

A large decorative graphic on the left side of the page consists of two overlapping triangles. The bottom-left triangle is a vibrant teal color, and the top-right triangle is a light gray color. They meet at a diagonal line that runs from the top left towards the bottom right.

# **OJJDP Tribal Consultation Response**

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# Executive Summary

This report summarizes findings from the Office of Juvenile Justice and Delinquency Prevention's (OJJDP's) consultation with tribal representatives held via webinar on June 25, 2020, and OJJDP's responses to the issues discussed. The Office encouraged participants and those unable to participate to submit their input during a 120-day comment period following the webinar. OJJDP received 31 comments during the comment period.

The discussion centered around the questions of how OJJDP can—

- Collaborate with tribal communities on implementing the provisions of the Juvenile Justice Reform Act (JJRA).
- Support tribal representatives' involvement in State Advisory Groups (SAGs).
- Improve tribes' access to states' Title II funds.
- Increase state-tribal partnerships.
- Encourage tribes to apply for discretionary grant funding.
- Determine which types of programs would enhance public safety and hold juvenile offenders appropriately accountable.

The conversation also addressed other specific assistance that OJJDP can provide for existing programs, innovative ideas, and additional training and technical assistance (TTA); and what barriers tribes face in accessing these resources.

Throughout the webinar and comment period, participants stressed their tribal nations' need for the federal grant-funding system to recognize the validity of tribes' culturally based approaches for working with youth before, during, and after entry into the juvenile justice system. The participants also emphasized the need for culturally relevant standards for measuring the effectiveness of traditional approaches used in tribal programs.

Tribal representatives stressed that they need funding to establish and support the basic infrastructure of their justice systems, such as law enforcement officers, tribal courts, court clerks, judges, and tribal court facilities. They expressed that hiring full-time or even part-time tribal court personnel is a challenge. Some tribal courts are entirely volunteer based, and struggle to find space to meet in their community.

Tribal nations also expect regular, ongoing dialogue with OJJDP related to the implementation of the Juvenile Justice and Delinquency Prevention Act as amended by the JJRA. Tribal leaders and representatives stressed the importance of annual consultations and recommended the creation of a working group or advisory committee that would work with the OJJDP Administrator and the Coordinating Council on Juvenile Justice and Delinquency Prevention.

Participants stressed that consultation and inclusion in matters involving tribal youth must be part of the government-to-government relationship and the federal trust responsibility to Indian tribes.

Regarding the JJRA's requirement that SAGs include tribal representatives, tribes are concerned that this representation will be inadequate and prefer that representatives be actual tribal members rather than individuals with experience in tribal justice systems. Participants also want states and tribes to be trained in how to fully comply with the tribal representation requirement.

OJJDP is committed to supporting American Indian and Alaska Native (AI/AN) communities in their work with tribal youth and to fostering an ongoing dialogue and effective relationship with AI/AN jurisdictions. The Office will take the following actions to help build and maintain its support of tribal communities and their juvenile justice programs:

- Incorporate a consultation or listening session into the biennial Tribal Youth Conference and gather tribal input regarding whether to add the same to the yearly State Relations and Assistance Division National Training.
- Recommend to the Federal Advisory Committee on Juvenile Justice (FACJJ) that it create a subcommittee devoted to issues of concerns to tribes.
- Recommend that the Coordinating Council on Juvenile Justice and Delinquency Prevention (Coordinating Council) establish a subcommittee devoted to issues of concern to tribes.
- Work to ensure that at least one tribal representative serves on the FACJJ and Coordinating Council.
- Ensure that states include a tribal representative on their SAG, and provide TTA to ensure that states have the support they need to meet this JJRA requirement.
- Collaborate with the Department of the Interior and the Census Bureau to strengthen the tribal pass-through methodology for Title II funding.
- Consult with tribes whose Title II funds are impacted by the formula and methodology for calculating the funding.
- Incorporate questions suggested by tribes about Title II pass-through funding into state programmatic monitoring site visits and enhanced programmatic desk reviews.
- Coordinate across federal agencies to identify programs that support tribal juvenile services, and make that information available to tribes in anticipation of issuing a solicitation for a comprehensive needs assessment of those services.
- Incorporate topics contributed through the consultation in both tribal and state TTA deliverables.
- Ensure that OJJDP's tribal TTA providers offer additional opportunities for tribes to learn from the experience of other tribes that have succeeded in having their tribal best practices recognized and funded.

- Examine the feasibility of incorporating language into certain solicitations that state, in lieu of the standard evidence-based programs that do not include a significant population of AI/AN youth in their studies, tribes may propose indigenous practices that have longevity within tribal communities.
- Examine the precedents at the federal and state level that allow traditional or cultural programs to be developed as promising or evidence based. To the extent that funding is made available, OJJDP will consider funding research in this area.

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# Background

On June 25, 2020, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) convened a [tribal consultation](#) via webinar with 288 tribal leaders and representatives from across the country. OJJDP sought feedback on how the Office can assist tribes in carrying out applicable provisions of the [Juvenile Justice Reform Act \(JJRA\) of 2018](#), how to increase the tribes' access to juvenile justice funding, and how to improve coordination with tribal communities.

The Office disseminated an invitation to the webinar and a [framing paper](#) on May 12, 2020 which laid out specific questions for discussion. All participants were encouraged to email additional comments to OJJDP by August 25, 2020, a 60-day window. In early September 2020, OJJDP extended the comment period an additional 60 days—to November 6, 2020. OJJDP received 31 written responses during the comment period.

Then-OJJDP Administrator Caren Harp moderated the discussion and Minnesota District Court Judge Korey Wahwassuck and tribal youth advocate Audriana Mitchell served as facilitators. Judge Wahwassuck is a founding member of the first joint tribal-state jurisdiction wellness court and a member of Project TEAM (Together Everyone Achieves More), which helps jurisdictions create tribal-state collaborative courts. Ms. Mitchell is a peer guide for OJJDP's Healing Indigenous Lives Initiative, a member of the 25 Under 25 Native Youth Leaders of 2018, and President of the Mesa Community College Inter-tribal Student Organization.

## Tribal Provisions in the Juvenile Justice Reform Act

In 2018, Congress passed the JJRA, which reauthorized and substantially amended OJJDP's authorizing legislation—the [Juvenile Justice and Delinquency Prevention \(JJDP\) Act](#). The JJRA created specific provisions related to tribes regarding funding transparency, tribal representation in State Advisory Groups (SAGs), and [Title II formula grants](#) funding. The JJRA also requires that OJJDP include in its annual report a description of grants provided directly to tribes and indirectly through a state or unit of local government.

*During the consultation, the Office sought the tribes' input on how OJJDP can best collaborate with tribal communities to implement applicable JJRA provisions. These provisions are described in the fact sheet: ["Congress Enacts 2018 Juvenile Justice Reform Act \(JJRA\) Including Amendments To Support Tribal Youth."](#)*

## Title II Formula Grants Program

As part of the JJRA, OJJDP requires states to pass a specific amount of Title II formula grants through to federally recognized tribes. The amount of pass-through funding tribes receive is based on the percentage of the state's youth population (younger than 18) who live on tribal lands. Tribes may use these funds for a variety of prevention and intervention activities such as counseling, training, and mentoring programs for youth.

Tribes can also use the grants to fund programs that address the needs of girls who are in or at risk of entering the juvenile justice system.

To be eligible for pass-through funding, a tribe must perform law enforcement functions, as determined by the Secretary of the Interior, in consultation with the Attorney General. The tribe also must agree to attempt to comply with the four core requirements of the JJDP Act, i.e., deinstitutionalize status offenders, separate juvenile offenders from adults in secure facilities, remove juvenile offenders from adult jails and lockups, and address racial and ethnic disparities within the juvenile justice system.

*During the consultation, the Office sought the tribes' input on how OJJDP can help—*

- *Improve tribes' access to resources from a state's Title II formula funds. OJJDP also asked what barriers tribes face in accessing these resources.*
- *Increase state and tribal partnerships that support programs and services for tribal youth.*

The JJRA also specifies that to be eligible for formula grant funding, jurisdictions with one tribe or more must have, as a member of their SAG, a tribal representative (if available) or an individual with significant expertise in law enforcement and juvenile justice in tribal communities. SAG members are responsible for monitoring and supporting their state's progress in addressing the four core requirements of the JJDP Act.

*During the consultation, the Office sought the tribes' input on how OJJDP can support the involvement of tribal representatives in State Advisory Groups.*

## **Discretionary Grant Funding for Delinquency Prevention and Intervention Programs**

OJJDP participates in the Department of Justice's Coordinated Tribal Assistance Solicitation (CTAS), which allows federally recognized tribes to submit a single application for most of the Department's tribal grant programs. OJJDP supports two purpose areas under CTAS.

The Tribal Juvenile Healing to Wellness Courts program (Purpose Area 8) helps tribal courts respond to the substance use challenges of court-involved youth younger than 21. Funding awarded under Purpose Area 9, the Tribal Youth Program, helps tribes prevent juvenile delinquency, respond to justice-involved youth, and improve their juvenile justice systems.

Tribes may also apply for other OJJDP discretionary funding. This includes funding for programs that support mentoring, juvenile and family drug courts, opioid-affected youth, children exposed to violence, children's advocacy centers, and Internet Crimes Against Children task forces.

Other programs include those that promote delinquency prevention, comprehensive anti-gang strategies, reentry, juvenile justice and mental health collaborations, and juvenile justice system enhancements.

Despite the significant number of funding opportunities that are available to tribes, a [2018 report by the Government Accountability Office](#) revealed that most tribes do not apply for funding if that opportunity is not designated as tribal specific.

*During the consultation, the Office sought the tribes' input on—*

- *How OJJDP can encourage tribes to apply for discretionary grants that prevent delinquency and victimization.*
- *What types of programs OJJDP can offer that would enhance public safety and help ensure that young offenders are held appropriately accountable to crime victims and tribal communities.*
- *What other assistance OJJDP can provide to help existing programs, support innovative ideas to expand programs, and provide additional training and technical assistance.*

This document presents an overview of how OJJDP is responding to the insightful feedback the tribes provided during the consultation and subsequent 120-day comment period. The input of our tribal partners is critical to our ongoing work to help ensure the well-being and success of American Indian and Alaska Native youth.

# OJJDP Consultation With Tribal Representatives

This report presents a summary of the conversations that occurred during OJJDP's consultation with tribal representatives, advocates, and contributors on June 25, 2020. The text has been condensed for clarity and to eliminate repetition. Readers may also listen to the full [OJJDP Tribal Consultation Webinar](#) or read its [transcript](#). This report includes additional input and feedback submitted during the postdiscussion 120-day comment period. If any participant or contributor believes the information they provided was not captured sufficiently, they may send their comments to [OJJDP Tribal Consultation@ojp.usdoj.gov](mailto:OJJDP Tribal Consultation@ojp.usdoj.gov).

## Questions and Responses

### ▪ **Question 1: How can OJJDP best collaborate with tribal communities to implement applicable JJRA provisions?**

One participant noted that the JJRA included a few new tribal provisions, but it did not include all the recommendations that have been advocated by Indian tribes since 2008. The participant recommended that OJJDP implement the remaining recommendations contained in Title II of S.210, the [Tribal Law and Order Act Reauthorization and Amendments Act of 2019](#). Many of these provisions could be implemented administratively and would help improve the lives of American Indian and Alaska Native (AI/AN) children by incorporating traditional and culturally based programs to improve rehabilitation, support systems, and coordination of juvenile justice and related systems.

The participant added that tribal consultation and inclusion in matters involving tribal youth must be part of the government-to-government relationship and the federal trust responsibility to Indian tribes and people. This relationship and trust responsibility extends across the entire federal government, including the Department of Justice, not just the Bureau of Indian Affairs.

Representatives from one state with tribes and AI/AN villages said that their state cannot grasp that it contains 220-plus tribal nations that are deserving of every bit of cooperation, collaboration, and respect. The tribes' relationship with the state is adversarial and conflicted, which is a barrier to the ability of tribes to provide the services that their tribal citizenry need.

Numerous other participants said that OJJDP must regularly engage with Indian tribes on implementing the JJRA to ensure there is up-to-date coordination and feedback from tribes on a national level. They acknowledged the consultation as a first step, but emphasized that an ongoing dialogue is needed to develop more detailed and updated information, recommendations, and solutions as tribes and states begin implementing the new JJRA provisions. The representatives asserted that quarterly informational calls or webinars with tribes would help OJJDP to stay engaged, encourage dialogue throughout the year, and enhance its knowledge about innovative tribal juvenile justice programs.

The participants also recommended that the OJJDP Administrator and Department of Justice establish a working group or advisory committee of tribal leaders or delegates to engage in ongoing dialogue as part of the collaboration required by the JJRA.

These advisors would work with the Administrator on the long-standing problems that AI/AN youth face in the federal, tribal, and state juvenile justice systems. They would work throughout the year to help the Administrator and Department of Justice find solutions that could be implemented by the federal, tribal, and state governments, not merely provide input at the biannual consultations. They would also participate in consultations with the Coordinating Council on Juvenile Justice and Delinquency Prevention. It was suggested that OJJDP model these consultations after the Office on Violence Against Women's annual tribal consultations.

It was also noted that the Indian Self-Determination and Education Assistance Act and the Violence Against Women Act both instituted annual consultations with Indian tribes and tribal organizations. The Departments of the Interior, Treasury, and Health and Human Services also have established tribal advisory groups on topics such as the annual budget, taxation, training, and Medicare and Medicaid services.

## **OJJDP Response**

In response to the tribes' input, OJJDP will begin to incorporate a tribal consultation or listening session into significant long-standing, Office-sponsored events.

- OJJDP's biennial Tribal Youth Conference is well established and is attended by federally recognized tribes that receive funding from OJJDP, tribes and organizations that do not receive OJJDP funding, and advocates and other tribal representatives that are invested in improving outcomes for AI/AN youth. The event exists to support and enhance tribal efforts to prevent and reduce juvenile delinquency by creating, expanding, and strengthening tribally driven approaches. OJJDP will add a consultation or listening session to this event to gather input on a variety of juvenile justice-related issues relevant to tribes.
- OJJDP's State Relations and Assistance Division's National Training Conference takes place annually. It provides critical training to Designated State Agency staff, and to members of the SAGs and the Federal Advisory Committee on Juvenile Justice (FACJJ) on implementing the JJRA and administering the Title II Formula Grants Program. For the past 2 years, the conference has included sessions on working with tribes to help states meet the JJRA requirements. OJJDP will solicit feedback from tribes' representatives on the SAGs regarding using the conference for a consultation or listening session, where federal and state juvenile justice leaders could hear about tribes and their states' implementation of the new JJRA provisions.

In addition to gathering feedback from consultations and listening sessions, OJJDP will incorporate several new ongoing avenues to improve coordination and feedback from tribes on a national level.

In response to the tribes' requests for OJJDP to establish a working group or advisory committee whose advisors would work with the Administrator on the problems AI/AN youth face in the federal, tribal, and state juvenile justice systems, OJJDP will use the long-standing and active Federal Advisory Committee on Juvenile Justice to establish a mechanism for tribal input.

Established by the JJDP Act and supported by OJJDP, the FACJJ is made up of 14 appointed representatives from the nation's SAGs and advises the President, Congress, and the OJJDP Administrator on juvenile justice issues and concerns.

The OJJDP Administrator, who appoints new FACJJ members, will update the membership balance plan to ensure that it reflects the need for a tribal representative. OJJDP also will suggest that issues of concern to tribal nations be considered for a FACJJ subcommittee. The work of this potential subcommittee may include developing input into the creation of an OJJDP policy to collaborate with representatives of Indian tribes with a criminal justice function on implementing the provisions of the JJRA that relate to Indian tribes.

The JJDP Act established the Coordinating Council on Juvenile Justice and Delinquency Prevention as an independent body to coordinate federal programs related to delinquency prevention and missing and exploited children. Of its 10 members who are juvenile justice practitioners, 1 is appointed by the chairman of the Senate Committee on Indian Affairs in consultation with the vice chairman and the chairman and ranking member of the Committee on Natural Resources of the House of Representatives.

OJJDP will recommend at least one tribal representative to serve on the Council. The Office will also recommend that the Council create a subcommittee to focus on the concerns of tribal nations. OJJDP also will direct the tribal training and technical assistance centers to compile a directory of subject matter experts from which the Council may select subcommittee members.

▪ ***Question 2: How can OJJDP support the involvement of tribal representatives in State Advisory Groups?***

Participants said that OJJDP should inform tribal nations about the SAG's role, how a tribal nation can secure a seat on their SAG, and advertise openings for tribal representatives nationally. OJJDP also should make national trainings available for each state's juvenile justice SAG on topics such as the new JJRA provisions and how to work effectively with tribal governments and tribal communities. SAGs also should include AI/AN youth to gain their unique perspective of juvenile justice issues in tribal nations.

It was expressed that, although the requirement for tribal representation on SAGs is new to the JJRA, several states already have a tribal affairs commission or tribal affairs official within their government. This type of involvement and cooperation is mutually beneficial because many issues affect both governments, such as crime and juvenile justice. The participants recommended that OJJDP host state meetings or webinars to educate state officials on the JJRA's tribal requirements. A joint meeting of state and tribal leaders would help introduce them to the tribal requirements and provide them with technical assistance.

At this venue, state and tribal leaders also could seek advice on suggested processes for completing their SAG requirement. The representatives suggested that OJJDP follow up with states, at least annually, on how this requirement is being fulfilled, which might also be a topic for the Coordinating Council on Juvenile Justice and Delinquency Prevention to take up with tribes.

The participants also asked OJJDP to educate SAGs on how they can respectfully engage with tribal nations, the positive impacts that tribal nation involvement has on tribal youth, and the advantages of having a representative from a tribal nation rather than simply a tribal expert.

SAGs should be required to report whether they have a representative from a tribal nation or a person with expertise in tribal law enforcement and juvenile justice in Indian tribal communities. If the SAG has only a representative from tribal law enforcement, it should be required to report why it does not have a representative from a tribal nation.

It was also suggested that OJJDP create a website through which states, tribes, and their affiliates can communicate and learn from each other as they work to comply with the JJRA and the SAG member requirements. The contributor also suggested periodic letters and coordination calls between OJJDP and the tribes as other ways for the Office to facilitate coordination between stakeholders.

### **OJJDP Response (continued below)**

Individuals can access information about other states, grant funding that AI/AN communities have received, and the juvenile justice programs that were funded through the [interactive map](#) on OJJDP's State Support webpage. By clicking on the state of interest, users can find the SAG members, the designated agency, all the state's grant funding, and its active grant programs. Users can look for the Title II or Core Protections label and click on the interactive map.

### ***Participant Responses to OJJDP Response***

A participant responded that having access to these tables will be a major help, but said more needs to be done to elevate tribal voices. The participant stated that tribes have a vested interest in keeping their people out of the revolving door that Western society calls justice. Tribes want rehabilitation. They want their citizens out of the system so they can become productive and prideful AI/AN people. They do not want their young women to end up as another statistic in the violence against women epidemic that tribal lands are known for. Tribal members must therefore be at every table where these decisions and funding mechanisms are being put in place. OJJDP should make it mandatory for the state to include the tribes at every table—not advisory but mandatory.

It was also stated that, with 220-plus tribes in Alaska that are very culturally diverse and located in 12 different regions, having 1 representative on the SAG will cause conflict and division among the tribes and Native villages. To achieve equity, tribes need a representative on the SAG from at least each region. The participant stressed that each tribe is different and must be treated as such. Each tribe needs culturally specific services and programs. It must be impressed on the states, from the federal level, that, "we are in this together...we need to work on win-win situations rather than putting up barriers" that make collaboration harder.

Another participant suggested that, if tribal participation in SAG is not required, perhaps OJJDP should host a meeting with the SAGs to discuss the benefits of tribal participation, and how that might be something for states to start doing now. The pending Tribal Law and Order Act Reauthorization talks about how tribes can be partners with the states.

A participant also asked how OJJDP will make sure that states follow the mandate. Would OJJDP, as part of approving the state plan, ask if the SAG has a tribal representative yet? Or, will OJJDP wait until it audits them?

### **OJJDP Response (continued)**

Tribal representation in the SAG is mandated by the JJDP Act as amended by the JJRA.

The JJRA Section 223 (a) (3) mandates that if a state has one or more Indian tribes located within its boundaries, the SAG must include “an Indian tribal representative (if such representative is available) or other individual with significant expertise in tribal law enforcement and juvenile justice in Indian tribal communities.” Starting in fiscal year 2020, OJJDP issued the solicitation for Title II formula funding that included this requirement for tribal representation. The solicitation explicitly includes a sample roster for SAG membership that reiterates that SAGs in states that have at least one federally recognized tribe within their borders must include a tribal representative or other individual with significant expertise in tribal law enforcement and juvenile justice.

To address concerns related to representation and training, OJJDP will issue a guidance document, based on the feedback received, that will outline effective practices and include input from current SAG members who serve as tribal representatives. It will teach states about the importance of having adequate representation and encourage states with large, diverse indigenous populations to have more than one representative. The guidance document also may include the preference for tribal representatives, rather than individuals with significant tribal experience, and will outline suggested protocol for working with tribal nations to ensure their interests are fully represented.

It also will suggest, in the spirit of strengthening government-to-government relationships, that states ask tribes to recommend individuals to serve as their tribal representatives on the SAG, and will recommend that SAGs include AI/AN youth.

OJJDP will direct its tribal training and technical assistance centers and its Center for Coordinated Assistance to States to collaborate on joint training events and meetings to bring together state and tribal representatives to develop best practices for meeting applicable JJRA requirements. The Office will instruct the centers to develop trainings, peer-to-peer learning opportunities, and ongoing webinars or conference calls to assist the states. The Office will also direct the centers to provide information on the role of the SAG and opportunities for tribes to learn directly from other tribes that have forged productive collaborations with state and local juvenile justice systems.

To ensure that states comply with the JJRA provision requiring tribal participation on the SAG, OJJDP program managers review Title II applications to ensure that they include the required up-to-date SAG roster demonstrating compliance with this requirement. Because each state's Governor appoints the SAG's members, these rosters are a matter of public record. If a state is not in compliance, OJJDP will provide extensive training and technical assistance to ensure the state is able to comply with the requirement. States that do not comply with the requirement will have a hold placed on their funds until they demonstrate compliance.

Currently, only one state is out of compliance with this requirement because their Governor has not yet made a formal appointment. However, this state has a tribal representative engaged and participating in meetings, but they will not be a voting member until the Governor officially makes the appointment.

▪ ***Question 3: How can OJJDP help improve tribes' access to resources from a state's Title II formula funds? What barriers do tribes face in accessing these resources?***

A participant stated that in at least one state, the state's relationship with its tribes is adversarial and conflicted, and that it is very difficult for tribes when the state acts as a middleman between the tribes and Title II block grant funds, which the states administer as pass-through funding.

Another participant said that all tribes desperately need the proper infrastructure to ensure that funded programs work to improve the quality of life in all the villages and tribes in the region. The participant asserted that to increase implementation of the Act's provisions in rural areas, OJJDP and the Department of Justice must fund the proper infrastructure to support tribal justice and public safety programs. This funding will enable tribes to use and expand the JJRA programs that have been proven to work, such as Tribal Juvenile Healing to Wellness Courts, youth and elder programs, and healthy families' programs.

A contributor asked that the Department of Justice encourage a particular state that is not participating in the JJDP Act to reenter the Act, saying that the state's nonparticipation is a barrier to its tribes' receiving Title II monies.

Another participant said that being able to apply directly to OJJDP for Tribal Youth Program funds has been a pleasure and that it would be beneficial to tribes if they could also apply directly to OJJDP for Title II funding.

A participant stated that while the pass-through amount is based on the census, using tribal enrollment figures would be much more accurate and would result in larger pass-throughs.

Another said that OJJDP could assist tribal nations with accessing Title II funds by—

- Providing more information to tribal nations about these funds, their various uses, and how tribal nations can access them.

- Being flexible with funding requirements.
- Using tribally approved data to determine tribal youth numbers.
- Guaranteeing state pass-through compliance.
- Allowing tribal nations to define the geographic area where they provide services, which would increase their ability to apply for funding. (Note: Some tribal nations have a checkerboard reservation that contains both tribal and nontribal lands. These tribes may provide services to any tribal youth regardless of whether they actually live on “tribal lands.”)
- Permitting tribal nations to use funding for culturally appropriate services for their youth, such as a summer fishing and cultural camp, which have positive impacts that cannot be overstated.
- Allowing tribal nations to choose how they count and report the number of tribal youth they serve, such as the tribal nation’s enrollment or the census data currently used in the Title II process, rather than by geographic boundaries.

## **OJJDP Response**

OJJDP audits the states and their compliance with the Title II pass-through funding for tribes. If tribes are not receiving their pass-through money, or if they have a question about the funds, they should reach out to OJJDP.

OJJDP’s policy is that tribes do not have to ask for pass-through funds from the state. The state simply has to pass those funds through to the tribes. When states choose not to submit the application for Title II funding, then the law requires that those funds be offered to nonprofits in local governments to further the four core protections of the JJDP Act. In the cases where states choose not to participate, private nonprofit agencies and local public agencies—including tribal agencies—are eligible to apply for funding.

OJJDP is legally required to use the formula and data described in the statute to determine Title II pass-through funding. While tribal input indicated that tribal data would be the preferred data, as opposed to Bureau of Indian Affairs or Census population data, the statute requires that OJJDP use the Census Bureau’s estimates of the tribe’s youth population. It further states that the Secretary of the Interior, in consultation with the Attorney General, determines which tribes provide law enforcement functions. Therefore, OJJDP cannot redirect Title II funding directly to tribes.

In 2019, however, OJJDP evaluated its methodology for calculating tribal pass-through funding and found that accurately estimating the under 18 youth population in geographical areas in which Indian tribes have jurisdiction has posed several methodological challenges.

To effectively implement the tribal provision of the JJDP Act, OJJDP will collaborate with the Department of the Interior and the Census Bureau to strengthen the methodology for tribal pass-through funding. OJJDP also will include input from tribes whose Title II funds are affected by the formula and methodology used to develop a more accurate formula for tribal pass-through funding.

In 2022, OJJDP's State Relations and Assistance Division will incorporate several questions submitted by a tribal representative during the post-webinar comment period into their site monitoring visits and enhanced programmatic desk reviews. They will include questions to determine whether the state passed through Title II funds to Indian tribes and if not, the reason why they were not passed through, and the amount of funding each state passed through to each tribe.

The tribal representative requested that two additional questions be asked: the data and geographic boundaries used to determine the pass-through amount, and whether or not the state asked the tribes for boundary and population information. These questions cannot be incorporated because the states do not calculate their own pass-through funding amount. OJJDP calculates the pass-through funding amount using the [formula](#) described on the OJJDP website.

▪ ***Question 4: How can OJJDP help increase state-tribal partnerships that support programs and services for tribal youth?***

A participant reported that their tribe is working to create a relationship with the local government, and that it has reached out to the District Attorney, the jail, and social services as part of this effort. The biggest roadblock is that the judge has the last call on how tribal members will receive services, even with juveniles. The participant shared that currently, a justice-involved youth may go before the judge and say, for example, "My tribe has funding available for me now to get me help instead of sending me to jail." Because of the youth's past, however, the judge will send the youth to jail or juvenile hall without letting the tribe help determine which service may benefit the youth. The participant said it would be helpful if OJJDP could hold conversations about these issues and help tribes to create memorandums of understanding with counties.

Another participant said that state-tribal partnerships in the juvenile justice field are emerging in states across the country. For example, one state enacted a law requiring the state to notify Indian tribes when their tribal youth are in juvenile custody, which resulted in partnerships between the state's Office of Juvenile Affairs and many of the state's tribes. According to the participant, as these partnerships develop, the tribes need additional resources and technical assistance to help sustain their activities. For example, moving the state's notification system from its current email notification to an electronic system in which information may be exchanged safely would be helpful, as would including an updated directory of tribal resources for local juvenile offices.

Another person commented that OJJDP can be instrumental in developing, promoting, and effectuating partnerships between tribal and state juvenile justice systems. The Office can provide resources for developing notification methods that will alert the tribal government any time a tribal child becomes involved in a juvenile justice system. The resources could include technical assistance on confidentiality and privacy concerns, and methods for coordination, such as a tribal liaison.

Some participants were of the opinion that state diversion policy and services may be made more effective when the tribe and the youth can work together in a more culturally sensitive, appropriate setting than the state can provide. This would include tribal services that may be available for prevention, rehabilitation, and diversion. The participants recommended that OJJDP work with Indian tribes to examine the tribal services offered, establish a baseline of needs for tribal juvenile services, and provide resources or submit budget requests accordingly. To assist with this, OJJDP should issue a report to Congress that thoroughly presents this baseline of needs in tribal communities. Without knowing the full picture of needs, Congress cannot address the problems facing tribal youth.

Other participants shared that the state public schools, the Bureau of Indian Education (BIE) schools, and other BIE programs could use OJJDP's help in providing more rehabilitation, mentoring, or preventive services that keep children in school rather than in detention or suspension.

For example, BIE operates programs that partner with the state educational system, most notably the Johnson O'Malley (JOM) program. JOM services vary, but may include tutoring, financial assistance, or counseling services. That type of supportive system is reflected in Title II of S.210, the Tribal Law and Order Reauthorization and Amendments Act of 2019. The participants recommended that OJJDP meet with BIE officials to improve this partnership.

## **OJJDP Response**

OJJDP's training and technical assistance efforts for state-tribal partnerships have grown over the past year. At the 2020 State Relations and Assistance Division National Training Conference, two panels focused on improving relationships between states and tribal nations. The sessions were titled "Inclusion, Voice, and Collaboration: Building Relationships Between States and Tribal Nations" and "Enhancing Tribal Nation and State Agency Relationships To Promote Access to and Use of Title II Funding."

The 2021 Tribal Youth Conference also included the panel "Tribal-State Relations To Support Juvenile Justice Improvements." At the annual conference of the Coalition for Juvenile Justice, OJJDP sponsored two panels: "Fostering Tribal, State, and Federal Collaborations" and "Reducing System Involvement and Reimagining Responses for Native Youth Through Prevention, Intervention, and Alternatives to Detention."

OJJDP will direct TTA providers to ensure that topics related to strengthening state-tribal partnerships that support programs and services for tribal youth suggested during the consultation and identified in written comments be incorporated when planning deliverables and trainings for OJJDP's tribal and state TTA.

Specifically, OJJDP-sponsored TTA efforts will incorporate an increased focus on assisting tribes in developing relationships with county and state juvenile justice systems, and assisting states with the TTA needed to develop effective notification efforts to facilitate increased coordination between tribes and the juvenile justice systems that impact their youth.

In response to a specific request for OJJDP to fund a study examining a baseline of needs for tribal juvenile services, OJJDP will work across federal agencies to identify programs that support tribal juvenile services and will make that information available via OJJDP's tribal youth TTA websites. This effort will represent preliminary work in anticipation of issuing a solicitation for a more comprehensive needs assessment.

▪ ***Question 5: How can OJJDP encourage tribes to apply for discretionary grant funding for eligible programs?***

Feedback indicated that tribes have several significant concerns about applying for discretionary funding. Contributors shared many examples of innovative, culturally based, and locally developed programs that are having positive effects in their communities.

Their concerns are that these culturally based tribal best practices can be outside of what grant programs will commonly support. Tribes also have concerns about the difficulty of data collection and data sovereignty. The participants commented that it is difficult for tribes to provide the data that state and federal governments require to prove that these practices are effective. Data is more challenging to collect in tribal communities, in part due to problems communicating with families and a lack of resources, such as reliable Internet or phone access.

The participants requested assistance in acquiring the required data and suggested that, perhaps, the requirements should be adapted for tribal programs.

One participant said that funding needs to be less restrictive. Tribes must be allowed to use their cultural knowledge and to teach their children about food security and how families can go back to being self-sustainable. According to the participant, tribal children and families have difficulty navigating the Western systems, programs, and services. Cultural activities such as a tribal fish camp are very restorative, but they need continuous funding, not grant development funding. Typically, these programs are created using a development grant; finding local funding to continue them is difficult. With continuous funding, tribes would be more successful in working with their youth and families.

A participant recommended that OJJDP staff visit the tribal areas to learn about the tribes' culturally relevant programs. Tribes know how to serve and restore their youth through their cultural activities and teaching, the participant asserted. They see that their youth are disconnected and they want to pull the youth back into their family units and cultural teachings—to bring back that identity, because that is where the strength comes from to move forward.

Another contributor suggested that funding for prevention programs and services should be directed to programs that are culturally appropriate even though they may not satisfy the Western standard of best practices. After highlighting a tribe's 12-week class called Healthy Families, which goes through the whole life cycle and engages children and families in the outcomes, the contributor recommended additional funding for these sorts of programs.

Explaining further, the participant said that state detention units are sometimes culturally semi-relevant but, for the most part, they are Western and tribal youth cannot connect with the programs or services. If the state cannot transition to be culturally relevant, the tribes have the capability.

The project director of an [18-month needs assessment](#) of 43 tribes in Oregon, Washington, and Idaho funded by the National Institute of Justice shared two primary findings regarding juvenile justice issues:

- Tribal youth are not being accurately tracked within the juvenile justice system.
- Justice-involved tribal youth need improved access to community or culturally based activities. In addition, tribes should have access to youth when they are released from custody, so they can engage the youth and families in cultural activities and other tribal best practices.

According to the project director, youth, tribal, and juvenile justice organization stakeholders unanimously acknowledged that culture is preventive and agreed that traditionally based programs should be more substantially funded by the federal government. The participant said that unlike other states, Oregon acknowledges and supports the use of tribal best practices. The participant shared that some tribal partners have developed a tool for adapting or developing tribal best practices and that there are currently 23 such practices funded through Medicaid, insurance, and other sources.

The participant shared that tribes have heard from their youth that they yearn for that cultural connection. However, resources to fund those cultural programs and activities are scarce. The participant stated that as sovereign nations, tribes own their data, which is often a hindrance when applying for funds from federal agencies.

Another barrier to funding is funders' definition of "rigorous" and "fidelity." The participant asserted that tribal best practices are rigorous and have fidelity within their own communities. However, tribes do not have enough numbers to prove that their programs are evidence based. The adaptation of a Western model to a tribal best practice is not always appropriate or culturally sensitive, she continued. Expanding the definition of an evidence-based, practice-based, or tribal-based practice would allow tribal communities to conduct their fishing camps, hunting camps, or canoe journeys.

The study also found that in Oregon and Washington, in particular, youth lose access to traditional activities and medicines when they enter a state facility. Their traditional medicines like sage or tobacco are considered contraband.

Tribes in Oregon are working on a state policy to allow cultural liaisons to go into the Oregon Youth Authority facilities and use those cultural activities and medicines with tribal youth, said the participant.

Another contributor said that one obstacle is that only the tribal administrator is authorized to apply for grants. In addition, many tribes are probably not getting the information, they may find the application process too long, or they may have auditing problems.

One participant asked if tribes located in urban areas are eligible to apply for OJJDP grants.

## **OJJDP Response**

OJJDP currently provides tribal-specific funding to support federally recognized tribes in their efforts to prevent and reduce delinquency and provide a fair, beneficial system for AI/AN youth. OJJDP participates in the Department of Justice's CTAS, through which tribes can apply for funding in nine Purpose Areas with just the one application. OJJDP's Purpose Areas are numbers 8 (Tribal Juvenile Healing to Wellness Court) and 9 (Tribal Youth Program).

Through CTAS, OJJDP has supported many innovative programs and services that the tribes have identified as critical for young people. In particular, CTAS funds the creation of Healing to Wellness Courts, where state and tribal partners help youth access substance abuse treatment that aligns with tribal values and culture. CTAS also supports diversion and afterschool programs, summer camps grounded in cultural approaches, truancy prevention efforts, and some tribal Boys & Girls Clubs.

OJJDP provides additional discretionary funding that is available to, but does not limit, eligibility to federally recognized tribes. With rare exceptions, tribes are eligible for all funding that OJJDP awards. Solicitations always list who is eligible to apply on the first page. This usually includes states, local governments, tribes, and nonprofits. Eligibility varies from solicitation to solicitation.

As pointed out in the 2018 Government Accountability Office report [\*Native American Youth: Involvement in Justice Systems and Information on Grants to Help Address Juvenile Delinquency\*](#), which was referenced in the framing paper for the consultation, tribes submit very few applications for funding opportunities that are not specific to tribal nations.

OJJDP wants to ensure that tribal communities are aware of and apply for all of the funding opportunities available to them. To better alert tribes to additional nonspecific funding opportunities, OJJDP has added a "Tribal Connections" section to its newsletter. The section highlights funding opportunities, best practices, and resources for tribes and organizations that serve AI/AN youth.

OJJDP has also issued new solicitations to provide additional opportunities for tribes to be awarded funds for their juvenile justice and delinquency prevention efforts.

In 2020, OJJDP issued a juvenile delinquency prevention solicitation that contained a specific category for tribal applicants. Two tribes were awarded 5-year grants of \$500,000 under that solicitation. OJJDP has issued the same solicitation, with categories specifically for tribal applicants, in 2021.

In 2020, OJJDP also created a series of solicitations specifically to increase support for tribal and Alaska victims of child abuse in accordance with the Victims of Child Abuse Act programs. Those solicitations have resulted in more than \$14 million in grant awards to support the creation and enhancement of children's advocacy centers in Alaska and in tribal communities in the lower 48.

In response to concerns about mandating evidence-based interventions in solicitations, OJJDP does not mandate any specific evidence-based programs for the tribal grant funds that are distributed through CTAS. Both purpose areas funded by OJJDP award funds to programs that propose cultural and traditional practices as prevention, intervention, and treatment initiatives. This is due, in part, to earlier tribal feedback expressing concerns that the evidence required for nonnative programs is not applicable when applied to AI/AN traditional and cultural program.

If a solicitation is not specifically designated for tribes, it is likely to have language on evidence-based programs. However, tribes have been awarded funds through those solicitations for culturally based, locally developed programs that do not fall within the scope of what is known as evidence based.

OJJDP will examine the feasibility of incorporating language into some solicitations that indicates that, in lieu of programs that are commonly understood as evidence based but which do not include a significant population of AI/AN youth in their studies, tribes may propose indigenous practices that have longevity within tribal communities.

In response to feedback indicating that training and technical assistance in relation to evaluation is desired, a training on evaluation using an indigenous worldview was offered at the 2021 Tribal Youth National Conference.

Tribal concerns regarding difficulties with identifying comprehensive and culturally relevant measures of progress and collecting the data related to those measures will be given priority when planning deliverables and training topics for the tribal training and technical assistance centers. Additional tools and trainings on this topic and on evaluation will be developed and offered to tribes and all those invested in improving outcomes for AI/AN youth.

▪ **Question 6: What types of programs would enhance public safety and help to ensure that juvenile offenders are held appropriately accountable to crime victims and tribal communities?**

This question prompted further discussion about recognizing that traditionally based, culturally relevant programs are essential for tribal youth to avoid and recover from juvenile justice involvement. A participant stated that to position a tribe's young people for success, their involvement in the child protection and juvenile justice systems must be minimized. When such involvement does occur, those interactions should be positive and empowering.

The participants stressed that for tribes to successfully implement programs supported by the JJRA, they must build the necessary infrastructure to support the programs. While tribes need programs focused on prevention and intervention activities for youth, they also must be able to fund basic needs like tribal courts, court clerks, judges, tribal court facilities, and public safety officers. The participants shared that hiring full-time or even part-time tribal court personnel is a challenge. Some tribal courts are entirely volunteer based, and struggle to find space to meet in their community. Villages also struggle to find sustainable funding to hire and retain community-oriented law enforcement officers.

Truancy is a problem in AI/AN communities that impacts all the other elements taking place in children's lives. One community has a system where it identifies truancy issues through neighboring schools, because the tribe does not have K-12 schools on the reservation. The court system then connects the youth to a diversion program within the tribe, connected with the education department. The program provides a web of services that wrap around each family, working with them for 6 to 9 months using effective practices taken from tribes, other entities, and other schools.

Education is one of the biggest ways for tribal people to overcome challenges, to be self-sustainable, and to be able to address generational traumas and empower families when family members also have suffered adverse experiences within the educational system.

A tribe's Attendance Achievement program was identified as an innovative practice that falls outside the scope of what structured grants usually support. The participant said that AI/AN communities need to be able to network and connect to systems like this that are nontraditional in a sense of evidence-based practice, but that are cultural in the way they work with and help tribal families.

Some tribes have identified public safety as their region's the number one issue. When then-Attorney General Barr visited rural Alaska in 2019, he declared the area a public safety emergency with a law enforcement crisis. In testimony presented to the President's Commission on Law Enforcement and the Administration of Justice, a representative for the tribes of a specific state brought forward three recommendations:

- Tribes must receive appropriate funding so they may adequately fund public safety in every tribal community.
- Tribes must receive appropriate funding for training their local law enforcement officers.

- Tribal jurisdiction must be addressed so that tribes have all the appropriate jurisdiction they need.

Another participant said that site visits would enable OJJDP to see where the funding is going, or what the tribes would like to do with it. Culture is embedded in tribal communities in a way that is restorative and can provide a lot of healing for tribal members. Site visits would help tribes better understand the grant requirements and logistics, and what tribes can use the funding for.

## OJJDP Response

To the maximum extent allowable under the statutes that govern each funding stream, OJJDP will work with tribes to obtain budget approvals that support their critical infrastructure needs related to the programs being funded. OJJDP's fiscal year 2020 solicitation to develop children's advocacy centers in Alaska contained specific language that allows tribes to use funds for infrastructure. Tribes that were awarded those funds used them to acquire space, a trailer, soundproofing supplies, and other items in their budgets.

Regarding tribes' feedback on innovative practices, OJJDP supports a number of TTA projects to assist tribes in building sustainable support for their AI/AN youth programs. OJJDP supports the [Tribal Youth Resource Center](#), which provides TTA to help tribes develop, expand, improve, and maintain their juvenile justice systems. The Center is developing resources that address current and promising practices to address truancy in AI/AN youth.

The Center is also developing the revised edition of the *Tribal Legal Code Resource: Juvenile Justice Guide for Drafting or Revising Tribal Juvenile Delinquency and Status Offense Laws* to include the [Bureau of Indian Affairs 2016 Model Indian Juvenile Code](#) and information concerning the [2018 reauthorization of the Juvenile Justice and Delinquency Prevention Act](#).

OJJDP also funds [The Resource Basket](#), an Alaska-specific training and technical assistance center, which is building the capacity of tribal communities across the state to address the specific needs and challenges of those who work with Native youth. OJJDP will instruct those developing both tribal TTA initiatives to continue to work to highlight effective programs and practices in Alaska Native communities.

In addition, the OJJDP National Intertribal Youth Leadership Development Initiative, known as the [Healing Indigenous Lives Initiative](#), will continue to collaborate with the training and technical assistance centers to ensure that the voice of AI/AN youth informs ongoing efforts.

- **Question 7: What other specific assistance can OJJDP provide to help existing programs, support innovative ideas to expand programs, and provide additional training and technical assistance?**

A participant expressed that reducing vulnerability and risk factors involves building protective factors and addressing certain underlying issues through targeted prevention efforts and treatment. Historical trauma is often highlighted as a continuing affliction leading to self-medication and other problems for AI/AN youth. Substantially increasing the availability of behavioral health or other services to prevent involvement in juvenile justice systems and reduce recidivism when it does occur would be a significant improvement to existing programs.

Several tribes have programs to reduce the risk factors facing AI/AN youth. The participant shared that these programs are innovative, culturally based, and include activities that have been part of the tribal traditions for generations. However, the practices are not familiar to Western culture or have not been examined scientifically to be considered evidence-based or even promising practices.

As a result, tribes may not receive federal or state funding when they attempt to use these time-honored practices as part of their juvenile justice systems. The participants recommended that OJJDP work with tribes and experts to develop a means by which traditional or cultural programs may serve, or be developed, as promising or evidence-based programs.

A participant asked OJJDP to address the recommendations presented in two Government Accountability Office reports about tribal issues, and continue to assist in building stronger futures for AI/AN youth. The reports are [Native American Youth: Involvement in Justice Systems and Information on Grants To Help Address Juvenile Delinquency](#) (2018) and [Native American Youth: Agencies Incorporated Almost All Leading Practices When Assessing Grant Programs That Could Prevent or Address Delinquency](#) (2020).

Another participant mentioned that high turnover and difficulty attracting qualified professionals can halt grant-funded programs.

## **OJJDP Response**

OJJDP will work with any newly developed subcommittees of the Coordinating Council on Juvenile Justice and Delinquency Prevention and the Federal Advisory Committee on Juvenile Justice to examine the existing precedents at the federal and state level that allow traditional or cultural programs to be developed as promising or evidence-based programs.

To the extent that funding is made available, OJJDP will consider funding a research study that would focus on this area. OJJDP's tribal training and technical assistance providers will provide additional opportunities for tribes to learn from the experience of other tribes that have had success in having their tribal best practices recognized and funded.

## Action Steps

OJJDP will respond to the requests and concerns of tribes voiced in the 2020 consultation with the following actions. The Office will—

- Incorporate a consultation or listening session into the biennial Tribal Youth Conference. The Office will gather tribal input regarding whether to add the same to the yearly State Relations and Assistance Division National Training Conference.
- Recommend to the Federal Advisory Committee on Juvenile Justice and the Coordinating Council on Juvenile Justice and Delinquency Prevention (Coordinating Council) that each group create a subcommittee devoted to issues of concerns to tribes.
- Work to ensure that there is at least one tribal representative serving on the Advisory Committee and the Coordinating Council.
- Provide training and technical assistance to ensure that states that contain federally recognized Indian tribes have the support they need to meet the JJRA requirement to include a tribal representative on their State Advisory Group (SAG).
- Ensure that states comply with the JJRA requirement to include a tribal representative on their SAG.
- Collaborate with the Department of the Interior and the Census Bureau to strengthen the tribal pass-through methodology for Title II funding.
- Consult with tribes whose Title II funds are impacted by the formula and methodology for calculating the funding.
- Incorporate additional questions suggested by tribes about Title II pass-through funding into state programmatic monitoring site visits and enhanced programmatic desk reviews.
- Coordinate across federal agencies to identify programs that support tribal juvenile services, and make that information available to tribes in anticipation of issuing a solicitation for a comprehensive needs assessment of those services.
- Incorporate topics contributed through the consultation in tribal and state deliverables and in training and technical assistance.
- Ensure that OJJDP's tribal training and technical assistance providers provide additional opportunities for tribes to learn from the experience of other tribes that have succeeded in having their tribal best practices recognized and funded.
- Examine the feasibility of incorporating language into some solicitations that indicates that, in lieu of programs that are commonly understood as evidence based but which do not include a significant population of AI/AN youth in their studies, tribes may propose indigenous practices that have longevity within tribal communities.

- Examine precedents at the federal and state level that allow for the development of traditional or cultural programs as promising or evidence based. To the extent that funding is made available, OJJDP will consider funding a research study that would focus on this area.

## Conclusion

OJJDP is committed to respecting the government-to-government relationship with federally recognized tribes by engaging in regular dialogue through a variety of means, including ongoing consultations and listening sessions.

OJJDP understands that forging better relationships between itself and tribes, and between tribes and their state and local governments, and the federal government depends on a deeper and more comprehensive understanding of tribal needs, challenges, victories, and concerns related to all AI/AN youth.

Beyond listening, OJJDP is committed to cultivating an ongoing dialogue and effective relationship with AI/AN jurisdictions, and to responding to the concerns and requests of tribes with actions that demonstrate respect for the wisdom and sovereignty of AI/AN people.

## Resources

- [Consultation Framing Paper on the Juvenile Justice Reform Act and Tribal Youth Delinquency Prevention and Intervention Programs](#)
- [OJJDP Tribal Consultation Webinar](#) (also available on [YouTube](#))
- [Transcript of the Consultation](#)
- [PowerPoint Slides From the Consultation](#)

**OJJDP**  
**Tribal Consultation Response**

**NCJ 301224**