

Tribal Youth in the Juvenile Justice System

Research has examined the juvenile justice system's disparate treatment of racial and ethnic minorities. This research includes studies of the disproportionate representation of American Indian and Alaska Native (AI/AN) youth¹ across the contact points in the juvenile justice system; the lack of access to treatment, services, and other resources that AI/AN youth can obtain; and the risk factors that may increase AI/AN youth's contact with the justice system (Lindquist et al. 2014; Rodriguez 2008; Mmari et al. 2009; Rountree 2015).

Defining American Indian and Alaska Native Populations

AI/AN individuals are generally defined as people who identify as having some degree of tribal heritage and are recognized as members of these groups either by a tribe or the United States government (Dorgan et al. 2014). According to the 2010 census, the U.S. population comprises 308.7 million people, of which 5.2 million (1.7 percent) identified as AI/AN, either alone or in combination with another race category (Norris, Vines, and Hoeffel 2012).

The U.S. government recognizes 566² AI/AN tribes, most of which have their own distinct language and culture (Lindquist et al. 2014; Indian Health Service 2015). The contemporary AI/AN population is also markedly diverse in terms of geographic distribution; roughly half of AI/AN populations live on reservations or tribal lands (federal or state reservations, Alaska Native areas, or designated tribal statistical areas). The other half live outside of designated AI/AN areas, particularly in urban areas (Beauvais, Jumper-Thurman, and Burnside 2008). Moreover, the AI/AN population is relatively young. The 2000 census showed that about 33 percent of this group was under age 18, compared with 26 percent of the total population, and that the median age for this group (29 years) was less than the median age (35 years) for the general U.S. population (Ogunwole 2006; Lindquist et al. 2014).

Jurisdictional Issues Faced by Tribal Youth

Crimes committed in Indian country (which is defined as all Indian lands and communities within the borders of the United States) can fall under the jurisdiction of the federal, state, or tribal justice systems (Dorgan et al. 2014; Adams et al. 2011). Jurisdiction depends on the following four factors: the location of the crime, type of crime, status of the perpetrator, and status of the victim.

¹ For the purposes of this literature review, Tribal Youth is defined as American Indian and Alaska Native (AI/AN) Youth.

² This number is current as of April 1, 2016. However, this number will soon increase to 567.

<http://www.bia.gov/cs/groups/public/documents/text/idc1-030829.pdf>

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In general, the federal government has jurisdiction over all federal crimes (including bank robbery and drug trafficking) committed in Indian country, regardless of whether the perpetrator or the victim is AI/AN (Adams et al. 2011; Motivans and Snyder 2011; Rountree 2015).

If the offense is not a federal crime, jurisdiction in Indian country depends on whether the state is designated a Public Law 280 (PL 280) state. In 1953, the federal government greatly expanded six states' jurisdiction over tribal matters under PL 280, which allows both the state and the tribe to have jurisdiction over the tribe (Tribal Law and Policy Institute n.d.). This means that even if a state decides to pursue a case against a tribal youth, this does not prevent the tribe from prosecuting the same case; in addition, the double jeopardy rule does not apply because tribes have inherent sovereign powers that are not derived from the federal government. If an AI/AN juvenile commits a crime in a PL 280 state, jurisdiction is shared by both the state and the tribe. Alternatively, if a non-AI/AN juvenile commits a crime, jurisdiction rests solely with the state (Adams et al. 2011; Tribal Law and Policy Institute n.d.).

Conversely, in other states, jurisdiction depends on whether the defendant is AI/AN, the victim is AI/AN, and whether the crime is considered a "major crime," as defined by the Major Crimes Act. The Major Crimes Act lists 15 offenses as major crimes such as murder and manslaughter. If a non-AI/AN individual committed the offense and the victim is AI/AN, jurisdiction rests with the federal government. Alternatively, if the case involves a non-AI/AN defendant against a non-AI/AN victim, the state has jurisdiction. Thus, at a minimum, for a tribal court to have jurisdiction, the defendant must be AI/AN (Adams et al. 2011).

This complex arrangement among the three jurisdictions (tribal, state, and federal) determines which justice system will handle the processing of tribal youth (Rountree 2015). This is not a situation which most youths, including those in other minority groups, must face; most juvenile cases are handled in state courts (Hockenberry and Puzanchera 2014). In addition, determining which system will handle tribal youth cases depends on available resources, because tribal justice systems are often underfunded and unable to handle the processing (Dorgan et al. 2014).

Overrepresentation of Tribal Youth in the Justice System

Research suggests that tribal youths are more likely than their white peers to be arrested, adjudicated, and incarcerated in juvenile justice systems across the United States. For example, tribal youths are 50 percent more likely than white youths to receive the most punitive sanctions such as out-of-home placement after adjudication or a waiver to adult court.³ One of the clearest examples of overrepresentation of tribal youth in the justice system can be found in the federal system: 60 percent of the federal juvenile justice population comprises tribal youth (Hartney 2008).

Only a small number of tribal youths are held in tribal facilities. For example, in 2007, only 13 percent of all detained tribal youths were held in jails or facilities on tribal lands. Such statistics show that not only are tribal youths disproportionately represented in the juvenile justice system, but they are also mostly housed in detention and long-term state and federal facilities that are far from tribal lands. This can negatively impact their ability to successfully reintegrate back into society (Lindquist et al. 2014).

A review of research conducted between 2002 and 2010 on racial disparities in the juvenile justice system uncovered 11 studies that examined the effect of being AI/AN on juvenile justice processing (Cohen et al. 2009). Across the 11 studies, the negative impact of race was found in over half of the case

³ The published study did not offer comparisons to other racial or ethnic categories.

outcomes.

For example, one of the 11 studies was an analysis of referrals to juvenile court in Arizona. In this study, Rodriguez (2008) found that AI/AN youths were more likely than white youths to be detained, even when controlling for factors such as prior record and offense type. In another study, of racial disparities in Alaska, it was found that AI/AN youths were less likely than white youths to be diverted from the juvenile justice system (Leiber, Johnson, and Fox 2006) .

Overall, the review by Cohen and colleagues (2013) found that even when controlling for important factors—such as prior record, offense type, gender, and age—tribal youths still experience disparate treatment in the juvenile justice system, when compared with white youths. In addition, the review also found that, compared with other minority youth, there is a lack of research on AI/AN youth. The review located 56 studies on black youth and 30 studies on Hispanic/Latino youth, but only 11 studies on AI/AN youth (Cohen et al. 2013).

Risk Factors

Historical Trauma

Historical trauma in the lives of tribal youth is generally traced back to the erosion of tribal sovereignty in the late 19th and early 20th centuries (Litt and Singleton n.d.; Eid et al. 2013; Rountree 2015). During this time, youths were sent to boarding schools, which forbade native languages and customs, causing generations of AI/AN people to lose connection with their tribal culture. Research also suggests that tribal youth are also still negatively impacted by the historical trauma that was caused by forced relocations, cultural assimilation, and broken treaties with the U.S. government (Litt and Singleton n.d.; Eid et al. 2013; Rountree 2015).

Violence

The exposure to violence is one of the most troubling problems facing tribal youth (Dorgan et al. 2014). In a study of the self-reported results from the Youth Risk Behavior Surveillance Survey, Pavkov and colleagues (2010) found that tribal youths were more likely than White youth to have carried a gun in the past 30 days, been involved in a physical fight in the last 12 months, been injured in a physical fight in the last 12 months, and been involved in a fight at school in the last 12 months. Tribal youth were also more likely than Hispanic/Latino youth to have carried a gun in the past 30 days and been injured in a fight in the last 12 months.

Tribal youths are also more likely than their peers to be the victims of serious violence or simple assault (Litt and Singleton n.d.). According to the Indian Law and Order Commission, the rate of posttraumatic stress disorder (PTSD) among tribal youths matches or exceeds the rate of PTSD in military personnel who have served in the Afghanistan, Iraq, and Persian Gulf Wars (Litt and Singleton n.d.; Eid et al. 2013).

Suicide

The Centers for Disease Control and Prevention found that between 1999 and 2009, tribal youths experienced suicide rates that were 50 percent higher than non-tribal youths (Litt and Singleton n.d.). More recent research shows that tribal youths are 2.5 times more likely to die by suicide than non-Native youths (Eid et al. 2013). Moreover, some tribal leaders have indicated that approximately 20 percent of their youths have attempted suicide (Eid et al. 2013).

Substance Use

Alcohol use disorders are among the most severe health problems for AI/AN people (SAMHSA 2013). This chronic exposure to high substance use has negatively affected the younger generation and continued this vicious cycle. For instance, tribal youths use cigarettes, engage in binge drinking, and use illegal substances at greater rates than the general population (Litt and Singleton n.d.; Eid et al. 2013). Moreover, the Indian Law and Order Commission found that binge drinking is more common among tribal youths than any other racial or ethnic group, and that tribal youths up through the age of 24 are more than twice as likely to die as a result of binge drinking than non-tribal youths (Eid et al. 2013).

Lack of Cultural Instruction

Most tribal youths attend public schools operated by the town or city near their home, even if they live on reservations (Pavkov et al. 2010). However, Mmari and colleagues (2010) found that attending school outside of the reservation can be a risk factor. For example, Arizona passed English-only laws, which replaced previous bilingual laws in schools. As a result, cultural instruction has been limited – if not discontinued – and even AI/AN teachers can no longer teach the tribal language. Tribal youths who attend schools outside the reservations feel a loss of language and cultural identity, and ultimately experience family separation (Mmari et al. 2010).

Overall, these risk factors, in combination with poverty rates and tribal communities' frequent lack of funding for mental health and other services, make tribal youths more susceptible to coming into contact with the juvenile justice system.

Protective Factors

Protective factors are those characteristics of the child, family, and wider environment that can increase resiliency and reduce the likelihood of adversity leading to negative child outcomes and behaviors, such as contact with the juvenile justice system (Development Services Group, Inc. 2013).

Family

The presence and support of family can be an especially important protective factor for tribal youth. For example, Mmari and colleagues (2010) conducted focus groups with tribal community members and found that family, especially parents, can have a protective presence in the lives of tribal youth. Parental support and having a close relationship with parents was one of the most frequently cited protective factors among tribal members. A study by LaFromboise and colleagues (2006) surveyed AI adolescents in grades 5–8 to examine protective factors that impact resilience. They found that maternal warmth (a measure of parenting behavior) significantly increased the odds of a youth being resilient. As measures of maternal warmth increased, the measures of a youth's resilience also increased. Pu and colleagues (2013) studied protective factors for violence among AI students in grades 6–12. They found that perceived parental monitoring was a significant protective factor for violence among female tribal adolescents (although not among male adolescents). Female adolescents who perceived greater parental monitoring were more confident they could avoid getting involved in violence.

Culture

Culture (which includes traditional values, customs, activities, and ceremonies in AI/AN communities) can play an important, protective role in the lives of tribal youth. For example, one protective factor that Mmari and colleagues (2010) found to be particular to tribal youths was their knowledge of tribal language. Tribal language was seen as a way to teach youths about cultural values and customs. For some youths, this gave them a sense of purpose and guidance. However, this factor was not as important to all tribal youths who were interviewed. While some felt that their

communities taught them the importance of learning the tribal language and cultural heritage, others did not feel it was as important to learn the language (Mmari et al. 2010). This particular finding emphasizes how tribal communities differ from each other, and how protective factors may be distinctive to particular tribes and tribal settings.

Additionally, LaFromboise and colleagues (2006) examined the impact of enculturation—which is the process of learning about one’s native culture—on the resilience of AI adolescents. They found that the more enculturated the youths were, the greater their resilience. As measures of enculturation increased, youths were 1.8 times more likely to be resilient. Further, Whitbeck and colleagues (2001) found that enculturation was positively associated with school success, meaning that the more enculturated youths had higher class grades and more positive school attitudes. The results show the important and positive influence of traditional culture in the development of tribal youths.

Outcome Evidence

Few evidence-based programs target tribal youths and the particular problems they face. Below are examples of evidence-based programs that seek to address problems such as suicide and substance use, which are prevalent among tribal youths.

American Indian Life Skills Development. Also known as Zuni Life Skills Development, this is a school-based, culturally sensitive, suicide-prevention program for AI/AN adolescents. Tailored to AI/AN norms and values, the curriculum was designed to reduce behavioral and cognitive factors associated with suicidal thinking and behavior. For the Zuni people, suicide is especially distressing because it is forbidden in their traditional culture (LaFromboise and Howard-Pitney 1995). Zuni leaders initiated the development of a suicide prevention program for students in grades 9 and 11, with the goal of reducing the risk factors related to suicidal behavior.

LaFromboise and Howard-Pitney (1995) found mixed results regarding the curriculum’s impact on AI/AN students. The intervention group showed significantly fewer feelings of hopelessness and demonstrated a significantly higher level of suicide intervention skills than the no-intervention group. Intervention students also demonstrated significantly higher levels of problem-solving skills, but only in the more mild suicide scenario, and not in the more serious suicide scenario. But there were no significant effects on measures of suicide probability and depression.

Cherokee Talking Circle (CTC). CTC is a culturally based intervention targeting substance use among AI/AN adolescents. The program was designed for students who were part of the United Keetoowah Band of Cherokee Indians, the eighth largest tribe in Oklahoma. The goal of CTC is to reduce substance use, with abstinence as the ideal outcome. CTC integrates Keetoowah-Cherokee values into the intervention and is based on the Cherokee concept of self-reliance. The Keetoowah-Cherokee use self-reliance as part of their overall worldview that all things come together to form a whole. Keetoowah-Cherokee leaders note that self-reliance is a way of life that directly affects health and helps maintain balance (Lowe et al. 2012).

An evaluation by Lowe and colleagues (2012) found that CTC was significantly more effective overall in reducing substance use and other related problem behaviors among AI/AN adolescents, compared with noncultural, standard substance abuse education programs.

Bicultural Competence Skills Approach. This is an intervention designed to prevent abuse of tobacco, alcohol, and other drugs by AI/AN adolescents by teaching them social skills. Intervention groups are led by two AI/AN counselors and include 10 to 15 sessions, of 50 minutes each. Through cognitive and

behavioral methods tailored to the cultural prerogatives and reality of the lives of AI/AN youths, participants are instructed in and practice communication, coping, and discrimination skills. All sessions include discussion of AI/AN values, legends, and stories.

Schinke and colleagues (1988) found that at the 6-month follow up, program students were significantly more knowledgeable about substance use and abuse and held less favorable attitudes about substance use in the AI/AN culture; scored higher on measures of knowledge of substance abuse, self-control, alternative suggestions, and assertiveness; and reported less use of smoked tobacco, smokeless tobacco, alcohol, marijuana, and inhalants in the previous 14 days than their control group counterparts. At the 3-year follow up, Schinke, Tepavac, and Cole (2000) found that rates of smokeless tobacco, alcohol, and marijuana use were lower by 43 percent, 24 percent, and 53 percent, respectively, for those who received the life skills training, as compared with the control group.

Project Venture. This is an outdoor/experiential program that targets at-risk AI/AN youths. The program concentrates on AI/AN cultural values—such as learning from the natural world, spiritual awareness, family, and respect—to promote healthy, prosocial development. The goals of Project Venture are to help youths develop a positive self-concept, effective social and communication skills, a community service ethic, decision-making and problem-solving skills, and self-efficacy. By fostering these skills, the program aims to build generalized resilience; increase youths’ resistance to alcohol, tobacco, and other drugs; and prevent other problem behaviors.

At the 18-month follow up, Carter, Straits, and Hall (2007) found mixed results; however, overall the program had a significant effect on alcohol use. Treatment youths demonstrated less growth in substance use, as measured by the four outcome measures (cigarettes, marijuana, alcohol, and other illicit substances) taken together. However, looking at the outcome measures separately, there was a significant effect found only for alcohol use. The other substances followed trends similar to alcohol use, but were not significant.

For more information on the programs, please click on the links below.

- [American Indian Life Skills Development](#)
- [Cherokee Talking Circle](#)
- [Bicultural Competence Skills Approach](#)
- [Project Venture](#)

Outcome Evidence Limitations

Unfortunately, the impact of evidence-based programs for AI/AN youths is limited for reasons other than the often-cited lack of funding for tribal communities. First, although there are some studies that analyze the effectiveness of evidence-based programs on tribal populations (such as those described above), most evaluation research does not include AI/AN youths in study samples. Similarly, if AI/AN youths are included as part of the sample, the study does not usually include a subgroup analysis that could show how the program impacts AI/AN youths differently than other minority or non-minority youths. Second, even when tribal communities are interested in evidence-based programming, their concerns about whether the program aligns with tribal values can hinder widespread implementation (Walker et al. 2015). Third, not only are there differences between tribes and other minority groups, but there are also differences among the various tribes. As a result, a program that works in one tribal community may not work in others with different cultures, values, and philosophies (Melton 2004). For example, although the evaluation of Project Venture showed positive impacts on youths from the United Keetoowah Band of Cherokee Indians, the study noted that there were limitations to the

generalizability of the program to other tribes in other communities (Lowe et al. 2012). Finally, evaluation studies of evidence-based programs in tribal communities are often cited as having study limitations such as small sample size, short follow-up period, and the use of self-report measures instead of official measures of delinquency (Carter et al. 2007).

Recommendations from the Attorney General’s Advisory Committee

The Attorney General’s Advisory Committee on American Indian and Alaska Native Children Exposed to Violence was tasked with examining issues related to tribal youths’ exposure to violence, and developing recommendations to address these problems. A number of recommendations put forth by the Committee focused on providing needed funding to tribal communities, and improving the federal- and state-level responses to the violence-related issues that plague a large number of tribal communities and tribal youth (Dorgan et al. 2014). For instance, in 2013, as a result of sequestration, there was \$85 billion in federal cuts to programmatic funding for populations throughout Indian Country, including for education and child welfare programs that assist tribal youth (Center for Native American Youth 2013).

With regard to the juvenile justice system, the Committee made a number of recommendations to improve the processing and rehabilitation of tribal youths such as 1) providing publically funded legal representation, to ensure the protection of tribal youths’ rights and minimize the harm that the justice system may cause; 2) only using detention when youths pose a danger to themselves or the community, and providing individually tailored services (such as reentry services) when detention is necessary; and 3) providing trauma-informed, culturally appropriate screening, assessment, and care throughout the federal, state, and tribal justice systems (Dorgan et al. 2014).

Conclusion

Advocates say that more must be done for tribal youth, particularly those involved in the juvenile justice system. An understanding of the unique cultural differences of tribal youth, and the different risk and protective factors they face, compared with non-tribal youth, is an important step in developing comprehensive and culturally appropriate prevention and treatment services. More research is needed to gain a better understanding of the complicated issues that face tribal youth in today’s society, along with additional evaluations on interventions that target tribal youth, and how these interventions can be better implemented in tribal communities (Morsette et al. 2012; Walker et al. 2015). According to Arya and Rolnick (2009), federal and state government agencies, in cooperation with tribal communities, should sort out the “tangled web of justice” that tribal youths encounter if they come into contact with the juvenile justice system. In addition, juvenile justice staff, service providers, and others who work directly with youth should be trained in culturally appropriate and trauma-informed approaches to treatment (Dorgan et al. 2014).

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