



NATIONAL CONGRESS OF AMERICAN INDIANS

TESTIMONY FOR SENATE COMMITTEE ON INDIAN AFFAIRS JUVENILE JUSTICE IN INDIAN COUNTRY

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The National Congress of American Indians (NCAI), the Nation's oldest and largest representative organization of tribal governments, commends the Senate Committee on Indian Affairs for holding this important hearing on the juvenile justice system in Indian Country and how it can be improved for the benefit of our youth.

Experts agree that incarcerating youth without adequate preventative or rehabilitative services does little to increase community safety;¹ instead incarceration all too often results in a child turning to a criminal way of life. At-risk youth need the support of family and community; nowhere is this truer than within tribal communities. Congress has a unique opportunity through the reauthorization of the Juvenile Justice and Delinquency Prevention Act to help provide tribes with the vital resources necessary to create effective, and culturally appropriate, prevention and rehabilitation programs that encourage Native youth to turn away from criminality.

Thank you for conducting this hearing and letting us share the deep concern we have for our youth. Most, if not all, of the adult Native people in this room know we are fortunate to have survived the rocky road of growing up in impoverished communities without the benefit of vital wellness programs. As grandparents, parents, uncles and aunts, the grave statistic cited below—that Native youth comprise the majority population in federal detention centers—is heartbreaking. We firmly believe that we can turn the corner on these problems and bring up our children without fear for their safety and well-being and with hope for their future.

Native Youth: Disparities in the Juvenile Justice System

A recent study on American Indian / Alaska Native youth in the juvenile justice system found that Native youth are almost twice as likely to be sent to court for status offenses than their white counterparts.² Status offenses are non-violent offenses that would not be considered a crime if an adult engaged in the same behavior, and include behaviors such as skipping school, underage drinking, and violating curfew.³ Once these youth engage with justice system, they are far more likely to be incarcerated than to be placed on probation for later violations.

¹ No Place for Kids: The Case for Reducing Juvenile Incarceration. The Annie E. Casey Foundation (2011).

² American Indian/Alaska Native Youth & Status Offense Disparities: A Call for Tribal Initiatives, Coordination & Federal Funding. Coalition for Juvenile Justice. Safety, Opportunity & Success: Standards of Care for Non-Delinquent Youth (2015).

³ In 2011, 34% of American Indian/Alaska Native youth were in court for a liquor law violation and 34% were sent for truancy.

At present, the majority of youth in federal detention centers are American Indian/Alaska Native. Native youth also make up a disproportionate number of the population in state juvenile justice systems, when compared with their non-Indian counterparts. Due to geographic and economic barriers, Native youth within the juvenile justice system frequently lose contact with their families and traditions. This increases the likelihood that these youth offenders will re-offend when released, developing into a continuous feedback loop with the justice system.

Tribal communities tend to be underequipped to handle the issues facing their youth populations as well. The Indian Law and Order Commission's 2013 report on juvenile justice, "A Roadmap for Making Native America Safer" (ILOC Report), discussed the disturbing reality that American Indian/Alaska Native youth face disproportionate exposure to violence and poverty as well. Many tribal communities lack access to funding for mental health and other support resources to offset the impacts of these conditions. This disparity in access to mental health resources, contributes to the likelihood that tribal youth will enter the juvenile justice system.

When faced with these realities, tribes are often unable to participate in ensuring the health and welfare of their youth populations. In most cases, tribes are better situated to offer culturally appropriate alternatives to incarceration; however, 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 building up Native juvenile justice systems with the tools needed to implement culturally sensitive juvenile justice solutions pale in comparison with the long term costs of incarcerating habitual juvenile offenders into adulthood. NCAI offers the below recommendations for the Committee.

Funding for American Indian/Alaska Native Juvenile Justice Programs

The ILOC 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. Incarceration of Native juvenile offenders only exacerbates an already precarious situation. According to the ILOC Report, when placed in juvenile detention facilities, youths are placed in "generally unsafe, abusive, ineffective, and horribly expensive" situations that tend to push them further into a life of crime. It is therefore necessary for tribal juvenile justice systems to have the flexibility to fashion appropriate alternatives aimed at rehabilitation and treatment.

The ILOC 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 (JJDPA), 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 JJDPA for all of Indian Country equals the amount apportioned to 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 JJDPA in order to provide their communities with adequate juvenile justice solutions, as detailed further below.⁴ Both the ILOC Report and the AG Report recommend that Congress authorize additional and adequate funding for tribal juvenile

⁴ NCAI Resolution PSP-09-008 calls for modification of current juvenile justice funding to allow for spending on services other than detention as well as equitable set-asides for tribal governments.

justice programs in the form of block grants and self-governance compacts to support the restructuring and maintenance of tribal juvenile justice systems.

A. Treatment of Tribes Under Current Law

As the sole source of federal funding dedicated to rehabilitation, the JJDPA does little to support tribal juvenile justice systems. The current JJDPA unnecessarily limits eligibility for grants to tribes that “perform law enforcement functions, as determined by the Secretary of the Interior.” It also does not recognize tribes as directly eligible for most of its grant programs, and provides non-existent or insufficient tribal set-asides. For example, the major block grant portion of the bill does not provide for direct funding to tribes. Where funds are available, tribes must either apply for competitive grants on the same footing with private organizations or, if they are treated as governments, they must comply with a variety of burdening administrative requirements.

As we describe in more detail below, the Act treats tribes as local governments, leaving the fate of tribal juvenile justice systems entirely at the discretion of states. In addition, the Act does not require that states provide any minimum amount of funding to tribes or consult with tribes in developing juvenile justice strategies. This approach, in which tribal governments are treated as no more than political subdivisions of states, is out of sync with nearly 40 years of federal policy supporting tribal self-determination and sovereignty.

Title II Formula Grants. By far the greatest share of JJDPA funding is distributed to states as a block grant. States receive a minimum of \$600,000, and some receive up to \$7.5 million in formula funds, depending on populations, which includes tribal communities. Tribes are not directly eligible for this funding. The funds go to states, and tribes must compete with local governments and private organizations for a share of the state money. Very little of this funding ever reaches tribal communities. We encourage Congress, using the model of the Violence Against Women Act, to create a 10% set-aside for tribal juvenile justice programs that is administered independent of state juvenile justice programs.

Title V Incentive Grants for Local Delinquency Prevention Programs. (Title V, Section 504). Title V authorizes funds to encourage collaborative and community-based delinquency prevention services, such as alcohol and substance abuse, mental health tutoring, recreation and job training. The funds are divided equally among states, and each state determines how to apportion funds among units of local government. In FY 2007, each state received \$75,000. Tribes are eligible to apply to the state for funding as a “unit of local government,” but states are not required to allocate any funding to tribes. As local governments, tribes would also be subject to burdensome administrative and matching fund requirements.

Tribal Youth Program. Within Title V, Congress typically earmarks \$10 million (about 15% of the total Title V appropriation) for competitive grants to tribes under the Tribal Youth Program, and OJJDP provides several competitive short-term grants directly to tribes each year. The Tribal Youth Program is the only program through which tribal governments regularly receive juvenile justice funding, yet it is not statutorily required by the JJDPA.

Delinquency Prevention Block Grants (Title II, Section 241). The Delinquency Prevention Block Grant program was created in 2002 to fund prevention, intervention and treatment activities. This program was initially funded at \$126 million in FY 2003, but has not received funding since that time. Instead, Congress has continued to appropriate money for specific, targeted grant

programs. The Delinquency Prevent Block Grant program is the only JJDP funding stream with a mandatory tribal set-aside. The Act requires that funds be allocated among the states according to population and that all eligible tribes are to be treated collectively as one state, with funding to this “51st state” allocated based on population relative to the other states. In practice, this would result in a tribal set-aside of less than one percent of all appropriated funds.

Challenge Grants. (Part E, Section 261). The Act authorizes OJJDP to make other grants directly to states, local governments, tribes, and private organizations to “carry out projects for the development, testing, and demonstration of promising initiatives and programs for the preventions, control, or reduction of juvenile delinquency.” There are no specific eligibility requirements and most of the funding is earmarked. Tribes receive very little funding this way. For example, in FY 2008, the Senate bill would have provided \$76.5 million, with only one grant (\$250,000) going to a tribal government. .003% will not begin to address the critical needs that tribal governments face.

B. Proposed tribal grant program

A first step toward ensuring a stable source of funding for tribal juvenile justice programs is to authorize the Tribal Youth Program as a combined tribal grant program, made up of funding provided for tribes each year under all of the JJDP grant programs. The new tribal grant program should be authorized in a separate section, which would set forth specific findings related to American Indian youth and tribal governments. The new program should also require OJJDP to consult with tribes prior to grant-making and report to the relevant authorizing Committee on grants provided, and require OJJDP to coordinate with other agencies providing funds to tribes for related purposes. This section should also streamline eligibility requirements for tribal grant applicants.

In order to ensure that tribal governments will share in the benefit from any overall increases in funding, the bill should set aside a specific amount of funding from each grant program. The tribal funding from these different streams can be administered through the combined tribal program, but separate set-asides will ensure that tribal governments continue to receive funding even if Congress elects not to fund one of the grant programs. This is especially important because, under current law, only the Delinquency Prevention Block Grant program has a required tribal set-aside, and this program has not received funding from Congress.

The set-aside amount for tribal grants should be increased to 10 percent, which is the amount of the tribal set-aside in the Violence Against Women Act.¹⁵ Tribes should also be made directly eligible for any new grants authorized, and funding set aside under those grants. In no event, however, should funding fall below the current level of \$10 million during a year in which any of these programs are funded.

Like all governments, tribes need access to flexible and consistent funding sources in order to develop institutions and programs that work. The method that OJJDP has chosen to administer funds earmarked for tribes—competitive short-term grants—does little to address this problem. This means that, although many tribes are responsible for running their own juvenile justice systems, they have no dependable source of juvenile justice funding. We encourage Congress to continue to work with tribes and consider how tribal juvenile justice systems might receive funding similar to the money states receive.

Other Needs

Tribal Juvenile Data Collection. The ILOC 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 ILOC 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 and 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 provide the resources necessary to maintain the at-risk youth's wellbeing. Juvenile data collection is essential for tribes to maintain healthy youth communities, but many tribes lack the resources necessary to institute these types of comprehensive programs. Appropriated funding is therefore necessary for the long term health of tribal communities, and will result in an overall savings in critical social and fiscal costs.

Preventative Family Services. According to the AG Report, Native juvenile offenders are exposed to violence at extremely high rates. This exposure negatively impacts neurological development, physical and mental health, and school performance, and increases substance abuse and delinquent behavior. 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. Tribes often lack the resources to initiate and facilitate these programs. Implementation of these programs, with an aim at holistic community and family wellbeing, has the potential to positively impact Native youth beyond the problem of juvenile justice. Congress must appropriate these programs with this in mind.

Thank you for the opportunity to comment and work together to create a better outlook for our Native youth. We look forward to working with the Committee on fashioning a tribally-informed juvenile justice system. If you have any questions or comments, please contact John Dossett, General Counsel or Christina Snider, Staff Attorney at (202) 466-7767.