



Native Youth & Juvenile Justice

Testimony before Alyce Spotted Bear and
Walter Soboleff Commission on Native Children, Jan. 7, 2022

[Addie C. Rolnick](#) JD/MA

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

Jurisdiction over Indian Children

	Major crime	Non-major crime with Indian victim	Non-major crime with non-Indian victim	Federal crime	Child welfare or status offense placement
Indian country	Tribal Federal	Tribal	Tribal Federal	Federal	Tribal
Indian country (PL 280)	Tribal State	Tribal State	Tribal State	Federal	Tribal State
Elsewhere	State*	State*	State*	Federal	Tribal State

Tribal Jurisdiction

In Indian country

- Exclusive jurisdiction over non-major offenses, status offenses, and child welfare by tribal children
- Concurrent jurisdiction over major offenses by tribal children
- Concurrent jurisdiction over Indian children affiliated with another tribe
- Possible jurisdiction over non-Indian children covered by VAWA

Outside Indian country

- Jurisdiction (under ICWA) over child welfare and status offenses
- Possible concurrent jurisdiction over citizen children
- Services for children in state systems

Recommended approaches

- Minimize use of pre-adjudication detention (only for danger or flight!)
- Keep children in the community/divert out of the system
- Involve and respect families (parents and extended families)
- Offer services that incorporate culturally appropriate practices
- Coordinate between child welfare and juvenile justice
- Trauma-informed care
- Minimize post-adjudication secure confinement and out-of-home care

State Systems

Challenges

- Disparities in status offense petitions, diversion, detention, out of home placement, incarceration
 - State and county differences
 - Native girls face some of the worst disparities
- Data invisibility
- Lack of consistent data collection
- Lack of clear definitions
- Failure of states to coordinate with tribes
- Where jurisdiction is shared, approaches may conflict
- Lack of culturally appropriate services in state systems

Promising Practices/Recommendations

- Efforts to reduce detention and incarceration should involve tribes and focus on Native youth where they are affected
- Standardize definitions across jurisdiction and decision point
- Record tribal affiliation
- JJDPa reauthorization requires tribal representation on State Advisory Groups
- New Mexico tribal notification law
- Watch coordination between states and tribes in Oklahoma
- Paid, not volunteer, staff for cultural programming

AI/AN arrests, percentage of all

	2012	2015
% of youth population	1.4	1.4
% of all youth arrests	1	2
Drunkenness	2	6
Offenses Against Family & Children	4	5
DUI	2	4
Liquor Violations	3	4
Vagrancy	0	3
Arson	1	3

Sources: Preliminary arrest estimates for 2015 developed by the National Center for Juvenile Justice based on data published in the FBI's 2015 Crime in the United States report. 2012 Data from Juvenile Offenders and Victims National Report, 2014.

Incarceration, per 100,000

	Disparity	Change 2007-2017	AI/AN Rate	White Rate
South Dakota	4.98	-8%	468	94
North Carolina	4.21	+188%	59	14
California	3.33	+51%	220	66
Washington	3.18	-3%	232	73
Montana	3.09	-4%	423	137
Alaska	2.77	+2%	455	164
Oklahoma	1.31	+27%	80	61
Texas	1.24	+46%	102	82
Arizona	1.19	-16%	63	53
New Mexico	1.17	+34%	98	84
National	2.83	+7%	235	83

Source: The Sentencing Project, Racial Disparities in Youth Incarceration Persist (2021), states with at least 10,000 AI/AN youth

The Federal System

Challenges

- No coordination required between federal and tribal prosecutors
- Not a juvenile system
- Use of contract facilities
- Children placed far from home
- Lack of transparency
- May face longer sentences
- Lack of programming

Promising Practices/Recommendations

- Amend federal Juvenile Delinquency Act to require tribal waiver
- Greater transparency in data and placement decisions
- Allow tribes to use federal jurisdiction as a backup for serious offenses
- Contract with tribal/BIA facilities?

Tribal Systems

Challenges

- Lack of data about what tribes are doing
- Lack of information about models and effectiveness
- Not enough money/staff; funding restrictions
- Grants for detention/corrections, not mental health or shelter care
- Difficulty coordinating with state officials
- Limited vision of what a juvenile system looks like
- Officials trained in law enforcement and corrections
- Insufficient support from innovative juvenile justice organizations
- Overuse of detention/incarceration
- Lack of mental health/substance abuse treatment

Promising Practices/Recommendations

- Increase tribal control
- Require other governments to communicate and coordinate with tribes to distribute resources
- More funding; more flexibility to explore less punitive approaches
 - Tribal Youth Program permanently authorized
 - Flexible block grant approach to DOJ funding
 - DOJ removed limitations on construction funding
 - What about BIA funding?
- Indigenous justice practices, including Healing to Wellness Courts, Elders Panels, reentry programs
- Research and data on tribal systems and practices
- Use health and Medicaid funding to expand treatment resources and facilities