



TESTIMONY OF DAVID SIMMONS, GOVERNMENT AFFAIRS  
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ASSOCIATION

BEFORE THE TRIBAL LAW AND ORDER COMMISSION

SEPTEMBER 7, 2011

FIELD HEARING HELD IN TULALIP, WASHINGTON

Chairman Eid and Commission members. Thank you for providing the National Indian Child Welfare Association (NICWA) an opportunity to share our experience and thoughts on issues of implementation of the Tribal Law and Order Act regarding American Indian youth involved in the juvenile justice system. Our focus is supporting alternative approaches to incarceration for those youth that can be healed and do not present a serious threat to community safety. We also are concerned with how those youth that are confined can be rehabilitated to reduce the chance that they will become repeat offenders.

In the United States, there are 563 federally recognized American Indian tribes comprising an American Indian/Alaska Native (AI/AN) population of approximately 4 million individuals. Half of this population lives on reservations, and the other half lives off-reservation, primarily in urban communities. The American Indian and Alaska Native population is young: 42%—almost 2 million—are under 19 years of age. The high school dropout rate for American Indian and Alaska Native children is more than double than that of white non-Hispanic students and the highest of any racial or ethnic group in America. The suicide rate among Indian youth is 9.2 per 100,000, as compared to 3.0 per 100,000 for the United States as a whole. Indian youth die from accidents at a rate of 43.4 per 100,000, as compared to 18.7 per 100,000 for the United States as a whole.

American Indian youth are grossly over-represented in state and federal juvenile justice systems and secure confinement. For example, in four states (South Dakota, Alaska, North Dakota, and Montana), Native youth account for between 29% and 42% of youth in secure confinement – far above their percentage of the total population. In South Dakota in 1999, the Youth Law Center investigated reports of routine use of harsh discipline and restraints at a juvenile boot camp. The investigation revealed that American Indian youth represented 40–50% of the youth at the facility and 90% of those in the most secure units of the facility. They also discovered that the youth were often more harshly treated than white detainees (use of pepper spray, restraints, and leashes). In addition, the tribal youth were being punished for speaking in Lakota. The Youth Law Center filed a federal class action lawsuit in response to these abuses and was able to end these practices. This example and other anecdotal evidence suggests that incarcerated Indian youth are much more likely to be subjected to the harshest treatment in the most restrictive environments and less likely to have received the help they need from other systems. Pepper spray, restraint, and isolation appear to be grossly and disproportionately applied to Indian youth who have no recourse, no alternatives, and few advocates.

Treatment of Indian youth is complicated by the multi-jurisdictional framework applicable to juveniles involved with the legal system. Depending on where the activity occurs and the nature of the activity, an Indian youth can be subject to federal, state, or tribal law. In the case of so-called “status offenses,” the Indian Child Welfare Act (ICWA) would apply to Indian youth who may be removed from their families through the state court system for those reasons. ICWA provides for safeguards for Indian youth and families in regard to potential removal from the home and placement, a formal role for Indian tribes in those proceedings, and the possibility for transfer to tribal court. Where the juvenile act involved would constitute a crime, however, none of those safeguards come into play. Many tribal advocates have shared with NICWA the difficulty in trying to help tribes and families have a voice in the rehabilitation and treatment of American Indian youth who are detained in state and federal facilities. Where ICWA provides for a uniform process for notice of court proceedings to the child's tribe and parents and allows family members and tribes to intervene in the proceedings, there is no similar federal requirement in juvenile delinquency proceedings for American Indian youth. This leaves tribes and family members in a difficult position as they try to understand what their role and rights are as they seek to assist in legal and rehabilitative issues.

Because many of these state and federal detention facilities are long distances from tribal communities, both the tribe and family members may be at a disadvantage as they try to help their tribal youth. Chairman Dan Eddy of the Colorado River Indian Tribe in his March 11, 2008, testimony before the United States Senate Committee on Indian Affairs described how difficult it was for family members in his

community to physically visit and maintain a helpful relationship with youth incarcerated in state or federal detention facilities, most of which are often hundreds of miles from the reservation community. He cited the lack of income and transportation as major barriers to family members being able to visit and participate in the rehabilitation of tribal youth from their community. Without a regular presence, it can very difficult for tribes and family members to have a current understanding of the issues that American Indian youth in detention are experiencing and how best to address these. This also affects the ability of the tribe to provide resources and supports to state and federal facilities and help inform the courts.

Tribal youth who are incarcerated also have difficulty pursuing their cultural practices and traditions, as well as practicing their tribal religions. These practices and traditions are key to helping American Indian youth rehabilitate successfully. In a study being conducted by the National Indian Child Welfare Association, Prevent Child Abuse of America, and Purdue University, where the link between youth victimization and delinquency are being examined, preliminary results have indicated that practicing and participating in tribal culture, such as speaking your tribal language, is key to having a reduced risk of becoming involved in the juvenile justice system, according to tribal youth being surveyed. For tribal youth who are in the juvenile justice system, we know that participating in cultural activities also plays an important part in supporting their rehabilitation. However, the capacity to access and practice one's cultural traditions and practices often requires some assistance, whether that is a family member or another person from the youth's tribe. State and federal detention facilities are not equipped to regularly provide this level of support to incarcerated American Indian youth and would be hard pressed to, even with a significant increase in resources. Those with the most knowledge of the youth, their families and community, are the key to successful rehabilitation, yet they have few resources to address the needs of this population after they have been incarcerated, much less the at-risk population that is not in the juvenile justice system currently.

NICWA and the Association on American Indian Affairs understand these issues and began several years ago to raise awareness of these issues within Indian Country and also with non-Indian juvenile rights organizations. As we have learned more about these issues, we have identified some of the policy and funding gaps that exist. Chairman Wendsler Nosie of the San Carlos Apache Tribe also understands these issues and stated in his March 6, 2008, testimony before the United States Senate Committee on Indian Affairs that while detention facilities help protect the community, they often do not provide the treatment services needed to alleviate the core issues that lead Indian youth to become delinquent in the first place. He went on to describe his tribe's efforts to attract funding for treatment services and all of the barriers to receiving these funds from both state and federal sources.

In order to help reduce the disproportional placement of American Indian youth into detention facilities, tribal capacity must be improved. The research is clear that diverting youth is the most direct way to lower detention and recidivism rates. This requires that adequate treatment and support services within the community from which the youth comes are available. As in child welfare, tribal involvement is key to developing and providing the strategies that will work with American Indian youth—Alternative strategies that are less punitive and more rehabilitative. Several tribes have begun developing these types of responses both in the court and through services programs. Chairman Wendsler Nosie in his testimony from 2008 discussed how his tribe has been using a 300-mile relay race called the Sacred Run to help youth build team work and relationship skills. The youth have expressed to him that the run provides them a chance to participate in something that is bigger than themselves, which is a source of great pride for them. Other tribes are using equine therapy and restorative justice approaches in their communities, approaches that call upon traditional methods of approaching the core issues that contribute to delinquency and promote imbalance in the relationships affected in the community.

Other successful approaches are and will be developed by tribes. Understanding the basics of how these alternative approaches work and how we can find opportunities to support them is our challenge.

The Office of Juvenile Justice and Delinquency Prevention is one federal agency that has funded these alternative approaches through their Tribal Youth Program. These programs have helped many tribes develop community-based strategies to prevent or reduce delinquency in tribal communities. Increased collaboration between tribes and federal and state juvenile justice authorities also have to be strengthened and institutionalized in policy to facilitate tribes and family members being able to regularly contribute at key points of the system process. Existing funding sources need to be examined for their ability to support treatment services, especially those provided by tribes, that are effective with tribal youth in the juvenile justice system. Funding sources that have significant barriers to tribal access and implementation should be reformed. These are all goals that have been discussed in current reports and publications. In response, NICWA and the Association on American Indian Affairs have recently entered into a partnership with Annie E. Casey Foundation to undertake some of the work to bring tribal leaders and advocacy groups together to develop a unified research, communications, and advocacy agenda and a set of strategies that can be adopted by the tribes and participating organizations to capture the momentum that has gathered and to engage both tribal and non-tribal leadership in public dialogue and an agenda for systems change. As we have seen in child welfare, there are many opportunities to bring about important changes, and we believe the time is now. The Tribal Law and Order Act contains some important opportunities to help these youth and facilitate a dialogue with Indian Country on how to not only improve law enforcement, but also address the needs of our youth before they become confined using alternative responses, especially those developed by and for tribal communities. We thank you for the opportunity to share our thoughts and experiences with the Commission and welcome the opportunity to work with you in the future.

## Reports and Publication Resources

Recent reports and publications over the last few years have paid increasing attention to juvenile justice issues affecting tribal youth. However, as can be seen in the following excerpts, the most consistent message of these reports is the importance of enhancing tribal involvement and input into the process, and the need for greater collaboration and communication between tribes and juvenile justice advocacy organizations. Each of these publications is less than three years old.

### *The Coalition for Juvenile Justice (CJJ)*

*A Pivotal Moment: Sustaining the Success and Enhancing the Future of the Juvenile Justice and Delinquency Prevention Act*

[http://juvjustice.org/resource\\_265.html](http://juvjustice.org/resource_265.html)

(Supported by the Public Welfare Foundation)

#### Recommendation:

- *(Tribes) should reach out to CJJ and other organizations that can offer expertise and support to revive and expand the conversation around effective delinquency prevention and juvenile justice practices for tribal nations, and tribal youth more generally.*

*Georgetown University Center for Juvenile Justice Reform, American Public Human Service Association and Casey Family Programs*

*Bridging Two Worlds: Youth Involved in the Child Welfare and Juvenile Justice Systems, A Policy Guide for Improving Outcomes*

<http://cjjr.georgetown.edu/resources.html>

#### Recommendations:

*All children, youth and families deserve equal protections and access to services regardless of jurisdiction.*

- *Tribal government jurisdiction is recognized and Tribes should be equal providers of child welfare and juvenile justice services.*
- *The full faith and credit of tribal court orders and acts as required by the Indian Child Welfare Act should extend to juvenile justice.*
- *The basic protections of the Juvenile Justice and Delinquency Prevention Act should extend to Federal and Tribal facilities.*
- *Equal access to federal funding streams that support child welfare and juvenile justice should be provided to all.*

### *Campaign for Youth Justice*

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

Policy Brief, Race and Ethnicity Series, Vol. 1.

Neelum Arya and Addie C. Rolnick, 2008

<http://www.campaignforyouthjustice.org/key-research/policy-briefs.html>

(Supported by the Public Welfare Foundation)

Recommendations:

- *Tribal juvenile justice advocates need a "seat at the table" to ensure the needs of Native youth are being met. Resources and jurisdiction issues require working relationships with neighboring communities to provide services for Native youth.*
- *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.*

*Poverty and Race: Poverty and Race Research Action Council*

November/December 2008

*"Native Americans and Juvenile Justice: A Hidden Tragedy"* by Terry L. Cross  
[http://www.prrac.org/full\\_text.php?text\\_id=1205&item\\_id=11356&newsletter\\_id=102&header=Search%20Results](http://www.prrac.org/full_text.php?text_id=1205&item_id=11356&newsletter_id=102&header=Search%20Results)

Quote:

*"Currently, Indian children and youth who are identified as delinquent have few protections and even fewer advocates. Parents of these children who are served in this system often experience a sense of powerlessness and report being discriminated against. Tribes that might be resources for positive change are without resources or the right to intervene on their citizens' behalf."*

*Child Welfare League of America*

Native American Juvenile Rights: Who Cares? - By Terry L. Cross and Kathleen A. Fox

The Link: Connecting Juvenile Justice and Child Welfare, Vol. 7, No. 2 – Fall 2008/Winter 2009.  
<http://www.cwla.org/programs/juvenilejustice/thelink2008fall2009winter.pdf>

Quote:

*"There is much that is unknown and unexplored related to AI/AN children and youth and the juvenile justice system. Without reliable knowledge, attempts at mobilizing advocacy efforts have gone without funding and have failed to gain traction."*

CWLA Position Paper by CWLA's National Advisory Committee on Juvenile Justice (NACJJ)

The Link: Connecting Juvenile Justice and Child Welfare, Vol. 7, No. 4 – Winter 2010.  
<http://www.cwla.org/programs/juvenilejustice/LinkNewsletterWinter2010.pdf>

Recommendation:

- *Recognize the roles and responsibilities of Indian Tribes in the administration of child welfare and juvenile justice as sovereign governments and fund them accordingly.*

*National Council on Crime and Delinquency*

Native American Youth and the Juvenile Justice System (March 2008)

[www.nccd-crc.org/nccd/pubs/2008\\_Focus\\_NativeAmerican.pdf](http://www.nccd-crc.org/nccd/pubs/2008_Focus_NativeAmerican.pdf)

Quotes:

*"Most importantly, Native Americans are 50% more likely than Whites to receive the most punitive measures..."*

*"Jurisdictional complexity also makes it difficult to collect accurate data, with numbers probably underestimated."*

## **NICWA and Juvenile Justice Experience**

The National Indian Child Welfare Association is located in Portland, Oregon. Governed by an all-Native board of directors, NICWA is a national voice for American Indian children and families. NICWA program activities include training tribal, state, and private agency social workers on ICWA, providing assistance with child welfare program development to tribal governments, and facilitating research and information sharing on critical public policies that affect American Indian children and families. This work has included advocacy and extensive training activities related to the Fostering Connections Act, and NICWA was instrumental in the effort to pull together a broad base of support within the larger child welfare community for the tribal provisions in the Act.

In 2002 the NICWA board of directors identified juvenile rights and juvenile justice as policy gaps that were negatively impacting our children and communities. Their particular concern was the abuse of Native youth in juvenile facilities and the wrongful incarceration of Native youth. In 2003 and 2004 NICWA conducted focus groups with youth, families, and tribal leaders to gather preliminary data and expand our knowledge of the scope of the problem. In 2005 NICWA dedicated its annual conference to the issue and formed collaboration with two of the leading organizations in the field, the Youth Law Center and the Child Welfare League of America. From 2004 through 2006 NICWA board member Tracy King, tribal council member of the Fort Belknap Tribe, gave testimony at several national meetings on the issue. In 2006 NICWA's executive director, Terry Cross, was appointed to CWLA's National Juvenile Justice Advisory Committee. In 2007 Mr Cross participated in a Wingspread Conference on juvenile justice and child welfare and was able secure a place for tribal issues in the final report. In 2007 NICWA entered into a collaboration with Prevent Child Abuse America and Purdue University to conduct a three-year study on the linkage between youth victimization and delinquency. In 2008 NICWA met with the Coalition for Juvenile Justice to advocate that tribal provisions be added to the Juvenile Justice and Delinquency Prevention Act. Finally, in 2009 NICWA published two papers to raise awareness of these issues.





## Third Way Café

### Beyond the News

#### Native American Youth

Following the death of young girl in the juvenile boot camp program at a South Dakota state training school in 1999, reports of routine use of shockingly harsh methods of discipline and restraint at the facility surfaced. The Youth Law Center conducted an investigation in response to these allegations, and subsequently filed a federal class-action lawsuit to protect the children confined in the facility. ...

" Out of Control," a sampling of the videotaped footage obtained in the lawsuit, dramatically demonstrates that staff regularly used excessive and abusive force on young people. It shows staff forcing youth into four-point metal handcuff restraints, overwhelming youth with "cell entry teams" dressed in riot gear, spraying youth with pepper spray for minor misbehavior, [and] leading youth around the facility on a leash... Many of the young people were suicidal or had other mental health problems.

As in many juvenile facilities around the country, there were a disproportionate number of youth of color in the South Dakota facility. Thus, despite the fact that Native American youth account for only about 10% of the adolescent population of South Dakota, Native youth constituted 40-45% of youth in the facility.

... It was discovered that in addition to being over-represented in the facility compared to their representation in the State, Native youth in the facility were very often treated more harshly than White youth, with Indian children making up almost 90% of the children in the most secure units in the facility. Moreover, the Center also discovered that Native youth were being punished for speaking in Lakota, which was considered a violation of facility rules.

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The Youth Law Center filed the lawsuit in February, 2000, and reached a settlement with the State in December, 2000, to end the abusive practices... As the State came into compliance with the settlement, there were enormous changes at the facility... [including changing] the policy prohibiting youth from speaking Lakota, ...providing cultural diversity training for staff and bringing in Native American staff to provide culturally appropriate activities for Native youth.

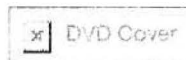
In December 2001, the State closed the State Training School. Despite the improvements that had been made following the lawsuit, the closing of the facility in many respects was a major victory for the children and families of South Dakota.

Although the Center prevailed in the lawsuit, it is clear that the struggle to find justice for Native American youth in the juvenile justice system is not over. Recent federal reports and other studies reveal alarming statistics on the status of Native American youth: Native American youth represent 1


percent of the U.S. population, yet they constitute 2 to 3 percent of youth arrested for such offenses as larceny-theft and liquor law violations. Additionally, Native American youth between the ages of 12-20 are 58 percent more likely to become crime victims than Whites or Blacks. Alcohol related deaths among Native Americans ages 15-24 are also 17 times higher than the national average; and the suicide rate for Native American youth is three times the national average.

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Read and download from Building Blocks for Youth, a comprehensive effort to protect minority youth in the justice system and to promote reform and effective juvenile justice policies. [www.buildingblocksforyouth.com](http://www.buildingblocksforyouth.com)



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