

## TRIBAL JUSTICE – CARING FOR OUR YOUTH

### Key Points:

- American Indian and Alaska Native youth face disproportionate exposure to violence and poverty.
- Native youth deserve to enjoy the safety and security that is taken for granted outside of Indian Country.

The public safety problems that plague tribal communities are the result of decades of gross underfunding for tribal criminal justice systems, a uniquely complex jurisdictional scheme, and a centuries-old failure by the federal government to fulfill its public safety obligations on American Indian and Alaska Native lands. Tribal citizens and visitors on tribal lands deserve to enjoy the safety and security that is taken for granted outside of Indian Country.

The Administration, Congress, and tribal governments have together taken historic steps in recent years to address these issues. The Tribal Law and Order Act in 2010 and the Violence Against Women Reauthorization Act of 2013 begin to address some of the barriers to public safety in tribal communities. The passage of these laws has created momentum for improving criminal justice on Indian reservations; however, we have yet to address juvenile justice.

American Indian and Alaska Native youth face disproportionate exposure to violence and poverty.<sup>1</sup> Many tribal communities lack access to funding for mental health and other support resources to offset the impacts of these conditions. As a result, Native youth are particularly likely to enter the juvenile justice system. Removing tribal youth from their families, tribal communities, and culture increases the likelihood that they will become habitual offenders. At present, the majority of youth in federal detention centers are American Indian and Alaska Native. Further, Native youth also make up a disproportionate number of the population in state juvenile justice systems, when compared with their non-Indian counterparts.

When faced with these realities, tribes are often unable to participate in ensuring the health and welfare of their juvenile populations. In most cases, tribes are better situated to offer culturally appropriate alternatives to incarceration, but many tribes lack the ability to financially support the infrastructure needed to deter and rehabilitate juvenile offenders, and rely solely on federal appropriations. The immediate costs of arming Native juvenile justice systems with the tools they need to implement culturally sensitive juvenile justice solutions pale in comparison with the long term costs of incarcerating habitual juvenile offenders into adulthood.

**Tribal Juvenile Justice Programs:** The Tribal Law and Order Commission’s 2013 Report on juvenile justice (TLOC Report) and the Attorney General’s Advisory Committee on American Indian/Alaska Native Children Exposed to Violence 2014 Report (AG Report) recommend that, rather than incarcerate Native juvenile offenders, tribes implement culturally-appropriate rehabilitation measures.<sup>2</sup> Incarceration of Native juvenile offenders only exacerbates an already precarious situation. When placed in juvenile detention facilities, youths are placed in “generally

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<sup>1</sup> Tribal Law and Order Comm’n, *A Roadmap for Making Native America Safer: Report to the President and the Congress of the United States* (Nov. 2013), at 153.

<sup>2</sup> Tribal Law and Order Comm’n, at 166-167; Attorney General’s Advisory Committee on American Indian/Alaska Native Children Exposed to Violence, at 112.

unsafe, abusive, ineffective, and horribly expensive” situations that tend to push them further into a life of crime.<sup>3</sup> It is therefore necessary for tribal juvenile justice systems to be able to fashion appropriate alternatives aimed at rehabilitation and treatment.

The TLOC Report recommends that resources be more effectively deployed to Indian Country in order to achieve parity between Native and non-Indian justice systems. The Juvenile Justice and Delinquency Prevention Act of 2002 (JJDP), which is up for reauthorization, provides funding for juvenile justice prevention and treatment programs in Indian Country. Currently, the aggregate amount of funding provided by the JJDP for all of Indian Country equals the amount apportioned to just one state. This is unacceptable in light of the challenges facing Indian Country in implementing and sustaining juvenile justice systems. Tribes must be allocated and appropriated at least ten percent of the funding available under the JJDP in order to provide their communities with adequate juvenile justice solutions.<sup>4</sup> Both the TLOC Report and the AG Report recommend that Congress authorize additional and adequate funding for tribal juvenile justice programs in the form of block grants and self-governance compacts to support the restructuring and maintenance of tribal juvenile justice systems.

**Tribal Juvenile Data Collection:** The TLOC Report highlights the difficulties Indian Country faces in keeping track of its juvenile offenders. In some cases, juvenile offenders disappear completely from a tribe’s radar once they are in the system. At the state level, data collection is either inadequate or nonexistent. Both the TLOC Report and the AG Report emphasize that proper data collection is *essential* if tribes are to attempt early intervention with at-risk youth.

A number of tribes have instituted juvenile tracking programs, in which they have collected data from a variety of sources to create a comprehensive picture of each of the youths within their tribal communities. From this data, tribes have been able to foresee when family situations require preventative action, and then supply the resources necessary to maintain the youth’s wellbeing. This kind of data collection is essential for tribes to maintain healthy youth communities.

**Preventative Family Services:** Native juvenile offenders are exposed to violence at extremely high rates.<sup>5</sup> This exposure negatively impacts neurological development, physical and mental health, and school performance, and increases substance abuse and delinquent behavior.<sup>6</sup> Many of these issues could be resolved through early preventative services, such as providing mental health and substance abuse counseling for parents, screening youth for trauma, or providing after school programs and youth mentorship.<sup>7</sup>

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<sup>3</sup> Tribal Law and Order Comm’n, at 166.

<sup>4</sup> Attorney General’s Advisory Committee on American Indian/Alaska Native Children Exposed to Violence, at 119.

<sup>5</sup> Attorney General’s Advisory Committee on American Indian/Alaska Native Children Exposed to Violence, at 110, 121.

<sup>6</sup> Tribal Law and Order Comm’n, at 153; Attorney General’s Advisory Committee on American Indian/Alaska Native Children Exposed to Violence, at 110, 121.

<sup>7</sup> Attorney General’s Advisory Committee on American Indian/Alaska Native Children Exposed to Violence, at 22, 113.