition*.
- ⁶⁵ Leiber, M.J., Johnson, J. & Fox K. (2006, April). *An Examination of the Factors that Influence Justice Decision Making in Anchorage and Fairbanks, Alaska: An Assessment Study*.
- ⁶⁶ Rosay, A. & Iverell, R.S. (2006, September). *Quantitative Analysis of Disparities in Juvenile Delinquency Referrals*.
- ⁶⁷ Ibid.
- ⁶⁸ Snodgrass, G.M. & Rosay, A. (2007, October) *Quantitative Analysis of Disparities in Juvenile Delinquency Referrals to the Fairbanks North Star Borough, FY 2005-2006*.
- ⁶⁹ Arizona Supreme Court, Administrative Office of the Courts, Commission on Minorities. (2006). *Equitable Treatment of Minority Youth: Second Arizona Statewide Report Card, Calendar Year 2004*.
- ⁷⁰ Guilfoyle, M., Technical Assistance Specialist, FirstPic, Inc.. Personal communication, May 2008.
- ⁷¹ Poupard, J., Redhorse, J., Peterson-Hickey, M., & Martin, M. (2005, August). *Searching for Justice: American Indian Perspectives on Disparities in Minnesota Criminal Justice System*.
- ⁷² Guilfoyle, M., Technical Assistance Specialist, FirstPic, Inc.. Personal communication, May 2008.
- ⁷³ Montana Board of Crime Control. (n.d.). *Montana 3 Year Plan for Reducing Disproportionate Minority Contact (DMC) 2006-2008*. Retrieved May 8, 2008 from <http://mbcc.mt.gov/juvenilejustice/Highlights/J3YrPlan.pdf>.
- ⁷⁴ Charish, C., Davis, S., & Damphousse, K. (2004, July). *Race/Ethnicity and Gender Effects on Juvenile Justice System Processing*.
- ⁷⁵ Marlin, M. (2002, January). *Assessment of Over-Representation of Native American Youth in the Juvenile Justice System*.
- ⁷⁶ The South Dakota Department of Corrections and Council of Juvenile Services. (2006, December). *Juvenile Justice and Delinquency Prevention Program: Disproportionate Minority Contact Report*.

- 77 Washington State Department of Social Health Services. (2006, December). *Report to the Legislature: Racial Disproportionality in the Juvenile Justice System*.
- 78 The Wisconsin Office of Justice Assistance. (n.d.). *2003 Relative Rate Index Report*. Retrieved May 8, 2008 from <http://oja.state.wi.us/docview.asp?docid=6440&locid=97>.
- 79 W. Haywood Burns Institute. (2002). Wisconsin Disproportionate Minority Confinement Phase I Index Matrix (2002). Retrieved May 12, 2008 from http://www.burnsinstitute.org/dmc/wi/WI_Index_Matrix.pdf
- 80 Building Blocks for Youth. (n.d.) *Native Youth in the Juvenile Justice System*. Retrieved May 14, 2008 from <http://www.buildingblocksforyouth.org/issues/nativeyouth/>.
- 81 Presentation of William Sabol, Ph.D., National Center for Juvenile Justice. *Coordinating Council on Juvenile Justice and Delinquency Prevention, Quarterly Meeting Summary* (September 10, 2004). Retrieved May 12, 2008 from <http://www.juvenilecouncil.gov/summary/091004sum.html>.
- 82 Riley, M. (2007, November 13). Principles, Politics Collide. *The Denver Post*, pp. 1A, 12A.
- 83 Rincon-Gallardo, M., DMC/JDAI Coordinator, Pima County Juvenile Court. Personal communication, May 2008; *Jonah R. v. Carmona*, 446 F.3d 1000 (9th Cir. 2002).
- 84 18 U.S.C. § 5032.
- 85 *United States v. Male Juvenile*, 280 F.3d 1008, 1016 (9th Cir. 2002); *United States v. Juvenile Male*, 864 F.2d 641, 645 (9th Cir. 1988); *United States v. Allen*, 574 F.2d 435, 439 (8th Cir. 1978).
- 86 *United States v. Male Juvenile*, 280 F.3d 1008 (9th Cir. 2002).
- 87 *United States v. Juvenile Female*, 869 F.2d 458 (9th Cir. 1989).
- 88 U.S. Department of Justice, Office of Justice Program. (March 2006) *Juvenile Offenders and Victims: 2006 National Report*.
- 89 Saylor, W. Director of Research, Federal Bureau of Prisons. Email communication, April 10, 2008.
- 90 U.S. Department of Justice, Office of Justice Program. (March 2006) *Juvenile Offenders and Victims: 2006 National Report*.
- 91 Bureau of Prisons. (January, 2007). Directory of Bureau of Prisons Contract Juvenile Facilities. Retrieved May 7, 2008 from http://www.bop.gov/locations/cc/Juvenile_%20Dir.pdf
- 92 See 18 U.S.C. § 5035; 18 U.S.C. § 5039.
- 93 Tribal Law & Policy Institute. (2003). *Tribal Healing to Wellness Courts: The Key Components*.

94 BJA Drug Court Clearinghouse Project. (2008, March). Summary of Drug Court Activity by State and County: Tribal Drug Court. Retrieved May 10, 2008 from

<http://spa.american.edu/justice/documents/2152.pdf>.

95 West, L.P. & Cook, T.C. (2004). *Drug Courts in the State of Wyoming: A Process & Outcome Evaluation*. Wyoming Survey & Analysis Center, University of Wyoming.

96 Benefits of Treatment at Raven's Way. Retrieved May 10, 2008 at <http://www.scarhc.org/common/pages/ravensway/postcards/benefits/pdfs/benefits.pdf>. From 2001-2007, 90% of youth participants reported using less or no alcohol during the year following discharge, 89% reported using less or no drugs, and 68% reported an improvement in legal status.

97 Zion, J. (1998). The Dynamics of Navajo Peacemaking. *Journal of Contemporary Criminal Justice*, 14(1) 58-74.

98 Office of Juvenile Justice and Delinquency Prevention. (December 1998). *Guide for Implementing the Balanced and Restorative Justice Model*.

99 Juvenile Detention Alternatives Initiative. (n.d.). *State-Level Detention Reform: A Practice Guide for State Advisory Groups*. Retrieved May 10, 2008 from

http://www.jdaihelpdesk.org/docs/documents/JDAI_SAG_final.pdf.

100 Ford, H., ed. (2007, August). *JDAI News: Newsletter of the Juvenile Detention Alternatives Initiative*.

101 U.S. Department of Health and Human Services, Centers for Disease Control and Prevention. (2003). Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System. *Morbidity and Mortality Weekly Report*, 56, No. RR-9.

102 Annie E. Casey Foundation Juvenile Detention Alternatives Initiative. (2007). Detention Reform Brief 1: Detention Reform: A Cost-Saving Approach. Retrieved May 12, 2008 from http://www.aecf.org/upload/PublicationFiles/jdai_facts1.pdf.

NOTES



1012 14TH ST. NW, SUITE 610, WASHINGTON DC 20005

PHONE: 202-558-3580 FAX: 202-386-9807 www.campaignforyouthjustice.org

CAMPAIGN FOR

YOUTH  JUSTICE

BECAUSE THE CONSEQUENCES AREN'T MINOR

Written Testimony for Judge Theresa Pouley & Carole Goldberg

Judge Theresa Pouley, (*Confederated Tribes of the Colville Reservation*), Chief Judge, Tulalip Tribal Court, and Member, Indian Law and Order Commission

The Honorable Theresa M. Pouley is a member of the Colville Confederated Tribes in eastern Washington and a judge of the Northwest Intertribal Court System, through which she serves as the Associate Justice of the Colville Court of Appeals and Chief Judge of the Tulalip Tribal Court. President Barack Obama appointed Judge Pouley to the commission. Formerly, she served as Chief Judge of the Lummi Tribal Court, as President of the Northwest Tribal Court Judges Association, and on the Board of Directors for the National American Indian Court Judges Association. She presented to U.S. Supreme Court Justices O'Connor and Breyer on indigenous justice paradigms. On numerous occasions, she testified before the U.S. Senate Committee on Indian Affairs. For the last several years, she has worked and lectured with the Administrative Office of the Washington State Courts and local, state, and national conferences regarding domestic violence and Indian law. She earned her BA from Gonzaga University and her JD from Wayne State College of Law.

Carole Goldberg, Vice Chancellor, UCLA Academic Personnel, Professor, UCLA School of Law and Member, Indian Law and Order Commission

Carole E. Goldberg is the Jonathan D. Varat Distinguished Professor of Law at UCLA and UCLA's Vice Chancellor, Academic Personnel. Since 2007 she has served as a Justice of the Hualapai Court of Appeals. She also serves as one of President Barack Obama's appointees to the Indian Law and Order Commission. Professor Goldberg has written widely about federal Indian law and tribal law, and is co-author of *Cohen's Handbook of Federal Indian Law* (1982, 2005, and 2012 editions). Her most recent books are *Defying the Odds: The Tule River Tribe's Struggle for Sovereignty in Three Centuries* (Yale University Press, 2010), *Indian Law Stories* (Foundation Press, 2011), and *Captured Justice: Native Nations and Public Law 280* (Carolina Academic Press, 2012). In 2013 she received the Lawrence Baca Lifetime Achievement Award from the Federal Bar Association's Indian Law Section.

A Roadmap for Making Native America Safer Report to the President & Congress of the United States Indian Law & Order Commission

A ROADMAP FOR MAKING NATIVE AMERICA SAFER

Report to the President &
Congress of the United States



Indian Law & Order Commission
November 2013



TABLE OF CONTENTS

Preface	<i>i</i>
Executive Summary	<i>v</i>
Acknowledgments	<i>xxxiii</i>
Chapter 1- Jurisdiction: Bringing Clarity Out of Chaos	1
Chapter 2 - Reforming Justice for Alaska Natives: The Time is Now	33
Chapter 3 - Strengthening Tribal Justice: Law Enforcement, Prosecution, and Courts	63
Chapter 4 - Intergovernmental Cooperation: Establishing Working Relationships That Transcend Jurisdictional Lines	99
Chapter 5 - Detention and Alternatives: Coming Full Circle, from <i>Crow Dog</i> to TLOA and VAWA	117
Chapter 6 - Juvenile Justice: Failing the Next Generation	149
Appendix A: Transmittal Letter	183
Appendix B: About ILOC	187
Appendix C: Commissioner/Staff Biographies	191
Appendix D: ILOC Advisory Committee	199
Appendix E: Witness List	209
Appendix F: Hearings, Meetings, Visits	217
Appendix G: Letters from Alaska	225
Appendix H: Data and Reports Required by TLOA	249
References	259
Acronyms	Inside Back Cover

PREFACE

The Indian Law and Order Commission is pleased to transmit its final report and recommendations—A ROADMAP FOR MAKING NATIVE AMERICA SAFER—as required by the Tribal Law and Order Act of 2010, Public Law 111-211 (TLOA). These recommendations are intended to make Native American and Alaska Native nations safer and more just for all U.S. citizens and to reduce the unacceptably high rates of violent crime that have plagued Indian country for decades. This report reflects one of the most comprehensive assessments ever undertaken of criminal justice systems servicing Native American and Alaska Native communities.

The Indian Law and Order Commission is an independent national advisory commission created in July 2010 when the Tribal Law and Order Act was passed and extended earlier in 2013 by the Violence Against Women Act Reauthorization (VAWA Amendments). The President and the majority and minority leadership of the Congress appointed the nine Commissioners, all of whom have served as volunteers. Importantly, the findings and recommendations contained in this Roadmap represent the unanimous conclusions of all nine Commissioners—Democratic and Republican appointees alike—of what needs to be done now to make Native America safer.¹

As provided by TLOA, the Commission received limited funding from the U.S. Departments of Justice and the Interior to carry out its statutory responsibilities. To save taxpayers' money, the Commission has operated entirely in the field—often on the road in federally recognized Indian country—and conducted its business primarily by phone and Internet email. The Commission had no offices. Its superb professional staff consists entirely of career Federal public officials who have been loaned to the Commission as provided by TLOA, and we are grateful to them and the Departments of Justice and the Interior.

TLOA has three basic purposes. First, the Act was intended to make Federal departments and agencies more accountable for serving Native people and lands. Second, TLOA was designed to provide greater freedom for Indian Tribes and nations to design and run their own justice systems. This includes Tribal court systems generally, along with those communities that are subject to full or partial State criminal jurisdiction under P.L. 83-280. Third, the Act sought to enhance cooperation among Tribal, Federal, and State officials in key areas such as law enforcement training, interoperability, and access to criminal justice information.

In addition to assessing the Act's effectiveness, this Roadmap recommends long-term improvements to the structure of the justice system in Indian country. This includes changes to the basic division of responsibility among Federal, Tribal, and State officials and institutions. The theme here is to provide for greater local control and accountability while respecting the Federal constitutional rights of all U.S. citizens.

Tribal governments, like all governments, have a moral duty to their citizens and guests to ensure the public's safety. They are also the most appropriate and capable government to ensure such safety—they employ the local police, they are the first responders, and understand the needs of their community better than all others. Unfortunately, the American legal system—through legislation and case law—has significantly hamstrung their ability to ensure safety in Indian country.

*Brent Leonhard, Interim Lead Attorney, Confederated Tribes of the Umatilla Indian Reservation
Written testimony for the Indian Law and Order Commission, Hearing on the Tulalip Reservation, WA
September 7, 2011*

Some of the Commission's recommendations require Federal legislative action. Others are matters of internal executive branch policy and practice. Still others must be addressed by the Federal judiciary. Finally, much of what the Commission has proposed will require enlightened and energetic leadership from the State governments and, ultimately, Native Americans and Alaska Native citizens and their elected leaders.

The Commission finds that the public safety crisis in Native America is emphatically not an intractable problem. More lives and property can and will be saved once Tribes have greater freedom to build and maintain their own criminal justice systems. The Commission sees breathtaking possibilities for safer, strong Native communities achieved through home-grown, tribally based systems that respect the civil rights of all U.S. citizens, and reject outmoded Federal command-and-control policies in favor of increased local control, accountability, and transparency.

With this Roadmap, the Commission completes its official work as provided by TLOA and the VAWA Amendments and extends its best wishes to everyone who helped with this journey. Thank you for the privilege of serving.

Respectfully,

A handwritten signature in black ink that reads "Troy A. Eid". The signature is written in a cursive style with a large, sweeping arch over the first name.

Troy A. Eid
Chairman
Indian Law and Order Commission

⁴Due to federal budget limitations, the Commission could not begin its work until the late summer 2011, so its one-year extension by the VAWA Reauthorization was a great asset in finishing our report on time and under budget.

A ROADMAP FOR MAKING NATIVE AMERICA SAFER

EXECUTIVE SUMMARY

American Indian and Alaska Native communities and lands are frequently less safe—and sometimes dramatically more dangerous—than most other places in our country. Ironically, the U.S. government, which has a trust responsibility for Indian Tribes, is fundamentally at fault for this public safety gap. Federal government policies have displaced and diminished the very institutions that are best positioned to provide trusted, accountable, accessible, and cost-effective justice in Tribal communities.

In most U.S. communities, the Federal government plays an important but limited role in criminal justice through the enforcement of laws of general application—that is, those laws that apply to all U.S. citizens—creating drug-control task forces, anti-terrorism and homeland security partnerships, and so forth. Under this system of federalism, State and local leaders have the authority and responsibility to address virtually all other public safety concerns.

Precisely the opposite is true in much of Indian country. The Federal government exercises substantial criminal jurisdiction on reservations. As a result, Native people—including juveniles—frequently are caught up in a wholly nonlocal justice system. This system was imposed on Indian nations without their consent in the late 19th century and is remarkably unchanged since that time. The system is complex, expensive, and simply cannot provide the criminal justice services that Native communities expect and deserve.

It is time for change.

Now is the time to eliminate the public safety gap that threatens so much of Native America. The United States should set a goal of closing the gap within the next decade. By 2024, coinciding with the centennial of the Indian Citizenship Act of 1924,¹ Native Americans and Alaska Natives should no longer be treated as second-class citizens when it comes to protecting their lives, liberty, and pursuit of happiness.

“A Roadmap for Making Native America Safer” (Roadmap) provides a path to make Native American and Alaska Native communities safer and more just for all U.S. citizens and to reduce unacceptably high rates of violent crime rates in Indian country.

The Roadmap is the culmination of hearings, meetings, and conversations between the Indian Law and Order Commission (Commission) and numerous Tribal, State, and Federal leaders, non-profit organization representatives, and other key stakeholders across our country.

ABOUT THE COMMISSION

In 2010, Congress passed, and the President signed, the Tribal Law and Order Act, P.L. 111-211 (TLOA), which created the Indian Law and Order Commission. The Commission is an independent national advisory commission comprised of nine members who have all served as volunteers in unanimously developing the Roadmap. The President and the majority and minority leadership of Congress appointed these commissioners.

TLOA directed the Commission to develop a comprehensive study of the criminal justice system relating to Indian country, including:

1. jurisdiction over crimes committed in Indian country and the impact of that jurisdiction on the investigation and prosecution of Indian crimes and residents of Indian land;
2. the Tribal jail and Federal prison systems with respect to reducing Indian country crime and the rehabilitation of offenders;
3. Tribal juvenile justice systems and the Federal juvenile justice system as it relates to Indian country and the effect of those systems and related programs in preventing juvenile crime, rehabilitating Indian youth in custody, and reducing recidivism among Indian youth;
4. the impact of the Indian Civil Rights Act of 1968 on the authority of Indian Tribes, the rights of defendants subject to Tribal government authority, and the fairness and effectiveness of Tribal criminal justice systems; and
5. studies of such other subjects as the Commission determines relevant to achieve the purpose of the Tribal Law and Order Act.

TLOA directed the Commission to develop recommendations on necessary modifications and improvements to the justice systems at the Tribal, State, and Federal levels. TLOA prescribed consideration of:

1. simplifying jurisdiction in Indian country;
2. improving services and programs to prevent juvenile crime on Indian land, to rehabilitate Indian youth in custody, and to reduce recidivism among Indian youth;
3. adjusting the penal authority of Tribal courts and exploring the alternatives to incarceration;
4. enhancing use of the Federal Magistrates Act in Indian country;
5. identifying effective means of protecting the rights of victims and defendants in Tribal criminal justice systems;
6. recommending changes to the Tribal jails and Federal prison systems; and
7. examining other issues that the Commission determines would reduce violent crime in Indian country.

TLOA provided the Commission with 2 years in which to complete this task, making the report due in 2012. However, due to Federal budget

limitations, the Commission could not begin its work until late summer 2011. Congress provided the Commission a 1-year statutory extension when it passed the Violence Against Women Reauthorization Act of 2013, P.L. 113-4.

As provided by TLOA, the Commission received limited funding from the U.S. Departments of Justice and the Interior to carry out its statutory responsibilities. To save taxpayers' money, the Commission operated entirely in the field—often in federally recognized Indian country—and completed its business primarily by phone and email. The Commission had no offices. Its professional staff consists entirely of career Federal public officials who have been loaned to the Commission as provided by TLOA. The Commission recruited each of its three staff members; when asked to serve, all three graciously did so.

Upon completing these field hearings and meetings, the Commission developed this report. The report is called a “Roadmap” because the Commission has a particular destination in mind—to eliminate the public safety gap that threatens so much of Native America.

ABOUT THE ROADMAP

TLOA has three basic purposes. First, it was intended to make Federal departments and agencies more accountable for serving Tribal lands. Second, the Act was designed to provide greater freedom for Indian Tribes and nations to design and run their own justice systems. This includes Tribal court systems generally, along with those communities that are subject to full or partial State criminal jurisdiction under P.L. 83-280. Third, the Act sought to enhance cooperation among Tribal, Federal, and State officials in key areas such as law enforcement training, interoperability, and access to criminal justice information. This Roadmap assesses the effectiveness of these provisions.

Additionally, the Roadmap recommends long-term improvements to the structure of the justice system in Indian country. This includes the basic division of responsibility among Federal, State, and Tribal officials and institutions. Some of these recommendations require legislative action. Others are matters of executive branch policy. Still others will require action by the Federal judiciary. Finally, much of what the Commission has proposed will require enlightened and energetic leadership from the governments of the several States and, ultimately, Indian Tribes and nations themselves.

A major theme of this Roadmap is that public safety in Indian country can improve dramatically once Native nations and Tribes have greater freedom to build and maintain their own criminal justice systems. The Commission sees breathtaking possibilities for safer, strong Native communities achieved through homegrown, tribally based systems that respect the civil rights of all U.S. citizens. The Commission rejects

outmoded command-and-control policies, favoring increased local control, accountability, and transparency.

The Roadmap contains six chapters, addressing: (1) Jurisdiction; (2) Reforming Justice for Alaska Natives; (3) Strengthening Tribal Justice; (4) Intergovernmental Cooperation; (5) Detention and Alternatives; and (6) Juvenile Justice.

Each chapter contains a full discussion of the aforementioned topics, providing background information, data, and on-the-ground examples about the current challenges facing Indian country. Below is a summary of each chapter. **All recommendations in this Roadmap represent the unanimous views of all nine members of the Commission, Republicans and Democrats alike.**

CHAPTER 1 - JURISDICTION: BRINGING CLARITY OUT OF CHAOS

Under the United States' Federal system, States and localities have primary responsibility for criminal justice. They define crimes, conduct law enforcement activity, and impose sanctions on wrongdoers. Police officers, criminal investigators, prosecutors, public defenders and criminal defense counsel, juries, and magistrates and judges are accountable to the communities from which victims and defendants hail. Jails and detention centers are often located within those same communities.

This framework contrasts with Indian country, where U.S. law requires Federal or State governments' control of the vast majority of criminal justice services and programs over those of local Tribal governments. Federal courts, jails, and detention centers are often located far from Tribal communities.

Disproportionately high rates of crime have called into question the effectiveness of current Federal and State predominance in criminal justice jurisdiction in Indian country. Because the systems that dispense justice in their communities originate in Federal and State law, rather than in Native nation choice and consent, Tribal citizens tend to view them as illegitimate: they do not align with Tribal citizens' perceptions of the appropriate way to organize and exercise coercive authority.

The current framework is institutionally complex. Deciding which jurisdiction delivers criminal justice to Indian country depends on a variety of factors, including but not limited to: where the crime was committed, whether or not the perpetrator is an Indian or non-Indian, whether or not the victim is Indian or non-Indian, and the type of crime committed.

The extraordinary waste of governmental resources resulting from the so-called Indian country "jurisdictional maze" can be shocking, as is the cost in human lives.

While problems associated with institutional illegitimacy and jurisdictional complexities occur across the board in Indian country, the Commission found them to be especially prevalent among Tribes subject to P.L. 85-280 or similar types of State jurisdiction. Distrust between Tribal communities and criminal justice authorities leads to communication failures, conflict, and diminished respect.

Many Tribal governments have been active in seeking ways to make do with the current jurisdictional structure. However, working around the current jurisdictional maze will continue to deliver suboptimal justice because of holes in the patchwork system and these “work-arounds” still do not provide Tribal governments with full authority over all crime and all persons on their lands.

The Commission has concluded that criminal jurisdiction in Indian country is an indefensible morass of complex, conflicting, and illogical commands, layered in over decades via congressional policies and court decisions and without the consent of Tribal nations.

Ultimately, the imposition of non-Indian criminal justice institution in Indian country extracts a terrible price: limited law enforcement; delayed prosecutions, too few prosecutions, and other prosecution inefficiencies; trials in distant courthouses; justice system and players unfamiliar with or hostile to Indians and Tribes; and the exploitation of system failures by criminals, more criminal activity, and further endangerment of everyone living in and near Tribal communities. When Congress and the Administration ask why the crime rate is so high in Indian country, they need look no further than the archaic system in place, in which Federal and State authority displaces Tribal authority and often makes Tribal law enforcement meaningless.

The Commission strongly believes, as the result of listening to Tribal communities, that for public safety to be achieved effectively in Indian country, Tribal justice systems must be allowed to flourish, Tribal authority should be restored to Tribal governments when they request it, and the Federal government, in particular, needs to take a back seat in Indian country, enforcing only those crimes that it would otherwise enforce on or off reservation.

Accordingly, the Commission recommends:

1.1: Congress should clarify that any Tribe that so chooses can opt out immediately, fully or partially, of Federal Indian country criminal jurisdiction and/or congressionally authorized State jurisdiction, except for Federal laws of general application. Upon a Tribe’s exercise of opting out, Congress would immediately recognize the Tribe’s inherent criminal jurisdiction over all persons within the exterior boundaries of the Tribe’s lands as defined in the Federal Indian Country Act.² This recognition, however, would be based on the

“When Congress and the Administration ask why the crime rate is so high in Indian country, they need look no further than the archaic system in place, in which Federal and State authority displaces Tribal authority and often makes Tribal law enforcement meaningless.”

understanding that the Tribal government must also immediately afford all individuals charged with a crime with civil rights protections equivalent to those guaranteed by the U.S. Constitution, subject to full Federal judicial appellate review as described below, following exhaustion of Tribal remedies, in addition to the continued availability of Federal habeas corpus remedies.

1.2: *To implement Tribes' opt-out authority, Congress should establish a new Federal circuit court, the United States Court of Indian Appeals. This would be a full Federal appellate court as authorized by Article III of the U.S. Constitution, on par with any of the existing circuits, to hear all appeals relating to alleged violations of the 4th, 5th, 6th, and 8th Amendments of the U.S. Constitution by Tribal courts; to interpret Federal law related to criminal cases arising in Indian country throughout the United States; to hear and resolve Federal questions involving the jurisdiction of Tribal courts; and to address Federal habeas corpus petitions. Specialized circuit courts, such as the U.S. Court of Appeals for the Federal Circuit, which hears matters involving intellectual property rights protection, have proven to be cost effective and provide a successful precedent for the approach that the Commission recommends. A U.S. Court of Indian Appeals is needed because it would establish a more consistent, uniform, and predictable body of case law dealing with civil rights issues and matters of Federal law interpretation arising in Indian country. Before appealing to this new circuit court, all defendants would first be required to exhaust remedies in Tribal courts pursuant to the current Federal Speedy Trial Act, 18 U.S.C. § 3161, which would be amended to apply to Tribal court proceedings so as to ensure that defendants' Federal constitutional rights are fully protected. Appeals from the U.S. Court of Indian Appeals would lie with the United States Supreme Court according to the current discretionary review process.*

1.3: *The Commission stresses that an Indian nation's sovereign choice to opt out of current jurisdictional arrangements should and must not preclude a later choice to return to partial or full Federal or State criminal jurisdiction. The legislation implementing the opt-out provisions must, therefore, contain a reciprocal right to opt back in if a Tribe so chooses.*

1.4: *Finally, as an element of Federal Indian country jurisdiction, the opt-out would necessarily include opting out from the sentencing restrictions of the Indian Civil Rights Act (IRCA). Critically, the rights protections in the recommendation more appropriately circumscribe Tribal sentencing authority. Like Federal and State governments do, Tribal governments can devise sentences appropriate to the crimes they define. In this process of Tribal code development, Tribes may find guidance in the well-developed sentencing schemes at the State and Federal levels.*

CHAPTER 2—REFORMING JUSTICE FOR ALASKA NATIVES: THE TIME IS NOW

Congress exempted Alaska from legislation aimed at reducing crime in Indian country, such as the Tribal Law and Order Act of 2010 and the Violence Against Women Act 2013 reauthorization (VAWA Amendments). Yet, the problems in Alaska are so severe and the number of Alaska Native communities affected so large, that continuing to exempt the State from national policy change is wrong. It sets Alaska apart from the progress that has become possible in the rest of Indian country. The public safety issues in Alaska—and the law and policy at the root of those problems—beg to be addressed. These are no longer just Alaska’s issues; they are national issues.

The strongly centralized law enforcement and justice systems of the State of Alaska are of critical concern. Devolving authority to Alaska Native communities is essential for addressing local crime. Their governments are best positioned to effectively arrest, prosecute, and punish, and they should have the authority to do so—or to work out voluntary agreements with the State and local governments on mutually beneficial terms.

Forty percent of the federally recognized tribes in the United States are in Alaska, and Alaska Natives represent one-fifth of the total State population. Yet these simple statements cannot capture the vastness or the Nativeness of Alaska. The State covers 586,412 square miles, an area greater than Texas, California, and Montana combined. Many of the 229 recognized tribes in Alaska are villages located off the road system, often resembling villages in developing countries. Frequently, Native villages are accessible only by plane, or during the winter when rivers are frozen, by snow-machine. Food, gasoline, and other necessities are expensive and often in short supply. Subsistence hunting, fishing, and gathering are a part of everyday life. Villages are politically independent from one another, and have institutions that support that local autonomy—village councils and village Corporations.⁵ Unsurprisingly, these conditions pose significant challenges to the effective provision of public safety for Alaska Natives.

Problems with safety in Tribal communities are severe across the United States—but they are systemically worst in Alaska. Most Alaska Native communities lack regular access to police, courts, and related services. Alaska Natives are disproportionately affected by crime, and these effects are felt most strongly in Native communities. High rates of suicide, alcohol abuse, crimes attributed to alcohol, and alcohol abuse-related mortality plague these communities.

In Alaska’s criminal justice system, State government authority is privileged over all other possibilities: the State has asserted exclusive criminal jurisdiction over all lands once controlled by Tribes, and it exercises this jurisdiction through the provision of law enforcement

and judicial services from a set of regional centers, under the direction and control of the relevant State commissioners. This approach has led to a dramatic under-provision of criminal justice services in rural and Native regions of the State. It also has limited collaboration with local governments (Alaska Native or not), which could be the State's most valuable partners in crime prevention and the restoration of public safety.

This is emphatically not to criticize the many dedicated and accomplished State officials who serve Alaska Native communities day in and day out. They deserve the nation's respect, and they have the Commission's.

Nonetheless, it bears repeating that the Commission's findings and conclusions represent the unanimous view of nine independent citizens, Republicans and Democrats alike, that Alaska's approach to criminal justice issues is fundamentally on the wrong track. The status quo in Alaska tends to marginalize—and frequently ignores—the potential of tribally based justice systems, as well as intertribal institutions and organizations to provide more cost-effective and responsive alternatives to prevent crime and keep all Alaskans safer. If given an opportunity to work, Tribal approaches can be reasonably expected to work better—and at less cost.

Because of the Alaska Native Claims Settlement Act of 1971 (ANCSA) and *Alaska v. Native Village of Venetie Tribal Government*⁴, the Alaska Attorney General takes the view that there is very little Indian country in Alaska and thus, its law enforcement authority is exclusive throughout the State because Tribes do not have a land base on which to exercise any inherent criminal jurisdiction.

The Commission respectfully and unanimously disagrees.

Accordingly, the Commission recommends:

2.1: *Congress should overturn the U.S. Supreme Court's decision in Alaska v. Native Village of Venetie Tribal Government, by amending ANCSA to provide that former reservation lands acquired in fee by Alaska Native villages and other lands transferred in fee to Native villages pursuant to ANCSA are Indian country.*

2.2: *Congress and the President should amend the definitions of Indian country to clarify (or affirm) that Native allotments and Native-owned town sites in Alaska are Indian country.*

2.3: *Congress should amend the Alaska Native Claims Settlement Act to allow a transfer of lands from Regional Corporations to Tribal governments; to allow transferred lands to be put into trust and included within the definition of Indian country in the Federal criminal code; to allow Alaska Native Tribes to put tribally owned*

fee simple land similarly into trust; and to channel more resources directly to Alaska Native Tribal governments for the provision of governmental services in those communities.

2.4: *Congress should repeal Section 910 of Title IX of the Violence Against Women Reauthorization Act of 2013 (VAWA Amendments), and thereby permit Alaska Native communities and their courts to address domestic violence and sexual assault, committed by Tribal members and non-Natives, the same as now will be done in the lower 48.*

2.5: *Congress should affirm the inherent criminal jurisdiction of Alaska Native Tribal governments over their members within the external boundaries of their villages.*

CHAPTER 3—STRENGTHENING TRIBAL JUSTICE: LAW ENFORCEMENT, PROSECUTION, AND COURTS

Parity in Law Enforcement. A foundational premise of this report is that Indian Tribes and nations throughout our country would benefit enormously if locally based and accountable law enforcement officers were staffed at force levels comparable to similarly situated communities off-reservation. From 2009-2011, the Office of Justice Services (OJS) in the Bureau of Indian Affairs (BIA) increased staffing levels on four Indian reservations to achieve such parity. This approach—through a “High Performance Priority Goal” (HPPG) Initiative—on average, reduced crime significantly on the selected reservations.

While the HPPG Initiative demonstrates what can work in Indian country, the Commission hastens to note that HPPG’s results can neither be replicated nor sustained on very many other Tribal reservations due to the extremely limited Federal and State funding options currently available to Indian country. Despite the current budget reality, the results of the HPPG Initiative should not be forgotten: parity in law enforcement services prevents crime and reduces violent crime rates.

In P.L. 85-280 States, the Federal government has transferred Federal criminal jurisdiction on Indian lands to State governments and approved the enforcement of a State’s criminal code by State and local law enforcement officers in Indian country. As a consequence of P.L. 85-280 and similar settlement acts, Federal investment in Tribal justice systems has been even more limited than elsewhere in Indian country. Nor is much help forthcoming from State governments; they have found it difficult to satisfy the demands of what is essentially an unfunded Federal mandate.

Accordingly, the Commission recommends:

3.1: Congress and the executive branch should direct sufficient funds to Indian country law enforcement to bring Indian country's coverage numbers into parity with the rest of the United States. Funding should be made equally available to a) Tribes whose lands are under Federal criminal jurisdiction and those whose lands are under State jurisdiction through P.L. 83-280 or other congressional authorization; b) Tribes that contract or compact under P.L. 93-638 and its amendments or not; and c) Tribes that do or do not opt out (in full or in part) from Federal or State criminal jurisdiction as provided in Recommendation 1.1 of this report.

Data Deficits. When Tribes have accurate data, they can plan and assess their law enforcement and other justice activities. Without data and access to such data, community assessment, targeted action, and norming against standards are impossible. The Commission found that systems for generating crime and law enforcement data about Indian country either are nascent or undeveloped.

Accordingly, the Commission recommends:

3.2: To generate accurate crime reports for Indian country, especially in Tribal areas subject to P.L. 83-280, Congress should amend the Federal Bureau of Investigation (FBI) Criminal Justice Information Services reporting requirements for State and local law enforcement agencies' crime data to include information about the location at which a crime occurred and on victims' and offenders' Indian status. Similarly, it should require the U.S. Department of Justice (DOJ) to provide reservation-level victimization data in its annual reports to Congress on Indian country crime. Congress also should ensure the production of data and data reports required by the Tribal Law and Order Act of 2010, which are vital to Tribes as they seek to increase the effectiveness of their law enforcement and justice systems, by allowing Tribal governments to sue the U.S. Departments of Justice and the Interior should they fail to produce and submit the required reports.

Special Assistant U.S. Attorneys ("SAUSAs"). The Indian country SAUSA program makes it possible for U.S. Attorneys to appoint appropriately qualified prosecutors to work in the capacity of an Assistant U.S. Attorney for the prosecution of certain Indian country cases. The SAUSA model is a positive and worthwhile development in making Indian country safer. SAUSAs boost Tribal prosecutors' ability to protect and serve. SAUSAs sometimes work with their respective U.S. Attorney's Offices to refer cases arising on Indian lands so that the investigations do not fall through the cracks. Further, all Tribal SAUSAs are required to undergo a rigorous FBI background check prior to their appointment. This vetting allows SAUSAs to legally obtain access to Law Enforcement Sensitive information. Such information helps determine how Tribal prosecutors allocate resources and implement their public safety priorities.

Despite better utilization of the SAUSA program in recent years, a more fundamental issue remains: Federal agencies' stingy support of Tribal court proceedings. Many Federal officials still see information sharing with Tribal prosecutors' offices as more or less optional. Routine refusal by many Federal law enforcement officials to testify as witnesses in Tribal court proceedings stymies the successful prosecution of Indian country crime.

Accordingly, the Commission recommends:

3.3: The Attorney General of the United States should affirm that federally deputized Tribal prosecutors (that is, those appointed as Special Assistant U.S. Attorneys or "SAUSAs" by the U.S. Department of Justice pursuant to existing law) should be presumptively and immediately entitled to all Law Enforcement Sensitive information needed to perform their jobs for the Tribes they serve.

3.4: The U.S. Attorney General should clarify the ability and importance of Federal officials serving as witnesses in Tribal court proceedings and streamline the process for expediting their ability to testify when subpoenaed or otherwise directed by Tribal judges.

3.5: To further strengthen Tribal justice systems, the Commission suggests that Federal public defenders, who are employees of the judicial branch of the Federal government within the respective judicial districts where they serve, consider developing their own program modeled on Special Assistant U.S. Attorneys.

Federal Magistrate Judges. TLOA directs the Commission to consider enhanced use of Federal magistrate judges to improve justice systems. The Commission has considered the concept of cross-deputizing Tribal court judges to serve as "Special Federal Magistrate Judges" to help expedite Federal criminal investigations, arrests, and indictments of crimes occurring in Indian country. However, despite repeated attempts to garner opinions on this topic, there was no public testimony on this topic.

While Federal magistrate judges play an important role in Indian country, there are obviously many instances where only an Article III judge can perform certain functions in Indian country that are required by law. Yet, not one U.S. District Court Judge is permanently based in Indian country, nor are there any Federal courthouses there.

Accordingly, the Commission recommends:

3.6: Congress and the executive branch should encourage U.S. District Courts that hear Indian country cases to provide more judicial services in and near Indian country. In particular, they should be expected to hold more judicial proceedings in and near Indian country. Toward this end, the U.S. Supreme Court and the Judicial

Conference of the United States should develop a policy aimed at increasing the Federal judicial presence and access to Federal judges in and near Indian country.

3.7: Congress and the executive branch should consider commissioning a study of the usefulness and feasibility of creating Special Federal Magistrate Judges.

Federal Funding and Federal Administrative Reform. The Roadmap sets forth a vision of Tribal governments having the lead role in strengthening Tribal justice. To achieve this goal, they must be able to communicate clearly and effectively with their Federal and State government partners about their justice capabilities and needs.

Most Tribal governments need financial support and a more rational Federal administrative structure for the management of criminal justice programs in Indian country. The need for resources is obvious if Tribes are to pursue successful strategies such as the HPPG Initiative. Administrative changes at the Federal level should make it possible to redirect spending that at present is duplicative, over managed, and misallocated. Thus, reform may not only improve information sharing, but also generate savings so that less “new money” is needed for investment in ideas that work.

Since the late 1980s, the U.S. Department of Justice (DOJ) has become a major funder of Indian country criminal justice system activities. DOJ’s involvement has been of great benefit to Tribes in areas such as program development and opening certain funding streams.

Despite these benefits, DOJ’s grant-based funding approach creates uncertainties in system planning; Tribal governments legitimately ask why—unlike their State and local counterparts—should they rely on such inconsistent sources to pay for governmental functions. Grant funding also requires Tribal governments to compete for and “win” grant funds, which means other Tribes did not. Further, small Tribes and Tribes with thinly stretched human capital lack the capacity to write a “winning” application, yet these Tribes often have disproportionate criminal justice needs. Finally, many grants awarded to Tribes contain so much bureaucratic red tape that the balance of the Federal funds awarded goes unused.

Additionally, Tribes must navigate the separate DOJ and U.S. Department of Interior (DOI) systems, which have substantial roles in the administration of Indian country justice programming. This arrangement creates costly duplication, confusion concerning lines of accountability, and wasteful outcomes. For example, the Commission learned of detention facilities built with DOJ funds that, once completed, could not be staffed because they were not included in the DOI budget for facilities operations and maintenance.

Some of these problems could be resolved if Tribal governments were able to access DOJ Indian country resources that allow Tribal governments to manage Federal funds. An alternative and preferred route would be to merge or combine these Federal responsibilities for Indian country criminal justice in a single Federal department.

Accordingly, the Commission recommends:

3.8: Congress should eliminate the Office of Justice Services (OJS) within the Department of the Interior Bureau of Indian Affairs, consolidate all OJS criminal justice programs and all Department of Justice Indian country programs and services into a single “Indian country component” in the U.S. Department of Justice (including an appropriate number FBI agents and their support resources), and direct the U.S. Attorney General to designate an Assistant Attorney General to oversee this unit. The enacting legislation should affirm that the new agency retains a trust responsibility for Indian country and requires Indian preference in all hiring decisions; amend P.L. 93-638 so that Tribal governments have the opportunity to contract or compact with the new agency; and authorize the provision of direct services to Tribes as necessary. Congress also should direct cost savings from the consolidation to the Indian country agency and continue to appropriate this total level of spending over time.

3.9: Congress should end all grant-based and competitive Indian country criminal justice funding in DOJ and instead pool these monies to establish a permanent, recurring base funding system for Tribal law enforcement and justice services, administered by the new Tribal agency in DOJ. Federal base funding for Tribal justice systems should be made available on equal terms to all federally recognized Tribes, whether their lands are under Federal jurisdiction or congressionally authorized State jurisdiction and whether they opt out of Federal and/or State jurisdiction (as provided in Recommendation 1.1). In order to transition to base funding, the enacting legislation should:

- a. Direct the U.S. Department of Justice to consult with Tribes to develop a formula for the distribution of base funds (which, working from a minimum base that all federally recognized Tribes would receive, might additionally take account of Tribes’ reservation populations, acreages, and crime rates) and develop a method for awarding capacity-building dollars.*
- b. Designate base fund monies as “no year” so that Tribes that are unable to immediately qualify for access do not lose their allocations.*
- c. Authorize the U.S. Department of Justice to annually set aside five (5) percent of the consolidated former grant monies as a designated Tribal criminal justice system capacity-building fund,*

which will assist Tribes in taking maximum advantage of base funds and strengthen the foundation for Tribal local control.

3.10: *Congress should enact the funding requests for Indian country public safety in the National Congress of American Indians (NCAI) “Indian Country Budget Request FY 2014,” and consolidate these funds into appropriate programs within the new DOJ Tribal agency. Among other requests, NCAI directs Congress to fully fund each provision of the Tribal Law and Order Act of 2010 that authorizes additional funding for Tribal nation law and order programs, both for FY 2014 and future years; to finally fund the Indian Tribal Justice Act of 1993, which authorized an additional \$50 million per year for each of seven (7) years for Tribal court base funding; and to create a seven (7) percent Tribal set-aside from funding for all discretionary Office of Justice Programs (OJP) programs, which at a minimum should equal the amount of funding that Tribal justice programs received from OJP in FY 2010. In the spirit of NCAI’s recommendations, Congress also should fund the Legal Services Corporation (LSC) at a level that will allow LSC to fulfill Congress’ directives in the Tribal Law and Order Act of 2010 and Violence Against Women Act 2013 reauthorization.*

CHAPTER 4—INTERGOVERNMENTAL COOPERATION: WORKING RELATIONSHIPS THAT TRANSCEND JURISDICTIONAL LINES

Stronger coordination among Federal, State, and Tribal law enforcement can make Native nations safer and close the public safety gap with similarly situated communities. It also is a proven way to combat off-reservation crime. The Federal government cannot and should not force Tribal and State leaders to work together. Local priorities and concerns ought to drive cooperation, and it needs to be voluntary. But the President and Congress can take steps to promote and support the conditions in which more positive forms of collaboration can take root.

A principal goal in intergovernmental cooperation is to find the right mechanisms to facilitate the entry into Tribal-State and Tribal-Federal law enforcement agreements and Memoranda of Understanding, including Special Law Enforcement Commission and local deputization and cross-deputization agreements.

Special Law Enforcement Commission (SLEC). With a SLEC, a Tribal police officer, employed by a Tribal justice agency, can exercise essentially the same arrest powers of a Bureau of Indian Affairs (BIA) officer assigned to Indian country without compensation by the Federal government. The SLEC enables a Tribal police office to make an arrest for a violation of the General Crimes Act or the Major Crimes Act in the non-P.L. 83-280 States or Tribal jurisdictions. While the SLEC appears to be precisely the kind of intergovernmental cooperation that would greatly enhance public safety in

Indian country, the Commission heard testimony that the BIA certification of the SLEC commissions is often delayed far too long.

State and Local Agreements. The Commission believes the recognition of Tribal government and jurisdictional powers through agreements with State and local jurisdictions will develop partnerships, allow the sharing of knowledge and resources, and result in better chances to coordinate police enforcement. Greater intergovernmental cooperation often results in better services for Indian country, is more cost effective, culturally compatible, and provides better arrest and prosecution rates.

The use of Memoranda of Understanding (MOUs) or other similar agreements between local law enforcement agencies and Tribal public safety permit, or “deputize,” the Tribal officers to enforce State criminal law. In most cases, this mechanism has served to ease the burden on non-Indian police forces. It also allows a full arrest of a suspect, which is necessary to secure a crime scene, protect evidence and witnesses, and ensure an appropriate arraignment and prosecution. However, liability concerns can hinder adoption of such agreements.

Accordingly, the Commission recommends:

4.1: Federal policy should provide incentives for States and Tribes to increase participation in deputization agreements and other recognition agreements between State and Tribal law enforcement agencies.

Without limitation, Congress should:

a) Support the development of a model Tribal-State law enforcement agreement program that addresses the concerns of States and Tribes equally, to help State legislatures and Governors to formulate uniform laws to enable such MOUs and agreements, in both P.L. 83-280 and non-P.L. 83-280 States;

b) Support the training costs and requirements for Tribes seeking to certify under State agencies to qualify for peace officer status in a State in a deputization agreement;

c) Create a federally subsidized insurance pool or similar affordable arrangement for tort liability for Tribes seeking to enter into a deputization agreement for the enforcement of State law by Tribal police;

d) For Tribal officers using a SLEC, amend the Federal Tort Claims Act⁷ to include unequivocal coverage (subject to all other legally established guidelines concerning allowable claims under the Act), not subject to the discretion of a U.S. Attorney or other Federal official; and

e) Improve the SLEC process by shifting its management to the U.S. Department of Justice and directing DOJ to streamline the commissioning process (while retaining the requirements necessary to ensure that only qualified officers are provided with SLECs). (Also see Recommendation 4.8.)

Tribal Notification of Arrest, Court Proceedings, and Reentry. On the Federal side, United States Attorney's Offices sometimes do not communicate effectively, or at all, with Tribal jurisdictions when declining cases for Federal prosecution. Without notification, local Tribal courts often do not take up the case in Tribal court by exercising their concurrent jurisdiction.

Tribal government notification at the time of a Tribal citizen's arrest—and appropriate Tribal government involvement from that point forward (during trial, detention, and reentry)—can reasonably be expected to improve outcomes for the offender and for the offender's family and Tribe, as well as improve law enforcement outcomes overall.

4.2: Federal or State authorities should notify the relevant Tribal government when they arrest Tribal citizens who reside in Indian country.

4.3: When any Tribal citizen resident in Indian country is involved as a criminal defendant in a State or Federal proceeding, the Tribal government should be notified at all steps of the process and be invited to have representatives present at any hearing. Tribes should similarly keep the Federal or State authorities informed of the appropriate point of contact within the Tribe. These mutual reporting requirements will help ensure the effective exercise of concurrent jurisdiction, when applicable, and the provision of wrap-around and other governmental services to assist the offender, his or her family, as well as the victims of crime.

4.4: All three sovereigns—Federal, State, and Tribal—should enter into voluntary agreements to provide written notice regarding any Tribal citizens who are reentering Tribal lands from jail or prison. This requirement should apply regardless if that citizen formerly resided on the reservation. This policy will allow the Tribe to determine if it has services of use to the offender, and to alert victims about the offender's current status and location.

Intergovernmental Data Collection and Sharing. Good criminal justice information—and, as necessary, sharing of information—are key to the effective operation of a criminal justice program. Indian country is seen as a data gap. Some Tribes are working with State and Federal law officials on innovative ways to collect and distribute data. However, more can and should be done to encourage data sharing, particularly at the State and local level.

Accordingly, the Commission recommends:

4.5: Congress should provide specific Edward J. Byrne Memorial Justice Assistance Grants (Byrne grants) or COPS grants for data-sharing ventures to local and State governments, conditioned on the State or local government entering into agreements to provide criminal offenders' history records with federally recognized Indian Tribes with operating law enforcement agencies that request to share data about offenders' criminal records; any local, State, or Tribal entity that fails to comply will be ineligible for COPS and Byrne grants.

CHAPTER 5—DETENTION AND ALTERNATIVES: COMING FULL CIRCLE, FROM *Crow Dog* TO TLOA AND VAWA

In August 1881, *Crow Dog*, a Brule Lakota man, shot and killed Spotted Tail, a fellow member of his Tribe. The matter was settled according to long-standing Lakota custom and tradition, which required *Crow Dog* to make restitution by giving Spotted Tail's family \$600, eight horses, and a blanket. After a public outcry that the sentence was not harsher, Federal officials charged *Crow Dog* with murder in a Dakota Territory court. He was found guilty and sentenced to death. The U.S. Supreme Court ultimately affirmed Tribal jurisdiction in this case, noting that the territorial court had inappropriately measured Lakota standards for punishment “by the maxims of the white man’s morality.”⁶ Members of Congress, outraged by the Supreme Court’s ruling, overturned the decision by enacting the Major Crimes Act of 1885, which for the first time extended Federal criminal jurisdiction to a list of felonies committed on reservations by Indians against both Indians and non-Indians.

In the 130 years since, detention and imprisonment have risen in prominence as responses to crime in Indian country, and Tribal governments have struggled to reassert their views about the value of reparation, restoration, and rehabilitation.

In recent years, the TLOA and VAWA Amendments have allowed Tribal governments to regain significant authority over criminal sentencing. But more could be done. By investing in alternatives to incarceration, the Commission also is hopeful that significant cost savings in Federal and State resources can be realized.

Deficiencies in Detention. Indians who offend in Indian country and are sentenced to serve time may be held in Tribal, Federal, or State facilities. While there are hardships associated with any incarceration, American Indians and Alaska Natives serving time in State and Federal detention systems experience a particular set of problems. One is systemic disproportionality in sentencing. The other is distance from their homes.

Further, such detention systems fail to provide culturally relevant support to offenders and community reentry becomes more difficult and may be ill coordinated.

Indians offenders also could be placed in an Indian country detention facility. There is an increasing number of exemplary facilities that serve as anchors along a continuum of care from corrections to community reentry and that are able to connect detainees with core rehabilitation services. For many Tribes, financial assistance from the Federal government for facility planning, renovation, expansion, staffing, and operations has been important in these efforts.

On the other hand, eight Tribal detention facilities permanently closed between 2004 and 2012. In most cases, deficiencies in funding, staff, and appropriate space proved their undoing. Indeed, the Commission visited detention facilities with deplorable living conditions. Funding for new jails and funding for operations remains a challenge. And while the number of violent offenders in Indian country detention facilities has fallen slightly in recent years, new sentencing authorities provided by TLOA and the VAWA Amendments may result in an increased the number of violent offenders in Indian country detention facilities.

Opportunities in Alternatives. “Alternatives to incarceration” or “alternatives to detention” are programs in which a judge may send criminal offenders elsewhere instead of sentencing them to jail. By addressing the core problems that lead offenders to crime (which may include substance abuse, mental health problems, and limited job market skills) and by helping them develop new behaviors that support the choice to not commit crimes, alternative sentencing aims to create pathways away from recidivism. Jail may still be part of an offender’s experience with an alternative sentence, but it would be used more sparingly and as a shorter-term measure, functioning as a component in a more comprehensive program involving intensive supervision, coordinated service provision, and high expectations for offender accountability.

A considerable amount of data demonstrates the effectiveness of some alternatives to detention across a wide range of court settings and offense categories. Effectiveness can translate to cost savings. Governments save money by diverting offenders away from jail and into alternative programs.

Accordingly, the Commission recommends:

5.1: Congress should set aside a commensurate portion of the resources (funding, technical assistance, training, etc.) it is investing in reentry, second-chance, and alternatives to incarceration monies for Indian country, and in the same way it does for State governments, to help ensure that Tribal government funding for these purposes is ongoing. In line with the Commission’s overarching

recommendation on funding for Tribal justice, these resources should be managed by the recommended Indian country unit in the U.S. Department of Justice and administered using a base funding model. Tribes are specifically encouraged to develop and enhance drug courts, wellness courts, residential treatment programs, combined substance abuse treatment-mental health care programs, electronic monitoring programs, veterans' courts, clean and sober housing facilities, halfway houses, and other diversion and reentry options, and to develop data that further inform the prioritization of alternatives to detention.

To increase intergovernmental collaboration, as suggested elsewhere in this report, Tribal, State, and Federal governments should collaborate to ensure that Tribal governments are knowledgeable about which of its citizens are in the custody of non-Tribal governments. This would afford each offender's Tribal government the option to be engaged in decision making regarding corrections placement and supervision and allow the nation to be informed about, and prepared for, the offender's eventual reentry to the Tribal community.

Accordingly, the Commission recommends:

5.2: Congress should amend the Major Crimes Act, General Crimes Act, and P.L. 83-280 to require both Federal and State courts exercising transferred Federal jurisdiction 1) to inform the relevant Tribal government when a Tribal citizen is convicted for a crime in Indian country, 2) to collaborate, if the Tribal government so chooses, in choices involving corrections placement or community supervision, and 3) to inform the Tribal government when that offender is slated for return to the community.

Tribes must receive a fair share of funds available at the Federal level for corrections systems creation and operation. While some corrections funds are specifically designated for Tribes, most are allocated in a manner that privileges State and local governments above Tribal governments. Savings realized through the creation and increased use of alternatives to detention should not be lost to Tribal governments, which is the case today. Instead, funding should "follow the offender," so that if an offender's time served is reduced, money that would have been spent on detention is then available for service provision.

Accordingly, the Commission recommends:

5.3: Recognizing that several Federal programs support the construction, operation, and maintenance of jails, prisons, and other corrections programs that serve offenders convicted under Tribal law, appropriate portions of these funds should be set aside for Tribal governments and administered by a single component of the U.S. Department of Justice. This includes any funds specifically intended

for Tribal jails and other Tribal corrections programs (e.g., those available through the Bureau of Indian Affairs) and a commensurate Tribal share of all other corrections funding provided by the Federal government (e.g., Bureau of Prisons funding and Edward J. Byrne Memorial Justice Assistance Grants/JAG program funding). To the extent that alternatives to detention eventually reduce necessary prison and jail time for Tribal-citizen offenders, savings should be reinvested in Indian country corrections programs and not be used as a justification for decreased funding.

5.4: *Given that even with a renewed focus on alternatives to incarceration, Tribes will continue to have a need for detention space:*

a) Congress and the U.S. Department of Justice should provide incentives for the development of high-quality regional Indian country detention facilities, capable of housing offenders in need of higher security and providing programming beyond “warehousing,” by prioritizing these facilities in their funding authorization and investment decisions; and,

b) Congress should convert the Bureau of Prisons pilot program created by the Tribal Law and Order Act into a permanent programmatic option that Tribes can use to house prisoners.

CHAPTER 6—JUVENILE JUSTICE: FAILING THE NEXT GENERATION

Indian country juvenile justice exposes the worst consequences of our broken Indian country justice system. Native youth are among the most vulnerable group of children in the United States. In comparison to the general population, poverty, substance abuse, suicide, and exposure to violence and loss disproportionately plague Native youth. Not surprisingly, and detailed in the Roadmap, these conditions negatively influence how Native children enter adulthood.

The same complexities and inadequacies of the Indian country adult criminal justice impair juvenile justice as well. The Federal court system has no juvenile division—no specialized juvenile court judges, no juvenile probation system. The U.S. Bureau of Prisons has no juvenile detention, diversion, or rehabilitation facilities. For Indian country youth who become part of State juvenile justice systems, there is generally no requirement that a child’s Tribe be contacted if an Indian child is involved. Thus, the unique circumstances of Native youth are often overlooked and their outcomes are difficult to track. Juveniles effectively “go missing” from the Tribe.

Although data about Indian country juveniles in Federal and State systems are limited, the available data reveal alarming trends regarding processing, sentencing, and incarceration of Native youth. Native youth are overrepresented in both Federal and State juvenile justice systems and receive harsher sentences.

Jurisdiction Reforms for Native Youth. Just as Tribal self-determination and local control are the right goals for adult criminal matters, they are the right goals for juvenile matters.

Accordingly, the Commission recommends:

6.1: *Congress should empower Tribes to opt out of Federal Indian country juvenile jurisdiction entirely and/or congressionally authorized State juvenile jurisdiction, except for Federal laws of general application.*

Analogous to the mechanism set forth in Chapter 1 (Jurisdiction: Bringing Clarity Out of Chaos), for any Tribe that exercises this option, Congress would recognize the Tribe's inherent jurisdiction over those juvenile matters, subject to the understanding that the Tribe would afford all constitutionally guaranteed rights to the juveniles brought before the Tribal system, and the juveniles would be entitled to Federal civil rights review of any judgments entered against them in a newly created United States Court of Indian Appeals. As in adult criminal court, the Tribe opting for this exclusive jurisdiction could offer alternative forms of justice, such as a juvenile wellness court, a teen court, or a more traditional peacemaking process, as long as the juvenile properly waived his or her rights.

If Tribes choose not to opt out entirely from the Federal criminal justice system for offenses allegedly committed by their juvenile citizens, Tribal governments should still be provided with a second option:

6.2: *Congress should provide Tribes with the right to consent to any U.S. Attorney's decision before Federal criminal charges against any juvenile can be filed.*

The U.S. Criminal Code already provides for such Tribal governmental consent in adult cases where Federal prosecutors are considering seeking the death penalty. The same reasoning ought to apply to U.S. Attorneys' decisions to file Federal charges against Native juveniles for Indian country offenses.

Strengthening Tribal Justice for Native Youth. Similarly, in the interests of achieving parity between Tribal and non-Indian justice systems, resources for Indian country juvenile justice must be more effectively deployed.

Accordingly, the Commission recommends:

6.3: *Because resources should follow jurisdiction, and the rationale for Tribal control is especially compelling with respect to Tribal youth, resources currently absorbed by the Federal and State systems should flow to Tribes willing to assume exclusive jurisdiction over juvenile justice.*

6.4: *Because Tribal youth have often been victimized themselves, and investments in community-oriented policing, prevention, and treatment produce savings in costs of detention and reduced juvenile and adult criminal behavior, Federal resources for Tribal juvenile justice should be reorganized in the same way this Commission has recommended for the adult criminal justice system. That is, they should be consolidated in a single Federal agency within the U.S. Department of Justice, allocated to Tribes in block funding rather than unpredictable and burdensome grant programs, and provided at a level of parity with non-Indian systems. Tribes should be able to redirect funds currently devoted to detaining juveniles to more demonstrably beneficial programs, such as trauma-informed treatment and greater coordination between Tribal child welfare and juvenile justice agencies.*

6.5: *Because Tribal communities deserve to know where their children are and what is happening to them in State and Federal justice systems, and because it is impossible to hold justice systems accountable without data, both Federal and State juvenile justice systems must be required to maintain proper records of Tribal youth whose actions within Indian country brought them into contact with those systems. All system records at every stage of proceedings in State and Federal systems should include a consistently designated field indicating Tribal membership and location of the underlying conduct within Indian country and should allow for tracking of individual children. If State and Federal systems are uncertain whether a juvenile arrested in Indian country is in fact a Tribal member, they should be required to make inquiries, just as they are for dependency cases covered by the Indian Child Welfare Act.*

6.6: *Because American Indian/Alaska Native children have an exceptional degree of unmet need and the Federal government has a unique responsibility to these children, a single Federal agency should be created to coordinate the data collection, examine the specific needs, and make recommendations for American Indian/Alaska Native youth. This should be the same agency within the U.S. Department of Justice referenced in Recommendation 6.4. A very similar recommendation can be found in the 2013 Final Report of the Attorney General's National Task Force on Children Exposed to Violence.*

“... data show that Federal and State juvenile justice systems take Indian children, who are the least well, and make them the most incarcerated. Furthermore, conditions of detention often contribute to the very trauma that Native children experience. Detention is often the wrong alternative for Indian country youth and should be the last resort.”

Detention and Alternatives for Native Youth. Alternatives to detention are even more imperative for Tribal youth than for adult offenders. Experts in juvenile justice believe detention should be a rare and last resort for *all* troubled youth, limited to those who pose a safety risk or cannot receive effective treatment in the community. More specifically, data show that Federal and State juvenile justice systems take Indian children, who are the least well, and make them the most incarcerated. Furthermore, conditions of detention often contribute to the very trauma that Native children experience. Detention is often the wrong alternative for Indian country youth and should be the last resort.

Accordingly, the Commission recommends:

6.7: *Whether they are in Federal, State, or Tribal juvenile justice systems, children brought before juvenile authorities for behavior that took place in Tribal communities should be provided with trauma-informed screening and care, which may entail close collaboration among juvenile justice agencies, Tribal child welfare, and behavioral health agencies. A legal preference should be established in State and Federal juvenile justice systems for community-based treatment of Indian country juveniles rather than detention in distant locations, beginning with the youth's first encounters with juvenile justice. Tribes should be able to redirect Federal funding for construction and operation of juvenile detention facilities to the types of assessment, treatment, and other services that attend to juvenile trauma.*

6.8: *Where violent juveniles require treatment in some form of secure detention, whether it be through BOP-contracted State facilities, State facilities in P.L. 83-280 or similar jurisdictions, or BIA facilities, that treatment should be provided within a reasonable distance from the juvenile's home and informed by the latest and best trauma research as applied to Indian country.*

Intergovernmental Cooperation for Native Youth. Where juveniles are involved, intergovernmental cooperation can enable Tribes to ensure that their often-traumatized youth receive proper assessment and treatment that is attentive to the resources and healing potential of Tribal cultures. Yet, Federal law, as prescribed by the Federal Delinquency Act, limits the ability to consider Tribal law and the unique needs and circumstances of a juvenile offender, particularly if that offender may be tried as an adult.

Accordingly, the Commission recommends:

6.9: *The Federal Delinquency Act, 18 U.S.C. § 5032, which currently fosters Federal consultation and coordination only with States and U.S. territories, should be amended to add "or tribe" after the word "state" in subsections (1) and (2).*

6.10: *The Federal Delinquency Act, 18 U.S.C. § 5032, should be amended so that the Tribal election to allow or disallow transfer of juveniles for prosecution as adults applies to all juveniles subject to discretionary transfer, regardless of age or offense.*

6.11: *Federal courts hearing Indian country juvenile matters should be statutorily directed to establish pretrial diversion programs for such cases that allow sentencing in Tribal courts.*

Finally, there are two key mechanisms of enhanced Tribal-State cooperation: notice to Tribes when their children enter State juvenile justice systems and opportunities for Tribes to participate more fully in determining the disposition of juvenile cases.

Accordingly, the Commission recommends:

6.12: *The Indian Child Welfare Act⁷ should be amended to provide that when a State court initiates any delinquency proceeding involving an Indian child for acts that took place on the reservation, all of the notice, intervention, and transfer provisions of ICWA will apply. For all other Indian children involved in State delinquency proceedings, ICWA should be amended to require notice to the Tribe and a right to intervene.*

CONCLUSION

These recommendations are the result of Commission field hearings and site visits to all 12 of the Bureau of Indian Affairs' regions across the United States, along with hundreds of letters, emails, and other input from every corner of our country. They are intended to make Native America safer and more just for all U.S. citizens and to save taxpayers' money by replacing outdated top-down policies and bureaucracies with locally based approaches that are more directly accountable to the people who depend on them most and can make them work.

Many of these recommendations will require Federal legislation. Others are matters of internal executive branch policy. Still others will require action by the Federal judiciary. And much of what the Commission has proposed will demand enlightened and energetic leadership from the affected State governments. This includes the development of model and uniform State codes and best practices. Ultimately, Indian Tribes, nations, pueblos, villages, and rancherias must choose if and when to implement these reforms.

This is a defining moment for our nation and for this generation. How we choose to deal with the current public safety crisis in Native America—a crisis largely of the Federal government's own making over more than a century of failed laws and policies—can set our generation apart from the legacy that remains one of great unfinished challenges of the Civil Rights Movement.

Public safety in Indian country can and will improve dramatically once Native American nations and Alaska Native Tribes have greater freedom to build and maintain their own criminal justice systems. We see breathtaking possibilities for safer, strong Native communities achieved through home-grown, tribally based systems, respectful of the civil rights of all U.S. citizens, systems that reject outmoded command-and-control policies in favor of increased local control, accountability, and transparency. Lives are at stake, and there is no time to waste.

ENDNOTES

¹ Also known as the Snyder Act, the Indian Citizenship Act, 43 Stat. 253, conferred U.S. citizenship on “all non-citizen Indians born within the territorial limits of the United States,” thereby enabling Native Americans to vote in Federal elections.

² 18 U.S.C. § 1151.

³ Alaska Native Corporations are discussed in Chapter 2, notably at endnote 9.

⁴ 522 U.S. 520 (1998).

⁵ 28 U.S.C. § 1546(b)

⁶ *Ex parte Crow Dog*, 109 U.S. 556, 571 (1883).

⁷ 25 U.S.C. § 1901 *et seq.*

ACKNOWLEDGEMENTS

The views expressed in this Roadmap by the nine appointed Commissioners of the Indian Law and Order Commission are theirs alone and do not necessarily reflect those of any other contributor. Nonetheless, the Commission wishes to acknowledge and thank the many talented and dedicated individuals who contributed to it.

Of particular note are the professional staff who were detailed from their permanent Federal employment to temporary tours of duty with the Commission. The Commission recruited each of them personally and then negotiated their public service as loaned executives:

- Jeff J. Davis, Executive Director, on leave from the United States Attorney's Office for the Western District of Michigan, Grand Rapids, MI, where he serves as an Assistant United States Attorney
- Eileen M. Garry, Deputy Executive Director, who remarkably never secured a formal detail and has continued to serve simultaneously in her permanent, full-time role as the Deputy Director of the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, Washington, DC.
- Laurel Iron Cloud, the Commission's Deputy Director, detailed from the Bureau of Indian Affairs-Office of Justice Services in Albuquerque, NM

Jeff, Eileen, and Laurel have provided enlightened and indispensable leadership throughout this project, and the Commission deeply respects their willingness to commit to such a challenging assignment.

The Commission's Advisory Committee also provided invaluable public service. Members were selected by the Commission based on dozens of applications from all 12 Bureau of Indian Affairs regions. Appendix C lists them individually. Their assistance along this journey is deeply felt and respected.

The Commission expresses its gratitude to teams from two universities who provided research and writing assistance: Miriam Jorgensen, Mary Beth Jäger, John McMinn, and Rachel Starks of the University of Arizona and Professor Angela Riley, John Haney, Addie Rockwell, and Leah Shearer of the University of California, Los Angeles (UCLA), American Indian Studies Center (AISC).

UCLA's AISC also graciously assisted the Commission at its inception, providing seed capital when Federal funding was unavailable due to delays in the budgeting process. The Commission cannot thank UCLA's AISC sufficiently for agreeing to host the permanent archive for the Commission's notes, documents, and other material.

The Commission also thanks Professor Duane Champagne of the University of California at Los Angeles for his expert advice and counsel to the Commission at the editing stage. Harriet McConnell of Greenberg Traurig LLP in Denver volunteered to cite-check the Roadmap and provided supplemental research; she was assisted by Jennifer Weddle, who co-chairs the firm's American Indian Law Practice Group. Additionally, the Chairman was aided by his colleagues at Greenberg Traurig LLP, Wendy Creason and Karen Loveland. Their help was invaluable.

John Dossett, general counsel at the National Congress of American Indians, deserves our appreciation for his assistance in strengthening the impact of the recommendations, as do NCAI Staff Attorney Katy Jackman Tyndell and NCAI Senior Communications Director, Melinda Warner for their support of the Commission.

Three Native American-owned firms, under contract to the U.S. Department of Justice, assisted in the Commission's work at various stages: Kauffman and Associates Incorporated (KAI), Agency Marketing & Business Unlimited (MABU), and Seneca Telecommunications. We thank Joann Kauffman, KAI president, and her team for exceptional web design and webpage support; Victor Paternoster and Tina Swannack, also of KAI, for travel and onsite logistical support at field hearings; Mike Mabin and Sean Fennington from MABU for travel support; and Jacqueline Jones from Seneca for overseeing the report's production, along with Harri j. Kramer, who edited the final report.

The Commission operated independently of the Federal government, yet benefitted throughout the process from strong staff leadership in Congress and in the executive branch. Similarly, many State and local officials, representatives of private and nonprofit organizations, and other stakeholders lent support at key moments.

Finally, the Commission honors the many Native American and Alaska Native nations it was privileged to visit and learn from. Every one of their stories from across our great country made a profound difference in helping the Commission think about the most positive approaches to addressing public safety in Indian country.

The risk in thanking the literally thousands of people who assisted the Commission is that naming names will cause many contributors to be overlooked. The Commission expresses sincere appreciation to everyone else who helped.

**A Roadmap for Making Native America Safer
Report to the President & Congress of the United States**

Indian Law & Order Commission

Chapter Six

**Juvenile Justice: Failing
the Next Generation**

http://www.aisc.ucla.edu/iloc/report/files/Chapter_6_Juvenile_Justice.pdf



JUVENILE JUSTICE: FAILING THE NEXT GENERATION

Indian country juvenile justice exposes the worst consequences of our broken Indian country justice system. At the same time, juvenile justice illustrates the fundamental point and promise of this report—greater Tribal freedom to set justice priorities, supported by resources at parity with other systems and full protection of Federal civil rights of all U.S. citizens, will produce a better future for Indian country and, importantly, for Native youth.

FINDINGS AND CONCLUSIONS: VULNERABLE AND TRAUMATIZED YOUTH

Any discussion of Indian country juvenile justice must begin with the dire situation of Indian children. Today’s American Indian and Alaska Native youth have inherited the legacy of centuries of eradication- and assimilation-based policies directed at Indian people in the United States, including removal, relocation, and boarding schools.² This intergenerational trauma continues to have devastating effects among children in Indian country, and has resulted in “substantial social, spiritual, and economic deprivations, with each additional trauma compounding existing wounds over several generations.”³

National statistical data, which include the 64 percent of Indian children who live outside Indian country as well as the 36 percent who live within, indicate that Native youth are among the most vulnerable

Today's Tribal youth carry the wounds of their ancestors, compounded by generations of atrocities committed against this nation's Indigenous people, including historical traumatic campaigns of eradication, reservation assignment, boarding schools, and relocation. Although they carry these wounds, these contemporary youth will be the first generation with an opportunity to heal from historical trauma.¹

Ivy Wright-Bryan, National Director of Native American Mentoring, Big Brothers Big Sisters of America

One year before I was 17, I was a pallbearer at 15 funerals.

Northern Arapaho youth⁸

We have concluded that 100 percent of our children and youth are exposed to violence, directly or indirectly....We now know that at least two children a day are victims of a crime, exposed to abuse and neglect, school violence, and domestic violence on the Rosebud reservation. We know that the unreported direct and indirect exposures to violence must be significantly higher.¹⁵

Mato Standing-High, former Attorney General, Rosebud Sioux Tribe

group of children in the United States. Over a quarter of these children live in poverty, compared with 13 percent of the general population.⁴ They graduate from high school at a rate 17 percent lower than the national average, and are expected to live 2.4 years less than other Americans.⁵ The rates of cigarette use, binge drinking, and illegal drug use among Native youth are higher than for any other racial and ethnic group.⁶ Native youth are more than twice as likely to die as their non-Native peers through the age of 24.⁷

One of the most troubling problems facing Native youth today is their level of exposure to violence and loss. Such exposure may include witnessing, being the victim of, or learning about domestic and intimate partner violence, child abuse, homicide, suicide, sexual violence, and community violence.⁹ While statistics about the overall rates of exposure of Native youth to violence are difficult to find, statistics about specific types of violence and exposure to violence in particular Native communities indicate the levels are extremely high. A report published by the Indian Country Child Trauma Center in 2008 calculates that Native youth have a 2.5 times greater risk for experiencing trauma when compared with their non-Native peers.¹⁰ Of all racial groups in the United States, American Indians and Alaska Natives have the highest per capita rate of violent victimization.¹¹ Native youth experience double the rates of abuse and neglect of White children, and are more likely to be placed in foster care. American Indian and Alaska Native women experience the highest rates of sexual assault and domestic violence in the nation. Native youth between the ages of 12 and 19 are more likely than non-Native youth to be the victim of either serious violent crime or simple assault. Native youth are 2.5 times more likely to commit suicide than non-Native youth.¹²

Indian juveniles experience Post Traumatic Stress Disorder (PTSD) at a rate of 22 percent, close to triple the rate of the general population. As Ryan Seelau points out, “to put this in perspective, this rate of PTSD exceeds or matches the prevalence rates of PTSD in military personnel who served in the latest wars in Afghanistan, Iraq, and the Persian Gulf War.”¹⁵ Further, “American Indian and Alaska Native children are... exposed to repeated loss because of the extremely high rate of early, unexpected, and traumatic deaths [among Native people in the United States] due to injuries, accidents, suicide, homicide, and firearms—all of which exceed the U.S. all-races rates by at least two times—and due to alcoholism, which exceeds the U.S. all-races [rate] by seven times.”¹⁴

Leaders from some Native communities estimate that nearly all of their children are exposed to violence.¹⁶ A 2003 U.S. Department of Health and Human services report estimated that on the Wind River Indian reservation, “66 percent of families have a history of family violence, 45 percent of children have run away, 20 percent of children have been sexually abused, and 20 percent have attempted suicide. Life expectancy is in the early 40s for Tribal members.”¹⁷

Too often [children exposed to violence] are labeled as “bad,” “delinquent,” “troublemakers,” or “lacking character and positive motivation.” Few adults will stop and, instead of asking “What’s wrong with you?” ask the question that is essential to their recovery from violence: “What happened to you?”²¹

*Robert L. Listenbee, Jr. et al.
Report of the Attorney General’s National Task Force on Children Exposed to Violence*

On the Rosebud Sioux reservation in South Dakota, former Attorney General Mato Standing-High estimates that every child on the reservation has been exposed to violence.¹⁸ Confirmation of this level of violence can be found in the number of calls to police. The 12 officers serving the 25,000-person service area receive close to 25,000 calls per year, approximately one call for every resident of the reservation. “At least two children a day are victims of a crime, exposed to abuse and neglect, school violence, and domestic violence,” Standing-High says.¹⁹ In Alaska in 2010, 40 percent of children seen at child advocacy centers were Alaska Natives, even though the overall population of Alaska Native peoples is 14.8 percent.²⁰

According to the U.S. Department of Justice’s (DOJ) Defending Childhood Initiative, “[e]xposure to violence causes major disruptions of basic cognitive, emotional, and brain functioning that are essential for optimal development ...When [children who experience violence] go untreated, these children are at a significantly greater risk than their peers for aggressive, disruptive behaviors; school failure; posttraumatic stress disorder; anxiety and depressive disorders; alcohol and drug abuse; risky sexual behavior; delinquency; and repeated victimization.”²² Further, research indicates that exposure to violence is associated with “long-term physical, mental, and emotional harms,” including “alcoholism, drug abuse, depression, obesity, and several chronic adult diseases.”²⁵ Because of the compounding effects of historical trauma in Indian country, “untreated trauma poses the greatest risk for further complications and risk for additional trauma in Tribal communities.”²⁴

American Indian and Alaska Native children are disproportionately exposed to violence and poverty, and their communities often lack access to funding for mental health and other support resources. The compounding effects of these realities make this population of children particularly susceptible to entry into the juvenile justice system, and increase the obstacles they face to a successful and healthy reentry. Further exacerbating these damaging vulnerabilities, entry into the justice system often means that children are separated from their Tribal communities and culture, robbing Tribes of their ability to shape the lives of their children, and removing the youth from one of their most essential resources for support, healing, and recovery.

Congress passed the Indian Child Welfare Act (ICWA) of 1978²⁵ to help ensure the safety of Indian children. ICWA also established in Federal law the fundamental principle that young Tribal citizens, when in need of out-of-home care, should first be referred to their Tribes for placement. A key reason is that through the care and nurturing of children, Tribal culture and traditions are passed on to future generations, which is an important element in the survival of Indian nations. Nonetheless, Federal law is incomplete in its protections of Tribal youth and Native nations. When Tribal youth commit offenses that would be crimes if committed by adults, ICWA does not apply at present, and processes outside the Tribal

Children should not be in an adult system, (particularly) an adult system which is not prepared to work with youth. There needs to be some sort of alternative that the youth still need to be able to access— there still needs to be a justice system accountable but through a rehabilitative system.³⁰

*Chori Folkman, Managing Attorney, Tulalip Office of Civil Legal Aid
Testimony before the Indian Law and Order Commission, Hearing on Tulalip Indian Reservation
September 7, 2011*

government's control remove young Tribal citizens from their homes and place them in State or Federal facilities, sometimes far from their homes.

FINDINGS AND CONCLUSIONS: FEDERAL AND STATE JUVENILE JUSTICE ARE MAKING MATTERS WORSE, NOT BETTER

At present, Tribal youth who live on reservations, like their adult counterparts, are under the authority of one of several jurisdictional arrangements: they may be subject to many different regimes: Federal, Tribal-Federal, State, or State-Tribal. The same complexities and inadequacies that plague the Indian country adult criminal justice system impair juvenile justice as well. As with adults, Tribes face significant obstacles toward influencing the lives of their young Tribal citizens involved in juvenile justice systems. In addition, features of the Federal and State juvenile justice systems, combined with the special needs of traumatized Native youth, magnify the problems.

The Federal court system has no juvenile division—no specialized juvenile court judges, no juvenile probation system—and the Bureau of Prisons (BOP), a DOJ component, has no juvenile detention, diversion, or rehabilitation facilities. Federal judges and magistrates, for whom juvenile cases represent 2 percent or less of their caseload,²⁶ hear juvenile cases along with all others. Native youth processed at the Federal level, along with their families and Tribes, face significant challenges, such as great physical distance between reservations and Federal facilities and institutions, and cultural differences with federal personnel involved in Federal prosecution.²⁷ If juveniles are detained through the Federal system, it is through contract with State and local facilities, which may be several States away from the juvenile's reservation.²⁸

Within Federal juvenile detention facilities for misdemeanor violations operated in Indian country by the Office of Justice Services (OJS), a component of the Bureau of Indian Affairs (BIA), secondary educational services are either lacking or entirely non-existent. Officials of the Federal Bureau of Indian Education, which is statutorily responsible for providing secondary educational services and programs within OJS juvenile detention centers, confirmed for the Commission that Congress has not appropriated any Federal funds for this purpose in recent years. This means that Native children behind bars are not receiving any classroom teaching or other educational instruction or services at all.²⁹

When one of the situations triggering Federal Indian country juvenile jurisdiction arises, the corresponding U.S. Attorney's Office decides whether to proceed against the Native youth. This decision is based on "seriousness of the crime, age, criminal history, evidence available, and Tribal juvenile justice capacity."³¹ As with adults, the U.S. Attorneys often decline to prosecute juvenile cases, even serious ones. As one research study points out, "[t]ribal governments are left to fill this void . . . [and] . . . many youth simply fall through the cracks, getting no intervention at all."³²

“Within Federal juvenile detention facilities for misdemeanor violations operated in Indian country by the Office of Justice Services (OJS), a component of the Bureau of Indian Affairs (BIA), secondary educational services are either lacking or entirely non-existent....

Native children behind bars are not receiving any classroom teaching or other educational instruction or services at all.”

Because some Tribes do not currently have the infrastructure or funding to house juveniles, they are unable to address problems with youth in their communities.

Indian country youth may become part of State juvenile justice systems if they commit a crime in a Tribal community where State criminal jurisdiction extends to Indian country under P.L. 83-280, a settlement act, or some other similar Federal law.³³ In State juvenile systems, there is generally no requirement that a child's Tribe be contacted if an Indian child is involved.³⁴ Thus, "once Native youths are in the system, their unique circumstances are often overlooked and their outcomes are difficult to track."³⁵ The juveniles effectively "go missing" from the Tribe. Furthermore, State juvenile systems do not adequately provide the cultural support necessary for successful rehabilitation and reentry back into the Tribal community.³⁶

Although data about Indian country juveniles in Federal and State systems are limited, the available data reveal alarming trends regarding processing, sentencing, and incarcerating Native youth. Native youth are overrepresented in both Federal and State juvenile justice systems and especially in receiving the most severe dispositions.

While the Federal government does not have a "juvenile justice system," youth do end up in Federal detention, and typically, the majority of these youth are American Indians and Alaska Natives. Between 1999-2008, for example, 43-60 percent of juveniles held in Federal custody were American Indian. In 2008, 72 Native youth were in Federal custody,³⁷ although the number fell to 49 in 2012.³⁸ According to the BOP, contracting to place a juvenile costs \$259 per day or \$94,535 per year.³⁹

Many States have significant populations of Native youth within their systems, and there are a disproportionate number of Native juveniles in State juvenile justice systems compared with non-Indian juveniles.⁴⁰ Although the State systems data do not separate Indian country youth and offenses from others, there is no reason to believe there are systematic differences.

In 2010 in the State systems, American Indians made up 367 of every 100,000 juveniles in residential placement, compared with 127 of 100,000 for White juveniles.⁴¹ This is especially alarming since American Indians make up little more than 1 percent of the U. S. population. In Oregon, a P.L. 83-280 State, Native American youth are over-represented in the State's juvenile justice system and in its detention programs run by the Oregon Youth Authority (OYA). While Native American youth make up approximately 2 percent of the State's 10-17 year olds, they are 5 percent of the youth committed to OYA.⁴² In 2008, the average cost for juvenile detention was \$240.99 per day or \$87,961.35 per year.⁴⁵

[W]here they exist, Tribal facilities, based in the community and therefore able to involve Tribal elders in the delivery of interventions that incorporate traditional Tribal beliefs and customs, may be better positioned to provide culturally competent services than the Federal system.

Consensus view expressed by both Federal and Tribal officials surveyed by the Urban Institute⁴⁴

FINDINGS AND CONCLUSIONS: APPLYING THIS REPORT'S RECOMMENDATIONS FOR ADULT CRIMINAL JUSTICE TO JUVENILE JUSTICE

Indian country juvenile justice is even more disturbingly broken than its adult counterpart. Tribal youth in non-P.L. 83-280 jurisdictions become ensnared in a Federal system that was never designed for juveniles and literally has no place to put them. In P.L. 83-280 jurisdictions, Tribal youth may be thrust into dysfunctional State systems that pay no attention to the potential for accountability and healing available in the Tribal community. In both situations, there is no regularized way of ensuring that the Tribal community can know where its children are, let alone participate in fashioning a better future for them. These and other shortcomings of the Indian country juvenile justice system compromise traumatized, vulnerable young lives, rupture Native families, and weaken Tribal communities that depend on their youth for their future.

How to improve juvenile justice for Native communities and break cycles of intergenerational trauma and violence? Many recommendations in this report for the adult justice system apply with even greater urgency to Indian country juvenile justice. All of this report's recommendations for juvenile justice drive toward a single end—enabling Tribal communities to know where their children are and to be able to determine the proper assessment and response when their children enter the juvenile justice system.

The Commission's aim for juvenile justice is consistent with the overall thrust of this report—releasing Tribes from dysfunctional Federal and State controls and empowering them to provide locally accountable, culturally informed self-government. With the very health and future of Tribal communities resting on the vulnerable shoulders of their often-traumatized youth, the stakes could not be higher.

RECOMMENDATIONS

Recommendations concerning jurisdiction. For a Native nation, losing control over its children has ramifications beyond losing control over adult offenders. The Congress that passed the Indian Child Welfare Act of 1978 recognized that “[t]he wholesale separation of Indian children from their families is perhaps the most tragic and destructive aspect of American Indian life today.”⁴⁵ Enhancing Tribal jurisdiction over Indian children was central to ICWA's scheme for remedying this problem.

For non-P.L. 83-280 jurisdictions, ICWA clarified that Tribal jurisdiction is exclusive for children residing or domiciled in Indian country. For P.L. 83-280 jurisdictions, ICWA created a mechanism for Tribes to reassume exclusive jurisdiction, regardless of State consent, but subject to Federal approval. ICWA limited its Tribal jurisdiction-enhancing

provisions to dependency cases, that is, cases involving parental abuse or neglect. Delinquency cases involving acts by juveniles that would be criminal if committed by an adult were excluded.

The rationale for jurisdictional change presented earlier (Chapter 1) applies as readily to juvenile offenses as to adult. Just as Tribal self-determination and local control are the right goals for adult criminal matters, they are the right goals for juvenile matters. Just as distance, both geographic and cultural, reduces the legitimacy and effectiveness of Federal adult criminal justice in Indian country, so too does distance impede Federal juvenile justice.

There are, however, additional reasons for striving to return exclusive juvenile jurisdiction to the Tribes that want it. As discussed at the outset of this chapter, the Federal justice system is not designed or equipped to deal with juveniles. The lack of diversion services and programs, parole, and other aspects of State and local justice systems means that Native juveniles in Federal custody are systematically receiving longer sentences of incarceration for the same or similar offenses. Moreover, the link between dependency and delinquency among Indian youth makes it anomalous to have dependency jurisdiction exclusively Tribal, but delinquency jurisdiction shared with the Federal system. If many Tribal delinquency cases are really extensions of dependency-related conditions, then it makes sense to integrate greater Tribal authority over both.

Based on these conclusions, the Commission recommends that Tribal communities that have the capacity and desire to do so should be able to regain control over juvenile justice, leading to two recommendations concerning jurisdiction.

6.1: Congress should empower Tribes to opt out of Federal Indian country juvenile jurisdiction entirely and/or congressionally authorized State juvenile jurisdiction, except for Federal laws of general application.

Analogous to the process set forth in the Chapter 1 (Jurisdiction: Bringing Clarity Out of Chaos), for any Tribe that exercises this option, Congress would recognize the Tribe's inherent jurisdiction over those juvenile matters, subject to the understanding that juveniles brought before Tribal courts would receive equivalent protection of their civil rights than to that they would receive in the Federal system, and the juveniles would be entitled to limited review of any judgments entered against them in a newly created U.S. Court of Indian Appeals. As in adult criminal court, the Tribe opting for this exclusive jurisdiction could offer alternative forms of justice, such as a juvenile wellness court, a teen court, or a more traditional peacemaking process, so long as the juvenile properly waived his or her rights.

If Tribes choose not to opt out entirely from the Federal criminal justice system for offenses allegedly committed by their juvenile citizens, Tribal governments should still be provided with a second option:

6.2: Congress should provide Tribes with the right to consent to any U.S. Attorney's decision before Federal criminal charges against any juvenile can be filed.

The U.S. Criminal Code already provides for such Tribal consent in adult cases where Federal prosecutors are considering seeking the death penalty. Specifically, in 1994 Congress required that notwithstanding the General Crimes Act⁴⁶ and the Major Crimes Act,⁴⁷ no person subject to the criminal jurisdiction of an Indian Tribal government shall be subject to a capital sentence for any Federal offense committed within Indian country unless the governing body of the Tribe has authorized the death penalty to be imposed as a sentence.⁴⁸ The same reasoning ought to apply to U.S. Attorneys' decisions to file Federal charges against Indian juveniles for Indian country offenses. The governing body of the young person's Tribal government—that is, the Tribal council, business committee, or other such institution as established by that Indian nation's own laws—should be required to consent before that Tribe's juvenile citizen is subjected to Federal Indian country criminal jurisdiction. Such consent would help ensure that community standards are applied and Tribal sentencing options carefully considered, before any Federal prosecution could proceed.

Recommendations related to strengthening Tribal justice. During its site visits, the Commission questioned Tribal juvenile justice officials about the reasons why some juvenile cases get referred to the Federal system or handled by a county in a P.L. 83-280 State. Was it because the Tribe lacked sufficient sentencing authority to manage the proceeding itself (due to limitations imposed by the Indian Civil Rights Act), or was it because the Tribe lacked resources to address the youths' need for treatment? Insufficient resources, not inadequate detention authority, was almost always the response.⁴⁹ Resources for Indian country juvenile justice must be more effectively deployed in the interests of achieving parity between Tribal and non-Indian justice systems, safer Tribal communities, and healthier Tribal youth.

For example, on the Wind River Indian Reservation in Wyoming, homeland of the Eastern Shoshone and Northern Arapaho Tribes, Tribal officials testified about the scope of the situation they face. The child protective services agency, with a caseload larger than the city of Cheyenne, has only one-third the available staff. There are only 2 juvenile probation officers available to manage 45 cases. They cannot refer matters to a juvenile drug court because on this vast reservation there is not a close enough monitoring site. There is no detoxification placement at all for juveniles, so they wind up being released without any assistance from social services. And the only local detention placement for juveniles is in a county facility that is about to close.

We do have a green reentry program in our juvenile detention center, and they are half way through a 4-year grant. And that program has been very successful at keeping our juveniles in school and keeping them from returning to detention. But again, it's a 4-year grant and not sustainable.⁵²

*Miskoo Petite, Facility Administrator, Rosebud Sioux Tribe Correction Services
Testimony before the Indian Law and Order Commission, Hearing at Rosebud Indian Reservation
May 16, 2012*

Despite these difficulties, the Wind River community has done its best to piece together resources to help prevent and address substance abuse and violence among its youth. Sadly, the impetus for much of this action was a shocking string of youth suicides in the 1980s. The national organization UNITY has an active chapter there, led by boys and girls representing each high school. Known as the Youth Council, it sponsors monthly meetings and events focused on connecting with tradition, community betterment, leadership skills, healthy lifestyles without drugs and alcohol, anti-bullying, and transition to college. At least 20 of its participants have gone on to college. One Youth Council member was so incensed by what he regarded as a negative story about Wind River that appeared in *The New York Times* that he sent in an essay response, pointing out all that was positive in his community, including continuity of culture, community events, and people who are sober and care for their families. *The Times* published this response on its website.

Another Tribal initiative, the Wind River Tribal Youth Program, blends prevention, treatment, and Tribal tradition to assist a diverse array of Tribal youth who may be on probation, in foster care, runaways, truants, referred by family members, or just coming on their own. Elders play a key role in many of the activities, including weekly sweat ceremonies. In 2012, the Federal Substances Abuse and Mental Health Services Administration (SAMHSA) within the U.S. Department of Health and Human Services recognized the Tribal Youth Program with its Voices of Prevention Award. It was one of five prevention and substance abuse programs in the country to receive such an award, and the only one that was reservation-based. Its participants speak highly of the impact that sweats, talking circles, and other tribally based activities have had in enabling them to see beyond the cycles of substance and domestic abuse.

Like many Tribal communities the Commission visited, Wind River is investing the very limited resources at its disposal in such youth programs. The Tribal resources available are no match for the magnitude of the problems, however, and Federal support is both inadequate and poorly deployed. Most Federal community-based juvenile justice programs⁵¹ are funded piecemeal, and are burdened by extensive reporting requirements. Further, administering a program through multiple 2- to 4-year grants is unsustainable. Any tribally operated program runs the risk of losing critical components because of temporary funding.

Most critically, as the Wind River case underscores, funding is needed for the prevention and treatment components of juvenile justice services. There is not enough institutional support in Tribal communities to keep youth busy so they do not get into trouble, as well as to actively reach the ones who are already following the path of delinquency. This issue needs to be addressed at the community level. It can include participating in traditional activities, Boys and Girls Clubs, community sports teams, active social services, and truancy prevention. Though these efforts are likely to be community-led, they still need funding.

As the example of Salt River Pima-Maricopa Indian Community shows, where Tribes have benefited from more ample resources, as from Tribal gaming enterprises, they have demonstrated success in treating youth and turning them away from self-defeating and destructive behaviors. The Commission convened a field hearing at Salt River and was inspired to see some of its juvenile justice programs in action. However, few Native nations are in a position to have revenue streams from such highly successful economic development ventures in an urban setting. For them, Federal support for similar Tribal programs can have the same benefits, making communities safer and youth healthier.

If Federal, State, and Tribal agencies are to be accountable for their use of juvenile justice resources, data about Tribal children in those systems must be maintained. As this report's chapter on strengthening Tribal justice points out (Chapter 3), adult crime data are entirely unavailable for P.L. 85-280 Tribes and for other Tribes subject to State jurisdiction. The Federal system also does a poor job of maintaining Indian country statistics for policing, court actions, probation, detention, and other justice system stages.

The deficiencies in the availability of data for adult criminal justice are magnified in the case of juveniles. In 2009, two agencies within the U.S. Department of Justice (DOJ), the Bureau of Justice Statistics (BJS) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP), commissioned the Urban Institute to analyze data on juveniles in the Federal justice system, focusing specifically on Tribal youth. Early on, the authors felt compelled to offer a major caveat about the reliability of the data, which came from a variety of sources, including BIA, DOJ, and BOP. The Urban Institute warned:

The project team encountered numerous challenges in identifying these cases, primarily because neither juvenile cases nor IC [Indian country] cases are recorded in a consistent manner across federal agencies. The capacity of agency data systems to identify juveniles and Indian Country cases vary substantially. There are some agency data systems that simply lack an indicator variable to identify IC juveniles ... As such, we must caution the reader that the numbers of Indian Country juvenile cases reported in this study vary considerably from stage to stage and do not necessarily track well or consistently across processing stages. As a result of these limitations with the data, we are left, not with a clear picture of juveniles and Tribal youth, but instead a mosaic with some missing pieces [emphasis in the original].⁵⁵

If a study sponsored by the Federal government cannot secure complete and consistent data about Tribal youth in the Federal justice system, Tribal communities have no hope of learning how many of their children are engaged with the system at various stages. However bad this arrangement is for juveniles involved in the Federal system, the problem

is considerably worse in P.L. 85-280 and other State jurisdiction situations. For purposes of collecting and maintaining statistics, those States treat Tribal children without regard to the location of the juvenile's misbehavior or the child's Tribal membership.⁵⁴ Thus, there are no data, period. It is simply impossible for Tribes to evaluate how Federal and State systems are managing their children in the absence of data. Proper data collection is also essential if Tribes and families are to maintain contact with Tribal youth, many of whom may be sent to facilities far from home.

This Commission's recommendations in Chapter 3 for strengthening Tribal justice—better coordinated, more effectively directed resources that are sufficient to achieve parity with non-Indian justice systems—apply with special force to juvenile justice.

6.3: Because resources should follow jurisdiction, and the rationale for Tribal control is especially compelling with respect to Tribal youth, resources currently absorbed by the Federal and State systems should flow to Tribes willing to assume exclusive jurisdiction over juvenile justice.

6.4: Because Tribal youth have often been victimized themselves, and investments in community-oriented policing, prevention, and treatment produce savings in costs of detention and reduced juvenile and adult criminal behavior, Federal resources for Tribal juvenile justice should be reorganized in the same way this Commission has recommended for the adult criminal justice system. That is, they should be consolidated in a single Federal agency within the U.S. Department of Justice, allocated to Tribes in block funding rather than unpredictable and burdensome grant programs, and provided at a level of parity with non-Indian systems. Tribes should be able to redirect funds currently devoted to detaining juveniles to more demonstrably beneficial programs, such as trauma-informed treatment, and greater coordination between Tribal child welfare and juvenile justice agencies.

6.5: Because Tribal communities deserve to know where their children are and what is happening to them in State and Federal justice systems, and because it is impossible to hold justice systems accountable without data, both Federal and State juvenile justice systems must be required to maintain proper records of Tribal youth whose actions within Indian country brought them into contact with those systems. All system records at every stage of proceedings in State and Federal systems should include a consistently designated field indicating Tribal membership and location of the underlying conduct within Indian country and should allow for tracking of individual children. If State and Federal systems are uncertain whether a juvenile arrested in Indian country is, in fact, a Tribal member, they should be required to make inquiries, just as they are for dependency cases covered by the Indian Child Welfare Act.⁵⁵

6.6: *Because American Indian/Alaska Native children have an exceptional degree of unmet need and the Federal government has a unique responsibility to these children, a single Federal agency should be designated to coordinate the data collection, examine the specific needs, and make recommendations for American Indian/Alaska Native youth. This should be the same agency within the U.S. Department of Justice referenced in Recommendation 6.4. A very similar recommendation can be found in the 2013 Final Report of the Attorney General’s National Task Force on Children Exposed to Violence.*

Recommendations concerning detention and alternatives. Alternatives to detention are even more imperative for Tribal youth than for adult offenders. Experts in juvenile justice believe detention should be a rare and last resort for all troubled youth, limited to those who pose a safety risk or cannot receive effective treatment in the community.⁵⁶ According to the Attorney General’s National Task Force on Children Exposed to Violence, “[t]he vast majority of children involved in the juvenile justice system have survived exposure to violence and are living with the trauma of that experience....What appears to be intentional defiance and aggression ... is often a defense against the despair and hopelessness that violence has caused in these children’s lives. When the justice system responds with punishment, these children may be pushed further into the juvenile and criminal justice systems and permanently lost to their families and society.”⁵⁷

Drawing on extensive research and the experience of states that have reduced their juvenile detention substantially, Bart Lubow, Director of the Annie E. Casey Foundation’s Juvenile Justice Strategy Group, told the Commission that “[J]uvenile detention and incarceration are generally unsafe, abusive, ineffective, and horribly expensive interventions that generally worsen the likelihood that the kids who come before juvenile courts will, in fact, succeed as adults.”⁵⁸ He also pointed out the likelihood that “children from different racial or ethnic background would be treated differently simply as a result of those characteristics.”⁵⁹

The implications for Indian country juvenile justice are clear. Tribal youth often experience severe trauma that is not only immediate, but also intergenerational—a legacy of dispossession and forced assimilation.⁶⁰ At one large reservation the Commission visited, a Tribal juvenile justice official pointed out that 80 percent of those who were referred for mental health treatment had previously attempted to commit suicide and that all of them had at least one friend or relative who had committed suicide.⁶¹

Data show that Federal and State juvenile justice systems take Indian children, who are the least well, and make them the most incarcerated. When they do incarcerate them, it is often far from their homes, diminishing prospects for positive contact with their communities.⁶² Furthermore, conditions of detention often contribute to the very trauma

that American Indian and Alaska Native children experience.⁶⁵ Detention is often the wrong alternative for Indian country youth, yet it is often the rule rather than the exception.

The Commission also heard widespread evidence that when Tribal children are detained in BIA-operated facilities, schooling and mental health services are unavailable to them. For example, the Ute Mountain Ute Tribe in Colorado and Utah utilizes a BIA Code of Federal Regulations (CFR) court⁶⁴ rather than its own Tribal court, and juveniles who come before that court may be sent for detention to a regional Federal facility in Towaoc, Colorado. As the Tribe's director of social services, Janelle Doughty, told the Commission, "I asked about education in our juvenile facility there.... There is no program. We do not have an educational program. We do not have any counseling services.... So we house them, they just sit there."⁶⁵

These findings lead the Commission to conclude that detention or secure treatment must be the last resort for Indian country juveniles, and appropriate alternatives should be legally preferred and practically available. Where detention or secure treatment is necessary, they should be structured and administered to meet the needs of Tribal youth. The Commission specifically recommends:

6.7: Whether they are in Federal, State, or Tribal juvenile justice systems, children brought before juvenile authorities for behavior that took place in Tribal communities should be provided with trauma-informed screening and care, which may entail close collaboration among juvenile justice agencies, Tribal child welfare, and behavioral health agencies. A legal preference should be established in State and Federal juvenile justice systems for community-based treatment of Indian country juveniles rather than detention in distant locations, beginning with the youth's first encounters with juvenile justice. Tribes should be able to redirect Federal funding for construction and operation of juvenile detention facilities to the types of assessment, treatment, and other services that attend to juvenile trauma.

6.8: Where violent juveniles require treatment in some form of secure detention, whether it be through BOP-contracted State facilities, State facilities in P.L. 83-280 or similar jurisdictions, or BIA facilities, that treatment should be provided within a reasonable distance from the juvenile's home and informed by the latest and best trauma research as applied to Indian country.

Recommendations concerning intergovernmental cooperation.

Intergovernmental cooperation is essential to achieve more effective use of limited resources and greater accountability to Tribal communities as long as Native nations share authority with Federal and State governments in the complex system of Indian country criminal justice. Government-to-government partnerships grounded in mutual respect have been shown to improve community safety while reducing redundancies, conflicts, and costs.⁶⁶ For some Tribes, including very small nations and those

[W]hen the monies run out or there's no service available, we have to send our kids to Kyle, South Dakota, which is an 8-hour drive—or 6-hour drive from us, and that's where our youth are detained over the weekend or if they have to go back, they are detained there.

*Statement of Vivian Thundercloud, Chief Clerk and Court Administrator, Winnebago Tribe of Nebraska
Testimony before the Indian Law and Order Commission, Hearing in Oklahoma City, OK
June 14, 2012*

enjoying good relations with local States, counties, and municipalities, intergovernmental cooperation may even be a better alternative than assuming exclusive jurisdiction.

Where juveniles are involved, intergovernmental cooperation is especially important, enabling Tribes to ensure that their often-traumatized youth receive proper assessment and treatment that is attentive to the resources and healing potential of Tribal cultures. Intergovernmental cooperation for juvenile justice takes different forms for the Tribes subject to Federal authority as compared with Tribes under P.L. 83-280, settlement acts, or other forms of State jurisdiction.

Where Federal authority exists, there is far less collaboration with Tribes than with State governments. In fact, the very structure of Federal juvenile jurisdiction builds in deference to States—indeed to the District of Columbia and to all U.S. territories and possessions—but not to Tribes. For example, if a juvenile in Los Angeles commits a Federal handgun crime, the Federal Delinquency Act, 18 U.S.C. § 5032, provides that Federal prosecutors may not proceed against the juvenile *unless they certify to the Federal District Court, after investigation*, that one of three conditions exists: 1) California juvenile courts do not have jurisdiction or refuse to assume jurisdiction over the juvenile, 2) California does not “have available programs and services adequate for the needs of juveniles,” or 3) the offense is a violent felony or a specified drug offense in which there is “a substantial Federal interest.” Under current law, the U. S. territory of American Samoa is entitled to the same deference as the State of California and every other State, but the Navajo Nation and the Rosebud Sioux Tribe are not.

The Federal Delinquency Act’s provisions limiting Federal prosecution promote Federal consultation and coordination with every other form of government except for Native nations. That disparity must end. Some U.S. Attorney’s offices, such as in South Dakota, have shown that Federal-Tribal cooperation on juvenile matters can be established and can be successful.

The Tribal Youth Pretrial Diversion Program, implemented by U.S. Attorney Brendan Johnson of the District of South Dakota on a trial basis on the Rosebud Indian Reservation, allows qualifying youth to be sentenced in Tribal court instead of Federal court. If the juvenile successfully completes the Tribal program ordered by the Tribal judge, the juvenile is not prosecuted in Federal court.⁶⁷ The Commission recommends that this type of diversion program should be mandatory in all Federal judicial districts with willing Tribal court partners, even though diversion will only be needed for a small number of Indian country cases remaining within Federal juvenile jurisdiction assuming the other recommendations in this report are adopted. For example, a juvenile’s designated Federal drug offense of general applicability or an offense by a juvenile whose Tribe does not have its own juvenile justice system would be diverted to Tribal court.

Tribal-Federal cooperation is also imperative when a Federal prosecutor considers making a motion to transfer a juvenile offender for trial as an adult. Transfer catapults Tribal youth into the realm of harsher sentences and detention conditions, and removes them from the protections of juvenile proceedings, including confidentiality. In recent years, very few Indian country juvenile cases appear to be transferred for adult prosecution. Between 2004 and 2008, the number of Indian country juveniles referred as adults to BOP dropped from a high of 54 to 12.⁶⁸ It is too soon, however, to discern whether this decline represents a long-term trend. Furthermore, the fate of each individual Tribal child matters.

Under the Federal Juvenile Delinquency Act,⁶⁹ transfer is mandatory for certain juvenile repeat offenders. In addition, if a child has passed a 15th birthday and has committed a crime of violence or one of several named drug and handgun offenses, the court has discretion to grant a transfer, taking into account a variety of considerations such as the juvenile's prior record and the juvenile's level of intellectual development and psychological maturity. Since 1994, in a narrower subset of violent crimes and crimes committed with a handgun, transfer is discretionary if the offense was committed after the child's 13th birthday; but Congress also provided that transfers for the juveniles age 13 and 14 for Indian country offenses will be allowed only if the juvenile's Tribe has elected to have Indian youth that age transferred.⁷⁰ To date, there is apparently only one report of a Tribe having allowed adult prosecutions of 13- and 14-year olds.⁷¹

Tribal control over the decision to transfer a juvenile for adult prosecution has the salutary effect of encouraging Tribal-Federal cooperation. Under the statute, however, Tribes lose their protective control once the juvenile turns 15, when the range of offenses that can trigger a transfer expands. That age cut-off is arbitrary. Considering the deeply rooted trauma that Tribal youth have experienced and the preference for tribally developed responses to that trauma, Tribes should be able to prevent all transfers of juveniles to adult status for all of the offenses specified in the Juvenile Delinquency Act and for juveniles of all ages, so long as Indian country is the basis for Federal jurisdiction.⁷² If, as recommended above, Federal juvenile authority is to be restricted when the Tribe is willing to assert jurisdiction, the number of cases eligible for transfer will likely be small, and few potential transfers will be affected.

For Indian country offenses under 18 U.S.C. § 1152 and § 1153, this report's recommendations on jurisdiction (Chapter 1) would afford Tribes the option to eliminate Federal juvenile jurisdiction altogether or, alternatively, to consent to any such Federal prosecutions should they wish to retain Federal jurisdiction over juvenile offenses. For Tribes that choose not to exercise these options and for Federal offenses of general application committed within Indian country, the following recommendations will create structures and incentives promoting greater Tribal-Federal cooperation with respect to juveniles.

6.9: *The Federal Delinquency Act, 18 U.S.C. § 5032, which currently fosters Federal consultation and coordination only with States and U.S. territories, should be amended to add “or tribe” after the word “state” in subsections (1) and (2).*⁷³

6.10: *The Federal Delinquency Act, 18 U.S.C. § 5032, should be amended so that the Tribal governmental consent to allow or disallow transfer of juveniles for prosecution as adults applies to all juveniles subject to discretionary transfer, regardless of age or offense.*

6.11: *Federal courts hearing Indian country juvenile matters should be required to establish pretrial diversion programs for such cases that allow sentencing in Tribal courts.*

Tribes subject to State criminal and juvenile jurisdiction under P.L. 83-280, settlement acts, and other Federal statutes must contend with State juvenile justice systems that typically take no special account of the often-traumatic experiences of Tribal youth or the cultural and other resources Tribes might be able to contribute toward accountability, treatment, and rehabilitation. Indeed, State justice systems never even record the Tribal member status or Indian country location associated with juvenile or other offenses, making it impossible for Tribes to hold the State systems accountable for how their children are treated. These same Tribes have also long complained that State justice systems provide inadequate service to reservation communities, while discriminating against Tribal members when they do appear as defendants or victims.⁷⁴ To make matters worse, the P.L. 83-280 and other State jurisdiction Tribes also operate without funding from the U.S. Department of the Interior for their policing, court systems, and detention, because of the Department’s policies denying financial support to Tribes under State jurisdiction.⁷⁵

Under current Federal law, Tribes are powerless to extricate themselves from State criminal jurisdiction—a process known as retrocession—unless the State agrees.⁷⁶ Both in this chapter and Chapter 1 (Jurisdiction: Bringing Clarity Out of Chaos), this report recommends that Congress alter that situation, and give Tribes the option to effect retrocession on their own. However, not every Tribe will have the capacity or the desire to carry out retrocession, either immediately or in the future.

Even if the recommendations in this report for strengthening Tribal justice are implemented (Chapter 3), and Tribes under State jurisdiction receive enhanced resources, some Tribes may still be too small to support a separate justice system. For those Tribes remaining under State jurisdiction, Tribal-State cooperation can greatly improve juvenile justice by providing notice to Tribes when their children enter the State system and engaging Tribes in crafting and implementing appropriate responses. Indeed, Tribes and local governments in several P.L. 83-280 States have already begun to implement cooperative measures with positive results.

In the P.L. 83-280 State of Oregon, for example, many Tribes and the State have a memorandum of agreement to inform the Tribes if one of their juveniles enters the custody of Oregon Youth Authority.⁷⁷ The Oregon Youth Authority (OYA) has been actively engaging Tribal governments in four main ways: 1) individually, through government-to-government relationships, as established in a memorandum of understanding with each Tribe; 2) collectively, through the OYA Native American Advisory Committee; 3) collaboratively, through implementing and coordinating culturally relevant treatment services for Native American youth in OYA custody; and 4) through the coordination and chairing of Public Safety Cluster meetings.⁷⁸

OYA has acknowledged that “[r]esearch shows that the most effective way to encourage youth to lead crime-free lives is by providing the appropriate combination of culturally specific treatment and education.”⁷⁹ The Youth Authority and the Tribes have set up a protocol for letting each other know when youth have gone into OYA jurisdiction, and they also discuss together how to plan for work with each youth and also for reentry.⁸⁰ A designated Tribal liaison represents OYA in Tribal relationships, and Oregon Tribes identify a contact person to begin communications between OYA and the Tribes. Although this arrangement introduces the Tribe into a juvenile’s proceeding after rather than before disposition, the relationship does allow Tribes to provide input throughout the entire commitment process and integrate their youth back into their Tribal community. The notice and information sharing aspects of the agreements are key to the success of this practice in allowing for more Tribal participation in the lives of their youth.

Another promising strategy for Tribal-State cooperation, coordinated exercise of concurrent jurisdiction and diversion of juvenile cases from State to Tribal court, involves the Yurok Tribe and Del Norte County in California, another P.L. 83-280 State.⁸¹ The Yurok Tribal Court and Del Norte County have negotiated a memorandum of understanding that provides for the two jurisdictions to coordinate disposition of juvenile cases, allowing for a joint determination to be made about which jurisdiction will handle the primary disposition of a youth’s case. Information is shared between the two court systems, and a procedure has been established for postponement of cases pending in county court in situations where the Tribal court has assumed jurisdiction and the youth completes an accountability agreement and any other conditions ordered by the Tribal court. This MOU acknowledges both concurrent jurisdiction and the possibility of the Tribal court petitioning for transfer of cases from the county.⁸² As one description of this cooperative arrangement notes, “[b]oth court systems have acknowledged that the Tribal court will order culturally appropriate education and case plan activities, including a restorative justice component, for all juveniles.”⁸³

Two key mechanisms of enhanced Tribal-state cooperation are notice to Tribes when their children enter State juvenile justice systems

and opportunities for Tribes to participate more fully in determining the disposition of juvenile cases. Notice, of course, is essential if participation is to occur. If the State is exercising juvenile jurisdiction over an act that would not be a crime if committed by an adult, such as truancy or underage drinking, notice and other requirements from the Indian Child Welfare Act apply. For a P.L. 83-280 or other State jurisdiction Tribe, that means the State must inquire into the child's Tribal status, and the Tribe will be notified and given an opportunity to intervene if the child is at risk of entering foster care.⁸⁴ Further, even though jurisdiction over Indian juveniles living in Indian country is concurrent under P.L. 83-280 and ICWA, the Tribe will be able to transfer the case from State to Tribal court absent parental objection or good cause to the contrary.⁸⁵ In contrast, if the State is exercising juvenile jurisdiction over an act that *would* be a crime if committed by an adult, none of these ICWA protections will be available for the Tribe.⁸⁶

That double standard must fall if this Commission's recommendations regarding local Tribal control are accepted. The great vulnerability of Tribal youth, the profound interest of Tribal communities in the welfare of their children, and the benefits of incorporating Tribal accountability and healing measures into the treatment of juveniles from those communities all point toward one conclusion: ICWA notice, intervention, and transfer measures should apply to State court proceedings involving actions of Tribal juveniles that take place within that Tribe's Indian country, whether or not the offense would be criminal if committed by an adult. Once this principle is established, further cooperative measures, such as diversion programs from State to Tribal court, will be more likely to take root. The Commission's recommendation concerning ICWA reflects these conclusions.

6.12: The Indian Child Welfare Act⁸⁷ should be amended to provide that when a State court initiates any delinquency proceeding involving an Indian child for acts that took place on the reservation, all of the notice, intervention, and transfer provisions of ICWA will apply. For all other Indian children involved in State delinquency proceedings, ICWA should be amended to require notice to the Tribe and a right to intervene.

CONCLUSION

There is perhaps no more telling indication of how mainstream society values—or rather devalues—Native Americans and Alaska Natives who live and work on Tribal homelands than how existing Federal and State laws and institutions treat Native youth. In unanimously proposing these far-reaching recommendations to restructure the current system and to accelerate and incentivize their replacement by locally based Tribal systems, the Indian Law and Order Commission paid particular attention not only to statements by Tribal leaders, but also to the testimony of Federal and State officials charged with carrying out—and in many cases,

propping up—the existing juvenile justice system. The Commission was struck by the official statements of U.S. Attorneys, as well as their informal, and often passionate comments to Commission members.

Given the extraordinary dysfunction of the prevailing juvenile justice system that is supposed to serve and protect Indian country and its citizens, including but not limited to the 1938 Juvenile Delinquency Act, it is perhaps not surprising that some of the most informed and impassioned pleas to reform it come from Federal prosecutors and, albeit quietly, U.S. District Court judges and magistrate judges.

A consistent complaint is the inherent unfairness of the system, which often imposes harsher sentences on Native juveniles simply because they happen to be Native and have committed offenses on Tribal homelands rather than off-reservation. A recent example involves *Graham v. Florida*, where the U.S. Supreme Court declared that State courts may not sentence juvenile offenders to life imprisonment without parole; to do so violates the Eighth Amendment to the U.S. Constitution.⁸⁸ Because *Graham* applies only to such sentences imposed by State courts, several Federal prosecutors observed that it does not benefit Native American juveniles who have been sentenced by Federal courts, sentenced as adults, and are incarcerated by the Federal Bureau of Prisons.

Indeed, shortly after *Graham* was announced, a divided Federal appeals court panel upheld a 576 month (48 year) Federal prison sentence for a Native American juvenile who was 17 years old at the time he committed a homicide. In that case, *United States v. Boneshirt*,⁸⁹ two judges of the U.S. Court of Appeals for the Eighth Circuit ruled that notwithstanding *Graham*, a 576-month sentence, with no possibility for parole, was not the equivalent to an impermissible life sentence. This prompted the dissenting judge, who observed that the average life expectancy for Native American males in the United States is just 58 years, to remark: “Even if he earns all his good time credit, which the district court was not optimistic about, he will still serve more than 40 years in prison. The district court anticipated Boneshirt would be an old man when he was released, but in reality he may be a dead man.”⁹⁰

Given the prevailing system of injustice toward Native young people, all U.S. citizens, no matter where they live and work, have a stake in ensuring that meaningful change happens soon. After all, we’re talking about our children. No one and nothing on this earth is more important.

ENDNOTES

¹ *Defending Childhood Initiative Public Hearing 2: Children's Exposure to Violence in Rural and Tribal Communities Before Attorney General's National Task Force on Children Exposed to Violence*, 52 (2012) (written testimony of Ivy Wright-Bryan, National Director of Native American Mentoring, Big Brothers Big Sisters of America).

² *Id.*

³ *Defending Childhood Initiative Public Hearing 2: Children's Exposure to Violence in Rural and Tribal Communities Before Attorney General's National Task Force on Children Exposed to Violence*, 108 (2012) (written testimony of Elsie Boudrou, Licensed Master Social Worker at Alaska Native Justice Center); .see also Maria Yellow Horse Brave Heart and Lemyra M. DeBruyn, *The American Indian Holocaust: Healing Historical Unresolved Grief*, 8 AM. INDIAN AND ALASKA NATIVE MENTAL HEALTH RESEARCH 56 (discussing the impact of intergenerational trauma on Native peoples in the United States).

⁴ Neelum Arya and Addie Rolnick, *A Tangled Web of Justice: American Indian and Alaska Native Youth in Federal, State, and Tribal Justice Systems*, at 4 (5 Campaign for Youth Justice Policy Brief 2008), available at <http://ssrn.com/abstract=1892959>.

⁵ *Id.* at 5.

⁶ *Id.* at 4.

⁷ Ryan Seelau, *Regaining Control Over the Children: Reversing the Legacy of Assimilative Policies in Education, Child Welfare, and Juvenile Justice That Targeted Native American Youth*, 37 AM. INDIAN L. REV. 63, 69 (2012), available at <http://libredeterminacion.org/proldi/imagenes/lawReview-remaking.pdf>.

⁸ *Defending Childhood Initiative Public Hearing 2: Children's Exposure to Violence in Rural and Tribal Communities Before Attorney General's National Task Force on Children Exposed to Violence*, 52 (2012) (written testimony of Carole Justice) (quoting anonymous Arapaho youth to illustrate the level of violence Native children are exposed to on the Wind River Indian Reservation).

⁹ *Defending Childhood Initiative Public Hearing 2: Children's Exposure to Violence in Rural and Tribal Communities Before Attorney General's National Task Force on Children Exposed to Violence*, 108-11 (2012) (written testimony of Gil Vigil, National Indian Child Welfare Association Board Member) (discussing trauma and youth exposure to violence in Indian Country); see also Dolores Subia BigFoot et al., *Trauma Exposure in American Indian/Alaska Native Children 1-4* (Indian Country Child Trauma Center 2008), available at <http://www.theannainstitute.org/American%20Indians%20and%20Alaska%20Natives/Trauma%20Exposure%20in%20AIAN%20Children.pdf>.

¹⁰ *Id.* at 2.

¹¹ Michelle Sarche and Paul Spicer, *Poverty and Health Disparities for American Indian and Alaska Native Children: Current Knowledge and Future Prospects*, 1136 Ann N Y Acad Sci. 126 (2008) at ¶4, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2567901/>; see also BigFoot et al., *supra* note 9 (providing similar statistical data on disparities experienced by Native youth).

¹² Bigfoot et al., *supra* note 9.

¹³ Seelau, *supra* note 7 at 72.

¹⁴ Sarche and Spicer, *supra* note 11.

¹⁵ *Defending Childhood Initiative Public Hearing 2: Children's Exposure to Violence in Rural and Tribal Communities Before Attorney General's National Task Force on Children Exposed to Violence*, 61 (2012) (written testimony of Mato Standing-High, Rosebud Indian Reservation Attorney General).

¹⁶ See *Defending Childhood Initiative Public Hearing 2: Children's Exposure to Violence in*

Rural and Tribal Communities Before Attorney General's National Task Force on Children Exposed to Violence, 94 (2012) (written testimony of Lyle Claw, Founder of CLAW Inc.) (indicating that in rural communities served by CLAW Inc., “[i]t is not uncommon for 90-98 percent of [Native] youth to acknowledge their exposure to domestic violence”).

¹⁷ Testimony of Carole Justice, *supra* note 8, at 44.

¹⁸ Testimony of Mato Standing-High, *supra* note 15, at 61.

¹⁹ See Testimony of Mato Standing-High, Indian Law and Order Commission Listening Session with Tribal Representatives in Santa Ana Pueblo, NM (Dec. 13, 2011), on file with the Commission.

²⁰ Written Testimony of Elsie Boudrou, *supra* note 3, at 27.

²¹ Robert L. Listenbee, Jr. et al., Report of the Attorney General's National Task Force on Children Exposed to Violence 31 (2012).

²² *Id.* at 27; see also U.S. Dept. of Justice, Defending Childhood Fact Sheet, 2010 (supporting the proposition that children exposed to violence experience harmful and debilitating mental, physical, and emotional effects).

²³ David Finkelhor et al., *Children's Exposure to Violence: A Comprehensive National Study*, U.S. Dept. of Justice Juvenile Justice Bulletin (Oct. 2009) at 3, available at <https://www.ncjrs.gov/pdffiles1/ojdp/227744.pdf>.

²⁴ Written Testimony of Gil Vigil, *supra* note 9, at 109; see also Yellow Horse Brave Heart and DeBruyn, *supra* note 3, at 60 (discussing the impact of intergenerational trauma on Native people in the U.S.).

²⁵ 25 U.S.C. § 1901 et seq.

²⁶ Arya and Rolnick, *supra* note 4, at 24 (“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.”).

²⁷ WILLIAM ADAMS ET AL., URBAN INSTITUTE JUSTICE POLICY CENTER, TRIBAL YOUTH IN THE FEDERAL JUSTICE SYSTEM, (2011) at viii, available at <http://www.urban.org/uploadedpdf/412369-Tribal-Youth-in-the-Federal-Justice-System.pdf>.

²⁸ Arya and Rolnick, *supra* note 4, at 26.

²⁹ Reported at a meeting of the Indian Law and Order Commission with personnel from the Department of the Interior, Bureau of Indian Education, Arlington, VA, March 6, 2012.

³⁰ Testimony of Chori Folkman, Hearing before the Indian Law and Order Commission, Tulalip Indian Reservation, WA (Sept. 7, 2011), transcript on file with the Commission. (See also endnote 65.)

³¹ William Adams et al., *supra* note 27, at viii.

³² Arya and Rolnick, *supra* note 4, at 25.

³³ See NELL JESSUP NEWTON ET AL., EDS., COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 6.04[4] (2012).

³⁴ *In re W.B. Jr.*, 55 Cal.4th 30, 57-58 (Cal. 2012).

³⁵ Arya and Rolnick, *supra* note 4, at 20.

³⁶ *Id.* at 24.

³⁷ Federal Justice Statistics Program: Federal Bureau of Prisons' data file (entry cohort), annual, 1999-2008; see also William Adams et al., *supra* note 27.

³⁸ Jon Gustin, “Native American Juveniles in Custody of Bureau of Prisons.” Communication to Jeff Davis, Executive Director, Indian Law and Order Commission, Nov. 6, 2012. Informa-

tion request per 25 U.S.C.A. § 2812(g)(3)(A). Email response.

⁵⁹ *Id.*

⁴⁰ See *Defending Childhood Initiative Public Hearing 2: Children's Exposure to Violence in Rural and Tribal Communities Before Attorney General's National Task Force on Children Exposed to Violence*, 71 (2012) (written testimony of Janell Regimbal) (“Even though Native American Youth comprise only 1.9 percent of [North Dakota's] population and 8.9 percent of the total youth state population, they represented 43 percent of the March 1, 2011 census of North Dakota Youth Correctional Center, housing youth from across the state and considered the most secure environment for corrections placements.”).

⁴¹ NATIONAL CENTER FOR JUVENILE JUSTICE, CENSUS OF JUVENILES IN RESIDENTIAL PLACEMENT 1997-2010 (2011), available at <http://www.ojjdp.gov/ojstatbb/ezacjrp/>; see also M. Sickmund, T.J. Sladaky, W. Kang, and C. Puzanchera, *Easy Access to the Census of Juveniles in Residential Placement* (2011), <http://www.ojjdp.gov/ojstatbb/ezacjrp/>.

⁴² OREGON YOUTH AUTHORITY, 2012 GOVERNMENT-TO-GOVERNMENT REPORT ON TRIBAL RELATIONS: SUPPORTING THE RIGHTS AND NEEDS OF OREGON'S TRIBAL YOUTH 3 (2012), http://www.oregon.gov/oia/reports/SB770Report_2012.pdf

⁴³ AMERICAN CORRECTIONAL ASSOCIATION, ADULT AND JUVENILE CORRECTIONAL DEPARTMENTS, INSTITUTIONS, AGENCIES, AND PROBATION AND PAROLE AUTHORITIES (2008).

⁴⁴ William Adams et al., *supra* note 27, at 24.

⁴⁵ H.R. Rep. No. 95-1386, at 9 (1978).

⁴⁶ 18 U.S.C. § 1152.

⁴⁷ 18 U.S.C. § 1153, also known as the Indian Country Crimes Act.

⁴⁸ 18 U.S.C. § 3598.

⁴⁹ The U. S. Attorney for the District of Wyoming corroborated this view, while lamenting the fact that once local Tribal youth were routed into the Federal system, they could wind up in placements as far away as the California Youth Authority. Testimony of Christopher “Kip” Crofts, Hearing before the Indian Law and Order Commission, Wind River Reservation, WY (May 23, 2012), on file with the Commission. Further corroboration can be found in William Adams *supra* note 27, at 26.

⁵⁰ See Kelsey Dayton, *Wind River Tribal Youth Program Blends Prevention, Treatment and Tribal Tradition*, CASPER. STAR-TRIB. (April 1, 2012).

⁵¹ The two main programs available through the U. S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP) are the Tribal Youth Program and the Tribal Juvenile Accountability Discretionary Grant Program. These programs make grants to federally recognized tribes for an array of activities, including delinquency prevention and intervention, juvenile justice system improvement, building or improving detention facilities, and specialized mental health and substance abuse services for Tribal youth and families. SAMHSA within the Department of Health and Human Services makes grants available to Tribes for youth suicide prevention, and opens many of its general substance abuse prevention and treatment program to Tribes. However, it does not target Tribal youth specifically. More information on these programs is available on the OJJDP website, <http://www.ojjdp.gov/index.html> and the Substance Abuse and Mental Health Administration Website, <http://www.samhsa.gov/grants/>.

⁵² Testimony of Miskoo Petite, Hearing before the Indian Law and Order Commission, Rosebud Reservation, SD at 73 (May 16, 2012), on file with the Commission. Similar concerns were expressed about successful, but temporary grants for child advocate and mental health services.

⁵³ William Adams et al., *supra* note 27, at ix.

⁵⁴ CAROLE GOLDBERG, DUANE CHAMPAGNE, AND HEATHER SINGLETON, FINAL REPORT: LAW ENFORCEMENT AND CRIMINAL JUSTICE UNDER PUBLIC LAW 280 (2008) at 21-22, available at

<https://www.ncjrs.gov/pdffiles1/nij/grants/222585.pdf>.

⁵⁵ See Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed. Reg. 67,584, B.1 (1979); *In re Nikki R.*, 131 Cal. Rptr. 2d 256 (Ct. App. 2005) (requiring juvenile court to oversee adequacy of inquiries).

⁵⁶ Robert L. Listenbee, Jr. et al., *supra* note 21, at 179.

⁵⁷ *Id.* at 171, 173. The Report further states: “Children exposed to violence, who desperately need help, often end up alienated. Instead of responding in ways that repair the damage done to them by trauma and violence, the frequent response of communities, caregivers, and peers is to reject and ostracize these children, pushing them further into negative behaviors. Often the children become isolated from and lost to their families, schools, and neighborhoods and end up in multiple unsuccessful out-of-home placements and, ultimately, in correctional institutions.” *Id.* at 172.

⁵⁸ Testimony of Bart Lubow, Hearing before the Indian Law and Order Commission, Nashville, TN at 94 (July 20, 2012), on file with the Commission.

⁵⁹ *Id.* at 95. This critique of juvenile detention is based on long-term research across 175 sites in 38 states.

⁶⁰ “The unfortunate and often forgotten reality is that there is an epidemic of violence and harm directed toward this very vulnerable population.... American Indian/Alaska Native children and youth experience an increased risk of multiple victimizations,” she said. “Their capacity to function and to regroup before the next emotional or physical assault diminished with each missed opportunity to intervene. These youth often make the decision to take their own lives because they feel a lack of safety in their environment. Our youth are in desperate need of safe homes, safe families and safe communities.” *Indian Youth Suicide Prevention Act of 2009: Hearing Before the S. Comm. On Indian Affairs* (2009) (Testimony of Dolores Subia BigFoot, Director of Indian Country Trauma Center, University of Oklahoma).

⁶¹ Testimony of Miskoo Petite, Facility Administrator for the Rosebud Sioux Tribe Correction Services, Hearing before the Indian Law and Order Commission, Rosebud Reservation, SD at 75 (May 16, 2012).

⁶² See testimony of Honorable Martha Vasquez, Judge for the United States District Court, District of New Mexico, before the Indian Law and Order Commission, Pojoaque Pueblo, NM (April 19, 2012).

⁶³ Robert L. Listenbee, Jr. et al., *supra* note 21, at 179; Testimony of Bart Lubow, *supra* note 57, at 102-103.

⁶⁴ Also known as Courts of Indian Offenses, CFR Courts are Federal courts for Tribes that lack their own judiciaries and responsible for misdemeanor enforcement pursuant to 25 CFR Part 11.

⁶⁵ Testimony of Janelle Doughty, Hearing before the Indian Law and Order Commission, Rosebud Reservation, SD at 105 (May 16, 2012), on file with the Commission. Ms. Doughty further testified that the Ute Mountain Ute Tribe has stepped forward to provide services to its children, but children from other tribes incarcerated at this Federal facility do not receive any education or other services. (See also endnote 29.)

⁶⁶ Duane Champagne and Carole Goldberg, CAPTURED JUSTICE: NATIVE NATIONS AND PUBLIC LAW 280 at 153-161(2012).

⁶⁷ Testimony of Brendan Johnson, Hearing before the Indian Law and Order Commission, Rosebud Reservation, SD at 133 (May 16, 2012), on file with the Commission. See also Executive Office of the United States Attorneys, Outreach to Indian Country, Empowering Native American Women and Youth: *Outreach Events and Wind River Indian Reservation and Wyoming Indian High School*, available at http://www.justice.gov/usao/briefing_room/vw/ic.html. See also

⁶⁸ See William Adams et al., *supra* note 27, at 65.

⁶⁹18 U.S.C. § 5032.

⁷⁰ See *Crime Prevention and Criminal Justice Reform Act of 1994: Hearing Before the Subcomm. on Crime and Criminal Justice of the H. Jud. Comm.* (February 22, 1994) (Written Testimony of Helen Elaine Avalos, Assistant Attorney General, Navajo Department of Justice, on Behalf of Peterson Zah, President of the Navajo Nation) (supporting a Tribal election provision for juvenile transfers, enhanced death penalty provisions, and other enhanced sentencing measures in the Crime Prevention and Criminal Justice Reform Act, due to disproportionate impact on Tribal members and infringement on Tribal sovereignty).

⁷¹ Arvo Mikkonen, *Federal Prosecution of Juveniles*, 58 United States Attorneys' Bulletin No. 4, July, 2010, at 57.

⁷² This power could be asserted for some or all of the offenses listed in 18 U.S.C. § 5032.

⁷³ The new language for 18 U.S.C. § 5032 would read: "A juvenile alleged to have committed an act of juvenile delinquency, ... shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to the appropriate district court of the United States that

(1) the juvenile court or other appropriate court of the *State or Tribe* does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency,

(2) *the State or Tribe* does not have available programs and services adequate for the needs of juveniles,..."

⁷⁴ See Duane Champagne and Carole Goldberg, *supra* note 65, at 67-111.

⁷⁵ *Los Coyotes Band of Cahuilla & Cupeño Indians v. Jewell* at 1, 13 Cal. Daily Op. Serv. 9855 (9th Cir. Sept. 4, 2013).

⁷⁶ See Duane Champagne and Carole Goldberg, *supra* note 65, at 165-191.

⁷⁷ OREGON YOUTH AUTHORITY, 2012 GOVERNMENT-TO-GOVERNMENT REPORT ON TRIBAL RELATIONS: SUPPORTING THE RIGHTS AND NEEDS OF OREGON'S TRIBAL YOUTH, available at http://www.oregon.gov/oia/reports/SB770Report_2012.pdf

⁷⁸ *Id.* at 2.

⁷⁹ Oregon Youth Authority, *2012 Government-to-Government Report on Tribal Relations: Supporting the Rights and Needs of Oregon's Tribal Youth 1* (2012) http://www.oregon.gov/oia/reports/SB770Report_2012.pdf

⁸⁰ Testimony of Stephanie Striffler, Hearing before the Indian Law and Order Commission, Portland, OR (Nov. 2, 2011), on file with the Commission.

⁸¹ Press release, Coordinated Adult and Juvenile Probation Parties: Yurok Tribal Court and Counties of Del Norte and Humboldt, California, <http://www.courts.ca.gov/documents/Tribal-Resources-JuvDelAgreement-Yurok.pdf>.

⁸² Tribal Law and Policy Institute, *Promising Strategies: Tribal-State Court Relations* (March 2013) 35-39, http://www.walkingoncommonground.org/files/TLPI%20Promising%20Strategies%20Tribal-State%20Court%20Relations_FINAL_Updated%208-15-13.pdf.

⁸³ *Id.* at 37.

⁸⁴ See 25 U.S.C. §§ 1911-1912; *In re W.B. Jr.*, 55 Cal.4th 30 (Cal. 2012).

⁸⁵ See 25 U.S.C. § 1911(b); *In re M.S.*, 40 Cal. Rptr. 3d 439 (Ct. App. 2006).

⁸⁶ See 25 U.S.C. § 1903(1) (definition of "child custody proceeding"). California law currently goes further than ICWA, and requires inquiry into the child's Indian status for all delinquency proceedings where the child is at risk of entering foster care, even if the underlying offense would be a crime if committed by an adult. Cal. Welfare & Institutions C., § 224.3(a). However, California courts have refused to interpret state law as applying any other ICWA

protections in such cases, such as the right of the Tribe to notice and to intervene. In re W.B. Jr., 55 Cal.4th 30, 55 (Cal. 2012).

⁸⁷25 U.S.C. § 1901 *et seq.*

⁸⁸560 U.S. 48 (2010).

⁸⁹*United States v. Boneshirt*, 662 F.3d 509 (8th Cir. 2011).

⁹⁰*Id.* at p. 25 (Judge Bright, dissenting as to the sentence).

Panel #2: Tribal Leaders' Panel

Panel #2: Tribal Leaders' Panel

Introduction: Examine the issue of children exposed to violence in Indian nations through the eyes of the leaders. Identify issues with the state, federal and tribal systems that negatively or positively impact American Indian youth and recommend solutions.

Panelists:

Gregory Mendoza, (*Gila River Indian Community*), Governor, Gila River Indian Community

Gregory Mendoza is the twenty-first Governor of the Gila River Indian Community and the youngest elected to this office. He is the son of Joseph Mendoza and the late Brenda Mendoza and resides in the village of Valin Thak (Goodyear) located in District Four of the Gila River Indian Reservation. Gregory served on the Gila River Indian Community Council for seven months prior to being elected governor. During his tenure as councilman, he was appointed as Chairman of the Education Standing Committee and a member of the Legislative Standing Committee. Preceding his Community Council service Mendoza was Chief of Staff to Governor William R. Rhodes, a position he held for almost six years. Gregory holds an associate degree in tribal management and BS in business administration. Gregory has spent his entire professional life in community service and is dedicated to promoting education and creating new opportunities for the Gila River Indian Community tribal members to flourish.

Erma J. Vizenor, (*White Earth Nation*), Chairwoman, White Earth Nation

Erma J. Vizenor was elected as the Chairwoman of the White Earth Reservation in 2004 and is the first woman to lead the largest tribe in Minnesota. As Chairwoman she represents all districts on and off the White Earth Reservation. Erma has worked her entire career in education on the White Earth Reservation. She holds an undergraduate degree in elementary education; a master's degree in guidance and counseling; and a specialist degree in education administration from Minnesota State University Moorhead. A Bush Leadership fellowship gave Erma the opportunity to earn a master's degree in community decision making and lifelong learning and a doctoral degree in administration, planning, and social policy from Harvard University. Erma is committed to building a strong infrastructure within the White Earth Reservation, which is necessary in order to exercise sovereignty, self-governance, and service to the tribal citizens. Erma has two daughters: Jody, a tribal coordinator for Minnesota State University in Moorhead, and Kristi, a pharmacist in Duluth. She is the proud grandmother of Addie, Bethany, Marina, and Cedar.

Ned Norris, Jr., (*Tohono O'odham Nation*), Chairman, Tohono O'odham Nation

Ned Norris Jr. is an enrolled member of the Tohono O'odham Nation from the remote village of Fresnal Canyon in the Baboquivari District. He was elected to a four-year term as the Chairman of the Tohono O'odham Nation in May 2007 and reelected to a second four-year term in May 2011. Chairman Norris has served the people of his nation for more than three decades. In October 2011, Chairman Norris was elected to serve a term as the Western Area (Arizona, Nevada, and Utah) Vice President for the National Congress of American Indians and is a board member of Chicanos Por La Causa in Tucson, the American Indian Association of Tucson, Inc., the University of Arizona Arthritis Center Advisory Board, the Tucson Airport Authority Advisory Board, and the Pima Association of Governments. He was inducted to the Sunnyside Unified School District Hall of Fame and is a former Commissioner for the Tohono O'odham Nation's Tribal Employment Rights Office. In May 2009, Chairman Norris was conferred an Honorary Doctorate Degree of Humane Letters from the University of Arizona.

Potential Questions for Panelists

General Questions

1. What type of screening and treatment for trauma is available for children in the child protection and/or juvenile justice system in your community?
2. What data and statistics do you gather in your community on child abuse and juvenile justice cases?
3. Do you have any type of program or support for “at risk” kids? (Those children or families that haven’t actually been accused of child abuse/neglect or juvenile that haven’t been cited in the juvenile court system, but are have many risk factors? If so, could you describe those supports?
4. How effectively do you work with your state in coordinating support for juvenile offenders? What improvements need to be made in this regard?

Gregory Mendoza, *Governor*

1. You mention that 80% of the child protection cases in your area are related to alcohol or drug abuse. What resource do you have for the parents that seek recovery from addiction? What addiction resources do you have for youth?
2. Your Children’s Court handles both child protection cases and juvenile offender cases. Why did your tribe decide to keep both types of cases in the same court system?
3. When a juvenile appears before your Children’s Court as a juvenile offender, is the family also before the court? What involvement is required of the family when a juvenile offends?

Written Testimony for Governor Gregory Mendoza

Gregory Mendoza, (*Gila River Indian Community*), Governor, Gila River Indian Community

Gregory Mendoza is the twenty-first Governor of the Gila River Indian Community and the youngest elected to this office. He is the son of Joseph Mendoza and the late Brenda Mendoza and resides in the village of Valin Thak (Goodyear) located in District Four of the Gila River Indian Reservation. Gregory served on the Gila River Indian Community Council for seven months prior to being elected governor. During his tenure as councilman, he was appointed as Chairman of the Education Standing Committee and a member of the Legislative Standing Committee. Preceding his Community Council service Mendoza was Chief of Staff to Governor William R. Rhodes, a position he held for almost six years. Gregory holds an associate degree in tribal management and BS in business administration. Gregory has spent his entire professional life in community service and is dedicated to promoting education and creating new opportunities for the Gila River Indian Community tribal members to flourish.

On behalf of the Gila River Indian Community ("Gila River" or "Community"), I submit this written testimony to the U.S. Attorney General's Advisory Committee of the Task Force on American Indian/Alaska Native Children Exposed to Violence ("Committee"). I want to thank the Committee for providing me with an opportunity to discuss the Gila River Indian Community's response to the exposure of our youth to violence.

Introduction

The Committee was formed to fulfill a recommendation of the Attorney General's National Task Force on Children Exposed to Violence to examine the specific needs of native children exposed to violence. The Task Force's Report, which was issued in December 2012, concluded that "ethnocultural groups," such as American Indians, who have historically been exposed to political and cultural trauma in the United States and in their families, are more likely to live in poverty, where the risk and adverse impact of exposure to violence is greatly exacerbated. The Report found further that American Indian/Alaska Native children are three times more likely to live in poverty than white or Asian-American children and are that much more likely to be exposed to violence.

Furthermore, the Final Report of the Indian Law and Order Commission ("Commission") devoted an entire chapter to tribal youth's overrepresentation and disproportionately harsh treatment in state and federal criminal justice systems. Many have derided the Commission's work regarding juvenile offenders as lacking specificity. However, the Final Report identifies a serious problem with the high incidence of tribal juveniles being placed into state or federal detention systems before the juvenile's tribe has had an opportunity to either consent to or assume the duty for prosecution. As a result, many of the juvenile justice reforms that we have adopted here at Gila River have been unable to affect positive change in many children's lives

before they become a ward of the criminal justice system. The Community nonetheless strives to rehabilitate juvenile offenders to help them avoid a life in the criminal justice system.

This written testimony provides a description of the Community justice system, as it pertains to children, as well as the programs that support children and promote healthy, productive lifestyles.

Background on the Gila River Indian Community

The Gila River Indian Community is comprised of the Akimel O'otham and the Pee-Posh tribes, and has over 20,000 enrolled members. Approximately 12,000 of these members live on our reservation, which is roughly 372,000 acres and located in the Phoenix metropolitan area, just south of the cities of Phoenix, Tempe and Chandler. While the Community's reservation was established by Congress in 1859, the Akimel O'otham, which means "river people," trace their roots to the HuHuGam, prehistoric people who centuries ago lived and farmed along the Gila River in the present-day Phoenix metropolitan area. The Pee-Posh migrated up the Gila River from the Colorado River, to avoid attacks by the other tribes and eventually formed a confederation with the Akimel O'otham in the 19th century.

The expansive size and rural character of our reservation, as well as a historical lack of resources, allowed crime to flourish and become entrenched in our community over many decades. A 2003 report from the U.S. Department of Justice listed the Gila River Indian Community as having the most violent crimes per capita in all of Indian Country. Today, the widespread problem of domestic violence and child abuse at Gila River is both intergenerational and cyclical. Our Crime Victim Assistance Office has reported a situation where three generations of women in the same family fell victim to domestic abuse. Yet, it was not until abuse was levied upon the granddaughter, the youngest child in the family that anyone spoke against the familial traditional of abuse. Our community's experiences demonstrate that households destroyed by child abuse and domestic violence often lead the victims of that abuse to become wards of the system. As wards, they often feel hopeless and resort to destructive activities that were inflicted upon them at a young age. For years, the cyclical and taboo culture of child abuse led many to ignore this plague on our community because it was either misunderstood or omnipresent.

In recognition of the problem with violence against children at Gila River, Gila River Social Services has instituted a system to meticulously track all referrals that involve children. These referrals are categorized based on the type of abuse alleged, whether substance abuse is involved, and whether the referral involves a recurring issue, among other categories. Reports are compiled monthly and at the completion of every fiscal year. From October 2012 to September 2013, Gila River Social Services received a total of 1,294 referrals for child abuse and neglect. Of these, 561 involved alcohol and substance abuse, 437 involved siblings, 52 resulted in child placements because of alcohol and substance abuse, and 1,028 were recurring cases. Out of these cases, 266 referrals were because of child abuse, 909 resulted from child neglect, and 119 involved sexual abuse. A strong majority of these cases, totaling 1,048, were referred

to social services, 82 were referred to criminal or Children's Court, and 164 resulted in no action being taken.

Despite these numbers, the Community has taken great steps in the past three decades to establish institutions that allow for the adjudication of crimes against youth in a setting that promotes the child's well-being and provides victim services that offer meaningful outlets for education, social services, and youth based activities. The Community has also taken proactive steps to establish a multi-tiered children's court and a graduated system of sanctions that promote rehabilitation instead of punitive punishments for youth perpetrators of crimes who are statistically, most likely to become adult offenders. Gila River's experience in addressing the pervasive problems of domestic violence and child abuse on the reservation has demonstrated that Community members are the solution to the problem and that the most important way to fight back is through listening to the victims and responding to their needs.

Gila River's Juvenile Justice System

Youth are the most precious resource that our community has and we have undertaken a dramatic overhaul of the Gila River juvenile justice system over the past 30 years to address the problem of domestic violence and child abuse on the reservation. Still, prosecutors, judges, and victim advocates agree that domestic violence continues to be a massive problem at Gila River. This problem is not unique to Gila River but our approach to addressing the problem has taken a different tact than many other tribal communities. This approach, from the justice system perspective, is need-based and rehabilitative. The most prominent aspect of our juvenile justice system is the Gila River Children's Court, which has several subsidiary courts and programs intended to provide specific types of rehabilitation to minors based on the category of offense perpetrated or the treatment to which the minor was subjected at the hands of an abuser.

The Committee has solicited testimony related to our response to violence against children but a discussion of our juvenile court system, as a whole, is critical because of the extremely high rates with which children that come from violent homes end up in the juvenile and adult justice systems. The Community's legal justice system is currently comprised of the Community Court and the Children's Court, which is part of the Community Court framework. The Community Court is the Community's court of general jurisdiction, exercising jurisdiction to the full extent available under federal law. Services provided through the Community Court include case filings of criminal, civil, traffic, and domestic relations, among many others. The Community Court has a Chief Judge and five associate judges. The Children's Court was established within the Community's court system in the mid-1980's to address the pervasive problems of domestic violence and child abuse. The court has expanded to now include two judges who exclusively deal with three types of cases for minors up to the age of eighteen: juvenile cases, status offenses, and child abuse cases involving Child Protective Services ("CPS"). The Children's Court began as one adjudicatory setting but has now expanded to include Drug Court, Teen Court, and Truancy Teen Court, which are part of the Community's

Diversion Program that is discussed further below. The Children's Court adjudicates cases involving the Children's Code, which is Title 7 of Gila River Indian Community Code ("Community Code").

The approach of the Gila River justice system to all criminal offenders, not just juveniles, is diversion away from the criminal justice system wherever possible, through a series of graduated sanctions that increase in severity with each violation. Of course, the applicability of the diversion approach depends on the severity of the crime committed. The "Diversion Program," which falls under the Community's Probation Department, is structured around education, program services information, and community and cultural awareness for juveniles. Status offenses, such as truancy, and juvenile violations, which are mostly identical to offenses in the adult criminal code, are dealt with pursuant to the Diversion Program. The Diversion Program consists of the Drug Court, the Teen Court, Group Education meetings, Peer Mentoring, Community Services, and the Truancy Teen Court. Each option within the Diversion Program presents an opportunity for treatment other than the placement in the juvenile system. These alternative forms of treatment and education available under the Children's Code are generally used for an offender's first, second, third, or fourth violation. These options may be prescribed by a Children's Court Judge in addition to or in lieu of probation but adjudication through the adult system is possible where an offense is particularly violent or prior rehabilitation efforts have proven ineffective. All children participating in the Diversion Program also receive treatment through the Community's Behavioral Health Department. This treatment begins with outpatient therapy but may be extended to inpatient care on or off the reservation, depending on whether the child has a prior juvenile record. Children who commit more than four violations of the Children's Code are likely to be placed into the Community's juvenile detention center or inpatient treatment, depending on the severity of the violation.

The Community's Department of Rehabilitation and Supervision ("DRS"), administers the largest correctional/detention facility in Indian Country. It is a tribal facility that is operated with tribal and Bureau of Indian Affairs funding. The inmate population typically ranges from 200-225 inmates, including male and female adults, as well as juveniles. The goal of the facility is to provide a proverbial "toolbox" to the inmates while there, so that they are able to learn or understand how to fix their "life issues" in a healthy way once they are released. In this vein, the detention is intended to reduce the recidivism rates within the Community. DRS has on site staff that provide in-house programs for the inmates. Those programs consist of GED education, drug and alcohol education classes, vocational education programs, anger management, healthy relationships, life skills, and various other programs. Self-directed, computer GED resources are available for inmates to obtain their GED certificate. Program officers also instruct basic computer classes, and life skills. Some tribal agencies also have staff that work at the facility providing groups and classes to the inmates on a weekly basis. Those programs are parenting classes provided by Tribal Social Services, Child Development classes, and sexual health education, screening, and testing. DRS also has a large group of volunteers that come into the facility to provide Alcoholics Anonymous groups, faith based groups, and

cultural/spiritual programs and education. Inmates with mental health issues are provided counseling and medication management through the hospital's Behavioral Health Clinic. Juveniles, under the age of eighteen, are housed in a separate part of the DRS facility where there is a greater emphasis on the programs that are otherwise available to adult inmates. Juveniles may be incarcerated for no more than one year at DRS.

In addition to adjudicating juvenile and status offenses through the Diversion Program, the Children's Court also adjudicates cases involving child abuse and domestic violence. The court refers to these as "Child in Need of Care" cases ("CNC" cases). These cases will only go through the Children's Court if CPS is involved. It is estimated that up to 80% of child abuse cases before the Children's Court involve the abuse of controlled substances by the parents. In a CNC case, the parent is a party and must respond to a petition to appear before the court. Once the allegations of abuse are adjudicated, the focus turns to the well-being of the child. Many times, a CNC case will go through the Children's Court but the parents are never charged in criminal court. This is primarily true because the Children's Court attorney must only prove their case by a preponderance of the evidence, as opposed to the "beyond a reasonable doubt" standard that is often employed in criminal courts. Nonetheless, parents may still be criminally charged in extreme cases. Situations where a parent will not be charged criminally often involve removal of a child who was born addicted to substances.

The definitions of "child maltreatment" and "domestic violence" in the Community's criminal codes were intentionally drawn broadly to capture the widest array of child abuse, neglect, and exploitation situations. For example, domestic violence, which is often defined as existing between domestic partners, is defined in Section 5.710 of the Community's Criminal Code as endangering, threatening, assault, sexual assault or abuse, interference with custody, kidnapping, disorderly conduct, or crimes against children, among many other acts. Domestic violence, as defined in the Criminal Code, may occur in any number of domestic relationships, whether there is a familial relationship or not. "Child Maltreatment" is defined in Section 7.103(13) of the Children's Code as encompassing physical injury, emotional or mental injury, sexual abuse or molestation, repeated withholding of care, certain forms of physical punishment, and exploitation of the child. "Child Abuse" is separately defined in the Community's Criminal Code as any situation where a person causes or permits bodily harm to a child or causes them to suffer; or places a child's health or life in danger. Gila River Indian Community Code § 5.705. Thus, child abuse and domestic violence charges may be brought in a wide range of cases involving maltreatment and there are multiple statutory bases for criminal sanctions. The Children's Court will become involved where the victim of abuse is a child or the perpetrator's crime leaves a child in need of care. CPS is always involved when a case of child abuse comes before the Children's Court and plays a vital role in protecting a minor's interest while in the justice system.

Support Systems for Victims of Child Abuse

The Community provides support for victims of child abuse, neglect, or exploitation through the justice system, social services, or Crime Victim Assistance. Children removed from their homes under these circumstances are most often protected and provided a safe home through CPS.

The primary goal of CPS is investigation and protective of services. CPS operates on a referral basis and is often called in to investigate or remove children from homes because of abuse, neglect, or activities that endanger the well-being of a child. Referrals can come from law enforcement, where the justice system is already involved, schools, relatives, or community members, among other places. As a result of an action taken by CPS, law enforcement agencies may bring charges against a parent, at which point the case would come before the Children's Court. Where the Children's Court rules that a home is unfit for a child, the child may be removed to live with a relative, the Residential Program for Youth ("RPY"), or the Community's Domestic Violence shelter. RPY provides emergency short-term and long-term shelter/housing for children from birth to age seventeen. The current RPY facility has the capacity of 24/7 care for twenty-four children and is secondary option for CPS after a child is removed after a CPS investigation or court order. The goal of RPY is to provide an immediate safe haven and nurturing environment for children who have been removed from their homes due to suspected neglect, abuse, or exploitation, and to provide each child with the individual social and life skills that will enable them to become self-reliant. A new, larger RPY facility is currently under construction and will be able to house eighty children. The new RPY facility is scheduled to be finished by February 13, 2014. The Community also recently constructed a Domestic Violence Shelter, which was completed in March 2013. The shelter houses women and children but its maximum capacity fluctuates depending on the composition of current residents.

Children placed in the RPY or the Domestic Violence Shelter immediately become part of the Community's strong and growing infrastructure of youth support programs. For example, these children receive treatment through Gila River Behavioral Health, which is part of the Gila River Hospital, are provided mentoring, and are connected with the Gila River Boys and Girls Club. Beyond these outlets, the RPY has a full time recreation coordinator whose sole job is to provide a full schedule of recreational activities, whether they are physical activities, outings, or team building exercises. The purpose of these programs is to provide as much normalcy and support for the children as possible through whatever physical, emotional, or cultural support that is needed.

In addition to RPY and CPS, which are specifically available to aid child victims of crime, the Community has created Crime Victim Assistance ("CVA"). CVA, which employs a staff of seven responders, plays an essential role in enhancing the Community's response to victims and survivors of violent crime and abuse. By listening to the experiences of those victimized and learning of the responses from Gila River's medical and justice agencies, CVA collaborates with other community partners

to bring greater awareness of the barriers to victim safety and to offender accountability in the Community. CVA provides services to victims of violent crimes in a variety of areas such as finding emergency shelter, court preparation, and access to basic resources needed for safety, such as transportation. Although not directly connected to the justice system like CPS, CVA focuses on direct services to victims, advocacy between law enforcement and community service based offices, and community education and awareness. Unlike CPS, which must respond to situations identified by law enforcement or courts as dangerous to a child, the ability of CVA to work for child victims of violence relies upon the victim to seek help or community referrals. The services provided by staff take direction from the person's self-identified needs, perspectives and strengths, their ways of healing and their culture. The role of staff is to ensure emotional safety, and support survivors' control over their trauma. Staff will collaborate in the survivor's growth and empowerment, providing culturally competent services and options that are relevant to their own lived experience. In this way, CVA provides ongoing support to victims of violence beyond simple removal from an abusive home and transcends the justice system.

Obstacles

There exist a multitude of obstacles that prevent the Community from fully grappling with and eradicating the problem of violence against children. Child victim advocates believe that our system, when utilized, does a solid job of responding to the needs of child victims and removing them from abusive relationships. However, our growing infrastructure is only effective when cases are referred to Social Services or CVA. Therefore, the largest problem facing our fight against this type of violence is a lack of community awareness of the support system in place, and apathy. Despite the 1,000 plus cases reported to Social Services in 2013, there were probably hundreds more that went unreported for various reasons. The Community's ability to prevent and fight child abuse is only as strong' as the people's desire to use the resources available to them. Funding also remains a problem. The Children's Court and prosecution of crimes against children are funded through the Community but there is a need for more money to be made available through federal or state grants. Additional resources would be used in the Children's Court and the Criminal Court to ensure that crimes against children and domestic violence cases are adjudicated. Funding is a chronic problem in all aspects of Government but it is particularly troublesome when those that suffer are the families and children who are victims of domestic crimes that go unpunished.

Conclusion

The Community has taken a unique and proactive approach to addressing the problem of child abuse and domestic violence at Gila River. The most important steps to protect and defend child victims of abuse are visible through the establishment of a Children's Court, implementation of a Children's Code, comprehensive rehabilitative services for youth offenders, and a multitude of social service related organizations. These efforts aim to not only provide relief and support for victims but to identify troubled youth offenders and put an end to the intergenerational cycle of domestic violence in Indian Country.

Written Testimony for Chairwoman Erma J. Vizenor

Erma J. Vizenor, (*White Earth Nation*), Chairwoman, White Earth Nation

Erma J. Vizenor was elected as the Chairwoman of the White Earth Reservation in 2004 and is the first woman to lead the largest tribe in Minnesota. As Chairwoman she represents all districts on and off the White Earth Reservation. Erma has worked her entire career in education on the White Earth Reservation. She holds an undergraduate degree in elementary education; a master's degree in guidance and counseling; and a specialist degree in education administration from Minnesota State University Moorhead. A Bush Leadership fellowship gave Erma the opportunity to earn a master's degree in community decision making and lifelong learning and a doctoral degree in administration, planning, and social policy from Harvard University. Erma is committed to building a strong infrastructure within the White Earth Reservation, which is necessary in order to exercise sovereignty, self-governance, and service to the tribal citizens. Erma has two daughters: Jody, a tribal coordinator for Minnesota State University in Moorhead, and Kristi, a pharmacist in Duluth. She is the proud grandmother of Addie, Bethany, Marina, and Cedar.

Please see front pocket for testimony

Written Testimony for Chairman Ned Norris, Jr.

Ned Norris, Jr., (*Tohono O'odham Nation*), Chairman, Tohono O'odham Nation

Ned Norris Jr. is an enrolled member of the Tohono O'odham Nation from the remote village of Fresnal Canyon in the Baboquivari District. He was elected to a four-year term as the Chairman of the Tohono O'odham Nation in May 2007 and reelected to a second four-year term in May 2011. Chairman Norris has served the people of his nation for more than three decades. In October 2011, Chairman Norris was elected to serve a term as the Western Area (Arizona, Nevada, and Utah) Vice President for the National Congress of American Indians and is a board member of Chicanos Por La Causa in Tucson, the American Indian Association of Tucson, Inc., the University of Arizona Arthritis Center Advisory Board, the Tucson Airport Authority Advisory Board, and the Pima Association of Governments. He was inducted to the Sunnyside Unified School District Hall of Fame and is a former Commissioner for the Tohono O'odham Nation's Tribal Employment Rights Office. In May 2009, Chairman Norris was conferred an Honorary Doctorate Degree of Humane Letters from the University of Arizona.

Please see front pocket for testimony

Panel #3: Juvenile Court Judges Panel

Panel #3: Juvenile Court Judges Panel

Introduction: Examine tribal, federal, and state justice systems from the judges' perspectives relative to American Indian children exposed to violence; identify obstacles, cultural components, and good practices; and make recommendations on improvements to better respond to American Indian children exposed to violence in the juvenile justice system.

Panelists:

William Thorne, Jr., (*Pomo/Coast Miwok*), Appellate Court Judge, Utah Court of Appeals (retired)

William A. Thorne Jr. is a Pomo/Coast Miwok Indian from northern California and is enrolled at the Confederated Tribes of the Graton Rancheria. He received his BA from the University of Santa Clara in 1974 and received his JD from Stanford Law School in 1977. He practiced law for several years at Echo Hawk & Thorne, specializing on Federal Indian Law. Judge Thorne has served as a tribal court judge in Utah, Idaho, Colorado, New Mexico, Arizona, Nevada, Montana, Wisconsin, Washington, Michigan, and California. After 14 years as a Utah state trial court judge, he was appointed in 2000 to the Utah Court of Appeals where he served until retiring in 2013. Judge Thorne has served as board member of numerous non-profits, focusing on child welfare and adoption, juvenile justice, education, racial and ethnic fairness, and American Indian issues. He continues to serve on the board for many national organizations, including the National Indian Justice Center, the National Child Welfare Resource Center for Tribes (NRC4Tribes), Child Trends, the Center for Study of Social Policy and the National Council of Juvenile and Family Court Judges. Judge Thorne is the 2010 Native Inductee into the Stanford University Minority Alumni Hall of Fame.

Abby Abinanti, (Yurok Tribe), Chief Judge, Yurok Tribal Court

Abby Abinanti is a graduate of Humboldt State College and the University of New Mexico School of Law. When Abby was admitted to the California State Bar in 1974, she was the first California Native admitted to the California State Bar. Abby is one of a very limited number of attorneys who have been practicing tribal child welfare law since prior to the 1978 enactment of the Indian Child Welfare Act. Abby served as a California Superior Court Commissioner for the city and county of San Francisco assigned to the Unified Family Court for most of the last twenty years. Judge Abinanti has also served as a tribal court judge for many tribes and as Chief Judge for the Yurok Tribal Court since her appointment in March 2007. Judge Abinanti has served as the President of the Board of Directors of the Tribal Law and Policy Institute since its establishment in 1996. She also serves as a member of National Child Welfare Resource Center for Tribes (NRC4Tribes) National Advisory Council and as a board member for the San Francisco Friendship House Association of American Indians, Inc., and has served as a board member for California Indian Legal Services and the National Court Appointed Special Advocate (CASA) Association and its Tribal Court CASA Advisory Council.

Herb Yazzie, (Navajo Nation), Chief Justice, Navajo Nation Supreme Court

The Honorable Chief Justice Herb Yazzie was confirmed as Chief Justice by the Navajo Nation Council on April 21, 2005. Chief Justice Yazzie comes from the community of Dennehotso, Tábaq̄hí clan, born for Kintichí'nii, Tó'áhaní (maternal grandparents) and Tódích'íi'nii (paternal grandparents). Chief Justice Yazzie has always worked with the Diné in public service. He served as attorney for DNA People's Legal Services and was legal counsel for the Kayenta Township. He was a school board member of the school at his community and later a member of the Executive Board of the Navajo Area School Board Association. Chief Justice Yazzie has also served the Navajo Nation as its Attorney General and as its Chief Legislative Counsel and was an attorney for the Yavapai-Apache Nation. Chief Justice Yazzie is a military veteran, serving a tour in Vietnam as an Army lieutenant. He is a 1975 graduate of Arizona State University College of Law. He has been a Utah State Bar member since 1976 and is a member of the Navajo Nation Bar Association.

Potential Questions for Panelists

General Questions:

1. Do state, tribal, and federal juvenile judges receive adequate training on trauma informed care? Is there adequate focus on treating youth in our juvenile system, rather than just punishing youth? What is needed?
2. In your experience with juvenile wellness courts, youth courts, peace courts or other alternatives that have been used with juvenile offenders, are these alternatives more effective with certain types of youth offenders? How they worth the investment?
3. There is a strong concern in justice systems overuse of detention, yet, many tribes want detention facilities for juveniles. When there are limited resources, where do you believe the money should go?
4. Do you have suggestions on how to encourage more collaboration between state and tribal juvenile justice systems?
5. Do most state juvenile justice systems simply lack the cultural component needed for Native youth? Are you aware of any state that does a good job in providing a cultural component to their juvenile justice system?
6. How important do you believe it is for youth in the tribal juvenile system to be represented by an attorney?
7. How do you recommend we keep youth out of the juvenile system?
8. How important is involvement or cooperation of the schools in the juvenile justice system? What do you think is the schools role?
9. When do you think it is appropriate for a juvenile offender to be transferred to adult court? When do you see this happening in tribal courts? Federal or state courts?
10. What barriers do you see in tribal juvenile systems that prevent youth from being helped by the system? Federal system? State system?

Written Testimony for Judge William Thorne, Jr.

William Thorne, Jr., (*Pomo/Coast Miwok*), Appellate Court Judge, Utah Court of Appeals (retired)

William A. Thorne Jr. is a Pomo/Coast Miwok Indian from northern California and is enrolled at the Confederated Tribes of the Graton Rancheria. He received his BA from the University of Santa Clara in 1974 and received his JD from Stanford Law School in 1977. He practiced law for several years at Echo Hawk & Thorne, specializing on Federal Indian Law. Judge Thorne has served as a tribal court judge in Utah, Idaho, Colorado, New Mexico, Arizona, Nevada, Montana, Wisconsin, Washington, Michigan, and California. After 14 years as a Utah state trial court judge, he was appointed in 2000 to the Utah Court of Appeals where he served until retiring in 2013. Judge Thorne has served as board member of numerous non-profits, focusing on child welfare and adoption, juvenile justice, education, racial and ethnic fairness, and American Indian issues. He continues to serve on the board for many national organizations, including the National Indian Justice Center, the National Child Welfare Resource Center for Tribes (NRC4Tribes), Child Trends, the Center for Study of Social Policy and the National Council of Juvenile and Family Court Judges. Judge Thorne is the 2010 Native Inductee into the Stanford University Minority Alumni Hall of Fame.

We Need A New Direction

I am sure you will hear much about the confusing and conflicting jurisdictional issues and the lack of resources available to jurisdictions. I have no disagreement with the importance and pervasiveness of those problems and their resultant impact upon rates of offenses and upon the efficacy of “the System.” It is however, the children who are exposed to violence, often in their own homes, who then fall under the purview of “the System” that I am most concerned with.

I have recently retired after 34 years as a judge, first in tribal court systems and then as a state trial court judge and finally 13 years as a state appellate court judge. During that time I have come to the realization that while there is a lot of rhetoric about our concern for victims there has been remarkably little effort focused on HEALING those same victims. Granted, no one wants children hurt or even exposed to real threats of harm. As a result, Safety has become the central focus of our efforts. We seek to drive down the rate of violent crime. We impose increasingly harsh penalties for violent crime [and non-violent crime.] We lengthen the incarceration of offenders. We remove “perks” from jails and prisons like offender treatment groups, education programs. We lock up a higher proportion of our population in this country than anywhere else in the world. But we don’t heal our victims and the families and communities in which they live.

When children grow up surrounded by violence they learn to see the world in two ways: as a victim of violence and as a perpetrator of violence. It shouldn’t surprise us when children grow into adults who see the world in similar ways. We only have to look at the numerous studies of domestic violence to see that children growing up in violent homes are much more

likely to embrace the role of victim or perpetrator in their own relationships. Even if we can in fact stop the violent actions from directly [physically] touching the children, they have learned that there are two types of people: victims and perpetrators. All too often they don't get the chance to experience anything different. In fact some studies have suggested that one way to make the downward trajectory for child victims in violent homes even worse is to remove those children into foster homes. We are seeing second, third, and even fourth generation children in foster care who are removed from their families. But the removal into foster care did little to prevent the generational transmission of problems. Thanks to the intervention of judges and caseworkers, they may now be "safe" from that particular form of physical violence, but we have just exacerbated their problems growing up.

The most recent "brain science" supports this concern. Children's brains grow as a combination of 'nature' and 'nurture.' It is the interplay of individual genetics and environmental cues that creates the necessary situation which permits the brains of children to literally grow. Brain science has also informed us that there is a situation which sabotages this growth. [This sabotage is particularly alarming in that the brain never goes back to make up for lost growth. Intensive therapy and rehab can utilize the plasticity of brains to create new connections, but this doesn't happen without focused effort and almost always leaves a deficit.] Long term intensive stress floods the brain with cortisol that quite literally prevents the brain from developing normally.

So how does "the System" deal with children's exposure to real violence? The first reaction is to remove them. Place them with strangers who are "safe." [Never mind that children are more likely to be abused in licensed stranger care than unlicensed relative care.] The system has now ensured that the exposure to cortisol is prolonged by placing the child with strangers. When every sound, every smell, every taste is foreign and you know no one else in that place and you don't know the 'rules' in place for your stay, how can you feel safe? In the name of "helping" we have now made sure that normal brain development has been sabotaged. Science has demonstrated that cortisol is dangerous to brain development. So do we do anything to minimize or even measure exposure to cortisol after we intervene to protect the child? Not in my experience. The same scientists who have demonstrated the harmful effects of cortisol have also demonstrated a 'protective factor' that significantly decreases the duration and intensity of the cortisol exposure. It is the presence of a caring adult with whom the child already has a relationship. Just the presence of the caring adult allows the child to surrender the hyper-vigilance experienced by many abuse victims to the charge of that caring adult that they already know and trust. The child feels safer, the cortisol level comes down, and the physical risk to the developing brain decreases.

Our system commendably has begun acting to protect children from violence. But we need to do so in a thoughtful and healing manner. "Just in case" is not an appropriate response. We don't amputate a leg just because there might be cancer present. We don't remove an eye because there is an infection that might spread. Instead we take a measured approach in order to determine which treatment is the best option. And we involve the patient in the discussions. And if removal is necessary, we do rehab. We try to recreate as well as possible the function of the lost limb or to the best of our ability assist the patient in living a full

life. We would never say, “The evil is removed, you are now on your own.” And yet for these children that is very close to what we do.

There are some children who after exposure to horrific sexual and physical abuse seemingly come out of the experience whole. Those children have in common a resilience that appears to protect them from some of the worst of the long-term after effects. We know how to create resilience in children. It is the product of caring relationships. It is the product of a network of caring relationships. A network ensures that a single weak or faulty strand isn’t responsible for dropping the child. Instead, the child is supported by a group of caring adults the child “knows” they can call upon in times of need. Adults who will “be there” when the child needs. That resilience protects the child in both seen and unseen ways. Even the Attorney General’s report on violence in 2012 noted the positive and ameliorating effect of supportive families and communities for children exposed to violence.

Building resilience in the children of our communities is the equivalent of vaccinating them against the worst effects of the violence epidemic. No one would willingly expose their child to smallpox. But if it happens, thank God for a smallpox vaccination. No one would willingly expose children to the harmful effects of violence, but if it happens....it would be nice to know that we have made them as resilient as we possibly can. And if a child is exposed who isn’t already inoculated, then we should be trying to minimize the harm while building those relationships necessary for resilience after the fact. We need to be assessing the individual effect upon an individual child and then creating and, as necessary, modifying the remedy. One size doesn’t fit all in this situation any more than one size fits all when getting a medical diagnosis. Exasperating the harm already done to the child by removing the child from caring and trusted adults should be the exception, not the rule.

As courts and agencies we need to stop taking children away from their families, especially “just in case,” or while we figure out what is really going on [which can take months.] Foster care with strangers should not be considered a neutral safe alternative for the child while “we” get our act together. We need our goal to be the timely healing or building of strong families and communities around our young people, so that when they have the opportunity, they will be wonderful parents for their own children. Removal, like amputation, should be a last resort when we have failed these children and their families. We need to give the children more, not less. We need to make sure they have hope and a sense of their own worth. We need to change the direction of our efforts. We should be about healing children, not taking children.

My general recommendations:

1. We need to build communities and families of hope, capability, and caring around our children to make them resilient and able to withstand whatever the world has in store for them.
2. If already exposed to violence, we need to build connections to families and communities wherever they are missing and strengthen connections already existing so that the children can heal and know they are not alone.

3. The child needs to be involved in deciding and planning and implementing whatever remedy may be appropriate. Powerlessness is not something to further impress upon victims.
4. There is no such thing as a “perfect family.” Children need connections to families. In my 34 years of experience working with children and families in court, it is exceedingly rare for a family to have no one capable of a healthy relationship with a child.
5. We should provide victims with the necessary resources to heal. This includes the means to build real connections and where appropriate victim-offender mediation. I have seen this work where the right infrastructure is in place, including the voluntary participation of the victim under circumstances appropriate to ensure safety, both emotional and physical safety.
6. Removal is over utilized as an intervention strategy, to the child’s detriment.
7. **I would like to lend my support for the juvenile justice recommendations of the ILOC, in particular to the expansion of ICWA notice and intervention provisions as they relate to delinquency cases.**

Specific recommendations:

1. Provide local communities with the resources to help victims heal through healthy and vibrant connections to their communities, families, languages and traditions.
2. Allow tribes to have a voice in state proceedings affecting their children.
3. Provide tribes with data, specific and aggregate, about their children from both state and federal systems – both as victims and as offenders, so that connections can be built.
4. Encourage and assist Tribes in building re-entry programs where offenders can reconcile and earn their way back into a community.
5. Encourage states to permit opportunities for connections to be built for young offenders, including the chance to qualify for tribal re-entry programs referenced in number 4 above.
6. Cap federal sentencing of youth offenders not to exceed that which state non-Indian offenders would have received.
7. Permit federal placement of youth in state systems where appropriate and where no appropriate federal system is available.
8. Permit Tribes to intervene and accept jurisdiction in place of federal jurisdiction.
9. Provide Tribes with appropriate levels of resources for child-welfare and juvenile justice cases, without distinction as to case types. These are the same children and families with the same problems. Their ability to access an appropriate type of service or care should not be limited by the type of case or charge which brought them into the system.
10. Provide resources to develop and demonstrate tribally specific interventions.
11. Domestic violence intervention should not include removal of children as a normal and usual response. Instead they should be removed only if there is an active on-

- going significant risk of physical harm to the child. If removed, continuing family connections need to be the default provision, changed only by a court finding of necessary to safety and no other viable contact means available.
12. Courts and agencies should provide notice and an opportunity to meaningfully participate to extended family and Tribes, not just parents.
 13. **The Department of the Interior, Bureau of Indian Affairs, issued guidelines for state courts should be withdrawn until they are revised in conformance with the letter and the purpose of the ICWA. State courts are arguing that those guidelines permit them to contravene the specific requirements of the Act.**

Written Testimony for Judge Abby Abinanti

Abby Abinanti, (*Yurok Tribe*), Chief Judge, Yurok Tribal Court

Abby Abinanti is a graduate of Humboldt State College and the University of New Mexico School of Law. When Abby was admitted to the California State Bar in 1974, she was the first California Native admitted to the California State Bar. Abby is one of a very limited number of attorneys who have been practicing tribal child welfare law since prior to the 1978 enactment of the Indian Child Welfare Act. Abby served as a California Superior Court Commissioner for the city and county of San Francisco assigned to the Unified Family Court for most of the last twenty years. Judge Abinanti has also served as a tribal court judge for many tribes and as Chief Judge for the Yurok Tribal Court since her appointment in March 2007. Judge Abinanti has served as the President of the Board of Directors of the Tribal Law and Policy Institute since its establishment in 1996. She also serves as a member of National Child Welfare Resource Center for Tribes (NRC4Tribes) National Advisory Council and as a board member for the San Francisco Friendship House Association of American Indians, Inc., and has served as a board member for California Indian Legal Services and the National Court Appointed Special Advocate (CASA) Association and its Tribal Court CASA Advisory Council.

My name is Abby Abinanti; I am an enrolled Yurok from Northern California. At home I am known as Judge Abby, I am the Chief Judge of my Tribe. I work part-time, having returned to work part-time for the San Francisco Superior Court as a Commissioner with duties that include dependency, duty judge and parole revocations. Thank-you for inviting me to testify today, though I must say I am getting tired of being part of the process and not part of the solution. I am rapidly returning to the lack of patience one tolerates in the young, but one expects to have ended with the understanding that it must be “done” the “right way” when one reaches the later years. The choices seem to be we are ignored, or we are studied, or we are part of the process i.e., we testify, report, study and/or help compile a massive record.

I do not know you all, some of you I do, others I know your work and respect your work. Is there violence; is there abuse of tribal children in this country? Yes, there is. Some we perpetuate, we have learned to be violent, to be abusive and as communities we have learned to do what we would never have accepted before the invasion we have learned to close our doors and not interfere. Some violence/abuse, a great deal, is done by non-tribal people who willing, and without censure, act out the legacy of this country’s violent, hateful past. We, as tribal people, are the victims of violent crimes; each and every surviving Tribe has a history with the invaders, a history that has not been reconciled. Instead we have become the “Indian problem”.

Today’s task is to identify the parameters of the Indian problem in 2014 as it relates to our children who are exposed to violence. You all will receive massive amounts of information confirming what you and I already know violence and abuse is defining the childhoods of many

tribal children. It is difficult to articulate in an organized fashion the issues. I look to home to help me...I see our children who grow up often in poverty; poverty is the seed of home grown trauma, and from this seed grows physical abuse, domestic violence, sexual abuse, alcohol and drug abuse, and personal failure. The failure of a person, our failure to become, to assume our responsibilities as a Yurok adult, because we are no longer free of the degradations of poverty is miring us in generations of people who engage in behavior we collectively know is wrong. And we watch as others brutalize our children and we are powerless to stop their institutionalized racism.

This leaves us with the need to prevent, to stop poverty and the need to intervene, to treat the people we have created, and to end the tolerance that allows institutionalized racism. Three problems. There are 566 reservations in this country, untold unrecognized tribes, and pockets of urban Indians, and all of them suffer from these untreated problems. Does this country have the ability to end this suffering, yes it does, and does it have the will? The ability yes, could poverty on reservations and in urban Indian settings be ended, of course it could. Jobs created, economies supported is that impossible, no only improbable. Does the country have the ability to treat trauma, could the created trauma be treated? The Advisory Committee itself has the expertise to devise a comprehensive plan to treat existing trauma in all of Indian Country. Could the private, state, and federal institutions that harbor institutionalized racism be ferreted out and brought to better practice? Yes of course they could if the Country chose to turn its resources to the eradication process.

The constant piecemeal practice of the Federal government, the lack of willingness to assume responsibility in a meaningful way, the failure to consider the ramifications of ill thought out practices of funding community support violence. We are looked at as problems, for instance, Indian people have a problem with substance abuse, so the country will create a safety net the sick individual, or their government, will have to compete for treatment slots, and they will not be provided a treatment for all in need, only a portion will be qualified to get help. This approach of only working with the problem once it has been created, and only with a certain segment of the problem insures that "the problem" will never be resolved. It is free to continue to infect, to spread by contact, which is how it spreads. Problems to cease need to be resolved prior to their development; it is elementary that without a comprehensive approach to each community's needs the problems will not be resolved.

The Federal Government is the holder of the privilege established by the biggest home invasion scheme known in the history of this country. That privilege, all the benefits of the home invasion, is part of the residual created by the invasion. It is one of the consequences of violence that the perpetrator must assume the responsibility for their actions. In this instance that responsibility includes the need to coordinate the redress activities for the crime(s), the response must be multifaceted and address all prongs noted, and there is ample justification for the need to proceed as noted. Below I discuss this in limited detail.

- 1) Poverty creates trauma and that leads to trauma behavior in children...this is not new information, for examples please read with care the *Reign of Error* by Diane Ravitch,

which discusses our public schools and the impact on children's educational performance if their families live in poverty; and see the work of Jane Costello, an epidemiologist at Duke University Medical School on the psychiatric outcomes among poor Cherokee families of receiving cash.

- 2) The magnitude of the "problem" that to a certain extent is what I am supposed to be articulating, but the odd thing about it is that you, every one of you sitting listening knows the magnitude of the problem that exists in Indian Country. This Advisory Commission was created in part as a response to the 2012 Report of the Attorney General's National Task Force on Children Exposed to Violence, which proposed an effort to detail the violence to our children. If you want to know who, because that is all that is left to know, then go to each place and ask...all of the problems described in the Task Force report exist in Indian Country. Sit in Klamath with me for a week, listen to all that I hear, grapple with how to help each of the young people I am responsible to try and help. Figure out how to fund enough case managers to work with each child and their family who has a problem; how to get quality specialized treatment for those who need; and how to deliver those service where we have a two hour commute from one end of the Reservation to the other (without a developed public transportation system), and where one end does not yet have electricity and where the snow can make us have to go the long way and hope the plows made it through.
- 3) Institutionalized racism in my home lands has given rise to efforts spearheaded by parents of Yurok children who with the assistance of the American Civil Liberties Union beginning in 2009 have filed lawsuits and complaints against Humboldt and Del Norte County schools for disparate treatment of Yurok children. This violence is part of a nationwide practice that contributes to our children's declining high school graduation rate; a rate that declines while every other identifiable group's graduation rate improves. The Federal governments treatment of native youth in the justice system is documented in the November 2013 Indian Law & Order Commission's "A Roadmap for Making Native America Safer – Report to the President & Congress of the United States" with a detailed recommendation for redress in Chapter 6 details a race based problem. Look at the U.S. Department of Justice Coordinated Tribal Assistance Solicitation – Fiscal Year 2014 Competitive Grant Announcement. That program is the biggest effort that exists in Indian Country, there are nine program areas, three specifically mention juveniles and others indirectly impact the quality of their lives, Program Area 6 – Children's Justice Act Partnerships for Indian Communities (OVC); Program Area 8 - Juvenile Justice (OJJDP); and Program Area 9 – Tribal Youth Program (OJJDP). The first area offers approximately 6 awards, the second 2-3 awards and the third area 10-12 awards. There are 566 recognized tribes in this country the winners of CTAS will have a start, but the "losers" way out number the possible winners.
- 4) The million and one isolated roadblocks that weigh on tribes, on our justice systems, on our children, which contribute to our inability to help ourselves including but not necessarily limited to the following:

- A) The federal government has decided that it is NOT required to pay for courts or law enforcement (our systems at their best should reflect our values with practices unique to our village responsibility model) in P.L. 280 states because that jurisdiction is with the states, there is an alternative they say go to the states (systems with proven bias against tribal people); the alternative is not working and we want to assume the responsibility for ourselves, but need the infrastructure. And the jurisdiction is concurrent so we can do so if we had the financial ability.
- B) No institution, including school districts, criminal systems, child support, federal/state benefit programs keep statistics based on tribal status, so the data collection necessary to plan or “justify” redress efforts requires tribes to laboriously and great investment of time to collect data.
- C) We do not have sufficient law enforcement to stop invaders from using our lands to dump garbage, to enter and grow massive amounts of marijuana in ecologically damaging manner polluting our ground level water system, killing game with the insecticides and/or making the game we feed our children dangerous; and frightening our citizens.
- D) We allow untruths/lies by omission about our shared history to be taught in this country so Yurok children in schools are not told the truth. There is no effort to teach our children our history, our language, cultural skills or our citizenship needs.
- E) History indicates approximately half of our children sent to boarding schools died in those schools and were buried there, not even returned to their homes/families to be buried among their people.
- F) Tribes do not have access to CLETS, we have to get local counties to enter our orders for us.
- G) The programs designed especially for the Tribes e.g., Title IVD/E both supposedly child centered come with pre-requisites that are designed for massive state institutions, they are almost insurmountable and the complexities are not in anyone’s best interest.
- H) Existing programs e.g., SSI for transitioning youth are under accessed by our youth who need these services and who flounder horribly without that aid; AB 12 services in California for juveniles exiting the foster care system are not utilized by our children; and almost any program that is designed for all youth

have a shocking lack of participation, if one were to examine the tribal participation rate.

- l) There is no effort to individually map the trauma of every individual tribe, which would be part of the information necessary to devise a individualized treatment plan for each tribe's children. This history is within the reach of the professional inquiry, and that inquiry needs to happen.

There is much more, more details, the stories of each child, of each family, they are there I know many of the stories from my homeland...but I do not want to tell their stories, even as examples they do not belong to you or to me. What belongs to us is the responsibility to stop it, and where the hurt has happened to sooth, to offer a way to decrease and maybe stop the pain. I came to tell you this and to ask you to help if you can. It can be done if the country develops the will to do right, the country has the ability/skill/knowledge it only needs the will, to create a comprehensive approach for each tribal community to resolve the continuing violence and stop new violence against our children.

Written Testimony for Justice Herb Yazzie

Herb Yazzie, (*Navajo Nation*), Chief Justice, Navajo Nation Supreme Court

The Honorable Chief Justice Herb Yazzie was confirmed as Chief Justice by the Navajo Nation Council on April 21, 2005. Chief Justice Yazzie comes from the community of Dennehotso, Tábaq̄hí clan, born for Kinłichí'í'nii, Tó'áhaní (maternal grandparents) and Tódích'í'í'nii (paternal grandparents). Chief Justice Yazzie has always worked with the Diné in public service. He served as attorney for DNA People's Legal Services and was legal counsel for the Kayenta Township. He was a school board member of the school at his community and later a member of the Executive Board of the Navajo Area School Board Association. Chief Justice Yazzie has also served the Navajo Nation as its Attorney General and as its Chief Legislative Counsel and was an attorney for the Yavapai-Apache Nation. Chief Justice Yazzie is a military veteran, serving a tour in Vietnam as an Army lieutenant. He is a 1975 graduate of Arizona State University College of Law. He has been a Utah State Bar member since 1976 and is a member of the Navajo Nation Bar Association.

Please see front pocket for testimony

Panel #4: Components of the Juvenile Justice System Impacting American Indian Youth

Panel #4: Components of the Juvenile Justice System Impacting American Indian Youth

Introduction: Examine the components of the juvenile justice systems that impact American Indian youth and describe the system's impact on trauma affected youth. Review investigation, prosecution, criminal defense, and probation in rural and urban settings identifying key issues and recommending changes that support youth involved in the juvenile justice system.

Panelists:

Sheri Freemont, (*Turtle Mountain Chippewa/Omaha*), Director, Salt River Child Advocacy Center

Sheri Freemont, Director of the Salt River Pima-Maricopa Indian Community (SRPMIC) Family Advocacy Center, was the previous Chief Prosecutor at SRPMIC for more than seven years. She is an active member and past president of the Arizona Tribal Prosecutors' Association, immediate past chair of the Executive Council of the Indian Law Section, and President-Elect of the Native American Bar Association—Arizona. She served as felony prosecutor in Maricopa County where she was assigned the division that handles child abuse. As Chief Prosecutor at SRPMIC, Sheri devoted a large part of her time working on crimes against children, coordinating projects that focus on improving criminal prosecution practice, training the police department and the Child Protection Team, and creating legislative initiatives to better serve children within Salt River. She also serves on the Board of Directors of the Child Crisis Center of Mesa, a nonprofit children's shelter and resource center for families in need where she provides valuable insight regarding tribal children's issues.

Nadia Seeratan, Senior Staff Attorney & Policy Advocate, National Juvenile Defender Center

Nadia Seeratan is the Senior Staff Attorney and Policy Advocate with the National Juvenile Defender Center (NJDC). Prior to joining NJDC, Nadia served as the Racial Justice Attorney for the American Civil Liberties Union (ACLU) of New Jersey where she engaged in advocacy, public education, and lawsuits designed to positively impact communities of color. Nadia came to the ACLU from New York City's Legal Aid Society Juvenile Rights Division where she represented children in child protective and juvenile delinquency proceedings. Ms. Seeratan works to build the capacity of the juvenile defense bar through national, state, and local advocacy. She provides training and technical assistance to juvenile justice system professionals, conducts appellate advocacy, is involved in assessment of state juvenile justice systems, and participates in various other aspects of juvenile indigent defense advocacy and reform efforts. She is committed to challenging racial and ethnic disparities in the justice system. She received her JD from St. Mary's University School of Law and her Honours BA from the University of Toronto.

Ethleen Ironcloud-TwoDogs, (*Oglala Sioux Tribe*), Technical Assistance Specialist, Tribal Defending Childhood Initiative, Education Development Center, Inc.

Sina Ikkicu Win (Takes the Robe Woman), Ethleen Iron Cloud-Two Dogs, is enrolled as a citizen of the Oglala Sioux Tribe and has Crow ancestry on her mother's side. The late Pehin Sapa Win (Black Hair Woman), Mary Locke Iron Cloud, and Isto Wanjila (One Arm), Eddie Iron Cloud Jr., are her parents and her Tiospaye (extended family) include Taopi Sica (Bad Wound), Locke, and Mila Yatan Pika (Knife Chief). Ethleen provides training and technical assistance nationally to tribal programs and tribal juvenile detention centers in the area of tribal youth programming. Ethleen is a past Bush Foundation Fellow and serves as a volunteer on the Knife Chief Buffalo Nation Organization Board of Directors, the First Nations Behavioral Health Association, Rosalyn Carter Mental Health Task Force, and the Bureau of Indian Education Advisory Committee for Children with Exceptional Education Needs. Ethleen is a doctoral student at Colorado State University.

Lea Geurts, Court Administrator, Pyramid Lake Paiute Tribal Court and Instructor, Fox Valley Technical College

Lea Geurts has dedicated her career to the enhancement of Indian country justice systems. Lea began her career with Pyramid Lake Paiute Tribe working with juvenile and adult offenders. During this time, Lea developed and implemented the current probation system with an emphasis on building a stronger tribal community, enhancing community safety, and reducing recidivism by bridging "best practice" concepts with the utilization of local tribal resources. Recently, Lea was promoted to the role of Court Administrator where she has been provided the opportunity to further develop the tribe's judicial system. Lea continues to actively promote and work on creating collaborative relationships with other departments and jurisdictions to provide resources that will enhance all aspects of the judicial services provided by the court. Lea holds her BS degree in criminal justice administration. Additionally, Lea has worked with multiple tribal technical assistance providers as a consultant and instructor on an array of different topics. Lea continues to be passionate and committed to the enhancement and development of tribal justice programs.

Potential Questions for Panelists

Sheri Freemont

1. Is your advocacy center open for children 24/7 and able to meet emergencies where children need a safe place immediately?
2. I was intrigued by your suggestion of a child friendly mobile center in your (written) comments, especially for more remote areas? Could you describe how you envision this would be manned and operated? Do you know of any Native communities that have tried this option?
3. Confidentiality is often an issue with multi-disciplinary teams, but it seems that you have resolved that issue. Could you tell us how you did this?
4. How has your program found a balance between cultural values/tradition and proven methods?
5. You indicated in your (written) testimony that in order for a professional to be culturally competent, including federal employees and contractors, they must engage in the community? What do you mean by engagement? Can you give some examples?
6. I was particularly interested in your MDT model used as a tool for prevention and your work with 'at risk' youth. What results has this produced? How long has this been implemented?
7. We have heard from tribes that have no family advocacy center and some that have no attorney for child protection cases and lack law enforcement even to handle major crimes, how dependent are your accomplishments on adequate personnel?

Nadia Seeratan, Senior Staff Attorney & Policy Advocate, National Juvenile Defender Center

Ethleen Ironcloud-TwoDogs

1. What are the specific needs of girls that are not being met in detention facilities?
2. Do you know of examples of culturally appropriate, gender appropriate programs that meet girl's need should they end up in a detention facility?
3. Are there diversion programs that are particularly helpful to girls? Please, describe.
4. Are you aware of programs that have been effective in addressing the needs of girls who have run away from home? Please, describe.
5. Are detention facilities or juvenile courts providing help to those girls that are in the system who are also victims of sexual assault/abuse? What is necessary?

Lea Geurts

1. In your case study (written testimony) we see schools action or inaction – What do you think schools should be doing to help in identifying at risk youth and providing services before the youth ends up in the juvenile system. Do you have ideas on what they might do to respond to trauma affected youth?
2. You mentioned the problems with restrictions on BIA funding, which limits you choices for youth and can result in poor choices. Could you explain that in more detail?
3. As a probation officer, do you have access to social service and school records?
4. Is there coordination between state and/or federal probation officers relative to juvenile offenders? Could you explain how the systems work together?
5. Is there a lack or shortage of residential treatment programs suitable for Native youth? What is available?
6. What are your recommendations to resolve some of the reentry problems juvenile offenders face upon return to their community?

Written Testimony for Sheri Freemont

Sheri Freemont, (*Turtle Mountain Chippewa/Omaha*), Director, Salt River Child Advocacy Center

Sheri Freemont, Director of the Salt River Pima-Maricopa Indian Community (SRPMIC) Family Advocacy Center, was the previous Chief Prosecutor at SRPMIC for more than seven years. She is an active member and past president of the Arizona Tribal Prosecutors' Association, immediate past chair of the Executive Council of the Indian Law Section, and President-Elect of the Native American Bar Association—Arizona. She served as felony prosecutor in Maricopa County where she was assigned the division that handles child abuse. As Chief Prosecutor at SRPMIC, Sheri devoted a large part of her time working on crimes against children, coordinating projects that focus on improving criminal prosecution practice, training the police department and the Child Protection Team, and creating legislative initiatives to better serve children within Salt River. She also serves on the Board of Directors of the Child Crisis Center of Mesa, a nonprofit children's shelter and resource center for families in need where she provides valuable insight regarding tribal children's issues.

Introduction

As a Native American mother, I am deeply troubled by the state of the children of our tribal communities. From my experiences in the legal field with tribes, I know that there is a lot that can be done to mitigate the harms the children are exposed to. The real work is in the communities, by the communities at large, by each of us as mothers, fathers, aunties, sisters, cousins and as neighbors, friends and mentors. However, I'm grateful that this task force has been put to work on this important issue. I am aware of testimony previously submitted to this task force in the December hearing, I am pleased to see that such qualified and informed recommendations have been offered. These are complicated issues and sensitive. Your task is formidable. I hope that my experience and what I have learned will be useful as you make your final recommendations.

My path to becoming the Director of the Salt River Pima-Maricopa Indian Community was a natural one in that my commitment to improving the lives for tribal children is my primary motivation. I believe that with hard work on behalf of tribal leadership and in partnership with our federal partners and others, important changes to the children's systems can be made that will fulfill the goals of this important task force.

Often I am asked how I can work in these difficult areas. For me there is nothing more important to get up and go to work for everyday than innocent children. I understand that there are so many sad stories, stories that make us mad, that make us sick. But there must be hope. The sight of a deceased child, who died when the people who are here to care for and love them failed to protect them or in some cases are the ones who took their life, is something that changes a person. Seeing these innocents in that way was truly life-changing for me.

Nothing can be more important than stopping the harm that happens to these children. The same is true for the children who reach adolescence and take their own lives, or try to. Who have been through so much pain and have so little hope that death is their only plan. Or when as a prosecutor, seeing young adults who are unable to love, unable to parent, and unable to keep themselves in safe relationships because they have never seen one, is unacceptable to me.

In my ten years' experience as a professional in Indian country justice, I have heard over and over the mantra about how the care of children in Indian country is "different" than in non-Indian communities, and I often sense that what is implied is that Indian people have a lower standard of care for children or that many native families are incapable of healthy parenting. I wish I have not ever heard "that's just how it is on the rez". While there is surely a racist undertone to such beliefs, and a sense of hopelessness, I have been mindful to take these experiences as teaching moments. Not only for those who said it, but also to each member of our team as they are being introduced to the system, that all children and families deserve love, safety, hope, dignity and respect.

Too often, I hear people who have lost hope and have no vision that this is just the way it is, the way it always has been, or that these lifestyles were the same when they were kids, and they turned out ok... and I realize we have a lot of work ahead of us. Working in CPS, prosecution, courts, victim advocacy or policing, is hard work, and it is hard on your soul. But nothing is harder on the souls of these people than when they feel that the system is not capable of making things better for these children and families. If they feel their work is futile, or the situation is hopeless, they will not be effective and will not stay. Thank you to the Department of Justice, Attorney General Holder, the task force members, and to the host tribe Salt River Pima-Maricopa Community for the opportunity to be heard and to give hope to all those who serve in these areas, and to the children and families who may someday be helped by your recommendations.

SRPMIC Family Advocacy Center

My primary recommendation for this task force is to support, advocate for and educate others about the role of an advocacy center and multi-disciplinary teams. While more advocacy centers are opening in Indian Country, there are still only a handful and have several different approaches. For SRPMIC, the co-location model has been effective for us and we hope that other groups will hear about our experience and implement any aspects of our program that could aid their systems.

In 2009, the Salt River Pima-Maricopa Indian Community Family Advocacy Center (FAC) was opened. Our center is used to co-locate our multi-disciplinary team members, as well as provide a place to bring our vulnerable victims and children when needed. We were lucky enough to be able to have a space that can accommodate privacy and security for our child victims, as well as adequate working space for our team members who are housed in the center. Located within the boundaries of the Community, the center is unmarked and is

concealed in large part by businesses that have relatively no idea that we exist. The Family Advocacy Center also is responsible for ensuring the relevant team members are offered relevant training to ensure competency.

MISSION STATEMENT

“The Family Advocacy Center provides a secure and healing environment for the investigation of cases involving child abuse and neglect by utilizing a collaborative, multi-disciplinary team to reduce further harm to children and other vulnerable victims, while honoring the cultural values and traditions of the Salt River Pima-Maricopa Indian Community.”

Advocacy centers and other alternative locations for children in traumatic scenes

Our center serves as a safe and calm place for children (primarily) but also other vulnerable persons to come when their home environment is either a current crime scene or some other trauma-inducing activities are there. One way to minimize harm and trauma for the children is to get them off these scenes as soon as possible and taken to a safe and secure location, especially if the scene was traumatic or if their family members are being investigated. Our center is not an overnight facility, but we are able to bathe children, cool them down if they have been in the heat, warm them if they have been in the cold, feed them, clothe them, and help them rest. We have a secure and welcoming play room for the children to be distracted while they await the next phase of the investigation or until a more appropriate place for them to go is identified.

Prior to the availability of the center, children in these circumstances were left on scenes, sometimes in police cars, sometimes seeing things they will never forget. Other times, child who were victimized were left in police station lobbies or even in suspect interrogation rooms. An advocacy center is the ideal alternative. However, when an advocacy center is not practicable, other options should be considered. A child-friendly mobile vehicle could be a good option. The vehicle should be away from the original scene, in a safe distance and provide privacy, security and basic comforts. (Food, blankets, resting areas, books, videos, games, comfort items and possibly hygiene supplies) Some mobile centers are equipped to conduct forensic interviews with recording equipment or other examinations as well.

A receiving home could also be used for the purpose of a safe alternative location for waiting. These homes are private residences that are hosted by the owner/volunteers. The homes are available to bring children while they await the next phase of the investigation, or while waiting to be taken to placement. In these places, children are fed, warmed (or cooled), respectfully treated, and possibly rested for a short period. They are attended either by a CPS worker or the hosts of the residence. The residences of fellow community members are likely less traumatic and more comforting than the back of a police car or a police lobby. The children are not witnessing any more traumas. Of course, training and protocol would need to be implemented for such homes including confidentiality, personal safety and basic communication.

The SRPMIC Multi-Disciplinary Team

SRPMIC has a stand-alone police department that is responsible for enforcing all the laws that are applicable within the tribal boundaries, including tribal state and federal laws. The police department is the primary agency for federal investigations, including major violent offenses or child abuse. The tribal prosecutor's office is staffed with licensed attorney prosecutors, some of whom are designated as Special Assistant United States Attorneys (SAUSAs). The prosecution office handles all criminal offenses in the tribal court, assists in federal matters, advises law enforcement on relevant investigations, and handles the dependency cases in the tribal jurisdiction. SRPMIC has a child protective services team consisting of a manager, six investigators and a case aide. The Family Advocacy Center has two full time staff persons, a director and an office manager. Other members of the MDT include the contracted forensic interviewers (all of whom are trained child therapist and are paid on a per interview basis), education staff, behavioral health services staff members, and other team members on case specific matters.

The FAC co-locates one child dependency prosecutor, the entire CPS team, a police sergeant and four detectives who are the primary officers assigned to child victim cases, and the FAC staff. The FAC has future plans to include a victim advocate and a possible child psychologist. These team members who are located together have direct and immediate access to one another to use as resources. The police members are available to assist on investigations, but also for support on non-criminal investigations. When the center is hosting multiple children, all team members step up if needed to ensure the children are taken care of. (Examples include detectives entertaining children with video games while other team members bathe other children or monitoring hostile teenage children with CPS workers until the child calms down.)

Collaboration and the Multi-Disciplinary Process

The Family Advocacy Center provides a location for the multi-disciplinary team (MDT) to merge our different departments and disciplines into a unified group to reach the overall goal of safer children and families. As mentioned by my counterpart at Tulalip in her recommendations, a competent and experienced facilitator is a critical piece. The experience in SRPMIC in forming a true multi-disciplinary team was not easy. Viewing the other agencies as team members is easy to say, but in practice can be difficult.

Before we were a co-located team, CPS would often rely on the criminal disposition of a case to determine what steps should be taken. CPS workers often believed that if a person was not arrested or convicted for an offense, then CPS cannot rely on the incident to justify deeming the children in need of care. The multi-disciplinary process has allowed for the CPS team to learn more about the different types of evidence and legal burdens of proof in the justice systems and how CPS decisions are based on very different standards. Likewise, the police department members who are a part of the team gain an understanding that

punishment of the parent is often a detriment to the family as a whole and multiple factors need to be considered by the team to decide best outcomes for the family and the community at large. Police officers would often wonder why a mother who had allowed her children to live in a home with a drug user would keep her children. After learning of the complicated factors that go into a family's situation, including the history and the behavior changing programs that may be in place, police officers may become advocates for the family. The two disciplines often have a difficult time seeing matters eye to eye, but over time and with respectful dialogue, the team mission to child safety is accepted.

When these agencies are unable to communicate and collaborate with one another, everyone fails. Agencies resist communication and collaboration when they don't know who to contact, when to contact, and if they are even allowed to contact. They may have prior experiences that cause them to not trust in communication, or have been subject to discipline for going outside the lines. Often law enforcement in tribal jurisdictions, whether they are federal or tribal or even state, do not have clear and simple practices to report issues of concern to the child protective services. Often, the police departments rely on the police report alone to effectively share the concern for the child's safety. However, there may not be practical procedures in place to ensure that the reports are actually received. Many mandatory reporting laws require that reports be in writing. However, the details that cause concern for children may not be in the report or the focus of the report.

Prior to the FAC, CPS would sometimes have to wait weeks to obtain critical law enforcement information, such as police reports. A police referral to CPS could take several days to reach a CPS staff person when it was sent through inter-office mail. If a police investigation was pending regarding a child being victimized, the CPS team was not always notified of the full concerns and were not included in law enforcement requested forensic interviews. Such practices were a disservice to the child and to the Community. Now, the teams work together and coordinate and collaborate on all cross agency investigations. In a small closed community such as tribes are, victims are not anonymous.

Throughout their lives, victims are seen in the community in different ways as the years go by. If you're like me, the names and sometimes faces and voices stay with you. A young child who you becoming familiar with as a witness in a case, and later you see him in truancy or in dependency, and sadly someday you see him crossover to adult tribal court in shackles. It is something I didn't appreciate as a prosecutor in a large jurisdiction. To see an offender as a police officer, as a prosecutor and maybe even a judge, is to have a limited view in front of you, an incident-based view. In some systems, the broader story behind a person and how they got to where they are (the sociological background and factors) is considered mitigation and therefore likely only brought forward by vigilant defense counsel. However, justice and safety cannot be applied or planned for without the parties understanding the history. Some prosecutors or law enforcement, or even judges and tribal leaders are resistant to a whole history out of the perception that the facts will be used as an excuse for bad behavior and decisions, or that people are being judged for their history and not for the act for which they

are accused of. I believe those fears can be overcome by using a competent team who is trained on cultural competency, mental health, and legal ethics.

In SRPMIC, we have used technology, training, and protocols to mitigate these gaps. Our officers have access to a simple online form (CPS referral) that prompts them to articulate the situation as to why it caused them a concern for the child, even when the nature of the police call was completely unrelated. The form is immediately sent to the CPS team and is tracked. CPS can identify if this is family already under supervision, or perhaps a family who is reverting to dangerous decisions. In addition, the protocols in SRPMIC require immediate phone contact with both CPS and a prosecutor whenever a child is a victim of a crime or a witness to a serious traumatic event. The multi-disciplinary approach is operational on all calls that involve children, day or night, 365 days a year. Prosecutors and the CPS team use mobile computers to access their systems to identify concerns and relevant history as related to child safety, as well as blackberry phones to call and email one another as the case develops. This is the type of collaboration and MDT protocols that communities need to minimize harm to children, by bringing different voices and experiences to the discussion on behalf of safety for children.

Informed Forensic Interview

The SRPMIC MDT uses the informed-interview process, which is supported by research to reduce trauma and achieve better results. When a child is brought to the advocacy center and is likely going to be interviewed about an incident, as much information as can possibly be gathered about the child and the family dynamics should be considered. For instance, if a child previously told an adult in the advocacy center about a different incident and the result was that the child's care provider was arrested, the child will have this frame of mind as they consider what is safe to tell.

An example of harm when failing to gather accessible information prior to an interview: A victim child had recently had her hair cut very short to battle a lice problem. In the interview, the forensic interviewer was using some primer questions about truth and lies. She said "if I said, you are a boy, would that be a lie?" However, what the interviewer did not know was that the child had been being tormented for the previous weeks at school for being a boy, due to her haircut and had been in several fights for the teasing and also told her counselor that she wanted to harm herself as well. When prompted by what appeared to be an innocuous question, the question struck an emotional chord with the child and she completely shut down to the interviewer. The situation could have been avoided if the team had gathered any recent concerns from her school counselor or other members who had been working with the child. We of course recognize and apply laws of confidentiality and ethics, but are always child-centered.

The SRPMIC MDT only uses trained therapists to conduct our child forensic interviews. The interviewers are on contract basis and respond as needed. Admittedly, there are times when our wait time can be an entire day delay, however, we have never been in a situation to not keep a child safe based on this delay. Based on their experiences and skills, our

interviewers are able to gather clues to the child's readiness to discuss traumatic incidents based on body language and other cues. For instance, if a child is punching the couch when the interviewer leaves the room, the interviewer may advise that the questions are causing the child frustration. Police officers are not likely as equipped to identify such clues.

Technology

In today's world, there are lots of ways to share information, securely and quickly. When a child protective services worker responds to a home to check on a child, that worker may only be armed with a small bit of information that came in from a phone call or some written referral. However, if that person could have access to a historic file on the mother, the children and the members the household that is held by her agency, then more-informed decisions could be made.

One example of a strategy to maximize information access by technology is the confidential referral form process implemented at SRPMIC. The police officers in the community have a mandatory protocol that requires them to phone in all immediate concerns to the tribal cps line. The CPS on-call person has a mobile computer that allows them to access the historical information on the family. In addition, when the police officer is completing his call or shift, he must complete a written electronic referral form that is immediately distributed to the core multi-disciplinary team members, including the CPS managers, the responsible prosecutor, and the child crimes police team. Those team members are on a group message that can be used to dialogue with one another in real time, or as necessary.

By having this sharing of critical information, the team members on the scene or on the phone can collaborate on safety strategies and avoid false assumptions (such as the current incident is isolated and could not have been expected). Information that can be quickly shared is if alternative placements for the children are safe and appropriate. If a child is on a traumatic scene and can be taken to a relative's home, cps and police should be able to quickly accommodate that by doing a quick check on the relative and the address. I am aware that in many tribal jurisdictions, many children have been removed from a family member and placed with other relative, only to learn that those family members had their own children removed for serious reasons when there were no effective and quick ways to validate such information.

Culturally and Discipline Competence

I am also well-aware of the difficulty for tribal jurisdictions to recruit, hire, pay and sustain competent employees in these challenging fields. These disciplines must be staffed with objectively competent team members. In my experience, the most effective employees in these fields are not only educated in their respective fields, but have also gained substantive experience in established programs. Those persons, who ideally have a personal affiliation with Native American cultures, who subsequently add the cultural competency and the commitment to the multi-disciplinary method have had the most significant impact for family services and

programs. Personally, when I was a law student, I was able to intern with established tribal-attorneys. I was advised that in order to be a competent attorney for a tribe, I should acquire outside (non-tribal) experience first. At first, I was reluctant, but have come to appreciate and repeat that same advice. The risk is that many Native American professionals, attorneys or otherwise, is hired by tribes without these critical years of competent “on-the job” training, and the quality of these tribal services suffers. (Example, I often encounter professionals in many jurisdictions from who do not understand confidentiality laws and withhold information from one another to the end of failing the families, but an experienced and competent professional easily knows the proscribed exceptions). When a tribe is capable to hire new professionals, who are able to train and mentor young Native American professionals by partnering them with competent experienced professionals within the tribal program, the situation may be more positive. However, I know that many tribal programs experience the pitfall of bad habits or bad practices continuing since that is the way it has always been done. Therefore, I recommend that tribal funding for programs include competitive wages, objective job competencies, and access to cultural competency training.

Effective programs should be culturally-traditional in spirit and values, in that the group is committed to healing the ones who are in need, but the methods must incorporate evidence-based practices and techniques as well. I have had the occasion to have witnessed program developers loosely develop a program based on a value that is not orchestrated to the details so that the execution of the program fails. (Example: a program whose value is grandparents are sacred and should be deferred to in planning for children. However, every premise must have protocols and understanding as to individual circumstances, so that an abused and neglected elder is not saddled with the pressure of making decisions they are not capable of making). Areas such as brain development are critical to understand and appreciate and Native American children deserve to have the best services, even when they are innovative and not necessarily a traditional method. Finding a balance of traditional values and proven-methods is the challenge of program managers and tribal leadership. Tribal leadership must be informed and take a role in these matters.

Cultural competence is community specific and includes contemporary attitudes and values, and not limited to education of Native American history. In my experience, cultural competence is a skill best developed through experience and peer review. Our experience has been that adding a cultural competence component to as many training lessons as we can keeps the dialogue engaged and effective. Without a doubt, educating team members about the history of the tribal people, the trauma and the shameful practices of government agencies in the past and the resulting mistrust tribal members may feel, is a necessary part of preparing team members to do effective child protection work.

A CPS worker, or any team member who is charged with ensuring child safety, must be familiar with this history and appreciate how it is likely to infiltrate into the contemporary dynamics. However agencies often provide a general list of rules and or “do’s and don’ts” to address the “Indian country” distinctions. However, cultural competence includes recognizing that stereotyping, even positive stereotyping is harmful. A culturally competent team member

understands the history of the community where they work, the traditional values and practices, the contemporary challenges and trends, and accepts that every family and individual has their own views values and history. To become culturally competent, a person must engage with the relevant community, even if that person is a federal employee or contractor. Federal agencies will not be able to create a one size fits all course to make child protection team members culturally competent.

A common example relied upon for demonstrating cultural distinctions is that of sleeping arrangements in Indian homes. In many Native American communities the layout of the home or residence may be in a way that allows for family members to sleep in any available space and often in communal areas or beds, or there is a tradition to use a family bed as a matter of closeness and bonding. In a non-Indian community, a female child who sleeps in the bed with her father causes concern to some, especially if that child is beyond toddler age. Before such a scenario would cause concern for a culturally competent investigator in many Native American communities, other factors would need to be present. An untrained or unfamiliar adult who is provided this information and who reacts in a shocked way that causes the child to be ashamed or embarrassed, or to be confused.

Cultural competency education, based on individual communities should be used to develop what are the questions to ask, and when flags are raised and when are they not. For instance in a culturally trained environment, the following questions may be posed before becoming concerned, such as how did the sleeping arrangement come to be discussed, are there any other adults in the home, is there any known history of violence or abuse in the family or extended family, is the child doing well in school, and did the child appear uncomfortable when she discussed the issue.

Adding Cultural Competency Points to Community Specific Trainings

Battling the pervading misconceptions is always a challenge, by Native Americans and non-natives, such as ideas that some things are “just the way it is”. One example is a cockroach infestation (understanding that cockroaches are not independently an indicator of a family in need). With regards to perceptions of cockroaches in homes, our team members had a whole range of reactions from complete acceptance of cockroach infestations as an unavoidable aspect of life for some people and not to be judged, to a complete repulsion for the presence of even one cockroach in a home. This disparity needed to be remedied. The FAC created a forum and educational course for the matter of cockroaches, such as health risks, preventive measure, the causes of infestation, and the resources available to address the infestations. The training included discussion of mental health barriers, physical health barriers, substance abuse and lack of financial resources to eradicate the concern. The training allowed the child protection team members to learn more strategies to discuss the issue with families in ways that would help understand cockroaches in a home and the overall well-being of the family. Team members now have comes resources to offer, some questions to ask, and some understanding of how to be sensitive to the potentially embarrassing situation. While

cockroaches do not discriminate on the types of home they invade, the training offered by our group included some discussion of tribal investigations in general. Historical mistrust of outside investigators, fear of lack of confidentiality in a small community, the possible shame an elder may feel that his children and grandchildren have not taken care of him and his home and other similar cultural matters were discussed. No independent outside source could have “trained” our group on this topic to appropriately fit our needs. Our team instead used multiple disciplines and ongoing dialogue within the community context to train our members.

Such community-specific training is critical to having a culturally-competent team. Building trust with the agency partners and joining in purpose to achieve safety and dignity for families in need is a result from the team learning together, sharing experiences, and supporting one another. When the agencies are isolated, the mission is often elusive and focused on a measurable outcome that is different than the Communities overall goals for a safe and healthy community.

Drew – a fictional child with a common experience

Following is a fictional timeline of a Native American child who I have created for purposes of demonstrating opportunities for change. This fictional account may seem unrealistic to many, however for those who have worked in some of our communities, a child with similar experiences is very plausible. My fictitious child has spent years on the reservation and some off the reservation. He attends state-operated schools off the reservation.

Drew, age 7 (2006)

In 2006, Drew was 7 years old. He lived with his dad, his mom, his uncles, his grandpa and his two younger siblings. His brother was 4 and his sister was just a baby. Drew was forensically interviewed as he is a possible victim or witness to an incident when his uncle held a knife to family members, and barricaded himself in Drew’s home, when Drew was living off the reservation in the nearby city. Drew reports that when Uncle Richard was upset, he and his brother were sleeping. He offers no other details, however the investigation revealed that he was yelling and crying in the background on the 911 tape. His dad and his uncles were in a gang and they drank a lot. They sometimes smoked “g”, but he wasn’t supposed to touch it or be in the room when they smoke. He knew what the pipes looked like and where they are kept. He also described what kinds of guns his dad had and what kinds his uncles had. Sometimes when they were playing around, his dad showed him how to make gang signs and to wear a bandana across his face. Drew talked about a police officer who works at his school who is nice and always talked to him. But Drew also said that police are not allowed in the house, and sometimes the family hid from them. He had seen police officers use the “teasers” on his dad and those hurt. His dad has been shot by a gun before but he didn’t die. His dad can shoot people if those people try to hurt him. Sometimes the bad friends shot guns at Drew’s house, but he and his mom and his little brother and sister hid in the bathroom. It just broke stuff. When his mom and dad fought, no one hit anyone, but sometimes dad held onto mom’s arms.

Dad made her cry. Sometimes mom goes to grandma's house with the baby but Drew and his little brother always slept at home.

Agency Responses:

Uncle was prosecuted. State CPS responded. This was the first contact by State CPS. Mom advised she was moving to reservation to live with her mother and her children and the children's father was not coming. Father said he was going to go to substance counseling. School records were not obtained. No other agencies were consulted. Mom was not referred to services.

Drew, age 9, (2008)

A search warrant is served on the child's residence on the reservation. Drew is present. His parents are held on the ground in front of him with officers and guns. Drew is allowed to leave with his grandpa. Weapons are seized and some methamphetamine pipes.

The same year, Drew is excessively truant. He is also suspended for bring a knife to school and he is bullying other children. He attends a state school off the reservation.

Agency Responses:

Father was arrested and sentenced to jail for 19 months. Mother faced no criminal charges. Tribal CPS was notified. This was the first tribal CPS contact and they did not know of the state CPS prior. No truancy referral is made for enforcement or services. Tribal CPS is unaware of the bullying behaviors. Tribal CPS determines that mother is a victim of the father and since he is removed, no services are offered.

Drew age 11, (2010)

Drew calls 911 when his parents are fighting and he tell the dispatcher that dad is kicking mom. Mom has blood on her face. Drew and his brother and sister are hiding in the garage.

Agency Responses:

Father is arrested. Mom refuses to cooperate and will not accept service of subpoena. Father is released from custody on the day of trial, about three months after incident. The police report does not mention that any children hid or called police, and only mentions that they were not harmed. CPS received the police report four weeks after the incident. Mother advised CPS that she was done with the father and he moved out and was not coming back. CPS was not aware the father was in jail. CPS offered mother the numbers for crisis and a domestic violence counselor. She was not advised of possible CPS actions or the risk to children.

Drew, age 12, (2011)

Drew's father is murdered in the home when no one else was home. No arrest is made but the family believes he was killed by a person the father owed money too. Drew and his brother are the first people to find the father's body.

Agency Responses:

Police attempt an investigation but identify no leads. CPS was notified and children are referred to behavioral health. CPS was not notified of the suspicions of the murder or any

details. CPS does not believe the harm to the children was the result of the parents' actions or lifestyles.

Drew, age 15, (2014)

Drew is documented as a gang member. He is arrested for tagging a wall. He is no longer in school. He has two prior arrests for alcohol and one for assaulting a teenage boy. He has a girlfriend; however the girlfriend's mother doesn't allow him to come to her home but reports that the children are sexually active. Drew reports to the probation officer his mother is drinking a lot. Drew's brother reports to probation officer that Drew yells at mother a lot and calls her names. Drew also has a large tattoo across his forearm saying his father's name, and his gang name on his other arm. Probation is not told of father's death or its circumstances.

Agency Responses:

Police officer submits a report for the delinquent act. Prosecution reviews the one report and is aware of two others but does not review. He is charged and pled responsible. He has a defense attorney who advises him that he will have a short probation term where he should remain out of trouble. The probation officer prepares a pre-sentence report by interviewing Drew, his mother and his brother and reading the police report. Mother denies any alcohol concerns and says her children just do not like rules. Attendance records are not sought. CPS is not notified. School enrollment is not confirmed.

Drew's life path is fictional, but not completely uncommon. What we in positions to have influence on practices and services are tasked to do, is to identify how can we identify these children and how can we limit their trauma and find services that may lead this family to a healthier life. In SRPMIC, we have not stopped the cycle. However, we have begun to implement tools to hopefully give us a good start.

Possibilities of SRPMIC MDT

When a young teenager is encouraged to be a gang member by his family from a very young age, and has watched gang activities and substance abuse his entire life, it is unrealistic to expect him to remain unaffected. When no one in his home is employed and no one encourages him to attend school daily, it is not surprising when he is truant. If he becomes a young parent, expecting him to be able to make good decisions for the young developing child in his care is also not realistic. When the system takes a singular track focus and criminalizing these young people for predictable actions, such as graffiti, domestic violence acts or substance abuse related incidents, these youth are often affirmed that their life path is pre-determined by their circumstance. In addition, jail may simply serve as credibility for them to their peers and serve as the milestones.

Without addressing these issues in a broader view and offering services and programs to the family when they are young, the cycle is bound to continue. In the above example, perhaps in-home family preservation services would have made an impact to the family in the child's first contacts. However, when no communication with the related departments, the opportunity was missed. Other missed opportunities include truancy referrals, other

educational referrals, and the non-communication between outside jurisdictions to the investigators.

Resistance can be high to such a collaborative MDT approach for various reasons. Some view the intrusiveness of an informed investigation, or a team that is analyzing the family as a whole from the times when they are merely “at-risk” as paternalistic and unfair. Also, when the team members are not culturally competent and are not operating under a clear mission including ethical boundaries, such a fear is justified. Another frequent barrier is misinformed ideas of how federal laws regarding confidentiality prohibit most critical information, including not understanding the federal law exceptions of consent and abuse reporting.

In our experience, as an Indian Country MDT, we are a busy team. Outside MDTs are often surprised to hear how many cases we collaborate on based on our population size. However, the more surprising piece is that we are able to use the MDT process for families and incidents that normally do not reach the criteria for MDT cases in other jurisdictions. Largely due to resources and caseloads, most MDT protocols are limited to serious physical or sexual abuse. Often CPS immediate responses are limited to immediate safety concerns. The SRPMIC MDT model is preventive as well as responsive, in that we address lower level “threats” and neglect issues as appropriate for our team. Police officers may not be involved in a full criminal abuse investigation, but they offer support as to history and safety escorts and always offer their collective input as to case process, if relevant. Our team regularly meets to discuss “at-risk” youth, who are demonstrating some delinquency or truancy, or who have been the subject of CPS referrals that are based on neglect (such as substance abuse by parents or domestic violence exposure).

Most MDTs would not involve the entire team and dedicate a staffing to a case of a four-year old wandering down the road. Perhaps if the parent told police the child escaped while the parent was pre-occupied and the officer who is also a parent accepted that answer, the case would be a simple closure. However, in a jurisdiction that has the protocols we do, we are able to identify if the parent is known to have a significant history of opiate addiction, for example, or that the parent has had several children removed from them in the past for neglect. The duty to keep children safe is the community at large. Children deserve a full investigation, not simply a system of inquiry, but one of checks and double checks. We are proud of the protocols and our continuing effort to employ them with respect, dignity and community values.

Disconnectedness of the agencies and departments that have contact with a family often result in the agencies focusing on the incident in isolation, rather than in context of the family history and other contacts with related departments. However, I believe that in Indian Country, we can use our small closed communities as strength, in that tribes may have the ability to connect their agencies and departments with creative and progressive strategies. As prosecutor for SRPMIC, I instituted a mandatory protocol along with the chief of police, the directors of our behavioral health department, the corrections department and CPS that was centered around children who were the subject of police contact based on suicidal threats or attempts. Pursuant to the law of the community, the police officers have the legal authority to

detain someone who appears to be harm to themselves. While there are other supportive departments to assist in these scenarios, such as a crisis response team, the police officers who felt the child would not be safe would make a safety decision to detain the child pending a psychological exam. Our protocol amended that practice to require that the officer and crisis team consult with prosecution and CPS to evaluate what other remedies were available, to avoid detention and to ensure the child and family received appropriate services. In some scenarios, the team was able to identify that the legal guardians or responsible adults either were not willing or able to secure the child appropriate services. On occasion, CPS determined that the care of the child was inadequate to keep the child safe. On other occasions, family counseling was needed in addition to the child's behavioral health needs. Leaving the decision to one department without the collaboration of other departments who may have had critical information as related to the child and family was insufficient. By using the team collaboration, many children ended up in appropriate treatment and not in the detention center. However the police department could not have achieved the same result on their own.

When agencies do not collaborate and share information in the interest of child safety, the results are more likely to be unsuccessful. Relying exclusively on self-reporting fails families. I know that many CPS investigators are limited in the information they have in investigating. They may only have a brief referral, their actual first-hand view of the home when they visit, the self-reporting of the parent and perhaps an interview with the reporter or the child in question. Some of the families are not even able to identify that their lifestyles are harmful to a developing child and therefore don't answer "yes" to the question if there are any safety issues in the home. How could they when it may be all they have ever known? The cycle of substance abuse and violence can become so normalized that sometimes the young parent caregivers do not think of their lifestyle as "unsafe". When these limited sources are unable to verify or identify a safety concern, people who are familiar with the family may become frustrated. We try to ensure that our team has access to the necessary and critical evidence to identify these concerns.

In the juvenile justice system, the same barriers occur. When a child enters the delinquency process, most often the only agencies involved is the police, the prosecution and the judicial team of a judge and probation officer. Probation officers are often tasked with a pre-disposition investigation. Many times the resources for information is limited, and the effectiveness of such an investigation is only as good as it's information. If the probation officer is only given one police report and an interview with the child and parent, there is little opportunity that a fully-developed investigation will identify trauma history or other factors. Further, unless a psychologist or other mental health professional is included, the services recommended to "rehabilitate" the child will likely be insufficient. I have seen many cases where the sentencing recommendation for a child is comparable to a "kid just being a kid" (such as throwing rocks at a window type offense), only later to find out the child has a substantive history that needs intervention for the whole family and not just community service to really make an impact.

Our team members are culturally competent, including understanding the cycle of violence or substance abuse, and gather information to open discussions with the family. Of course, it is still challenging and difficult, but our team protocols provide us with the tools for as quality investigations to hopefully improve the life trajectories for our children. The MDT in SRPMIC has the ability to review the circumstances of a family at the early stages of concern. Any member of the team can request an opportunity to review the situation. Example if education is concerned when a young child is missing many school days. The team could consider whether there are other cps concerns, or police contacts. Often the team member will identify other factors that are affecting the well-being of this family. These efforts are preventive, and allow the family to know about resources and services ideally before a crisis scenario occurs.

Conclusion

All tribes are situated differently and no one solution will be able to work for all. I hope that the experiences that we have had will offer some ideas to others in a decision-making positions. I firmly believe that now is the time for us to go all in for the sake of healthy and safe futures for our young people. Evidence based programming, competent employees and contractors for the respective disciplines, funding for training, and educated leaders are on the top of my wish list. Multi-disciplinary team concepts and mission can be achieved with relatively small investments, but to be effective and successful, the tribes need support primarily in the area of funding and technical assistance. I further recommend that ethics, competence and cultural respect be tenets of any programming supported by this task force.

Written Testimony for Nadia Seeratan

Nadia Seeratan, Senior Staff Attorney & Policy Advocate, National Juvenile Defender Center

Nadia Seeratan is the Senior Staff Attorney and Policy Advocate with the National Juvenile Defender Center (NJDC). Prior to joining NJDC, Nadia served as the Racial Justice Attorney for the American Civil Liberties Union (ACLU) of New Jersey where she engaged in advocacy, public education, and lawsuits designed to positively impact communities of color. Nadia came to the ACLU from New York City's Legal Aid Society Juvenile Rights Division where she represented children in child protective and juvenile delinquency proceedings. Ms. Seeratan works to build the capacity of the juvenile defense bar through national, state, and local advocacy. She provides training and technical assistance to juvenile justice system professionals, conducts appellate advocacy, is involved in assessment of state juvenile justice systems, and participates in various other aspects of juvenile indigent defense advocacy and reform efforts. She is committed to challenging racial and ethnic disparities in the justice system. She received her JD from St. Mary's University School of Law and her Honours BA from the University of Toronto.

Please see front pocket for testimony

Written Testimony for Ethleen Ironcloud-TwoDogs

Ethleen Ironcloud-TwoDogs, (*Oglala Sioux Tribe*), *Technical Assistance Specialist, Tribal Defending Childhood Initiative, Education Development Center, Inc.*

Sina Ikikcu Win (Takes the Robe Woman), Ethleen Iron Cloud-Two Dogs, is enrolled as a citizen of the Oglala Sioux Tribe and has Crow ancestry on her mother's side. The late Pehin Sapa Win (Black Hair Woman), Mary Locke Iron Cloud, and Isto Wanjila (One Arm), Eddie Iron Cloud Jr., are her parents and her Tiospaye (extended family) include Taopi Sica (Bad Wound), Locke, and Mila Yatan Pika (Knife Chief). Ethleen provides training and technical assistance nationally to tribal programs and tribal juvenile detention centers in the area of tribal youth programming. Ethleen is a past Bush Foundation Fellow and serves as a volunteer on the Knife Chief Buffalo Nation Organization Board of Directors, the First Nations Behavioral Health Association, Rosalyn Carter Mental Health Task Force, and the Bureau of Indian Education Advisory Committee for Children with Exceptional Education Needs. Ethleen is a doctoral student at Colorado State University.

Greetings to all friends, relatives and colleagues, I would first of all like to acknowledge the ancestral spirits and guardians of this beautiful land, I am honored to be a guest here. I am Sina Ikikcu Win (Takes the Robe Woman), Ethleen Iron Cloud-Two Dogs, enrolled as a citizen of the Oglala Lakota people and also carry Crow Tribal ancestry. I am the daughter of the late Isto Wanjila (One Arm), Eddie Iron Cloud Jr. and the late Pehin Sapa Win (Black Hair Woman), Mary Locke Iron Cloud and I come from the tiospaye (extended family) of Knife Chief, Bad Wound and Locke. I currently live in Fort Collins, CO studying for a doctoral degree in Education at Colorado State University. My permanent home is in Porcupine, SD on the Pine Ridge Indian Reservation.

“For my mom to be there for me, to help me stay in school, to encourage me to do bigger and better things with my life. And to stop using alcohol and drugs.”

January 2014, Response from a 16 year old girl detained for nearly four months in a tribal juvenile detention center when asked about her most important need. She last attended school a year ago (February 2013) and the last grade she completed was 8th grade.

I am a Technical Assistance Specialist with Native Streams Institute (NSI) and Tribal Youth Training and Technical Assistance Center (TYTTAC), Education Development Center, Inc. (EDC) and am one of the two technical assistance providers assigned to the Rosebud Sioux Tribe's Defending Childhood Initiative (DCI) project, the other Technical Assistance provider is my colleague Anna Marjavi, from Futures Without Violence. My relative and colleague, Terri Yellow Hammer, is assigned as a technical assistance provider to the Rocky Boy/Chippewa Cree Defending Childhood Initiative project. Rosebud Sioux Tribe and Rocky Boy/Chippewa Cree Tribe are the only two Tribal grantees funded under the Defending Childhood Initiative.

Today I speak from not only my experience as a Technical Assistance Provider to a Tribal Defending Childhood Initiative project but from past and current experience in my work with

Tribal Juvenile Detention Centers. Previously, I served as an Education Specialist with the Bureau of Indian Education and was assigned to work with the Tribally-operated and Federally-operated juvenile detention centers in Indian Country in the area of education and other programming. I also work with Tribal Juvenile Detention Centers as a Technical Assistance Provider under OJJDP's Tribal Juvenile Detention Reentry (TJDR) Initiative. First of all, I would like to commend the Advisory Committee on American Indian/Alaska Native Children Exposed to Violence for setting up this public hearing and especially for organizing a panel that highlights the juvenile justice system and how it impacts American Indian youth. I am truly honored to provide input on this important topic with particular focus on American Indian girls in the juvenile justice system.

The needs of American Indian and Alaska Native girls in today's society are unique and many. For the purposes of this testimony, the focus will be on the needs of American Indian girls in detention. First, as a general snapshot of our young relatives, common to this population are that their alcohol and other drug use rates, educational challenges including a high dropout rate, intentional and unintentional injury rates, rate of sexually transmitted diseases and rate of pregnancy while in their teens are higher than all races overall in the United States (Barlow, Mullany, Neault, Compton, Carter, Hastings & Walkup, 2013). Additionally, they along with their male relatives are at very high risk for depression and kill themselves at a rate more than three times the national average in the age groups of 5-14 years and 15-24 years (Gilder & Ehlers, 2012).

In a study of American Indian adolescents and their initiation into substance abuse, Whitesell, Kaufman, Keane, Crow, Shangreau & Mitchell (2012) found that American Indian girls were more likely than boys to use cigarettes as a gateway drug. Additionally, meth use is on the rise among American Indian adolescents with three times as many reports of meth use in the past year among youth, ages 12 and older, than other races in the United States ((Barlow, Mullany, Neault, Compton, Carter, Hastings & Walkup, 2010). In speaking with a Juvenile Corrections Officer at a Tribal Juvenile Detention Center, it is reported that many of the girls that are booked in detention have prior suicide attempts and often make a suicide attempt while detained. It must be said that while American Indian youth and for purposes of this testimony, American Indian girls, have a myriad of challenges facing them that prevent or limit them from reaching their full potential, they also have great strengths, talents and skills that are often not highlighted or talked about. In order to create opportunities that capitalize on their strengths while focusing on their needs, I offer the following strategies and solutions.

Solutions/Strategies/Needs

Overall, an integrated, coordinated, collaborative and comprehensive systems approach that is grounded in culturally appropriate values, principles and practices is needed for any of the following strategies to be effective:

1. With one in three American Indian girls having experienced or being at risk for sexual assault and violence, culturally appropriate mental health services are a critical need for this population. From a conversation with a Traditional Healer, it is strongly recommended that a process be initiated and implemented that addresses the spiritual

healing of girls who have experienced sexual abuse/assault in accordance with the respective Tribal culture of the girl. For example, one Tribe has a spirit calling ceremony where the spirit of the person who has experienced trauma and who has experienced loss of spirit as a result of the trauma is reintegrated with the mind, body and emotions. Indian Health Services as the primary behavioral health provider in Indian Country needs to initiate and implement a partnership with the Bureau of Indian Affairs Division of Corrections as well as Tribal Corrections departments to ensure that American Indian girls are screened for suicide, depression and other mental health needs and FOLLOW UP with appropriate, regular and consistent culturally appropriate mental health services.

2. Substance abuse programming and services is desperately needed for this population, particularly with meth use and addiction on the rise. More resources are needed for prevention, early intervention (before the girls end up in the juvenile detention facility), intervention, and culturally appropriate treatment and healing.
3. Programming and activities are needed in the juvenile detention facilities and in the reentry process including family engagement and support services. Fifteen girls detained in tribal juvenile detention facilities across the nation as of January 2014 responded to an informal feedback form on the needs of American Indian girls in detention. They ranged in age from 14 years to 17 years of age. Thirteen of the fifteen girls had not completed beyond the eighth grade. At the time of their feedback responses (January 2014), they had served anywhere from 14 days to 180 days in detention. Some girls cited the need for more time for hygiene maintenance (e.g., showering, shampooing their hair); more programming including self-help groups, cultural activities, ceremonies, outdoor activities, sports, anger management, education, alcohol/drug prevention, beading, church, dances, basketball, female cultural education, workouts, sewing, field trips, sweats (purification ceremonies). Many of the girls cited family support as a big need for reentry programming.
4. Education screening and education services have to be provided at all juvenile detention facilities as part of the intake process and should be followed up on throughout her stay and after the girls' reentry into the community. Responding to a feedback form that asked about the needs of girls in detention, many of the girls emphasized the need for education as a critical need. Thirteen of the fifteen girls, ages 14-17 years, who responded to the feedback form reported that the last grade they completed was the eighth grade; and they expressed a desire and need to return to school. The Department of Education, Bureau of Indian Education, Bureau of Indian Affairs, Tribally-operated schools and Tribal Corrections need to enter into a Memorandum of Agreement to provide education services to youth (not only girls) that are detained in juvenile detention facilities. One Juvenile Detention Facility Manager strongly recommended placing modular buildings next to the juvenile detention centers if they don't have space to be used for educational programming.

5. Scott & Langhorne (2012) stressed the need for activities to develop critical thinking and coping skills among American Indian girls, these can help them with making healthy decisions and increase protective factors that would be important in reducing risk factors. Healthy and positive communication skill building activities should be incorporated into all settings, including school and juvenile detention center settings.
6. Extensive and ongoing culturally appropriate research is needed relative to the needs and experiences of American Indian girls that are jailed and detained in adult and juvenile detention centers.
7. Tribally operated and federally operated juvenile detention facilities that detain American Indian girls need resources to be able to respond to their needs; including funding for additional staffing, activities and training as well as for upgrade of facilities and funding of construction and renovation that would allow for education/school and other programs and activities.

You might be thinking "JDCs were not set up to provide for all the needs of the youth". However, with the Tribal Law and Order Act (TLOA) allowing for enhanced sentencing authority, youth are and will be detained in JDCs for longer periods of time. The lack of services in JDCs, in particular educational services, severely hamper the growth and potential productivity of American Indian girls, limit their successful reentry to the community and can lead to recidivism.

In summary a comprehensive, coordinated, collaborative and most importantly, culturally appropriate system of care is needed to address the needs of American Indian girls in detention and for reentry purposes. American Indian youth, both boys and girls, come from a history of genocide, oppression, and historical trauma which has resulted in varying degrees of disconnection from the cultural and spiritual life ways that can sustain them and yet they continue to strive, survive and endure what faces them. As my relative and colleague, Dr. Maria Yellow Horse Brave Heart stated, "a consideration of Native history and the continuing transfer of trauma across generations are critical in developing prevention and intervention strategies that will be effective for Native Peoples" (pg. 2, Yellow Horse Brave Heart, 2003). It is up to all of us to create prevention, intervention and healing strategies and support systems that are grounded in the individuals' respective culture so they and their families can be strengthened and American Indian girls can reach their full potential. On behalf of all American Indian and Alaska Native girls currently in juvenile detention facilities, my hope and prayer is that we can make a better path for them. Lila Pilamayaye (thank you very much).

References

- Barlow, A., Mullany, B., Neault, N., Compton, S., Carter, A., Hastings, R., & ... Walkup, J. T. (2013). Effect of a Paraprofessional Home-Visiting Intervention on American Indian Teen Mothers' and Infants' Behavioral Risks: A Randomized Controlled Trial. *American Journal of Psychiatry*, 170(1), 83-93.
- Barlow, A., Mullany, B. C., Neault, N., Davis, Y., Billy, T., Hastings, R., & ... Walkup, J. T. (2010). Examining correlates of methamphetamine and other drug use in pregnant American Indian adolescents. *American Indian & Alaska Native Mental Health Research: The Journal of the National Center*, 17(1), 1-24.
- Gilder, D., & Ehlers, C. (2012). Depression Symptoms Associated with Cannabis Dependence in an Adolescent American Indian Community Sample. *American Journal on Addictions*, 21(6), 536-543. doi:10.1111/j.1521-0391.2012.00281.x
- Pierce, A. (2012). American Indian adolescent girls: vulnerability to sex trafficking intervention strategies. *American Indian & Alaska Native Mental Health Research: The Journal of the National Center*, 19(1), 37-56.
- Scott, D., & Langhorne, A. (2012). Believing in Native Girls: Characteristics from a baseline assessment. *American Indian & Alaska Native Mental Health Research: The Journal Of The National Center*, 19(1), 15-36.
- Whitesell, N., Kaufman, C. E., Keane, E. M., Crow, C., Shangreau, C., & Mitchell, C. M. (2012). Patterns of Substance Use Initiation among Young Adolescents in a Northern Plains American Indian Tribe. *American Journal of Drug & Alcohol Abuse*, 38(5), 383-388. doi:10.3109/00952990.2012.694525
- Yellow Horse Brave Heart, M. (2003). The Historical Trauma Response Among Natives and Its Relationship with Substance Abuse: A Lakota Illustration. *Journal Of Psychoactive Drugs*, 35(1), 7.

Written Testimony for Lea Geurts

Lea Geurts, Court Administrator, Pyramid Lake Paiute Tribal Court and Instructor, Fox Valley Technical College

Lea Geurts has dedicated her career to the enhancement of Indian country justice systems. Lea began her career with Pyramid Lake Paiute Tribe working with juvenile and adult offenders. During this time, Lea developed and implemented the current probation system with an emphasis on building a stronger tribal community, enhancing community safety, and reducing recidivism by bridging “best practice” concepts with the utilization of local tribal resources. Recently, Lea was promoted to the role of Court Administrator where she has been provided the opportunity to further develop the tribe’s judicial system. Lea continues to actively promote and work on creating collaborative relationships with other departments and jurisdictions to provide resources that will enhance all aspects of the judicial services provided by the court. Lea holds her BS degree in criminal justice administration. Additionally, Lea has worked with multiple tribal technical assistance providers as a consultant and instructor on an array of different topics. Lea continues to be passionate and committed to the enhancement and development of tribal justice programs.

On behalf of the Pyramid Lake Paiute Tribe and myself I want to thank you for inviting me today. It is both my pleasure and honor to be able to speak to you today about children exposed to violence and Tribal Juvenile Probation.

I would like to start by giving a scenario that is all too common and familiar to those of us that work in the field and interact with “troubled” or “delinquent” youth.

Johnny is a 14 year old young man that has been adjudicated as a delinquent offender for an assault and minor in possession of alcohol that took place at a community event and was believed to be gang related. Johnny was referred to tribal probation on a suspended sentence in hopes of providing some interventions and resources for Johnny, as this is his first time before the Juvenile Justice System. During the case planning process and some investigation the probation officer was able to develop a time line of different instances throughout Johnny’s life where he has had contact with different agencies. At age four, Social Services was contacted because Johnny was found by a neighbor wandering the street asking neighbors for food and appeared to be unbathed and in soiled clothing. Johnny was returned to his mother and some monetary assistance was provided to the family for food. At age eight, Johnny is referred to the principal’s office for pushing other kids off of toys during recess and fighting and was given lunch time detention; at age 10 Johnny is referred again to the principal’s office for cursing at his teacher and refusing to engage in class room activities, a conference meeting was set up with Johnny’s mother, who did not show, up and Johnny was sent back to class. At age 11, Johnny was found by law enforcement to be with some older boys that were spray painting a local water tower. Johnny was driven home by the officer, the officer attempted to make contact with Johnny’s mother but was told that his mother was at work, the mother’s boyfriend

was home but seemed uninterested in what Johnny was up to and showed little concern that Johnny had been brought home by law enforcement. At age 12, Johnny is found to be skipping class and hiding in the school bathrooms, Johnny is referred to the school resource officer who instructs Johnny he can't hide out in the bathrooms at school and needs to go to class, one month prior to summer break Johnny stops going to school altogether. The following school year Johnny is placed in a special class for students that have been deemed "disruptive" Johnny is truant off and on and has lost any academic aspirations but manages to stay under the radar and is promoted to high school. Johnny continues to have issues both with attendance and academics. Up until this year, Johnny was known to be more of a loner and not have a lot of friends, however, a school teacher reported seeing Johnny being picked up from school during lunch break by kids she knows that have been expelled from school for fighting. That following weekend Johnny was taken into custody for the assault and minor in possession that placed him under probation supervision.

It is fair to say that Johnny, at minimum, has a history of behavioral problems, however, when we pull the curtains back and take a deeper look into Johnny's life we see a different picture, we don't see the unruly child that's disruptive in class, fights with other kids, disrespect elders and has no regard for the law. We see a victim, we see a child exposed to violence. We see a child who was in the car and watched his father rob a convenient store cashier at gun point and then be sentenced to prison. We see a child whose mother has a drug addiction and struggles to provide the basic needs of her child, such as food and safe home. We see a child who watches his mother get beat by her boyfriends and then beats him for his mere existence. We see a child who turns to extended family for solace only to be sexually assaulted by an older cousin. We see a child that is teased and made fun of because he is different than the other students in school and lastly we see a child that watches a gang initiation and rather than being scared and wanting to retreat to his home for safety he wants desperately to belong.

More often than not "Johnny" is who is referred to Juvenile Probation and probation is tasked with trying to overcome all of the years of exposure to violence, learned survival and the anger and distrust that has been embedded and reinforced over the years. In trying to address the needs of our juvenile clientele tribal probation officers face many hurdles. If I were to make a list of the top three issues that tribal probation faces, adequate funding is always somewhere on the top of everyone's list of challenges especially when it comes to securing resources for our youth. However for the purposes of this discussion and the identification and recommendations I believe it's important to keep the mind set of doing more with less and focusing on how we can enhance or modify resource availability with minimal monetary impact to our already struggling Tribal Justice Systems.

One major hurdle that I believe tribal Probation Officers face is standardized protocols for information sharing/assessment and referral: As we seen with Johnny throughout his 14 years there were multiple contacts and missed opportunities for family interventions to take place. So often a minor is placed under probation and wants to do well, responds favorably to the structure and is making progress in the different types of programming that the minor has

been referred to. However the minor continues to be exposed to the same environment that assisted him in the development of his current behaviors and at times becomes apparent in an attitude displayed by the parents that either being put on probation or court involvement is somehow a “rite of passage” or a parent for an array of different reasons may take on the attitude of “he’s yours now, you fix him.” This attitude becomes difficult to combat. Additionally there may be other agencies having contact with the family and the probation officer is not notified. For example: Law Enforcement receives a phone call for a domestic violence dispute. The perpetrator may be arrested and on-site medical care provided to the victim but the minor and the exposure to the violence may not always be addressed. The same issue can come up when a probation officer is out in the field conducting home visits and sees not necessarily an act that would fall under mandated reporting for abuse and neglect but a minor being exposed to violence.

The development of a tool that can be implemented tribal wide throughout all the different departments to mandate an awareness of a child being exposed to violence that helps identify the exposure, how the information is reported and who the information is reported to would assist one, in the early detection to exposure and increase the opportunity for intervention and two, will assist the Probation Officer in making the best assessment for the well-being and future case planning for the minor under their supervision.

The last issue that I would like to discuss and make recommendation on is the limited access and restrictions to BIA funding. A perfect example to address this issue would be to refer back to Johnny; if after assessment it is determined that Johnny is in need of a multi-faceted residential behavioral program (6-12 month program) there is not one accessible through IHS. The next step would be for the probation officer to secure Medicaid on the minor through the state and then follow the long process to get approval for Johnny to be placed in the needed program which more times than not is out of state. Johnny may progress well in the program and prior to discharge from the program the recommendation from Johnny’s treatment team is that a transitional process take place to slowly integrate Johnny back home. This would be great except for the fact that Probation does not have access to place Johnny in a transitional environment that may be closer to the tribe and be able to allow Johnny to engage in community activities. Instead the use of corrections funds are only authorized to place Johnny in a detention facility that is contracted with BIA, so once again the probation officer must access state resources which moves Johnny further away from home and does not support a smooth transitional back to his home environment. At times, these hurdles are too great and state transitional placement is too far from the tribe and the minor ends up being dumped back at home without the step down process and without a safety net to monitor the home environment and minimizes the true progress that the minor has made.

In closing, I would like to thank you once again for your time. I hope that this insight assists in the development of programming that is both practical and accessible in the field. Finally, *“Children are the world's most valuable resource and its best hope for the future” - JFK*

Panel #5: Promising Approaches in Juvenile Justice

Panel #5: Promising Approaches in Juvenile Justice

Introduction: Examine culturally sensitive programs and services for American Indian youth in the juvenile justice system or for youth at risk of entering the juvenile justice system. Listen to the youth's perspective of challenges and recommendations for change.

Panelists:

Candida Hunter, (*Hualapai Tribe*), Manager, Hualapai Green Re-entry Program, Hualapai Juvenile Detention and Rehabilitation Center

Candida Hunter is an enrolled member of the Hualapai Tribe and received her BA in psychology from Chapman University. She is the Education Coordinator at the Department of Hualapai Education and Training and was the Green Reentry Program Manager at the Hualapai Juvenile Detention and Rehabilitation Center. She believes children need a strong foundation that starts with parents and family members, and extends to the community. She is the Vice-Chairperson of the First Things First Hualapai Regional Partnership Council and an Advisory Board Member of the Peach Springs Boys and Girls Club. She served as a Hualapai Tribal Council Member, Chair of the Hualapai Education Committee, Chair of the Hualapai Justice Systems Advisory Board, and the Phoenix Area Representative on the Tribal Consultation Advisory Committee for the Center of Disease Control. As a proud mother of a seven-year-old daughter, she promotes health, education, and capacity building in her community.

Carole Justice, (*Northern Arapaho*), Coordinator, Indian Country Methamphetamine Initiative of the Northern Arapaho Tribe

Carole Justice began working in juvenile justice as a VISTA worker in 1972. Since that time, she has been involved in the development of service programs for children and youth with more than twenty years of service to the tribal governments and programs of the Wind River Indian Reservation. In 1994, she became the tribal prosecutor for the Shoshone and Arapaho Tribes. Ms. Justice is providing integrated health services planning for the Wind River Service Unit–Indian Health Services in creation of a comprehensive, integrated health delivery system on the reservation. She has taught for the Wind River Tribal College and at Central Wyoming College and is a certified trainer for National Center for Prosecution of Child Abuse, National District Attorney's Association. Ms. Justice holds a BA in social work; a BS in secondary education–social studies; a master's degree in educational administration, counseling, and personnel services (all from Kent State University); and a JD from the University of Denver, College of Law. She is also the proud mother of soon-to-be eighteen-year-old son Preston Joseph Justice and adopted daughter Nichole.

Jessie Deardorff, (*Lummi Nation*) Manager, Lummi Safe House

Jessie Deardorff is the manager for the Lummi Youth Safe House. She holds a master's degree in continuing and college education; a BA in education; and an AAS transfer degree from Northwest Indian College. She formerly served as director for Lummi Systems of Care, Lummi Head Start, and Title IX Indian Education for the Ferndale School District; and she served as a representative on the National Indian Head Start Directors Association for a number of years. She serves as a member of the Board of Trustees for Northwest Indian College and as a Committee Officer for Whatcom County Democratic Party Region 137.

Daniel Cauffman, (*Pokagon Band of Potawatomie Indians*), Student, Grand Valley State University

Daniel Cauffman is 21 years of age and an enrolled member of the Pokagon Band of Potawatomie Indians. Daniel is a student at Grand Valley State University in Allendale, Michigan.

Jose Martinez, (*Salt River Pima-Maricopa Indian Community*), Student, Arizona State University

Jose Martinez is 20 years of age and an enrolled member of the Salt River Pima Maricopa Indian Community. Jose is a student at Arizona State University in Tempe, AZ.

Potential Questions for Panelists

Panel #5: Promising Approaches in Juvenile Justice

Candida Hunter

1. You mention (written testimony) that the Hualapia Tribe has 2304 enrolled members, yet the Hualapia Detention and Rehabilitation Center detained 198 youth in 2011. Are all of these youth Hualapia tribal members or does the detention center house non-members?
2. It sounds like a lot of community input went into the planning of the juvenile detention center and that your community continues to be involved with the youth in detention. Do you have advice for other communities on how to get community involvement to help youth?
3. It sounds like the reentry program works with many other community programs to help prevent recidivism. Can “at risk” youth get involved in your program or are their other programs in your community for “at risk” youth to encourage prevention from involvement in the juvenile system?
4. In your reentry program is there any type of screening, assessment, or treatment for youth exposed to violence? In the assessment/treatment for alcohol or drugs for youth is there also a focus on trauma the young person may have experienced?

Carole Justice

1. You mention in your (written) testimony the key to success of the ICMI was “funding and partnership” and this practice should be incorporated into all federal funding. Could you describe the key practices that need to be adopted in this strategy?
2. You mention in your (written) testimony that Wind River has developed a Prevention through Intervention strategy that includes a campus for related programs and services. How is Wind River continuing with that strategy following the shifting of federal funding?

Jessie Deardorff

1. One of your recommendations in your (written) testimony was the establishment of facilities such as Boys Homes and Girls Homes. Could you describe your vision of those facilities in more detail and describe how you see them helping?
2. How is the safe house currently dealing with the issues of runaways? Drug and alcohol problems?
3. What kind of screenings or assessments does your program do of the youth in your facility?

Young Adults, Daniel Cauffman, Jose Martinez

1. Were you able to benefit from counseling or any type of traditional healing as you recovered from your childhood experiences?
2. Other than a “safe home” are there other types of services that might help youth overcome the trauma they suffer in an abusive home environment?
3. What advice would you give a child who finds themselves in the type of situation that you survived?
4. What key strategies or aids, helped in your recovery from your past?

Written Testimony for Candida Hunter

Candida Hunter, (*Hualapai Tribe*), Manager, Hualapai Green Re-entry Program, Hualapai Juvenile Detention and Rehabilitation Center

Candida Hunter is an enrolled member of the Hualapai Tribe and received her BA in psychology from Chapman University. She is the Education Coordinator at the Department of Hualapai Education and Training and was the Green Reentry Program Manager at the Hualapai Juvenile Detention and Rehabilitation Center. She believes children need a strong foundation that starts with parents and family members, and extends to the community. She is the Vice-Chairperson of the First Things First Hualapai Regional Partnership Council and an Advisory Board Member of the Peach Springs Boys and Girls Club. She served as a Hualapai Tribal Council Member, Chair of the Hualapai Education Committee, Chair of the Hualapai Justice Systems Advisory Board, and the Phoenix Area Representative on the Tribal Consultation Advisory Committee for the Center of Disease Control. As a proud mother of a seven-year-old daughter, she promotes health, education, and capacity building in her community.

Thank you for this opportunity to share with the AI/AN Children Exposed to Violence Task Force efforts the Hualapai Tribe is taking to meet the needs of our youth and families in our community.

Hualapai

The Hualapai Tribe is a federally recognized Indian Tribe located in Northwest Arizona. There are 2,304 enrolled members. The Hualapai reservation is 992,463 acres and one hundred and eight miles of the northern boundary is the middle of the Colorado River. The Hualapai Tribe has a written constitution, under the provisions of the Indian Reorganization Act of 1934. The constitution was revised in February of 1991. The Hualapai Tribal Council is designated as the governing body of the Hualapai Tribe. The Tribe is divided into two branches of government; the *legislative* and the *judicial* branches.

Like many native communities, our people suffer from diabetes, high blood pressure, and cardiovascular disease. There are also high school drop outs, illegal substance, and alcohol abuse in the community. All of these factors contribute to the crimes committed on the Hualapai reservation.

Alcohol and Drug abuse has become a prevalent trend that is affecting the tribal youth on the Hualapai Reservation. In 2010 the Arizona Youth Survey (AYS) was provided by the AZ Criminal Justice Commission, it is designed to assess school safety, adolescent substance abuse, antisocial behavior and protective and risk factors that predict adolescent problem behaviors. The survey was completed by 8th, 10th, and 12th graders. An estimated 35% of the total youth population completed the survey. Of these youth, 73% reported a lifetime alcohol use compared to the 58% state average; 76% reported lifetime marijuana use compared to the 30%

state average. Forty-six percent (46%) of the youth reported alcohol use in the past 30 days compared to the 32% state average; and 47% of the youth reporting marijuana use in the past 30 days compared to the 15% state average. About 69% of the youth reported being drunk or high at school compared to the state average of 18%.

In the past two years, the Hualapai Juvenile Detention and Rehabilitation Center (HJDRC) has seen an increase in alcohol and drug offenses rise from 41% to 50%. In 2011, a total of 198 youth were detained at HJDRC, and out of that number, 80 were alcohol and drug offenses accounting for 41% of the population. In 2012 HJDRC detained 133 youth. Of the 133 youth, 66 were charged with a DUI, Possession of Drugs and/or Alcohol, Drug Paraphernalia, or Public Intoxication, and accounted for 50% of the population. The remaining 67 detained youth were charged with offenses such as Burglary, Domestic Violence, Disorderly Conduct, Assault, Trespassing and Criminal Damage. In 2012, the Hualapai Tribal Courts handled a total of 79 juvenile cases, 67% of which were alcohol or drug related. Multiple studies show a correlation between alcohol and drug use and criminal behavior. There are various efforts by the Hualapai government and people to meet the needs of our community. This is done through programming provided by the departments in the community.

In April of 2009, the Hualapai Tribe began operating the Hualapai Juvenile Detention & Rehabilitation Center through a P.L. 93-638 contract. When the tribe began designing the facility it started with a committee of stakeholders who all shared the same vision. This thirty bed facility would be a place for youth to receive education, learn life skills, and receive services needed to help them heal to be strong and productive community members. The design of the building included a classroom, library, and cultural room. The yard included space for a sweat lodge, gardening, and physical activity. Realizing there was a need for programming the Hualapai Tribe applied for the Tribal Juvenile Detention and Reentry Green Demonstration Grant funded through the Office of Juvenile Justice Delinquency Program (OJJDP). The Hualapai tribe was one of three tribes to receive this grant.

Green Reentry Program

For months the tribe advertised for the Green Reentry Program manager. A non community member was hired for three months and then the position was readvertised. In late 2010 Candida Hunter was hired as the Green Reentry Program Coordinator. The Green Reentry Advisory Board was established and comprised of detention staff, prosecutors, Behavioral Health staff, Boys and Girls Club, Youth Services, UofA Agricultural Extension Office, Housing Department, Underage Drinking Coalition members, tribal council members, probation and court staff, parents, and other key stakeholders of the community. Programming was to be provided by the different departments and resources in the community, not just detention staff. This would provide youth with the opportunity to build a rapport with the service providers and continue these services in the community. It is important to providing reentry services to youth.

The Green Reentry Program focuses on reducing recidivism rates by connecting youth to resources in the community and providing different learning opportunities. The goals of the program included: 1) Reduce number of youth experiencing with substance abuse issues by 4% per year, 2) Reduce number of youth truancy violations by 4% per year, 3) Increase youth employment within the community by 5% per year.

Youth were given the opportunity to participate in the program or were court ordered. Each youth and family is encouraged to participate in a child and family team. This is a time for the youth, family, and their other natural supports to sit with service providers to identify their goals, strengths, and needs. It up to the family to decide what service providers would sit in the meeting. If a need was identified during this meeting the youth and family would be referred to this service. Family and natural supports are vital to the success of our youth.

Gardening, Solar Energy, and Promoting Cultural Awareness

To meet the needs of youth the advisory board focused on a number of projects. The first project was constructing a 10 kilo watt solar photovoltaic power system at the HJDRC. The funding for this project was provided from a grant through the Department of Energy. At the time a youth who had just turned 18 was hired by the construction company. Positive Warrior Work Service youth were also involved with the construction. This project provides youth chance to learn about alternative energy.

At the HJDRC a garden was planted at the facility by detention staff and the UofA Agricultural Extension Office. Raised beds were utilized to plant different crops for the facility and community. Youth participated in building the beds, amending the soil, and planting. Positive Warrior Work Service youth and detention staff also constructed a greenhouse at the facility. Today, hydroponics is also used in greenhouse.

To support the gardening and help with the transition from the HJDRC to the community reentry youth are able to continue gardening. There is a community garden at the Cultural Resource Department where the UofA Extension Office and community members plant their crops. The Boys and Girls Club also has raised beds and a straw bale greenhouse is being constructed at the Boys and Girls Club. When construction began we looked at resources available in the community. There was an old Head Start building which was deconstructed. Lumber from that building was used and there was minimal cost to purchasing other supplies. Straw bales were also donated from Wakimoto farms in Mojave Valley. Assistance was provided from PennElys Goodshield of Sustainable Nations to help with the clay to build the walls. Reentry youth, Positive Warrior Work Service youth, the Boys and Girls Club, and the Apprenticeship program all helped to construct this building. Although this building was to be done in the beginning of 2013 construction was delayed. A storm hit about August of 2012 and the apprenticeship program (which had skilled laborers) and reentry youth participating in that program helped rebuild many of the homes that were damaged from the storm.

The Hualapai Cultural Department not only provided an area for gardening but provides programming at the HJDRC and their department. The staff work with youth on different projects and speak the language. Nine months out of the year they offer the Cultural Arts, and Language (CAL) Class. These classes are taught by elders and staff. Activities such as gourd making, beading, butchering, and cooking traditional foods are taught. Youth and elders also took various trips to harvest materials needed for these different projects.

The bees are the latest project to the green reentry. Three bee hives are located to the north of the facility where the Positive Warrior Work Service youth and reentry youth can access the hives. The bees compliment the gardening activities in the community. It was also designed to provide youth with the opportunity to learn about marketing and budget management.

Education

Many elementary youth attend school at the Peach Springs Unified School District. Some also attend school in the small neighboring communities. All high school students attend school off the reservation. Youth can attend a neighboring high school located 38 miles east, 50 miles west, or an out of state boarding school. There are also youth detained at the facility who were not enrolled in school because they were suspended or expelled and never returned.

To meet this need the teacher at the HJDRC assesses the youth to determine their grade level. Depending on their goals the youth is in online education or work towards their GED. This works great for youth detained at the facility. However, when youth were released they would not continue with their online schooling. Many times it was because students needed help and did not have computer and internet access at home. The Boys and Girls Club provided a place for youth to do their schooling. Many youth were accessing the computers and two more computers were purchased. Staff helped youth with their studies when they were available. However, with the increasing attendance of the Boys and Girls Club the advisory committee supported the need to hire a teacher to work in an alternative type setting. The Tribal Council supported this need and a teacher was hired at the Department of Hualapai Education & Training (DHET). When youth are released they are referred to the department to continue their online schooling or GED. The DHET also began working to track the students attending schools off the reservation to prevent youth from falling far behind and helping youth reenroll in school if possible.

Employment

The tribe has opportunities for youth to learn job skills. Many of these opportunities were limited to the summer months. In working with the Hualapai Housing Department and Apprenticeship Program youth were able to be hired to learn basic job skills. These youth were required to meet employment requirements and to work towards earning a high school diploma or GED.

Youth who enrolled in a neighboring high school or boarding school were provided employment opportunity during the summer. Youth were referred to the Youth Workforce Investment Act,

Grand Canyon Resort, Corporation, and Housing, and the Apprenticeship program. Job Corps and Teen Challenge are also programs youth were referred and accepted to.

Healing and Spirituality

Youth and family counseling is available to all youth at the HJDRC. These services are provided by the Behavioral Health Department. Wellbriety is facilitated in the HJDRC by detention staff and facilitated in the community by a Probation Officer and Behavioral Health Staff. Elders and volunteers provide church services from the local churches in the community. Youth are also able to participate in sweat lodge at the facility and continue once they are released.

HJDRC

The HJDRC provides the foundation for the reentry program. It provides a safe and nurturing environment where youth are involved in programming, learn new skills, and build on those skills once release. The facility operates on a Level system. Positive behavior and participation allow youth to move up on the level system and participate in different programming. When youth reach a Positive Warrior work Service they are allowed to apply for the culinary program and the Positive Warrior Work Service (PWWS). With the support of the tribal courts youth are able to be temporarily released to give back to the community. Projects have included cutting wood for elders, serving meals at community functions, and construction of buildings.

Positive Outcomes

In the past five years the programs and service provided to youth in the justice system have continued to grow. It isn't because of just one or two staff. It's also not because of the work of one or two departments. Positive outcomes and growth are because of a community effort. When we identify a need in our community we must look at to the current resources provided in the community. If a resource is lacking we need to find how we are a community strengthen that weakness. It is also important to identify strengths of our current departments and community members. Again, it's as a community we address our needs as a people.

Many times our people involved in the justice system are required to be on probation and/or report to various departments. This includes youth and their parent or guardian. We do not provide them with the opportunity to succeed when they have a plan with social services, a plan with behavioral health, their probation officer, or others. That is why it's important for service providers to have one meeting with the youth and family to not overwhelm them. Youth and families can become overwhelmed by the system.

What works in one native community may not work in another. It's important we recognize and respect those differences. There are many native communities who are working to address their needs but do not have the financial resources. These communities need to be given the opportunity through funding sources to revitalize their own "best practices."

Written Testimony for Carole Justice

Carole Justice, (*Northern Arapaho*), Coordinator, Indian Country Methamphetamine Initiative of the Northern Arapaho Tribe

Carole Justice began working in juvenile justice as a VISTA worker in 1972. Since that time, she has been involved in the development of service programs for children and youth with more than twenty years of service to the tribal governments and programs of the Wind River Indian Reservation. In 1994, she became the tribal prosecutor for the Shoshone and Arapaho Tribes. Ms. Justice is providing integrated health services planning for the Wind River Service Unit–Indian Health Services in creation of a comprehensive, integrated health delivery system on the reservation. She has taught for the Wind River Tribal College and at Central Wyoming College and is a certified trainer for National Center for Prosecution of Child Abuse, National District Attorney’s Association. Ms. Justice holds a BA in social work; a BS in secondary education–social studies; a master’s degree in educational administration, counseling, and personnel services (all from Kent State University); and a JD from the University of Denver, College of Law. She is also the proud mother of soon-to-be eighteen-year-old son Preston Joseph Justice and adopted daughter Nichole.

I have been asked to speak on children exposure to violence on the Wind River Indian Reservation. As first a full-time and now a retired, part-time tribal prosecutor for the Shoshone and Arapaho Tribes, I was asked in 2005 by the Northern Arapaho Tribal Chairman to become involved in systems planning to put a “face” on the methamphetamine crisis and other issues involving children and families on the reservation. Since that time, I have assisted the tribe in many ways, including coordination of the Indian Country Methamphetamine Initiative.

I have had the honor of serving the people and governments on that reservation for over twenty years. However, I do not propose to speak for those who have their own capable voices. The words are mine and mine alone.

My previous testimony before the Defending Childhood Taskforce concerning violence and trauma experienced by children and youth on the Wind River Indian Reservation has been made available to you. I would also like to refer you in the Indian Law and Order Act Commission’s publication “A Roadmap for Making Native America Safer” for addition information concerning the reservation and Indian Country systems.

I have been requested to address, PROMISING APPROACHES IN JUVENILE JUSTICE SYSTEMS: Positive Outcomes, Good Practices and Suggestions for improvements. But to understand why an approach is promising, it is important to first understand the landscape upon which they take place.

Children exposed to violence

Want, need, loss, born of pain-these are the roots of children exposed to violence. They are children of chaos, children whose lives becomes the blur of hearing, seeing, feeling pain, loss, need and want until they find a way to turn off, tune out whether through disassociation, drugs, alcohol, sexual or violent behaviors. The type of this 'fruit' depends upon the nature of 'root' which is a combination of the natural personality and the extent of the harm done to it.

The trauma is not just that of being a witness and victim of the violence. It is instability of the very soil where the child's roots are to grow. Safety is the soil, the foundation upon which every life is rooted. It is the rest without which there is no comfort.

Indian country children and youth are exposed to multiple forms of violence. The social systems that are to provide them with safety instead continue the threats to their well-being due to the fragmental, inconsistent, and fickleness of these systems. Safety never assured in this ever shifting environment fosters instability, continues injury and prevents healing.

On March 8, 2007, The Honorable Richard Brannan, Chairman of the Northern Arapaho Tribe, testified before the Senate Committee on Indian Affairs. Chairman Dorgan chaired that Senate committee meeting and heard the passionate plea of Chairman Brannan concerning Methamphetamine Abuse as an "Emerging Disease" on the Wind River Indian Reservation. He held up a photograph and from his heart he spoke about Marcella Hope YellowBear.

Emerging Diseases: Methamphetamine Abuse – Marcella Hope Yellow Bear

This is Marcella Hope Yellow Bear; she was 22 months old when her parents were charged with her death. When Marcella was brought to the emergency room unresponsive, the medical staff examined her and saw evidence of several broken bones that had mended without attention, new and old cuts and bruises all over her body, burns on the soles of her feet. She died of suffocation. She had been found hanging in a closet by the suspenders of her clothing. It was obvious to the medical staff that examined Marcella that she had been sustaining a brutal level of physical abuse for some time in her short life. Marcella's parents were long time meth abusers.

The Indian Healthcare budget is strained and funding to address emerging diseases is limited to non-existent. Meth is the scourge of my reservation. Marcella's death is one that my community will never forget. We all share a responsibility in her death. Knowing that, I share her story with you today, so that we are more vigilant in addressing the impacts of meth abuse, and we are more aggressive in demanding funding to address mental health issues, alcohol & substance abuse issues and emerging diseases in the Indian healthcare budget. We need to be more persistent in securing the legislation that will ensure our health, our children's health...children like Marcella are counting on us.

Testimony of The Honorable Richard Brannan Chairman of the Northern Arapaho Tribe For the Reauthorization of The Indian Health Care Improvement

***Act Before The Senate Committee on Indian Affairs March 8, 2007 – 9:30 AM
Room 485, Senate Russell Building***

Marcella was not the only child to suffer and die that I have known. I carry their faces and their memories in my heart.

A picture of how children are exposed to Violence in Indian Country

Violence is up front and personal-not abstract - as in Indian Country families are the most important social unit and are frequently interrelated. Therefore, a majority of the reservation's violence is inter-family violence affecting not only the victim and a perpetrator but with a major ripple effect upon all in the family system and throughout the community.

- Tight knit, family centered tribal households and communities
- Intertwined family relationships – what the dominant society calls
- a blended family but much larger as it is not just blending by marriage but by extended family blood and marriage ties as well as by ceremonial relationships

Violence is frequent, not an occasional event and takes many forms.

- Crimes of violence including suicide, homicides, domestic violence,
- Sexual assault, child abuse
- Traffic accidents, early death
- Crimes of violence not reported but known of, spoken of violence shared in sweats/talking circles, and by indirect communication discussed in community

Violence has many causes

- Intergeneration violence related to the cycle of battering in domestic violence and of intergenerational sexual assault and its trauma.
- Violence related to family and community norms that accept and condone violent behavior even by community professionals reflected in disorderly conduct and assaults.
- The violence of substance abuse/addictions -drugs, alcohol and process addictions

- Violence related to sport teams, competition, racism, gender, sexual identity
- Violence used by family gangs, street gangs, and organized crime violence
- Violence of blood quorum, tribal membership that interferes with a feeling of belonging in a tribal community, resulting in a group of disenfranchised citizens and in social isolation that permeates this colonial imparted banality of evil.
- Violence related to substance and physical abuse of the child in utero and, once born, developed through early childhood experiences.
- Violence of poverty and lack of resources from housing where they children and youth are safe, to food insecurity.
- Violence of our institutional systems designed to 'help' but that instead promise false hope and continuing harm: the educational system that reject the child that is different and difficult, and the social services and juvenile justice system that 'picks them up, puts them down' but fails to protect and serve the child, youth and the families.
- Violence related to incarcerated, impaired and/ or the deceased family member for which there is not a clear way to deal with the feelings of abandonment, loss, hurt and pain..
- Violence rooted in historical trauma-trauma of the past 150 years and trauma related to last week, last month, and last year. This is intergenerational violence where victimization becomes a part of life to be lived with and to survive.

When safety is not within the control of those caring for a child, the result is a childhood based upon survival. When victimization occurs, the ability to trust is broken and trust is an ingredient of bonding, belonging, caring about others and self. When victimization takes place at an early age, children are 'shattered' and putting back the pieces is difficult as there are often small slivers always missing.

The constant loss and pain felt due to violence In Indian County is mind numbing. Among the Northern Arapaho Tribe on the Wind River Indian Reservation, the average life expectancy is 51 years of age, is 46 if you are addicted to alcohol, is age 31 if you are addicted drugs. Co-morbidity of alcohol and drug use with posttraumatic stress, anxiety and depression is almost always found in those seeking treatment at the Indian Health Service unit, according to

information gathered by the tribal epidemiology workgroup's lead facilitator, Dr. Roland Hart, psychologist.

The tribal belief systems on the reservation are rooted in a sense of belonging to a People, a Place. When that place is full of violence, there is no immigrating to another country, another place, another People, as identity is not about the individual, but associated with a family, a people. When a child and youth feels unattached, unloved, unwanted in a tribal community it is a loss of self and of personal dignity. The incredible pain and suffering felt leads to addictions and violence to self and others, to self-dispossession and suicide.

How do we restore hope, ambition, initiative and expectations – the many reasons individuals and a People thrive and grow? How do we Respectfully address the violence reservation children are exposed to on a daily basis when separating them from their people and place may be the ultimate violence of all?

Dr. Kimberly Fielding, in a presentation on the Integration of Trauma Informed Care and Drug Endangered Children, (presented for the National Drug Endangered Children Association on January 15, 2014) said that it was time to “look at the root, not the fruit” a time to focus on not what the child is doing but caused the behaviors that cause folks to look in the first place. Dr. Gabor Mate M.D. in his pivotal book on addiction *In the Realm of Hungry Ghosts: Close Encounters with Addiction* repeatedly indicates that pain and abandonment in the early life of children fosters addictions. He writes “Addiction has biological, chemical, neurological, psychological, medical, emotional, social, political, economic and spiritual underpinnings – and perhaps others that I haven't thought about. to get anywhere near a complete picture we must keep shaking the kaleidoscope to see what other patterns emerge.” *In the Realm of Hungry Ghosts: Close Encounters with Addiction* (North Atlantic Books, Berkeley, California, 2008, p 138.)

Suggestions for Improvement- Looking at Roots

We need to move the kaleidoscope and create a different picture. Despite all the negatives, the Wind River Indian Reservation, as in most tribal communities, has a culture of Respect that is, a belief in the dignity their people. This is a belief that every tribal member has value and is not to be thrown away, that all are born good persons-as part of the People- but that some do bad things. This is a belief in that fosters reunion and is forward looking. It is the basis of culture and a common standard upon which ‘a good life’ and doing it ‘in a good way’ is based.

There is a civil rights crisis that must be address in order to positively address children exposed to violence in Indian Country

The child protection system is the chute down which the juvenile justice system is fed. The lack of properly conducted and compliant general and special education services that are civil rights compliance with the IDEA, Section 504 of the rehabilitation act and the Americans with Disabilities Act for traumatized children and youth who qualify for these services due to developmental delays and temporary or permanent trauma based condition (i.e. head trauma,

post-traumatic stress, recovery for addictions, etc.) –this is the chute down which the juvenile justice system is fed.

These systems are often a blend of tribal, state and federal influences and funds which makes for competing interests and policies that do not fit reservation reality.

Instead of a tri-governmental checks and balance system to insure the protection of children, we have tri-governmental cover-ups and ‘look good’ policies. Self-protection runs rampant at all levels. Quit hiding behind the terms of ‘confidentiality’ and of jurisdiction. When it comes to arresting American Indians for crimes committed in non-reservation communities, all seem to join in (contributing to the disproportional rate of American Indians juvenile and adults in jails and prisons) but when it comes to protecting and serving the most vulnerable, suddenly those same ‘partner’ cites the mantra of the master that they serve as an excuse to do nothing. Affirmative action is needed.

Language as that found in the 2014 Omnibus Appropriations Bill Report, page 21 which read: "Spirit Lake Tribal Social Services -- The Bureau (of Indian Affairs) is directed to report to the House and Senate committees of jurisdiction on the progress of its efforts and the adequacy of child placement and judicial review by the Tribe and the Bureau. The Secretary is expected to take all necessary steps to ensure that children at the Spirit Lake Reservation are placed in safe and secure homes." This bill was signed into law by the President. Extending such reporting requirements to tribal governments from all federal and state agencies that are responsible for services to tribal citizens will assist in helping tribal governments review and hold accountable their own service systems and protect their children from dangers without and within tribal communities.

There is an Equal Protection under the Law crisis in Indian Country that must be address in order to protect children exposed to violence. Children and youth are citizens of three governments – tribal, state and federal- and deserve three times the services not three times less the services! The issues and conditions reported out about the Spirit Lake reservation can be found throughout Indian Country as they are conditions of failed public policy and failed public institutions that is the merger soil upon which the ‘root’ of the problem thrives.

However, state and federal government **must not** co-op tribal self-governance by supporting leaders against the very people who strive to hold those leaders accountable. This American failed state foreign policy approach to Indian Country is as baseless here as it is internationally. Instead, checks and balances are needed with reporting out to tribes by all three governments that are supposed to be serving and protecting their people. When problems exist, funds should be allowed to pay for the technical assistance invited in through tribal protocol (traditional or governmental) from other tribal nations to go to Indian Country rather than spending those funds on ‘American Indian experts’ from distant cities and from identify-based organization that serve the many masters of their funding streams. A United (Indian) Nations approach of on-the ground facilitators and problem solvers allow for respectful dialog,

suggestions for solutions and allow tribes to stand together to demand reform and resources for those reservation who are in crisis.

Governments need to stop doing what doesn't work well and federal/state governments need to stop requiring Tribes to accept practice and policy models that don't work as a condition of receiving of federal and state grants, programs and money

Fickle funding policies, practices and opportunities from federal and state governments do not work. Demonstration grants and pilot projects that are discontinued even when they “prove” they are effective cannot survive for if the tribes had the funds to do these programs, they wouldn't have asked for money in the first place! Tribes are looking to fix their problems not ‘define’ them. Planning is helpful, ‘readiness’ strategies are of less use as people are suffering and dying daily. Assist in keeping programs alive and in sharing the information across Indian Country to enable other tribes to choose, modify and replicate tribally tested programs to address their locally defined problems. Then federal governments, if you must, send in the researchers to find out why and how it works, instead of requiring tribes to take models that are not relevant to the landscape of the reservation to try to make them ‘fit’. Assess then prescribe, not proscribe and assess (as is the current method by federal/state agencies/grants/funders).

As a peer reviewer for the Bureau of Justice Assistance Consolidated Tribal Assistance (CTAS) grant program, I can testify to the wealth of tribal creativity in proposing programs and services for their tribal communities and native villages. Unless they receive funding however, the rest of Indian Country never hears of those wonderful, creative, cost-effective proposals! Reviewers and federal staff are prohibited from even discussing these ideas. While the need to protect tribal governmental information is certainly there, not offering tribal governments a forum with which to disseminate these ideas and promising solutions defeats capacity building by the tribes and fosters a dependence on non-native models.

The Tribal Justice Safety and Wellness Meetings were a forum where at least tribal leaders and program people could come together to network, converse, ally and learn. The federal dismantling of these importance and successful conferences is yet again an example of fickle federal financing. Those conferences also were novel in that they brought together federal agencies and, through government to government discussions, encouraged them to break out of their funding and programmatic silos. These federally funded meetings with travel scholarships or grant funds set-aside for tribal travel allow for the sharing of knowledge and led to active solutions rather than just plans on paper.

CREATING THE NEW PICTURE-EXAMPLES OF WHAT WORKS

WHAT WORKS: Block grant funds to tribes with flexibility for tribal application and adjustment to address locally defined issues, work. Until this occurs, CTAS and other discretionary grant approaches need to insure adequate capital for program development to tribal children and

youth, as many categories, such as the Tribal Youth Program, have been frozen at the same budget limit for decades.

*A Block Grant-Flexibility Funding Approach that Worked:
Indian Country Methamphetamine Initiative (ICMI)*

The Indian Country Methamphetamine Initiative (ICMI) was begun by Dr Eric Broderick, while Administrator of the federal Substance Abuse and Mental Health Administration along with other notable federal policy personnel such as Beverly Watts-Davis, Senior Policy Advisor to Dr. Broderick and Eugenia Tyner-Dawson, Tribal Affairs Policy Advisor, US DOJ. It was begun in response to conversations with Chairman Richard Brannan of the Northern Arapaho Tribe and Jonathan Windy Boy of the Chippewa Cree Tribe concerning the impact of the meth on their reservations.

The ICMI – SAMSHA gave a small amount of funds over a five year period to, first 3, then 5 tribes through a flexible funding mechanism (government to government). Additional money from the Office of Minority Health (Dr. Mirtha Beadle) expanded the initiative to five additional tribes. The ICMI-HIV-AIDS and ICMI-HIV-AIDS tribal colleges initiatives added eight additional tribal communities to the overall effort. Tribes were charged with grass root creation of tribal best practice tool kits to address meth addiction and its collateral damage to children and families on the reservations. The results were outstanding with promising practices which bear study and replication and the little amounts of monies expended was simply amazing.

ICMI tribal partners also greatly benefited from a number of ICMI federal agency decision maker's actions that were designed to inform, encourage, and engage the Tribe in a government to government relationship. The Northern Arapaho Tribe ICMI strived to take full advantage of as many opportunities offered and identified whenever tribal capacity existed to incorporate these opportunities at the tribal level.

ICMI funding was designated by the Northern Arapaho Business Council as a vehicle to 'raise all boats' rather than being provided to just one program. This culturally – relevant approach allowed for the forming of true interagency benefits and partnerships, not just 'networking and interagency meetings.'

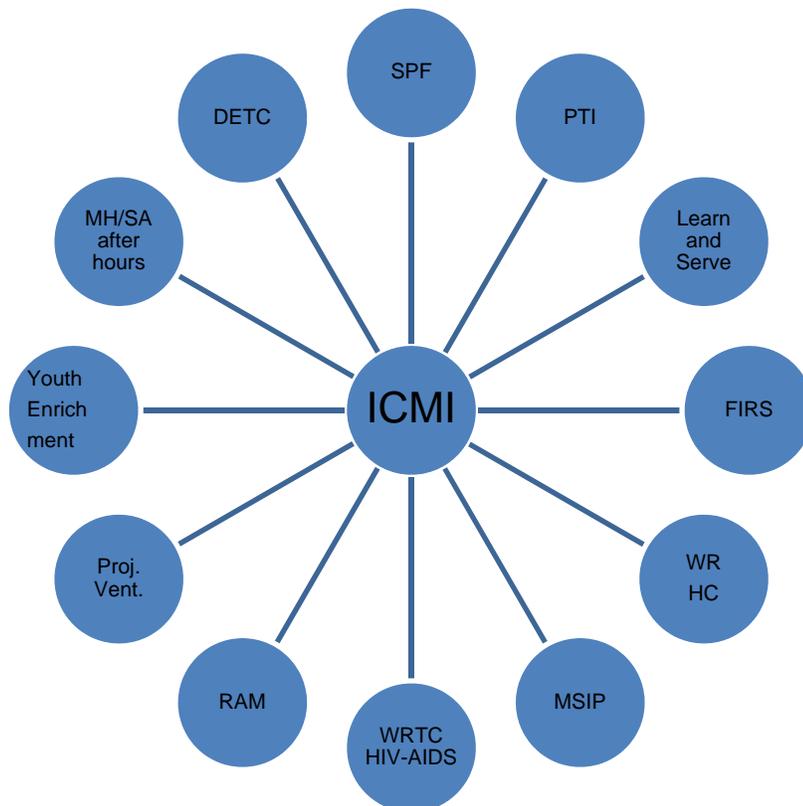
ICMI monthly phone calls brought together ICMI tribes and tribal partner agencies to share information, ideas, activities, agendas, and best practices. The funding mechanism of providing government to government contracting through technical assistance subcontracts was an important measure towards initiative success. Kauffman and Associates staff **served** as staffers to the tribal initiatives while closely monitoring tribal deliverables but also assisting tribes in meeting those deliverables as a full partner, not an overseer. Communication with SAMHSA was promoted at the highest levels and not relegated between tribal leaders and federal division staff. ***This mechanism of funding and partnership was a huge component of the ICMI partnerships and a chief component of the success of the ICMI model-once that should be***

studies and incorporated throughout federal as an important Indian Country policy and practice.

Community specific benchmarks were identified and reported out in annual ICMI reports to SAMHSA. These were adjusted and added to reflect changed community circumstances and when re-defined by on-going community data and input. This flexibility was made possible by two factors:

1. Tribal government direction of the ICMI (involvement at the highest level of organized tribal government).
2. Incorporation of tribally negotiated deliverables with Kauffman and Associates, the contractor for SAMHSA and with SAMSHA which were minimalistic in scope which provided for a 'commander on the ground' approach to funding utilization and tribal direction.

The Northern Arapaho's *Indian Country Methamphetamine Initiative* (ICMI) was included a larger system of "Works." The "Works" are an integrated care model, in development of a therapeutic community approach for all community members affected by the methamphetamine epidemic and the violence related to addiction and substance use. Development of a therapeutic community with prevention through intervention was defined as a core feature of the Northern Arapaho ICMI design.



(SPF is Strategic Prevention Framework project. PTI is Prevention through Intervention; Learn and Serve-Meth is leadership project; FIRS is Families in Recovery-Re-entry and treatment for pregnant women and women with young children; WRHC is Wind River Health Center a tribally-chartered rural health clinic. MSPI is Meth suicide prevention. RAM is reservation against meth-community block party prevention. Project Venture is a national evidenced-based practice. Youth enrichment included youth cultural recreation and community activities. MH/Sa refers to mental health
– substance abuse services.

Perhaps the most measurable of ICMI efforts at Wind River is illustrated by the work of the staff of at the Wind River Tribal Youth program in the area of Suicide Prevention. The ASIST trained suicide prevention teams provided an:

- Immediate crisis response 24/7 response by a team of cross-trained workers;
- Peer-to-peer intervention for individuals and families
- Hands-on referral assistance, not a hand-off to someone else
- Healing ceremonies post-crisis for recovery from the grief/shame/secrets
- Culture as a way to cope
- Inclusion of tribal elders and spiritual leaders
- Text messaging and in-person delivery of messages—whatever it took to reach youth, families, and elders
- Sweats, talking circles, and meals prepared together on a regular, continuous basis to continue to support and heal

PROMISING APPROACH-GREAT OUTCOME *There have not been a suicide of youth under age 18 since suicide prevention programming began through the ICMI efforts on the Wind River Indian Reservation.*

Program staff have traveled to other reservations, invited there by tribal spiritual leaders to assist with their suicide prevention efforts. This is a grassroots tribal-to-tribal technical assistance technique – a United Tribal Nations approach to solutions.

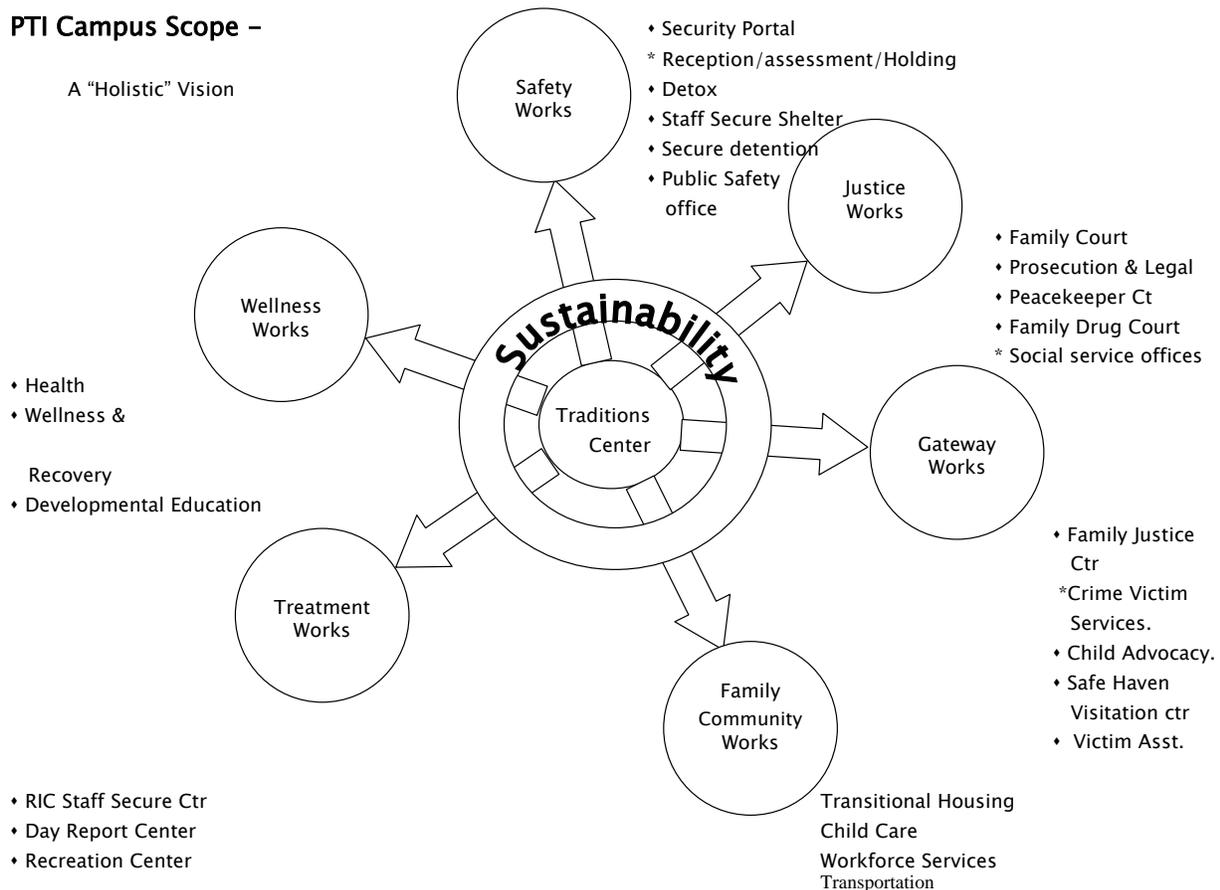
The Northern Arapaho ICMI Wind River tribal youth program receive the SAMHSA Voices of Prevention Award on February 6, 2012, the first tribal effort to ever receive this award for this result, as well as for other implemented practices and results including those of the ICMI-HIV - AIDS project. They accept this award on behalf of all the ICMI efforts by all the ICMI tribes. The federal government would be hard pressed to find another project where such a limited amount of funding (\$450,000 over 5 – years) produces the capacity building results in Indian Country to address a major health, safety and welfare issue as ICMI let alone to do so through tribally-driven and designed culturally relevant approaches.

PREVENTION THROUGH INTERVENTION

A major emphasis of the ICMI at Wind River was development of the Prevention through Intervention campus and related programs and services. The title 'Prevention through Intervention' was coined when the current Northern Arapaho Business Council Co-Chairman Ronald Oldman Sr. used it to grasp the concept when participating in discussion of a new multi-purposed youth facility for the Wind River Indian Reservation.. As it captured the essence of the efforts, it has become a recognizable method, a therapeutic approach and the name for a unique approach for youth, young adult and family services, as well as the title of the original multipurpose campus. This one-stop campus is currently constructing Phase One-the community assessment center that will provide a culturally-based youth and family centered services including therapeutic intake and assessment, social detoxification and, school support/truancy services, day report center for court involved-school suspended youth, preventative health services, forensic interviewing, counseling, and traditional supports and services.

PTI Campus Scope –

A "Holistic" Vision



Unfortunately funding for ICMI has been discontinued as the federal government changed priorities and Indian Country champions like Dr. Broderick retire. ICMI tribes are struggling to keep the programs and practices alive which held such hope and funding is critically needed.

The resilience of tribal members to continue on is a strength that critically needs to be changed from mere survival to real success if only they would receive the type of monetary support that the systems we know haven't work still receives.

Conclusion

In summary, it needs to be recognized that exposure to violence is a health, justice, and educational systems issue and not simply a child protection, mental health, or law enforcement problem. We must respect and realize that there will be no childhood to defend if we do not combine resources and shift the paradigm on the federal level. The Governor of every state must recognize and honor their duties to all its citizens while engaging in meaningful government to government consultation with tribal leaders. Only then will we see a true safety blanket of purpose and a development of a coordinated system response of justice-tribal, state, and federal- to protect children exposure to violence.

Written Testimony for Jessie Deerdorff

Jessie Deardorff, (*Lummi Nation*) Manager, Lummi Safe House

Jessie Deardorff is the manager for the Lummi Youth Safe House. She holds a master's degree in continuing and college education; a BA in education; and an AAS transfer degree from Northwest Indian College. She formerly served as director for Lummi Systems of Care, Lummi Head Start, and Title IX Indian Education for the Ferndale School District; and she served as a representative on the National Indian Head Start Directors Association for a number of years. She serves as a member of the Board of Trustees for Northwest Indian College and as a Committee Officer for Whatcom County Democratic Party Region 137.

Describe the Lummi Safe House Program:

The Lummi Safe House provides:

- A Safe Place to Live for Lummi youth
- Offers a "Home-environment"
- Not a "lock down facility"
- Male/Female
- Ages: 6 up to 18
- Length of Stay: Varies from 1 day up to 3-months

Since we reopened in January 2011, our greater numbers of youth have come and do come from:

- Foster Care programs
- Run-Away Status
- Respite Care (Foster Care placements & Lummi Youth Academy)
- Treatment
- Family/Guardians

Positive outcomes:

Youth are able to transition from Foster Care, transitioning to either new Foster Care, other placements in Lummi (Lummi Youth Academy) or even better...transitioning from FC to Family or Relatives. We have had a number of youth reunify with their family or extended family.

Unfortunately, we do have a number of kids who do run away from the Safe House as well, as we are not a lock down facility.

Lummi Safe House also provides and has provided Respite Care for Foster Care and Parents or Grandparents as requested.

Identify issues the Safe House notes that AI/AN youth are facing with respect to youth exposed to violence in the juvenile justice systems (tribal, state or federal):

As complicated as it is to identify the many issues, it is believed that the tragic lives we encounter at the Safe House begins with our youth when they are children. Their home lives are encompassed by a tragic cycle of abuse, historical trauma which leads to many facets of circumstances and situations beyond their control.

- Abuse, Neglect and Trauma
- Removal from family; parents; guardians
- Placed in Foster care; numerous foster families
- Trouble in school; and/or with Authorities
- Continual lifestyle of uncertainty;
- Begin a lifestyle of using drugs/alcohol
- Self-hate; self-mutilation; attempts of suicide
- Aging-out of the FC system to no where to go
- Gang-affiliations or developing Gang-affiliations

Provide concrete recommendations to address those issues:

- Provide facilities such as Boys Home and Girls Home
 - Provide cultural specific teachings (as handed-down from generation to generation)
 - Men/helping young men; Women/helping young women
 - Respect for self and one another
 - Helping your family/community
 - Life skills
 - How to cook for yourself
 - How to develop a Resume
 - How to search for jobs
 - How to complete education packets
 - (Financial aid; scholarships; college enrollment)
 - Banking skills
 - Education
 - Provide mentors to help promote and follow through with education until graduation
 - Provide mentors to help with college preparation
 - Employment
 - Provide mentor to help connect with job-readiness
 - Provide mentor to help connect with employment opportunities
 - Living Environment
 - For those Aging-Out of FC system help with:
 - A place to reside; transitional housing
 - A mentor to help with locating new place to live

Highlight Lummi Safe House practices that could be used by other Indian communities.

Networking:

- The Safe House works with many partners within our community:
 - Lummi Indian Business Council

- Lummi Children Services
 - Lummi Law and Order
 - Lummi Courts
 - Lummi Behavior Health
 - Lummi Youth Academy
- Identify the Needs of the community
- Work with organizations within your own community
- Develop partnerships to curtail issues
- Work closely with Caseworkers and/or legal guardians
- Have an “Open Communication” but also keep Health Insurance Portability Accountability Act (HIPAA) in mind
- Keep ALL information confidential (and locked up)

Trust:

- Develop a “trusting relationship with clients”
- Speak openly about issues pertaining to particular clients (with client/CW or Legal Guardian)
- Understand client’s issues without judgment.
- Talk daily with CW on the “plan” for client to make “progress”
- Develop a “trusting relationship” with all Partners involved; meet often.

Hope:

- Develop a “hopeful relationship with clients”
- “What’s next?”
- Be truthful.
- Speak honestly with clients. Say if you “don’t know” but you will “find out”
- Don’t “sugar-coat” things.

Transition:

Because the Lummi Safe House is a transition facility, we are happy when our clients do transition to another place whether it’s temporary or permanent. We believe we have provided each client some life skills and experiences which can help them better their lives.

We invite them to come and visit. Return for lunch or dinner; to check in and let us know how they are doing.

We have had a number of client’s return, after Aging-Out of the system, to have coffee, lunch or dinner. Many of these clients have returned to get help in applying for jobs; TANF; or apartments. **This is when we know we have done our job. A job well-done.**

Written Testimony for Daniel Cauffman

Daniel Cauffman, (*Pokagon Band of Potawatomi Indians*), Student, Grand Valley State University

Daniel Cauffman is 21 years of age and an enrolled member of the Pokagon Band of Potawatomi Indians. Daniel is a student at Grand Valley State University in Allendale, Michigan.

A Problem, but Not an Issue

I am 21, a full time student at Grand Valley State University and a proud member of the Pokagon band of Potawatomi Indians. I was recently recommended by Heather Zenone to join the task force or provide you with some personal experience involving violence on native youth. I would like to note that I am honored to accept this privilege and benefit my native community in any way that I can. I recently joined my tribes youth council this past summer and have just begun to learn about Native Country. I have been to the last two NCAI conferences in Tulsa, Ok and Reno, NV and they have made a big difference in my life. Since my involvement, I have been offered a great deal of opportunities and continue to accept them. Opportunities like this being offered only help me live and learn more about myself and society. I am seeking a degree in social work because I have lived the life of poverty and feel like I have much personal experience I can use to help those I encounter in my career. Bringing my career back to the Native community is something I strongly work towards doing.

I feel it's important you're informed that I just got registered with the Pokagon Tribe in 2011. My biological father Derrel is where I get my heritage, from but I was pulled from his custody at 8 years old. He remained a mystery in my life up until getting registered. I moved back to Niles, MI from Zanesville, Oh prior to my senior year of high school. My biological mother, Shawna Brooks, strongly encouraged my success in school and to never give up on my heritage. She told me that I was Native American and that my schooling would be funded by my tribe growing up. She died when I was 16 and I managed being an independent for two more years under the guidance of my mother's boyfriend Mike Wisecarver.

In the summer of 2011 Mike, (half-brother), and I decided to move back to Michigan. Prior to graduating my senior year, the councilor and I discussed college opportunities. Not knowing my mother's knowledge on my background as a Native, the last thing I expected in life was going to college. I wanted to be the working man; I have been my whole life. I decided to take her advice and after some confusion found out I was never registered within my tribe at birth. I asked about my half-sister (Derrels daughter) and she was also not in the system. After finding out my father never registered his two children within the tribe registry. I had to contact him after 10 years of no communication (the reason for my enrollment in the task for). After I found him, I made him register my sister and I. I'm still fairly new to the knowledge of Native Country and the problems we see. After my experiences at NCAI I know a lot more than when I began and I plan to keep attending the conferences.

Now that my native history and my experience prior to actually being enrolled Native citizen are clearer, I would like to describe where it all began. My Mother Shawna Brooks, and Father Derrel, remained a couple for three years of my life. Prior to that Mike Wisecarver had been somewhat of a father figure. From my understanding, Derrel had custody on weekends, holiday privileges, and what worked around my school schedule. Visiting him I experienced abuse and neglect unlike most. His girlfriend at the time, Wendy now his wife, was the abuser. She chose to avoid doing harm to me when it was noticeable for Derrel. She would act as a kind soul. He worked and didn't come home until late. I'm assuming he worked second shift. My mornings and days in this household consisted of being on alert 24/7 waiting for my next wrong doing. Although some days are like yesterday, much of it remains blurry. Over the course of eight years, I was neglected by her, while my half-sister (Wendy's daughter) and two step brothers were treated normally. Not to mention we took in many unfortunate kids around the block and she treated them kindly with love while they came and went. As for me, there was no sympathy, or remorse for what she did.

To give a mental image; at times I was woken up at odd hours of the night being pulled out of bed, by my hair. One night, I remember being pulled into the hallway while I was sleeping and lifted up on to the wall by my throat while, she let loose hateful frustrating things I can't recall now. She often used a closed fist when assaulting me and she often struck me for little to no reason at all. I have considered different assumptions as to why she may have been doing this over the course of my life, but I can't justify it in anyway. She used to make me and her son (my step-brother) fist fight because she wanted to see him beat me up. I grew up never backing down from anyone, so we had all out brawls until one of us was eventually choked out or too physically exhausted to continue. She would yell at us and cheer him on as we continued to tear her house apart. I ended up being the one to clean up after it all. Countless times in the house I was asked to do chores and to clean up after the three full blooded boxers we had but never anyone else. I was often struck for simply not running to her demands right away. I couldn't do anything right in her eyes and I was constantly being abused verbally physically and mentally.

My half-sister and I shared a room and would always play games. There were countless times I would try to hide when she called for me or came looking for me. She would yell at my sister and threaten her until I came out, but she would never lay a hand on her daughter. Her oldest son treated me with respect and it became a place for me to escape. He was in his teens so he realized what was going on but kept to himself. Around dinner time, my father would get home from work and we ate dinner. When he wasn't looking I caught random smacks and a glare that definitely told me not to say anything. We would have the same day to day about my father knowing nothing of the abuse and we would develop excuses together. She was normal when he was around and things were for the most part quiet. We all stayed in our rooms and I would talk to him for what little time we had.

We got to the point where I already started to make up excuses before she would even have the talk with me and I told her I had it under control. By age six I had actually started to process all this and let it become a regular occurrence, knowing I was the target. I started to resist and it began to get worse. I could not handle her anymore. I began to make her catch me and break her holds. If I was going to get beat I was going to make her work for it. The beatings got worse as I got older and stronger from

working out because I wanted to resist more. She couldn't stop me from smiling in her face and she became more upset.

My last encounter with her when I was eight years old was the worst. I resisted for as long as I could, crawling away, when she picks me up by my ankles and swung me around by my feet into the wall, and the stairwell at the end of the hall way. She whistled for our three full blooded boxers, and they came running up stairs. Continuing to swing me by my feet, she got the dogs to attack me. All I remember is my shirt being over my face, being dizzy, and claws tearing into my stomach and back. After what seemed like forever, she swung me level with the stairs head first so I would slide then roll down the carpet steps, being stopped by the closet door at the bottom. The dogs scratched at me more before she called them off. She let me lay there and be at peace the rest of the day, but I was in my pajamas early to cover myself. I went home the day after and sat my mother down and told her everything I was going through. As you can imagine she cried and it was extremely emotional moment, she said "you never had to go back again". Since then I have not heard from my father until I registered with my tribe when I was eighteen.

I tried to forget what happened at first. Although I battled with it for years I did not really care to seek my father out. I have wondered how he could let me walk out of his life after being beaten for years. I never asked my mother about taking me from his custody, but I know there was no law involved. Meeting him after 10 years of no contact and having him drive me to the administration building with my sister was a wild trip. It wasn't until this point I gained interest in the truth. I asked Mike, but he isn't a reliable source for the truth. He and I have had multiple altercations gaining, and losing respect, it is hard to trust him. It will forever remain a mystery why she never paid for her crime. I know my mother and Mike battled drug habits while, on the other side, my father and Wendy had her abuse. Either way, by the end I would have ended up in a foster home. There is no way to justify any of these actions, I know it made me who I am today and I wouldn't change any of it.

I know others battle with abuse and neglect, but it's hard to gain the right to strip a parent of their child. In most cases, the child accepts their misfortune as I did. Who is to say if the child tells someone about their situation that they can be promised safety? There have been multiple cases where the child has to stay and the situation gets worse. Bruises aren't enough evidence if the child feels like they are living a normal life, saying they still love their mom and dad. Trying to reduce violence is a tedious task. In order to get children out of the homes of abusers no sympathy can be taken on the psychological and sociological aspects of the family. The fact is a child is getting beaten and no matter what counseling you give a parent they aren't going to change a function of behavior. Maybe in time it can, but the child still gets abused in the process. My only suggestion, which I think is already in effect, is that the child goes to a foster home or lives with another family until the parents are deemed fit to get them back after counseling. The problem with that is you have to find homes for all the kids. Also, most parents that are abusers tend to be in poverty, meaning that they will less likely be able to make counseling sessions.

It's a tough battle, but I am with U.S Task Force of AI/AN Children Exposed to Violence all the way. Collaborating ideas will be beneficial because I don't know the law as well as the task force

obviously does. The experience I have combined with the knowledge makes me believe we will come up with great idea by the end of our meeting. I've noticed after our conferences, when the youth experience and the elder's knowledge combine, great things happen and people get inspired. I am extremely excited to bring my experience to the task force and hope it benefits Native Country. Until February 11th I wish you all safe travels to the meeting I'm excited to meet you all!

Written Testimony for Jose Martinez

Jose Martinez, (*Salt River Pima-Maricopa Indian Community*), Student, Arizona State University

Jose Martinez is 20 years of age and an enrolled member of the Salt River Pima Maricopa Indian Community. Jose is a student at Arizona State University in Tempe, AZ

Please see front pocket for testimony