

Native American Youth Overrepresented in the Juvenile Justice System  
An Examination of Barriers and Solutions to Improvement

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## Abstract

Native American Youth are overrepresented in the Juvenile Justice System. This is a serious issue that needs to be addressed in order to find solutions to alleviate the problem. The 2008 National Council on Crime and Delinquency found poverty; educational attainment and victimization are influential in Native American juveniles' likelihood of becoming involved in the Criminal Justice System. Research also shows that alcohol and drugs are key factors to the problems that Native Americans face in their homes and on their reservations. However, the problems do not stem solely from Native American lifestyles or communities. The Criminal Justice System has a level of responsibility for the breakdown of Native American quality of life.

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## **SECTION I. – INTRODUCTION**

### **Statement of the Problem**

There is a lack of appropriate treatment programs for Native American youth who are struggling with alcohol, drug issues and thoughts of suicide. Furthermore, methamphetamine addiction has greatly increased on tribal lands and there are major ramifications. In some tribes, for example Rosebud Reservation in South Dakota, there are few services offered to support tribal members. The services that are offered are hard to access due to distance and transportation issues. While the tribe built a new juvenile detention center, they fell short in offering prevention programs and services to help the youth for a number of years. It was not until 2009 that the Office of Juvenile Justice and Delinquency Prevention (OJJDP) administered the Tribal Juvenile Detention and Reentry Green Demonstration Program (Tribal Juvenile Detention and Reentry Resource Center, 2009).

In Wisconsin, the Native American youth in some areas feel underrepresented in treatment centers where Native American doctors, counselors and Health Service providers are often non-Indian. This often leads to cultural insensitivity or a lack of cultural awareness. The benefits of the spiritual aspect in treatment of Native Americans are often missing or misunderstood. The Substance Abuse and Mental Health Services Administration (SAMHSA) and its Center for Mental Health Services (CMHS) believe that mental health services often are more effective when they are provided within the most relevant and meaningful cultural, gender-sensitive, and age-appropriate context for the people being served (SAMHSA, 2001).

Rosebud Reservation also has a huge problem with gang activity. Indians and Alaska Natives experience a crime rate of 656 incidents per 100,000 residents, compared with a crime rate of 506 incidents per 100,000 residents in the general U.S. population (Hickman, 2003).

### **Purpose of the Study**

This research paper shows the problems and barriers that Native American youth are facing. Furthermore, it exposes the disproportionate numbers of Native American youth who are currently involved in the Juvenile Justice System. The lacking resources to minimize these high numbers are discussed in this paper. Strategies and solutions for success in supporting Native American youth are also addressed.

Findings from the 2008 Louisiana Caring Communities Youth Survey (CCYS), a survey of 6th, 8th, 10th, and 12th grade students conducted in the fall of 2008 and January of 2009 found that severe substance abuse was higher for Native American Youth than the rest of the population of youth in the state. Not surprisingly, peer pressure played a key role in Native American youth using alcohol and drugs.

At the 2006 Senate Indian Affairs Committee Hearing it was reported that more than one-half of all persons who commit suicide in Indian communities never met with mental health professionals (Senate Indian Affairs Committee, 2006). Missed opportunities for treatment from depression, alcohol and substance abuse, child abuse, and domestic violence influence the number of suicides committed.

Tarzana Treatment Center in California has a treatment plan specific to the needs of Native American youth and they recognize the issues found in Indian Communities. They acknowledge the importance of Native American traditions, ceremonies and families in the treatment of the Native American youth.

A detachment from native customs, loss of identity or breakdown in traditions, languages and in some cases family structure in a number of Native American communities, has led to a dramatic increase in Native American gangs. Native American youth are becoming disconnected. As a result, a high number of them are turning to gangs to feel connected and supported. This is especially true on tribal reservations.

Navajo country recently reported 225 gangs in its territory alone and more reservations noted the increased presence of gangs (National Public Radio, 2009).

### **Significance or Implications of the Study**

American Indian youth are dramatically over-represented in the juvenile justice system. Furthermore, incarcerated Indian youth are much more likely to experience harsher treatment in the most restrictive environments and they are less likely to receive the help they need from other systems (Cook, 2008). After their incarceration many Native American youth return to their Indian communities. Without the necessary resources, alternatives, advocates or supports in place to guide them to positive reintegration they are at high risk of returning to the criminal justice system. Therefore, it is vital that tribes offer programs, support and resources to assist their tribal youth in a way that will help eliminate or reduce recidivism.

## **Methods of Approach**

Sources of information include: the U.S. Department of Justice, Bureau of Indian Affairs, Bureau of Justice Statistics and various scholarly resources.

## **Disparity in Sentencing of Native Americans**

Disparity in sentencing is defined as differential treatment of offenders who have the same current offense and criminal history. The enactment of the 1984 Sentencing Reform Act (SRA) did not eliminate the risk of unequal treatment. Disparity in sentencing can occur in placement within the standard ranges, the incarceration decision, and the alternative sentencing rates among different racial, ethnic and gender groups (Sentencing Guidelines Commission, 2008). Such disparity leads to racial tensions between incarcerated Native Americans and the Correctional System.

Federal sentences tend to be more severe than their state counterparts. Although judges and commentators have planned various strategies for reducing the disparity they did not have the political capital to be enacted, or they have been aggravated by the inflexibility of the Federal Sentencing Guidelines (Droske, 2008).

## **Challenges of Cultural Responsiveness**

There are numerous injustices and concerns to address within society. It is vital that American Indian tribes support and promote cultural responsiveness and awareness. To put this into action tribal communities must become involved by collaborating and partnering with the community and offering programs and resources where they are needed. However, some tribes will struggle to take action if there is limited financial support which is not uncommon for many tribes.

And racial tensions and barriers will be difficult to remove. Therefore, tribes may have to develop inexpensive means of educating the public by effectively promoting racial identity, collaborating with non-native communities to build healthy relationships, and alleviating issues of racism and stereotypes (Stone-Hanley & Noblit, 2009).

### **Native American Juvenile Perspective**

There are a number of reasons for the plight of Native Americans in the criminal justice system. The loss of autonomy and the destruction of traditional culture and economic independence have not surprisingly caused increases in crime and violence. Native concepts of justice and social control are quite different from western ideas. Law enforcement and court jurisdictions are often muddled, causing further disruptions (Ross & Gould, 2006). The interactions between Native Americans and criminal justice workers often come with preconceived ideas and built-in stereotypes that put Native Americans at a disadvantage. Negative public perceptions of Native Americans often cross over into the correctional system and its subculture. For example, there is a lot of mistrust from Native Americans towards the criminal justice system that stem for historical conflicts with Anglo-Americans. There is also a lack of understanding of cultural traditions and their importance to the Native American population. This leads to a number of challenges for everyone involved. In Native American jails there are also issues of mistrust between criminal justice workers and the incarcerated population. Tensions are also fueled by the disparity of sentencing towards the Native American population and a corrections subculture that is hard to penetrate.

## **Correctional System Perspective**

There are unique problems in the relationship between the criminal justice system and incarcerated Native American youth. The criminal justice system focuses more on the relationship between law and justice and less on the relationship between the correctional system and Native Americans. Tribal sovereignty, resources, and conflicting jurisdiction make the task of effective and appropriate policing in Indian Country a complicated matter due to jurisdiction being handled by one or more agencies depending on the offense. Factors may include the location of the crime, race of the victim or offender, severity of the crime and ability to provide the proper victimization services.

## **II. – REVIEW of LITERATURE**

### **Statistical Data**

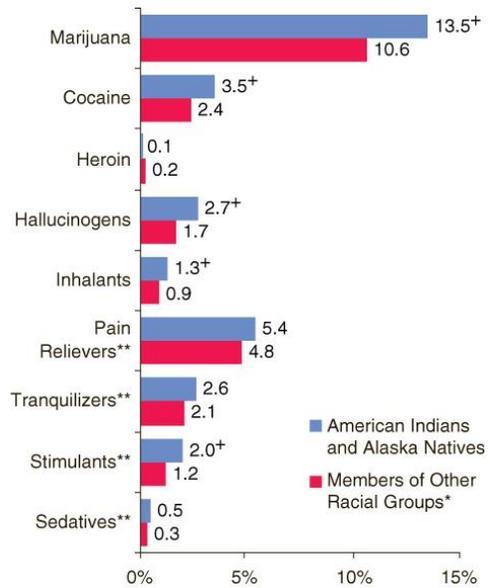
Native American adults have an incarceration rate 19% higher than the national rate. According to the U.S. Commission on Civil Rights (2008) differential treatment by the criminal justice system, the lack of access to adequate counsel and racial profiling attribute to these higher rates. American Indians and Alaskan Natives are arrested by law enforcement at twice the rate of the U.S. population for violent and property crimes. American Indians typically receive and serve longer sentences than non-Indians and in Indian Country there are also growing concerns. There were 2,135 inmates confined in Indian country jails at midyear, 2008. While it was a decrease from 2007, this decrease follows increases from 2004 through 2007.

The numbers of incarcerated Native Americans are still disproportionate compared to the national overall population and there are growing numbers of facilities to house them. In 2004 there were 68 correctional facilities on Indian land and by midyear 2008 there were 82 facilities (Minton, 2009). The Bureau of Justice Statistics 2007 mid-year report on eighty-three Indian Country jails with 2,163 inmates, stated 40 percent of inmates in jails, had been confined for violent crimes (Bureau of Justice Statistics, 2008).

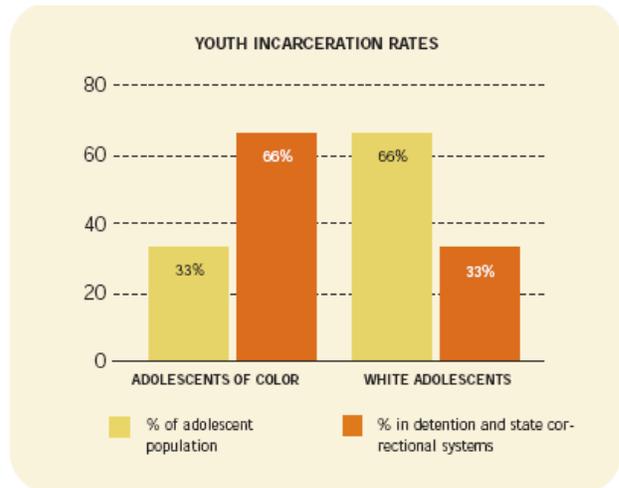
There were also disproportionate numbers of American and Alaskan Natives ages twelve years and older with higher numbers of illicit drug use and disorders than other racial groups in the same age range.

The numbers of Native American youth involved in the correctional system do not look much better than the adult population.

Figure 1. Percentages of Persons Aged 12 or Older Reporting Past Year Use of Specific Illicit Drugs, by Racial Group: 2002-2005



Source: SAMHSA, 2002-2005 NSDUHs.



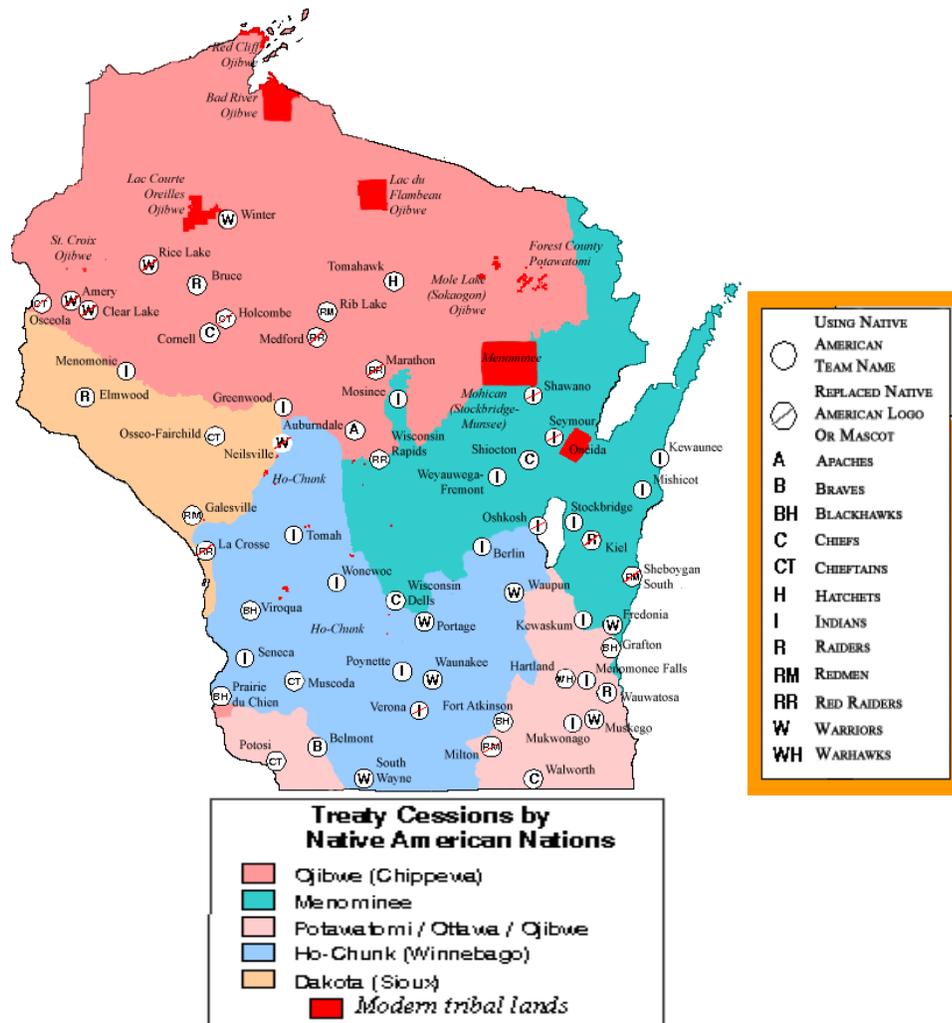
In 2005, South Dakota's Disproportionate Minority Contact Report found arrest rates were almost two and a half percent higher for Native American youth than they were for Caucasian youth. Detention rates were over one and a half times higher for Native American youth than they were for Caucasian youth (South Dakota DOC and Council of Juvenile Services, 2005).

### **General Strain Theory**

Cullen and Agnew (2006) claimed the fundamental idea that if people are treated negatively or if they don't obtain a preferred goal through legal means, they may turn to crime to fulfill their desired goal. The strain theory emphasizes that individuals are more inclined to commit crime and deviant acts when they are under extraordinary pressure or strain (Cullen & Agnew, 2006). People may simply reach the point where they become reactionary and do things that they wouldn't ordinarily do, like commit crimes. Agnew's theory asserts that when individuals stop treating people poorly, there will be a reduction in criminal behavior.

One example of general strain theory is the use of Indian Mascots. In the State of Wisconsin there has been much discussion and anger over the Indian mascot debate. And yet, if one imagines a sport team with the name, "Spics, Niggers, or Polacks," it sounds appalling (Munson, 1998). Not only would it be unacceptable nonsense but such names could realistically incite rioting. The main problem is that a race of people is being compared to objects and animals, and that stereotypes are sending negative messages to non-native and native communities alike. Indian logos and nicknames create, support and maintain stereotypes of a race of people.

When such cultural abuse is supported by one or many of society's institutions, it constitutes institutional racism (Munson, 1998). Some Native Americans view this as a dehumanizing mockery of their culture and race. Another concern is that what they consider institutional racism is having an effect on the self-esteem and positive self-image of Native American youth nationwide. "Such sports mascots promote inaccurate images and stereotypes and negatively affect the self-esteem of young American Indians" (Grier, 2005).



## **Critical Race Theory**

Critical race theory is appropriate for the area of Native American juvenile justice. Inequality in power and material well-being create conditions that lead to crime. Inequality also impoverishes many while providing opportunities for exploitation by the people in power (Cullen and Agnew, 2006).

In 2003, litigation over conditions in a South Dakota state training school exposed horrific abuses in the use of restraints and isolation while offering minimal education or mental health services (Cross, 2008). Findings also showed that Native youth were significantly over-represented in the lockdown unit therefore subjected to the worst abuses. For example, one young girl from the Pine Ridge Reservation had been detained in a secure unit within the facility for nearly two years, during which time she was placed in four-point restraints, spread-eagled on a cement slab for hours at a time. She was held in isolation for days and even weeks and pepper-sprayed numerous times (Cross, 2008). Such treatment can only lead to escalating resentment.

Such resentment can be felt on Native American reservations. The United States government's formal and informal social controls have also had a direct and often negative impact on the Native American way of life. For instance, government controlled boarding schools used formal social control by cutting the long hair and braids off of Native American boys to force them to assimilate to white culture (Trafzer, Keller and Sisquoc, 2006). Demands and peer pressure towards the boys to cut their hair in order to conform to the standards of society would be an example of informal social control.

Various losses of tribal traditions and major disruptions in living patterns were the result of Native Americans being held in boarding schools and discrimination and biases against Native Americans have had long lasting and continuing effects (Trafzer, Keller, & Sisquoc, 2006).

Disease, poverty and starvation forced the government to provide tribes on reservations with food and supplies. The Office of Indian Affairs, later referred to as the Bureau of Indian Affairs (BIA) became responsible for administering the distribution of supplies but regrettably, by the 1860's the BIA was corrupted and mishandled financial affairs and land dealings. In the 1880s, the BIA's presence on reservations increased dramatically. As a result there was despair, hostility and increasing resentment on tribal reservations (Henson, 1996). BIA Indian agents were more present on reservations during the assimilation era, in the 1880s. Indian agents were responsible for dispensing justice, distributing supplies, administering allotments, operating schools and more. But the BIA was not trusted by the Native American community. Indian agents had in essence become the tribal government by 1900 (Henson, 1996). In 1938 a report on the BIA's corruption had been made and Congress passed the Indian Reorganization Act (IRA) to improve tribal economies and tribal governments (Henson, 1996). The basic premise is that in the United States, persons of color are oppressed and being oppressed generates fundamental disadvantages for those who are so treated (Vago, 2006).

### **Differential Association Theory**

A more recent problem in Indian country is the increase of gangs. While the majority of Native American youth are not involved in gangs, there are a growing

number of gangs both on and off reservations. Many of these gangs are small, unstructured and unorganized. According to Cullen and Agnew (2006) crime is learned through association with criminal definitions and will be repeated and may become chronic if reinforced. Gang members often gain support by engaging in criminal activities thus encouraging and reinforcing such behaviors. A history of racial inequality and social factors such as cultural instability, poverty, alcohol and drug, sexual and physical abuse, have also had an influence on the increase of gangs as young people seek a place to fit in with their peers.

### **Labeling/Shaming Theory**

According to Cullen and Agnew (2006) people become stabilized in criminal roles when they are labeled as criminals, stigmatized, develop criminal identities, are sent to prison, and are excluded from conventional roles.

There is no shortage of stigmatization when it comes to Native Americans. Historians have proven to be ineffective in telling the real story of Native American history and the suffering that Native Americans have endured. And biases remain strong: hence the symbolic opposition to any kind of public expenditure aimed at preserving "ethnic" cultures (Crawford, 1992). In fact, there are still elementary students being taught to believe that Native Americans live in teepees and wear buckskins while carrying bows and arrows and there are yearly events that promote stereotypical caricatures of Native Americans. Such depictions of Native Americans fuel ignorance and a lack of understanding. It also fuels frustration, anger and resentment from Native

Americans. Columbus Day and Thanksgiving are prime examples of holidays that promote misconceptions.

### **Anomie Theory**

Such oppression led to anomie for many Native American tribes. Anomie occurs when the gap between the goals for economic success and the opportunity to obtain such goals create structural strain (Cullen & Agnew, 2006). Weak social foundations such as an unstable family units and poverty stricken neighborhoods also crate strain. This leads to anomie by causing social instability and eroding values and standards (Cullen & Agnew, 2006). Pine Ridge Indian Reservation in South Dakota is a prime example of a tribe that is experiencing anomie with an average income is \$2600 to \$3500 and extremely high unemployment rates (Bright, 2008).

### **III. – CONCLUSIONS and RECOMMEDATIONS**

It is imperative that Native American youth are given equal treatment within the juvenile justice system. There are many strategies that can uphold just treatment. For example some strategies would be monitoring legislation and policies that affect the juvenile justice process and altering existing policies that are in need of improvement. The use of assessment tools to expose unintentional racial biases could be given to personnel in the juvenile justice system. Assessment could be followed by cultural competence training to minimize negative or false attitudes and beliefs.

Ethnicity-based data within the juvenile justice system should be collected, analyzed and addressed throughout all levels of the process. The data would then be examined for areas of contrasting treatment and outcomes.

Changes would be implemented to lessen or eliminate the areas of inequality identified by the data finding to create fair treatment of all juvenile regardless of their ethnicity. By incorporating such strategies, racial disparities can and would be reduced.

To address the issues of recidivism, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) assists community efforts through coordination and leadership to create intervention strategies and put them into action (OJJDP, 2010). For example, the Second Chance Act Adult and Juvenile Offender Reentry Demonstration Projects and the Second Chance Mentoring Program authorize grants for Native American tribes. The grants can be used to: Use Actuarial-Based Assessment Instruments for Reentry Planning, Target Criminogenic Needs that Affect Recidivism, Provide Sustained Case Planning/Management in the Community, Support a Comprehensive Range of Services for Offenders.

Offender aftercare programs are essential in lowering recidivism by providing rehabilitation and treatment to Native American youth, families and communities. Proper prevention strategies and culturally sensitive treatment programs can greatly reduce the numbers of Native American youth in the juvenile justice system.

It is equally important for tribes to put programs in place to promote and provide emotional support, sobriety and healthy living strategies for Native American juveniles inside the juvenile justice system and after they are released from incarceration. Native American juveniles may be best supported by their tribes through early prevention programs that prevent gang involvement and criminal behaviors.

Tribal families also have a responsibility to lead by example and guide their children into a healthy way of living and being productive members of their communities.

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