

CHAPTER 4

Creating a Juvenile Justice System that Focuses on Prevention, Treatment, and Healing

“We are here today talking about our young people, sacred people. And the sacredness is not acknowledged, not recognized by the American legal system. It simply isn’t. That’s why we say that the ancient laws, the ancient principles, the ancient practices, have to be acknowledged by the governments. And I talk not only of the federal government, the state governments, but our own Indian Nations. They have to acknowledge that sacredness.”

Justice Herb Yazzie, Chief Justice, Navajo Nation Supreme Court. Testimony before the Task Force on American Indian/Alaska Native Children Exposed to Violence, Phoenix, AZ, February 11, 2014

Children entering the juvenile justice system are exposed to violence at staggeringly high rates. We know that this exposure has a number of negative effects including changes in neurological development, decreased physical and mental health, decreased school performance, and increases in risky behaviors such as substance abuse and delinquent behavior.¹ Of children who enter the juvenile justice system, the prevalence of trauma symptoms due to violence exposure is estimated at 73 to 95 percent.² Research has shown that a majority of youth detained in juvenile detention centers have been exposed to violence, whether it is exposure to direct violence as a victim (e.g., physical or sexual abuse) or witnessing violence (e.g., domestic violence, gang shootings). Unfortunately, the research on how exposure to violence intersects with the juvenile justice system has been slow to inform juvenile justice system practice.³

The slow application of knowledge about the intersection of the prevalence of youth exposure to violence and the juvenile justice system response is very likely one of the reasons the Western model of juvenile justice used for so long by state, federal, and many tribal jurisdictions does not work.

Many American Indian and Alaska Native (AI/AN) people believe that the Western criminal/juvenile justice system is inappropriate for children, particularly AI/AN children, as it is contrary to AI/AN values in raising children. As Justice Herb Yazzie said in testimony: “I would be blunt in saying that the American criminal justice system is inappropriate to be applied to young people. . . . You do not apply criminal concepts to young kids. . . . So I encourage you to seek ways to break the application of criminal law concepts to young people.” This concern raised during testimony points to trends in the 1990s away from a juvenile justice system focused on rehabilitation and toward the overuse of secure detention and formal processing of cases in state court systems. As evidence of this concern, a review of the results of twenty-nine randomized controlled trials found no evidence that formal delinquency processing had any positive effect on juvenile crime control, and in fact this review discovered that most of these randomized controlled trials found formal processing actually increases delinquency.⁴ The inescapable conclusion is that the standard approach to juvenile justice in state jurisdictions is a failure.

Testimony at public hearings and site visits conducted by the Advisory Committee established that these formal processing

systems are often relied upon by tribal juvenile justice systems as well. This is a disturbing trend, when funding for tribal juvenile justice systems is so disproportionately smaller than that for state systems. This failure is compounded for tribal communities that lack the taxation authority and funding streams available to states. The Indian Law and Order Commission arrived at the same conclusion in its recent report as it entitled its chapter on juvenile justice: “Juvenile Justice: Failing the Next Generation.”

Over the history of the federal and tribal relationship, federal law and policies have systematically impeded the sovereignty and governing ability of tribes to meaningfully and positively impact the lives of tribal children. The federal boarding school policies at one time resulted in nearly half of all AI/AN children being in residential boarding schools, sometimes hundreds or even thousands of miles away from their families where many experienced physical and sexual trauma, and loss of role models of effective parenting.⁵ Likewise, the allotment acts passed by the U.S. Congress were an attempt to assimilate the American Indian into the dominant culture,⁶ but instead had the effect of conveying almost 100 million acres of Indian reservation lands into ownership by non-Indians.⁷ Later, in 1953, Congress passed PL-280⁸ resulting in states being delegated criminal and limited civil jurisdiction over Indians located on reservations. PL-280 and the Allotment acts have created a patchwork of non-Indian and Indian landownership on most reservations, and a patchwork of criminal federal, tribal, and state jurisdiction over Indians who reside on these reservations or trust lands. AI/AN children accused of delinquent acts or truancy are at risk of becoming involved in the courts of one or more of the juvenile justice systems of these three sovereign entities.

This complex jurisdictional system has a dramatic effect on the ability of tribes to react to the needs of their youth. The juvenile systems impacting AI/AN youth, whether federal, tribal, or state, are all failing these children and creating more harm to them, while not reducing juvenile crime and truancy. This finding was reinforced at the Advisory Committee’s Juvenile Justice Hearing in Arizona, and at other hearings and Listening Sessions.

This chapter provides a vision for what an effective AI/AN juvenile justice system would look like, reviews findings from hearings, and discusses concrete recommendations. Our hope is that these recommendations lead us to a more effective, tribally driven juvenile justice system for AI/AN youth.

“Now, sadly, we know that the road to involvement in the juvenile justice system is often paved with experiences of victimization and trauma.”

Kevin Washburn, Assistant Secretary for Indian Affairs, U.S. Department of the Interior. Testimony before the Task Force on American Indian/Alaska Native Children Exposed to Violence, Phoenix, AZ, February 11, 2014

“When I got out, there was all this negative around me and no positive. I hung out with my friends because I didn’t have a home to go to. My mother was in the hospital and my father moved. I didn’t know where my brothers were. It was pretty hard. I wished I was back in the detention center.

Now I am homeless. I’m living with my grandma temporarily. I plan to go to college in the fall in New Mexico. I’m not sure what to major in. I like cosmetology so if college doesn’t work out, I will go to cosmetology school. I still cut my wrists, but I have the desire to stop. I want to make something of my life.”

Temetria Young, 18 years old. Testimony before the Task Force on American Indian/Alaska Native Children Exposed to Violence, Phoenix, AZ, February 11, 2014

Three different jurisdictional systems impact AI/AN youth involved in the juvenile justice system: federal, tribal, and/or state. The confusing criminal jurisdictional framework, which is designed for adults, has a significant and oftentimes harmful impact on youth. Depending upon where a delinquent act takes place, the race of the victim, the seriousness of the act, and whether PL-280 or a similar-styled law applies, one or more of the three systems could have jurisdiction over the juvenile. While this jurisdictional maze is problematic for adults, it is far more disastrous for youth caught in the systems and does not allow for notification of their tribes, which might not realize the extent of their youth’s involvement in the state or federal juvenile justice systems.

Many tribal communities have no tribal juvenile court system or juvenile code, and oftentimes lack the supporting service delivery system necessary to meet the specific needs of their youth who come in contact with the juvenile justice system. Due to the fact that tribes do not have a tax base, these systems are largely dependent on federal authorizations and appropriation. Tribes in PL-280 states and Alaska Tribes⁹ generally receive little to no funding for court services overall, and much less for handling the unique needs posed by juvenile justice cases specifically.

If a tribe is one of the fortunate few to have successful economic enterprises acting as tax base surrogates that can be used to support juvenile justice system infrastructure and staffing, there is still a significant lack of training in best practices to better the lives of juveniles. A few tribes that have funding through successful economic ventures have developed juvenile justice systems that provide services and support to the youth that enter their systems, with strong focus on prevention and rehabilitation in their communities. However, the Advisory Committee also saw, in these examples, a heavy reliance on detention, even in cases of status offenses such as curfew violations. These detention centers were also much more akin to adult correctional facilities than to a place where these children would feel safe and have their needs addressed. While the Advisory Committee understands that this is a very common practice in state and federal jurisdictions, we believe that a tribe’s continued common use of detention for children having such extreme rates of exposure to violence is another infliction of violence on these children. As such, there must be strong support for community-based, culturally specific alternatives to detention for AI/AN children.

Over and over again the Advisory Committee heard testimony to the effect that: “We have the answers.” “The answers lie within our people, within the communities.” “We as Indian people hold the healing ability to heal our communities through our cultural ways.”¹⁰ Tribal culture and tribal and family connections play an important role in responding to the effects of exposure to violence through the development of resiliency. The current system does not support that local participation and develop the capacity of the local community. It does not support local practices that work, but rather supports evidence-based practices that worked in Europe or some non-Indian community, not in Indian country, Alaska Native villages, or urban Indian communities.¹¹

The Advisory Committee supports substantial reform of the juvenile justice systems impacting AI/AN youth. A reformed juvenile justice system should be tribally operated or strongly influenced by tribes within the local region. It is a system:

- Where tribes, parents, and families know where their children are and believe they are safe and in good care.
- Where youth are appropriately screened, and services are trauma-informed.
- Where tribal-specific or culturally based traditional healing, understanding, and practices are interwoven with all therapeutic services available for children and their families.
- Where federal, tribal, and state systems coordinate and cooperate ensuring that their AI/AN youths’ needs are being met in a seamless and accountable method.
- Where a variety of diversion and reentry programs involving the tribal or local community are available.
- Where there is less reliance on the use of family methods that disrupt families, and where detention and removal from home are utilized as a last resort when there is no other recourse to protect the child or community.
- Where, when detention is necessary to protect public safety, youth are placed close to home and family with adequate and effective services.
- Where juvenile justice codes reflect an understanding of children’s exposure to violence and reflect local cultural values, and status offenses are treated differently from other juvenile offenses.
- Where successes are tracked so that other nontribal justice systems feel confident in referring Native children to their system and services.

“One of the barriers, both our youth and their families face, are professionals. They come and they have proper credentials that are required by the state, but they lack the cultural knowledge and ability or even desire to understand where our children and their families are coming from in their history and their lives.”

Darla Thiele, Director, Sunka Wakan Ah Ku Program. Testimony before the Task Force on American Indian/Alaska Native Children Exposed to Violence, Bismarck, ND, December 9, 2013

“We must expand our notion of healing and therapeutic interventions to go beyond those from the Western world and once again look to traditional ceremonies, practices, beliefs and rituals that served us throughout time immemorial. . . . So I caution against the sole use of Evidence Based Practices (EBP) alone, as the only direction, but a holistic and comprehensive approach must be taken that integrates the best of both worlds.”

Deborah Painte. Testimony before the Advisory Committee, Bismarck, ND, December 9, 2013

ADVISORY COMMITTEE VISION FOR JUVENILE JUSTICE REFORM

The Advisory Committee envisions a reformed juvenile justice system, based on the fundamental philosophy that children are sacred; a system with the resources to implement and support this philosophy. The Advisory Committee believes that each tribal community will use modern evidence-based and practice-based responses in concert with its cultural teachings and traditions to find the methods that are effective in preventing children's exposure to violence and treating those who have been exposed.

The Advisory Committee supports a system in which American Indian and Alaska Native children have equal protection under the law and have equal access to the services that are critical for their personal well-being. Developing local capacity through training, education, and funding is essential. Tribal cultural and family connections, coupled with culturally adapted screening and treatment interventions will ultimately save our children from the effects of exposure to violence through the development of their resiliency. Our vision includes developing and delivering a supportive juvenile justice system that is meaningful, helpful, and nurturing and that supports wellness of American Indian and Alaska Native children.

Findings and Recommendations

- **4.1 Congress should authorize additional and adequate funding for tribal juvenile justice programs, a grossly underfunded area, in the form of block grants and self-governance compacts that would support the restructuring and maintenance of tribal juvenile justice systems.**
 - 4.1.A Congress should create an adequate tribal set-aside that allows access to all expanded federal funding that supports juvenile justice at an amount equal to the need in tribal communities. As an initial step towards the much larger commitment needed, Congress should immediately establish a minimum 10 percent tribal set-aside, as per the Violence Against Women Act (VAWA) tribal set-aside, from funding for all Office of Juvenile Justice and**

Delinquency Prevention (OJJDP) funding making clear that the tribal set-aside is the minimum tribal funding and not in any way a cap on tribal funding. President Obama's annual budget request to Congress has included a 7 percent tribal set-aside for the last few years. This is a very positive step and Congress should authorize this request immediately. However, the tribal set-aside should be increased to 10 percent in subsequent appropriations bills. Until Congress acts, the Department of Justice should establish this minimum 10 percent tribal set-aside administratively.

The funding tribes receive for juvenile justice programming must be adequate and stable. Currently, tribes need to rely on inadequate base funding from the Bureau of Indian Affairs. Tribes are thus forced to compete for grant funds to support the most basic components of a juvenile justice system. It is unacceptable for federal agencies to provide grant funding for a tribal program, only to limit the funding to three years; thus requiring tribes to re-compete or lose funding at the end of the grant period. It is unethical to withdraw critical services being provided to tribal children who trust that those services will help them with the trauma they have already faced. Tribes use scarce and limited resources to develop a program and establish relationships to create trust in the program. Then, when the program is most productive, it loses funding and comes to an end. Long-term stability of good programs is vital to significantly address exposure to violence and trauma that impact youth.

Flexibility in funding is important to allow local communities to utilize the funding in creative, impactful ways that focus on an individual community's needs. Funding is the key to tribal empowerment. The Overview Section, Chapter 1 of this report, provides a greater explanation of the need for block grants and/or self-governance compacts.

The White House Native American Affairs Office (see Recommendation 1.2) should coordinate implementation of this recommendation along with the other recommendations in this chapter.

4.1.B Federal funding for state juvenile justice programs should require that states engage in and support meaningful and consensual consultation with tribes on the design, content, and operation of juvenile justice programs to ensure that programming is imbued with cultural integrity to meet the needs of tribal youth.

Programming offered in state juvenile justice systems is not meeting the needs of AI/AN youth and in some cases is harming these youth. Even those states with significant AI/AN populations fail to meaningfully consult with tribes about their juvenile justice systems to ensure that their programming is thoughtful and culturally based. One way to ensure that states with significant AI/AN populations involve tribes in important decisions regarding AI/AN children is to tie federal funding to meaningful consultation with tribes. Encouraging states and tribes to collaborate and cooperate on juvenile justice is imperative, as even cooperation on such issues as cross-deputization of law enforcement indirectly affects youth. And states must share information about AI/AN youth involved in their juvenile systems if tribes are to be meaningfully involved in their youths' healing and development. For instance, the state of Washington maintains a database of screenings of all juveniles who enter that juvenile justice system, which is readily identifiable by name and birth date. Washington State tribes should be able to access these screens of their tribal member children to better coordinate services that the tribes could provide.

In general, providing tribes with adequate funding for programs and services will also make tribal programs more attractive alternatives to state-run programs. This would ultimately encourage local courts to utilize tribal programs. Developing the tribes' ability to offer states options of culturally appropriate services through their tribal juvenile justice system could counter the impact of AI/AN youth caught in the state juvenile justice system. Some tribes have good relationships with their local county juvenile court systems and juveniles in the state system are referred to the tribal court systems. Encouragement of these collaborative ventures through funding is critically important.

4.1.C Congress should direct the Department of Justice (DOJ) and the Department of the Interior (DOI) to determine which agency should provide funding for both the construction and operation of jails and juvenile detention

facilities in AI/AN communities, require consultation with tribes concerning the selection process, ensure the trust responsibilities for these facilities and services are assured, and appropriate the necessary funds.

Currently the DOJ and DOI have divided responsibilities to construct, operate, staff, and maintain jails and juvenile detention centers. This has resulted in dozens of facilities being constructed that are vacant or seriously underutilized because operating funds have not been provided. The tribes where these facilities have been constructed have significant need for both detention facilities and alternative programs to support children and youth who are in the juvenile justice system, many of whom have also been exposed to violence. These youth often need substance abuse treatment, mental health treatment, education, and other services to address their exposure to violence. These facilities must be staffed and funded for operations after construction. The split responsibility that exists now is not workable and is not in the best interest of tribes. In the future, tribes should be consulted before facilities are constructed.

- **4.2 Federal, state, and private funding and technical assistance should be provided to tribes to develop or revise trauma-informed, culturally specific tribal codes to improve tribal juvenile justice systems.**

Developing a tribal juvenile justice system means developing tribal codes that fit the culture and community. Too often tribes have copied tribal codes from nontribal or different tribal entities, which do not fit their own tribal or community values and beliefs. It is particularly important that tribes receive adequate funding for juvenile justice so they can develop juvenile justice systems that are not a reproduction of the failed Western systems, but a structure that respects their youth and their tribal values, as well as a system that is trauma-informed. Technical assistance should be provided to develop culturally appropriate, trauma-informed, juvenile justice codes and systems.

- **4.3 Federal, tribal, and state justice systems should provide publicly funded legal representation to AI/AN children in the juvenile justice systems to protect their rights and minimize the harm that the juvenile justice system may cause them. The use of technology such as videoconferencing could make such representation available even in remote areas.**

“How do we continue programs for more than 5 years? When Columbus landed in 1492, he screwed us up for over 500 years. And it ain’t going to take overnight.”

Tracy Ching King, Testimony before the Task Force on American Indian/Alaska Native Children Exposed to Violence, Phoenix, AZ, February 11, 2014

“We often have juveniles appearing before tribal courts without the assistance of counsel. And we need to work on strengthening those positions. We know that often youth and their parents don’t have or aren’t exactly at the level of education to understand the nature of the proceedings.”

Sherrie Harris, Public Defender
San Carlos Apache Tribe.
Testimony before the Task
Force on American Indian/
Alaska Native Children
Exposed to Violence, Phoenix,
AZ, February 11, 2014

“NJDC has seen firsthand the positive outcomes that result from effective legal representation for juveniles. We have also seen the lasting adverse effects that follow when children charged with crimes are provided with inadequate or no representation. We strongly believe that all youth involved in the juvenile justice system should have ready and timely access to capable well-trained legal counsel; with individualized representation that is developmentally appropriate, free from bias, and strength-based.”

Nadia Seeratan, Senior Staff
Attorney and Policy Advocate,
National Juvenile Defender
Center. Testimony before
the Task Force on American
Indian/Alaska Native Children
Exposed to Violence, Phoenix,
AZ, February 11, 2014

The status of AI/AN youth is unique; they may be prosecuted in three distinct justice systems: federal, tribal, or state. Each has its own rules and procedures, which are foreign and confusing to any juveniles and their families. An AI/AN youth in juvenile court is very likely also a victim of trauma. This makes it even more important that this youth is listened to, respected, and represented by competent counsel in order to foster understanding of the process and achieve the best disposition possible. In the state and federal juvenile justice systems, the youth is entitled to some form of representation; either a *guardian ad litem* if they are under a certain age, or their own attorney to represent their interests. This right, however, does not universally exist in tribal juvenile justice systems as the Indian Civil Rights Act does not require publically funded appointed counsel for juveniles. To allow a child to be formally processed in a juvenile justice system without an advocate by their side is unconscionable. The youth’s counsel is in the best position to ensure that the youth is not re-traumatized by the system, adequately advise the youth, intervene with his or her family and tribe to protect the youth’s rights, help the youth recognize the need for accountability for his or her actions, promote assessment, and be an advocate for fairness and rehabilitation.

The impact of immaturity is a factor in every juvenile case. However, in those cases involving AI/AN youth, the effects of exposure to violence and trauma are more likely to also be present. Parents frequently are no more likely to understand the system, rights, and process, than the youth. It is highly likely that the parents are in the cycle of intergenerational violence and trauma exposure and are limited in their understanding about how this impacts their child. Juvenile defenders play a vital role in ensuring that all youth that enter the juvenile system are treated fairly and protected from further harm within the system. Given the overrepresentation of AI/AN youth in state and federal justice systems and in secure confinement, it is critical that culturally competent, well-trained defense counsel be afforded to the youth at public expense in all federal, tribal, and state juvenile proceedings. The juvenile defender acts as the child’s voice in the proceeding, representing the expressed interests of the youth. Defenders do not simply bend to any and every whim of the child. Instead, they elicit a child’s perspective, counsel the child on the practical and legal consequences of any decision, and help the child arrive at informed choices and decisions, understanding the myriad direct and collateral consequences they may face.¹²

- **4.4 Federal, tribal, and state justice systems should only use detention of AI/AN youth when the youth is a danger to themselves or the community. It should be close to the child’s community and provide trauma-informed, culturally appropriate, and individually tailored services, including reentry services. Alternatives to detention such as “safe houses” should be significantly developed in AI/AN urban and rural communities.**

The use of juvenile detention is not effective as a deterrent to delinquent behavior, risky behavior, or truancy, and should only be used when there is clear evidence that the youth is a danger to themselves or the community. Federal, tribal, or state detention of AI/AN youth should be close to the juvenile’s community and provide trauma-informed, culturally appropriate, and individually tailored services to each child. Detention should only be used as a last resort and culturally appropriate alternatives to incarceration such as “safe houses” should be significantly developed within AI/AN urban and rural communities.

Although most AI/AN youth in the juvenile justice system are charged with low-level offenses and normally would not be subject to detention, the lack of alternatives and diversion programs force the system to use detention as shelter. This is a poor response as younger inmates have higher rates of victimization by youth and staff.¹³ Female inmates are sexually victimized at higher rates.¹⁴ Youth with higher rates of exposure to violence who are put into detention have greater fear of future victimization and higher rates of conflict with other detainees and staff.¹⁵

Adequate funding would help keep children out of detention. Tribes need resources to develop appropriate juvenile codes and diversionary programs. This can include development of or revisions to Juvenile Codes as well as the creation of prevention and diversion programs to ensure children are not placed in detention, unless all other options have been exhausted by tribes.¹⁶ Only a few tribes have the financial ability to develop services and alternatives to detention on their own. Most rely on the federal government to meet its trust obligation to tribes by providing the funding needed.

Youth returning from a detention or treatment facility must have appropriate reentry services. Too frequently there is no support available for youth returning to their homes or to their

“As a commissioner on the Indian Law and Order Commission, I asked for the better part of two years, where are our children?”

Judge Theresa Pouley, Chief Judge, Tulalip Tribal Court and Member, Indian Law and Order Commission. Testimony before the Task Force on American Indian/Alaska Native Children Exposed to Violence, Phoenix, AZ, February 11, 2014

“I think there needs to be a safe house on every reservation, a place that is not a detention facility, a place that is not a lockdown facility, a place that is home and they can feel what it’s like to have a home.”

Jessie Deardorff, Manager, Lummi Safe House. Testimony before the Task Force on American Indian/Alaska Native Children Exposed to Violence, Phoenix, AZ, February 11, 2014

communities due in part to the limited infrastructure and the judicial limitation of tribes and funding.

Some of these alternatives were described in testimony at public hearings of the Advisory Committee. In particular, the Advisory Committee heard about “safe houses/homes” (transitional living with intensive services) in tribal communities, such as the Lummi Safe House in the Lummi Nation. This facility provides a safe place for Lummi youth in a home environment. They may take in youth who have run away from home, those returning home after treatment or transitioning from foster care, along with other children in need of safe housing.¹⁷

Another example is the Ain Dah Yung Center in Saint Paul, Minnesota, which provides emergency shelter to homeless AI/AN youth and could be considered a “safe house.” Homeless youth are vulnerable to further trauma, and are highly likely to become involved in the juvenile justice system. These “safe houses” should provide screening and individual services needed by youth as well as culturally specific teachings, life skills, education support, employment, and transitional services. Funding restrictions limit the amount of time homeless youth may stay at the Ain Dah Yung to twenty-one days. Such short time frames should be eliminated or adjusted to allow for individualized response, recognizing that youth in need of a “safe house” are also suffering from multiple traumatic events. These youth may need long-term support to help them find a more permanent home and more stable family connections.

While most AI/AN youth are placed in detention for committing low-level offenses, there is a group of Native youth prosecuted in the federal system that may spend more time in secure confinement than youth prosecuted in state systems, sometimes by several years. Placement far from a youth’s home is more likely with either the state or federal system. Federal sentences are usually longer than state sentences for identical crimes.¹⁸ The Bureau of Prisons (BOP) contracts with state and local facilities in nine states. Many youth are placed wherever there is bed space, which means that the youth are placed in facilities far from their families and loved ones.¹⁹ Tribes and states also place juveniles far from home, generally because there are no options available nearer to home or the options available do not provide the services needed by the youth. AI/AN youth should be detained close to home to enable family to be involved with the youth.

The BOP, a federal agency, should enter into intergovernmental agreements or contracts with Indian tribal juvenile detention centers for federally detained AI/AN juveniles to permit them to be housed in tribally eligible facilities within or near their own community. The BOP should review 18 U.S.C., Section 4006²⁰ to determine if Indian tribes are eligible to enter into an agreement with the DOJ along with states and territories; and if not, the Congress should amend this section to include Indian tribes.

The DOJ should explore with the Center for Medicare and Medicaid Services (CMS), Department of Health and Human Services (HHS), what services Medicaid can provide AI/AN children in need of treatment, and determine together with the tribes, how tribes can bill for Medicaid services for AI/AN children in tribal juvenile facilities that offer direct and alternative treatment services.

All juvenile justice systems should recognize the special needs of juvenile girls and LGBTQ/2S youth and individually tailor services for all AI/AN juveniles. For example, AI/AN girls in detention have experienced alcohol and drug usage; educational challenges, including high dropout rates; teen pregnancy; high intentional and unintentional injury rates, including suicide attempts and completions; and high rates of sexually transmitted diseases.²¹

- **4.5 Federal, tribal, and state justice systems and service providers should make culturally appropriate trauma-informed screening, assessment, and care the standard in juvenile justice systems. Indian Health Service (IHS) and tribal and urban Indian behavioral health service providers must receive periodic training in culturally adapted trauma-informed interventions and cultural competency to provide appropriate services to AI/AN children and their families.**

Children and adolescents exposed to violent or traumatic events involving serious threat of injury or death to oneself or others often results in emotional, behavioral, or psychological harm.²² The pervasiveness of exposure to violence is the precursor to poor mental health outcomes demonstrated in the high rates of substance abuse, PTSD, and depression among AI/AN children and families.²³ One report found that the prevalence for exposure to any traumatic event ranged from 63.4 to 69.8 percent for fifteen to fifty-seven year olds for tribal participants in the study.²⁴ Likewise,

“Finally, there’s a strong need for funding for on-reservation shelters and group homes . . . more in a family setting. Those would be places for victims and their families to live free from fear and receive the necessary treatment and life-skills types of programming and educational services that are desperately needed to help in and reuniting victims and their families. The facilities would include culturally sensitive curriculums that address everything from day treatment for substances abuse, to supervised visitation centers, to parental skills programming, to nutritional needs programming and developmental education. These are the types of programs that we take for granted in off-reservation communities and everybody in this room longs for the day when we can take those types of programs for granted on reservation communities.

Joe Vetsch, Criminal Prosecutor for the Spirit Lake Nation. Testimony before the Task Force on American Indian/Alaska Native Children Exposed to Violence, Bismarck, ND, December 9, 2013

“What I have found is that in the tribal juvenile detention centers, the American Indian girls are at great risk for not receiving the needed services for what they come in with. A lot of them come in with prior suicide attempts. . . . We really need a transformation of the system. The juvenile detention centers should be a place where healing can begin. They should be able to have the youth screening for suicidality, for their strengths, for their skills, for trauma, what have they been through; for education, for health.”

Ethleen Ironcloud-TwoDogs,
Technical Assistance
Specialist, Tribal Defending
Childhood Initiative, Education
Development Center, Inc.
Testimony before the Task
Force on American Indian/
Alaska Native Children
Exposed to Violence, Phoenix,
AZ, February 11, 2014

a community-based study revealed that 57 percent of AI/AN youth and young adults between the ages of fifteen and twenty-four had experienced a minimum of one traumatic event in their short lifetime.²⁵

Behavioral health services for AI/AN youth may be handled by different agencies with different priorities. Youth in the juvenile justice system are typically not a priority to those community-based agencies. Reports indicate that 60 percent of Native people rely on IHS for their health care including behavioral health.²⁶ There are only two psychiatrists and four psychologists for every one hundred thousand tribal members who are in need of these services; and less than 5 percent of the 1.5 million of IHS-eligible tribal members receive mental health and substance abuse services.²⁷ IHS continues to operate at 52 percent of need and mental health and substance abuse services are funded at an appalling 7 percent of need.²⁸ The U.S. Commission on Civil Rights divulged that IHS spends \$1,941.00 per patient for all health care services; compared to the federal prison system, which spends \$3,803.00 per federal prisoner.²⁹

This documented disparity in the limited availability of behavioral health services offered by IHS underscores the need for maintaining an adequate workforce for treating AI/AN children exposed to violence, and ensuring they are appropriately trained in trauma-informed interventions that are culturally relevant. IHS and other agencies providing these services must work together with a youth focus and consistently build and retrain an adequate workforce. Ensuring that culturally appropriate trauma-informed screening and care becomes the standard in all juvenile justice systems that impact AI/AN youth is critical to developing systems that treat children as sacred and promote wellness and resilience.

- **4.6 Congress should amend the Indian Child Welfare Act (ICWA) 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. As a first step, the Department of Justice (DOJ) should establish a demonstration pilot project that would provide funding for three states to provide ICWA-type notification to tribes within**

their state whenever the state court initiates a delinquency proceeding against a child from that tribe which includes a plan to evaluate the results with an eye toward scaling it up for all AI/AN communities.

States have jurisdiction over AI/AN children when a violation occurs outside of Indian country or within Indian country in PL-280 states or states that have a settlement act or other similar federal legislation. Since 64 percent³⁰ to 78 percent³¹ of the AI/AN population resides off reservation or not on tribal land, the vast majority of AI/AN children who come to the attention of authorities are involved in the states' juvenile justice systems. An overarching concern voiced at hearings conducted by the Advisory Committee was that states are not required to notify the tribe or involve the tribe in a juvenile delinquency proceeding. That concern is exacerbated because states generally do not provide the cultural support necessary for Native youth's rehabilitation and reentry into the tribal community.³²

Unlike the child welfare system where the state is required to notify the tribe under ICWA, there is no requirement that the child's tribe be contacted if the child is charged with a juvenile offense. The unique issues of AI/AN youth are often overlooked in the state's juvenile justice system and their outcomes are difficult to track.³³ In most states, AI/AN youth are more frequently referred to juvenile court, receive disproportionately harsher sentences, and are more likely to be removed from their homes. A 2006 Alaska study using Anchorage and Fairbanks data from 1999 to 2001, found Alaska Native youth are referred to juvenile court 3.28 times more than Caucasian youth. In Fairbanks the referral rate was 4.85 times more likely. Alaska Native youth are held in secure detention at a rate of about one and a half times the rate of Caucasian youth in Anchorage and at more than twice the rate in Fairbanks.³⁴ In four states (South Dakota, Alaska, North Dakota, and Montana), Native youth account for between 29 percent and 42 percent of youth in secure confinement—far above their percentage of the total population.³⁵

The disparities that currently exist in the juvenile justice system are similar to the inequities that gave rise to and supported the passage of ICWA of 1978. State systems do not even record the tribal member status of youth or the Indian country location associated with the offense. Tribes find it impossible to hold the state accountable for how their youth are treated. Providing tribes with notice

“And we also have to begin to focus on the reentry and detention alternatives. What we often see is some minors are given harsher penalties than adults charged with the same offenses. And we begin to desensitize them to what it is to be in detention facilities. And it's like we're creating a better criminal. As they go through the system, the punishment of jail doesn't mean as much to them, because they've spent so much time in jail already.”

Sherrie Harris, Public Defender
San Carlos Apache Tribe.
Testimony before the Task
Force on American Indian/
Alaska Native Children
Exposed to Violence, Phoenix,
AZ, February 11, 2014

in all state delinquency proceedings and with the right to intervene and/or transfer in all other state delinquency proceedings involving AI/AN youth when the offense occurs on the reservation would allow tribes to stay connected to their youth and to ensure the state system is accountable for treatment of tribal youth.

Not every tribe will have the ability or resources to intervene or transfer a case to tribal court, but every tribe should have the option to decide on the status of their tribal youth, particularly when the offense occurs on the reservation. Intervention can provide a unique tribal perspective to the court proceedings and additional assurance that the youth are important as tribal citizens. Tribes may often have tribal-specific resources that the state lacks. An inadequate response will ensure that current disparities will continue and that the juvenile system will continue to be a pipeline for tribal youth to the adult criminal justice system.

Resiliency is based on connectedness to culture, family, and community. An AI/AN child's resiliency cannot be fully developed in a state's juvenile justice system without the involvement of the child's tribe. According to the literature, enculturation, spirituality, and social connections are protective factors that continue to play important roles in fostering resilience among AI/AN children and families.³⁶ The tribe's involvement can increase the likelihood that these factors will be central to the development of youth, enhance their sense of responsibility and understanding, and show them that they matter to their tribe and their community.

This change in the law will also undoubtedly lead to greater cooperation between states and tribes when AI/AN children are involved. Such a change will no doubt benefit AI/AN children.

States can do much to encourage cooperation and meaningful collaboration with tribes on AI/AN juvenile justice proceedings within their state boundaries. Some counties and tribes share programs and services. New Mexico has an effective practice of requiring that AI/AN children be identified when the child is involved in the juvenile justice system.³⁷ Once a child is identified, the tribe must be notified and consulted for purposes of disposition. Tribal customs and practices are also taken into consideration.

■ 4.7 Congress should amend the Federal Education Rights and Privacy Act (FERPA) to allow tribes to access their members' school attendance, performance, and disciplinary records.

Almost 92 percent of tribal children attend public schools. FERPA³⁸ generally allows federal, state, and local education agencies to access student records and other personally identifiable information kept by state public schools without the advance consent of the parents. Tribes are excluded from this law. These records include information about a student's attendance, grades, and discipline; information critical to a tribal education department seeking to provide services to tribal member students. Early intervention is important and school absences, performance, or disciplinary problems can be a red flag indicating family or individual problems. The tribe, if notified, would have the option to intervene to help the family or youth. Through the Elementary and Secondary Education Act of 1965³⁹ and its 1994 reauthorization, Congress authorized U.S. Department of Education funding of Tribal Education Departments to provide educational support services to their student tribal members. It is this type of support that allows tribal education departments to direct services toward students at risk for truancy proceedings, which often can result in detention. Unfortunately, Congress has not amended FERPA⁴⁰ to include these federally supported tribal education departments along with analogous agencies of state, local, and federal governments that are able to access student information.

FERPA (20 U.S.C. 1232(g)(b); 34 C.F.R. 99.31(a).) should be amended to explicitly authorize tribal education departments to readily access information regarding their member children who are absent from school or have performance or disciplinary records. Tribes should be treated in the same manner as FERPA treats states.

Tribes that have programs for early intervention and assistance, such as the Coeur d'Alene Tribe of Idaho or the Salt River Pima Maricopa Indian Community, testified to the Advisory Committee about their problems securing the information they need because of FERPA restrictions.⁴¹ Some schools will cooperate with information requests and others refuse to provide information due to confidentiality. It must be clarified that tribes have a right to this important information about their young tribal members.

“At the federal, state, and tribal level, we all must work to better serve the children in Indian country. It starts with embracing the spirit of cooperation and working together to find solutions. . . . But without proper support from every level of government, no amount of partnership and creative thinking can deliver the level of services that our children need and deserve.”

Ned Norris Jr., Chairman,
Tohono O'odham Nation.
Testimony before the Task
Force on American Indian/
Alaska Native Children
Exposed to Violence, Phoenix,
AZ, February 11, 2014

Notes

1. Carlson, B. E., "Children Exposed to Intimate Partner Violence: Research Findings and Implications for Intervention," 1(4) (2001): 321–42; Skowrya, K., and Cocozza, J. J., "A Blueprint for Change: Improving the System Response to Youth with Mental Health Needs Involved with the Juvenile System," *National Center for Mental Health and Juvenile Justice, Research and Program Brief*, June 2006; Widsom, C. S., Ireland, T., and Glynn, P. J., "Alcohol-Abuse in Abused and Neglected Children Followed-Up: Are They an Increased Risk?," *Journal of Studies on Alcohol* 56(2) (1995): 207–17.
2. Kilpatrick, D. G., et al., "Violence and Risk of PTSD, Major Depression, Substance Abuse/Dependence and Comorbidity: Results from the National Survey of Adolescents," *Journal of Consulting and Clinical Psychology* 71(4) (2003): 692–700; Cauffman, E., et al., "Posttraumatic Stress Disorder among Female Juvenile Offenders," *Journal of the American Academy of Child and Adolescent Psychiatry* 37(11) (1998): 1209–16; Abram, K. M., "Posttraumatic Stress Disorder and Trauma in Youth in Juvenile Detention," *Archives of General Psychiatry* 61(4) (2004): 403–10.
3. Sprague, C., "Informing Judges About Child Trauma," *NCTSN Service System Briefs* 2 (2008); Adams, E. J., "Healing Invisible Wounds: Why Investing in Trauma-Informed Care for Children Makes Sense," *Justice Policy Institute* (2010).
4. Petrosino, A., et al., "Formal System Processing of Juveniles: Effects on Delinquency," *Campbell Systematic Review* (2010). doi:10.4073/csr.2010.1.
5. Evans-Campbell, T., et al., "Indian Boarding School Experience, Substance Use, and Mental Health among Urban Two-Spirit American Indian/Alaska Natives," *The American Journal of Drug and Alcohol Abuse* 38(5) (2012): 421–7; Prucha, Francis Paul, *Americanizing the American Indians*. Cambridge, MA: Harvard University Press, 1973.
6. Huff, Delores J., *To Live Heroically: Institutional Racism and American Indian Education*. Albany: State University of New York Press, 1997.
7. Royster, Judith, "The Legacy of Allotment," *Arizona State Law Journal* 27 (1995): 12.
8. Act of August 15, 1953, Ch. 505, 67 Stat. 588-90 (now codified as amended in scattered sections of 18 and 28 U.S.C.).
9. Alaska tribe –The Native peoples of Alaska are commonly referred to as "Alaska Natives," and "Alaska Native Villages." For the purposes of this report, we will use the term "Alaska tribe" to refer to federally recognized tribes in the State of Alaska. 79 Fed. Reg. 4,748 (Jan. 29, 2014), available at: <http://www.gpo.gov/fdsys/pkg/FR-2014-01-29/pdf/2014-01683.pdf>.
10. Testimony of Leander McDonald, Hearing of the Task Force on American Indian/Alaska Native Children Exposed to Violence, Bismarck, ND, December 9, 2013, at 108, available at: <http://www.justice.gov/defendingchildhood/nd-briefingbinder.pdf>; Testimony of Darla Thiele, Hearing of the Task Force on American Indian/Alaska Native Children Exposed to Violence, Bismarck, ND, December 9, 2013, at 61, available at: <http://www.justice.gov/defendingchildhood/1st-hearing/intersection-dv-cpsa.pdf>; Testimony of Lonna Hunter, Hearing of the Task Force on American Indian/Alaska Native Children Exposed to Violence, Bismarck, ND, December 9, 2013 at 17, available at: <http://www.justice.gov/defendingchildhood/nd-briefingbinder.pdf>.
11. See Roth, Anthony, and Fonagy, Peter, *What Works for Whom? A Critical Review of Treatments for Children and Adolescents*, New York: Guildford Press, 2005.
12. Testimony of Nadia Seeratan, Hearing of the Task Force on American Indian/Alaska Native Children Exposed to Violence, Phoenix, AZ, February 11, 2014 at 7–12, available at: <http://www.justice.gov/defendingchildhood/2nd-hearing/panel4.pdf>.
13. Cooley, D. "Criminal Victimization in Male Federal Prisons." *Canadian Journal of Criminology* 35 (1993): 479–95.
14. Wolff, N., and Jing Shi, "Patterns of Victimization and Feelings of Safety Inside Prison: The Experience of Male and Female Inmates." *Crime and Delinquency* 57(1) (2010): 29–55.
15. Mackenzie, D.L. "Age and Adjustment to Prison: Interactions with Attitudes and Anxiety." *Criminal Justice and Behavior* 14(4) (1987): 427–47.
16. Testimony of Governor Gregory Mendoza, Hearing of the Task Force on American Indian/Alaska Native Children Exposed to Violence, Phoenix, AZ, February 11, 2014 at 4–10, available at: <http://www.justice.gov/defendingchildhood/2nd-hearing/panel2.pdf>.
17. Testimony of Jessie Deerdorff, Hearing of the Task Force on American Indian/Alaska Native Children Exposed to Violence, Phoenix, AZ, February 11, 2014 at 8–14, available at: <http://www.justice.gov/defendingchildhood/2nd-hearing/panel5.pdf>.
18. Ibid.

19. Ibid.
20. 18 U.S.C. § 4006.
21. Testimony of Ethleen Iron Cloud–Two Dogs, Hearing of the Task Force on American Indian/Alaska Native Children Exposed to Violence, Phoenix, AZ, February, 11, 2014 at 192, available at: <http://www.justice.gov/defendingchildhood/az-briefingbinder.pdf>.
22. Cohen, J. A., Manarino, A. P., and Deblinger, E., *Treating Trauma and Traumatic Grief in Children and Adolescents*, New York: The Guilford Press, 2006.
23. Deters, P. B., et al. “Trauma and Post-Traumatic Stress Disorder Symptomatology: Patterns among American Indian Adolescents in Substance Abuse Treatment,” *American Journal of Orthopsychiatry* 76(3) (2006): 335–45.
24. Manson, S. M., et al., “Social Epidemiology of Trauma among 2 American Indian Reservation Populations,” *American Journal of Public Health* 95(5): 851–9.
25. Gnanadesian, M., et al., “The Relationship of Gender and Trauma Characteristics to Post-traumatic Stress Disorder in a Community Sample of Traumatized Northern Plains American Indian Adolescents and Young Adults,” *Journal of Clinical Psychiatry* 66(9) (2005): 1176–83.
26. Gone, J. P., “Mental Health Services for Native Americans in the 21st Century United States,” *Professional Psychology: Research and Practice* 35(1) (2004): 10–18.
27. Ibid.
28. Ibid.
29. Sarche, M., and Spicer, P., “Poverty and Health Disparities for American Indian and Alaska Native Children,” *Annals of the New York Academy of Sciences* (2008).
30. Indian Law and Order Commission, *A Roadmap for Making Native America Safer: Report to the President and Congress of the United States* (November 2013): 149, available at: <http://www.aisc.ucla.edu/iloc/report/index.html>.
31. The percentage of AI/AN populations that live on Indian land varies substantially depending upon who self-identifies as AI/AN. The 2010 Census allows for self-identification and includes individuals of more than one race. The 2010 Census defined “American Indian or Alaska Native” as a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment. This is much broader than those who may be members of a tribe. See Norris, T., et al., *2010 Census Brief, The American Indian and Alaska Native Population*, available at: <http://www.census.gov/prod/cen2010/briefs/c2010br-10.pdf>.
32. Indian Law and Order Commission, *A Roadmap for Making Native America Safer: Report to the President and Congress of the United States* (November 2013): 156, available at: <http://www.aisc.ucla.edu/iloc/report/index.html>.
33. Arya, Neelum, and Rolnick, Addie C. “A Tangled Web of Justice: American Indian and Alaska Native Youth in Federal State, and Tribal Justice Systems,” Washington, D.C.: *Campaign for Youth Justice Policy Brief 1* (2008).
34. Leiber, M. J., Johnson, J., and Fox, K., *An Examination of the Factors that Influence Justice Decision Making in Anchorage and Fairbanks, Alaska, An Assessment Study*, Alaska, 2006.
35. Testimony of David Simmons, Hearing of the Tribal Law and Order Commission, Tulalip Reservation, September 7, 2011.
36. Strand, J. A., and Peacock, R., “Resource Guide for Cultural Resilience,” *Tribal College Journal of American Higher Education* 14(4) (2003).
37. Wolfe, Corinne, *New Mexico Juvenile Justice Handbook*, available at: <http://childlaw.unm.edu/docs/Juvenile%20Justice%20Handbook%20-%20August%202011%20Web.pdf>.
38. 20 U.S.C. 1232(g).
39. PL-89-10 (1965).
40. See, Title IX, Sec. 9125 of PL-103-382 (1994).
41. Testimony of Sherri Fremont, Hearing of the Task Force on American Indian/Alaska Native Children Exposed to Violence, Fort Phoenix, AZ, April 16, 2014 at 1–6, available at: <http://www.justice.gov/defendingchildhood/2nd-hearing/panel4.pdf>.

