

**OFFICE OF JUVENILE JUSTICE AND DELINQUENCY
PREVENTION'S TRIBAL CONSULTATIONS AND LISTENING
SESSIONS REPORT 2023**



**U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS
OFFICE OF JUVENILE JUSTICE AND DELINQUENCY
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OJJDP Tribal Consultation Report 2023

INTRODUCTION

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is part of the Office of Justice Programs (OJP), within the United States Department of Justice (DOJ). OJJDP engaged in consultation with federally recognized Tribal leaders in 2023, along with listening sessions for any Tribal practitioners or interested parties who wanted to provide input on the topics. Through the consultation, OJJDP sought Tribal Leader, policymaker, practitioner and other interested party input on OJJDP priorities, proposed regulations, and how OJJDP funding could best support Tribes to enhance and expand efforts to prevent and reduce delinquency and improve juvenile justice systems.

The Tribal consultations and listening sessions addressed questions centered around OJJDP's three priorities: treating children as children; serving young people at home with their families and in their communities; and opening up opportunities for system involved youth. In addition, the Tribal consultations and listening sessions addressed a question about OJJDP's potential proposed regulations that would determine which Tribes are eligible for Title II passthrough funding.

BACKGROUND

The Juvenile Justice and Delinquency Prevention Act of 1974 (JJDPA), Public Law 93–415, as amended, established the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to support local and state efforts to prevent delinquency and improve juvenile justice systems.

Signed into law on September 7, 1974, the Act established OJJDP and charged the agency with supporting local and state efforts to prevent delinquency and improve the justice system. The Act represented the first federal legislation to address youth and unlawful acts in a comprehensive, coordinated way.

Tribes were more formally included in the JJDPA when it was amended and reauthorized through the Juvenile Justice Reform Act of 2018.

OJJDP just marked the 50th anniversary of the JJDPA, with the year-long observance "**Looking Back, Moving Forward: Celebrating 50 Years of the JJDPA**" in 2024.

A component of the Office of Justice Programs within the U.S. Department of Justice, OJJDP works to prevent and respond to youth delinquency and protect children.

Through its divisions, OJJDP sponsors research, program, and training initiatives; develops priorities and goals and sets policies to guide federal juvenile justice issues; disseminates information about juvenile justice issues; and awards funds to states to support local programming.

OJJDP envisions a nation where all children are free from crime and violence. Youth contact with the justice system should be rare, fair, and beneficial.

OJJDP provides national leadership, coordination, and resources to prevent and respond to youth delinquency and victimization. The Office helps states, localities, and Tribes develop effective and equitable juvenile justice systems that create safer communities and empower youth to lead productive lives.

2023 TRIBAL CONSULTATIONS AND LISTENING SESSIONS

On August 28, 2023, OJJDP distributed a Dear Tribal Leader Letter (<https://ojjdp.ojp.gov/events/dear-tribal-leader-letter.pdf>) and a Framing Paper (<https://ojjdp.ojp.gov/events/2023-tribal-consultation-listening-session-framing-paper.pdf>), setting forth the consultation and listening session details.

Sessions were conducted virtually via webinar on multiple dates in late 2023. Tribal leaders in the lower 48 were invited to a consultation on September 27, 2023, while Tribal leaders in Alaska were invited to a consultation on October 11, 2023. Tribal leaders unable to be present for either of those two dates were invited to a consultation on October 27, 2023.

During each session, once Tribal leaders finished speaking, the consultation was concluded and any others participating in the webinar were then invited to comment in an informal listening session.

Written comments via email or mail were accepted through November 27, 2023.

QUESTIONS, COMMENTS AND RESPONSES

Question About Priority One: What factors impact Tribal juvenile justice systems in their ability to keep Tribal youth out of courts and correctional facilities?

Several commenters noted that Tribal youth in Indian country face multiple jurisdictional arrangements that lead to complexities that impair juvenile justice. The feeling is that federal and state governments have authority over juveniles in Indian Country by statute that thus does not require consultation. Because of that, Tribes feel they cannot fully influence the lives of Tribal youth in either federal or state juvenile justice systems, or offer them restorative programs such as wellness courts, teen courts, or peacemaking.

Another commenter noted the limited youth programming and facilities for teens, generation delinquency, mental health resources and substance abuse treatment resources were critical. Rural Tribes without the variety and availability of resources found in more urban areas significantly limits a youth's access to services and prevention measures than others. If more programming and local facilities were available, Tribal juvenile justice systems would be able to encourage early intervention efforts focused on positive community integration. They noted that their Tribe saw "generation delinquency", in which Tribal youth found their way into the system by following in a family's footsteps, leaving them ill-equipped to leave that cycle. Tribal healing to wellness courts are found in some Tribes, but limited by DOJ guidelines which prevent youth who have violent offenses from participation, thus limiting both court process and resulting in placement generally in youth correctional facilities. They also noted that both mental health and substance abuse related challenges are very much present across many Tribes, and often strained state relationships limit access to services. Treatment voids exist, especially when Tribal youth are close to state borders where state-assisted services will not cover out of state placements.

Another commenter noted that without a juvenile center in their region in Alaska, their Tribal youth end up going to larger communities to facilities which are meant for youth who have committed more serious offenses. They noted a concern about being able to help youth before they get to that point in their lives.

One commenter noted that their Tribe is attempting to build the foundation for youth that their Tribal culture is the cornerstone of all programs in the youth or juvenile justice area. Looking back at Tribal teachings, how they used to be done, and taking the solutions from the old ways is important. Many Tribes are very isolated, and have made do with what they had, and bringing in culture is important but very difficult given the modern Westernized world. It is easier for Tribal youth to feel inundated and connected with youth in other parts of the world than their own Tribe. Their suggestion was that if a Tribe was having problems with youth programs, to go back into prayer, go back into ceremony and see if a new way of doing things opens up as a result.

Another commenter agreed that while all Tribes are different and what works for one doesn't work for others, underlying Tribal culture and reverting to the other ways helps youth in so many ways. Unfortunately, some of the funding programs have stipulations which are not culturally oriented, and the guidelines they have do not help Tribal youth in a traditional sense. Funding has roadblocks that dictate what can and can't be done with the money, and while many are there for a specific purpose, others do not help for traditional cultural practices. For instance, in many Tribal cultures ceremony or sweat lodge is a common response to problems, and various things are needed to carry out these traditional practices that are not allowed or covered by grant funding.

Greater misunderstanding between indigenous and non-indigenous communities on the importance of culture in many aspects of life has led to communication barriers which have allowed systems and policies which are harmful, noted another commenter. Disparities at disproportionate rates across a number of areas including health, education, employment, justice and many other parts of life are a result of having culture forcibly taken away, which impacts youth. The importance of understanding that these substantial disparities exist and where they are rooted in cultural deficits in Tribal communities would lead to creating effective solutions for youths within these systems.

One commenter involved as a Training and Technical Assistance (TTA) provider for Tribes working in youth systems noted that there are many different levers of change that are available, and how important it is for OJJDP to provide guidance to TTA providers who are going out into various Tribal communities and helping with OJJDP grants to Tribes. It is also to provide information that TTA providers can give to Tribes about all kinds of financial and programmatic assistance that is available for Tribes – both specific to Tribes but also general funding that Tribes are eligible to apply for as well, so that Tribes don't have to seek it out but are provided that information directly. In addition, TTA providers and OJJDP need to

continue to ensure that Tribes have access to funding, and by way of Tribal set-asides, rather than by competition. Finally, the commenter noted the importance of TTA providers in Tribal communities listening to what Tribes, Tribal leaders and members are saying about what is culturally appropriate within their specific Tribe, so that assistance is based on what is right for that Tribe.

Reminding that Tribal leaders have to be thinking seven generations ahead at all times is important, as everything Tribal leaders do today impacts not only tomorrow or next year, but the next seven generations, so focusing on youth and what's important is crucial, said one commenter.

Another commenter noted that many Alaska Tribal courts are very successful at keeping youth out of court through cultural programs and connections. Things work best for Tribes when they have healthy connections and healthy relationships with youth and giving those youth a sense of connection and relationships to themselves, family, and community, thus building on assets. For an example the commenter noted fishing day trips, fish camps, net mending, and putting up traditional foods which all ground youth not only in their culture but also in their communities. If youth need to figure out how to behave in better ways, courts work with them to reground them often using Elders who utilize stories and sustainment of family. Part of the work of a good Tribal court is to work with youth and families and communities.

Several expressed concern about the internet, social media, cell phones and parents who may not have the ability to monitor or control what their children are being exposed to and how that plays a newer role in challenges in more rural or remote Tribal communities.

One commenter noted a concerning trend among Tribal youth to more prevalent marijuana usage, but also more gun crimes, stolen vehicles and youth being involved with more serious crime than historically, where none of the Tribal adults ever thought of being possible to see what is happening now with Tribal juveniles, and the future of the Tribe. They noted that how Tribal youth are handled today will dictate both their future and the future of the Tribe itself.

Issues around drug use, especially methamphetamine, as luring parents away from their children, and ultimately destroying not only the parents, but the children were often noted. Tribal youth not having safe, sober homes with parental supervision and being left to fend for themselves and younger siblings cause worry in youth, along with domestic violence, sexual assault and other violent behavior impact their safety and well-being. Youth are often modeling their parents' actions.

One Tribe suggested starting a Healthy Homes Initiative for Tribes where there isn't a youth safe house or shelter care, which means doing everything to keep children safe at home. Ensuring a safe, loving, and caring environment for children in homes with sober, non-violent parents or guardians who provide food, love, compassion and a sense of security. This Initiative could keep youth out of the juvenile justice system. Again, funding is a barrier to this type of program, so that needs to be addressed.

A commenter noted that too often, the first reaction to a child acting out, having a meltdown, or delinquent behaviors is to take them to court and put them in detention, without taking the time to sit down, talk to the young person and see what is happening. That is not a best response nor a response that utilizes evidence-based practices. What might trigger the events could be parents who are absent, issues at home, drug or alcohol use or anger or grief at parents for choosing drugs and alcohol over their children.

A possible solution offered by one commenter was a youth shelter that is not detention, but a home environment staffed with caring, sober individuals that tend to the youth's needs, safety, food, clothing, healthcare, education, and teaching values. A youth shelter could offer tutoring, basic cooking classes, life skills, substance abuse counseling, anger management counseling, grief counseling, prevention services, beading, art classes, equine therapy, family counseling, Tribal values and traditions, a sense of belonging, and being loved and respected. That solution would keep children out of the juvenile justice system and help them find balance spiritually, emotionally, behaviorally, and physically through compassion and not detention.

Having Tribal language classes and cultural events at school and within communities remind Tribal children of who they are and are important to keep youth out of the juvenile justice system, noted one person. But economic poverty and the housing crisis on many reservations make things worse for youth.

One commenter noted that children's safe homes are needed so Tribes have an option as an alternative place to go than just to juvenile detention centers, but they would have to include substance use treatment, along with anger management as their Tribal children often seem angry. Accountability for children needs to be put back on those parents and guardians, but making sure they have a safe place to go for that child, that doesn't call for the removal of that child off the reservation,

away from their friends and their family and their school classmates, so that traumatization is stopped.

Question About Priority Two: What factors impact Tribes' ability to serve their youth in community -based programs that involve families instead of incarceration? What role does mental health or substance use and availability of treatment play in Tribes' ability to serve youth at home and in their communities?

Again, multiple commentors noted that inadequate funding remains the greatest barrier for Tribal juvenile justice systems. While some Tribes may receive some core system elements such as police services, jails, facilities or some youth programs, that support is primarily from BIA and DOJ and is inadequate. Tribal juvenile justice systems also require extensive other services such as adequate healthcare, education, mental health and addiction treatment which may or may not be funded or offered by other agencies such as HHS or SAMHSA. Tribes want greater juvenile justice control, but most lack infrastructure to wholly replace other federal or state systems. Tribal systems and communities are often more rural or isolated and have limited taxing ability and revenue to fund their governmental services. As a result, Tribes most often depend on federal funds and services than do their local or state counterparts. In addition, Tribes may not always access formula grants which states use, and funding for juvenile justice is often low.

Another commenter noted that a lack of family-based support, education and resources were a huge challenge. With substance abuse endemic in their Tribal youth population involved in the juvenile justice system along with mental health challenges on the rise, home and community-based efforts are negatively impacted. Generational trauma must be understood and taken into account when working with Tribal youth and their family and community, and not be seen as parents not caring or not wanting system assistance but realized as lack of trust in the system. Youth in Tribal communities lack access to mental health and substance abuse treatment, and often children as young as elementary school age are experimenting with marijuana and older teens with harder narcotics. Many of these children and youth need in-patient treatment options which are sadly lacking.

One commenter noted that a lack of funding was always problematic and wished for continuity and increase in funding to help their youth.

Another said that youth mental health, and helping to support their mental health is challenging in Tribal communities and in states in which Tribes are remote. Many

of those services in those areas are provided by lay-advocates and a telehealth system which can provide services to remote areas and recognize important wellness activities as well, including National Mental Health Day, Domestic Violence Awareness months, alcohol and tobacco cessation activities and more. The challenging part is that many of the providers are there only for a short time and are passing through communities, thus making keeping clinicians on a regular basis a real challenge. Lower-level support needs are fairly well covered, but higher levels of need are not, nor are the consistency issues. In a state where the state has agreed to transfer juvenile justice cases back to Tribes, that does not happen until after a child has already been involved with the system on multiple occasions, when it might be too late. They may have already committed serious crimes before they are referred back to the Tribe, but the Tribe wants to intervene much sooner, as it is a very real barrier.

A lack of Tribal law enforcement, Tribal law enforcement with limited jurisdiction or authority and lack of Tribal juvenile courts were also mentioned as barriers by several commenters.

Social media was again noted by several commenters as impacting Tribal youth and the Tribe's ability to help them. Social media sites seem to incite feelings of insecurity, isolation, depression, and further encourage bullying and violent behavior. The violent behavior is often recorded, and then posted on social media, leading to feelings of community outrage and a desire to incarcerate the youth.

Question About Priority Three: What are the barriers to success that involvement with the juvenile justice system creates for Tribal youth, whether in Tribal court or in state courts?

Several commenters noted that system data for Tribal children within federal or state systems is non-existent, and thus those systems cannot be held accountable for their Tribal youth resources. They argue that Tribal youth are incarcerated more than other children, often far away from their communities which diminishes their ability for rehabilitation. Intergovernmental cooperation in cases involving Tribal juveniles is critical, and Tribal notification when Tribal youth enter into state systems with accompanying Tribal input into case determinations is needed.

Another commenter noted that collaboration and communication between Tribal and state entities which serve youth can be lacking, and access to resources

suffers. In states where that collaboration is not in place, success for both Tribal and state juvenile justice systems suffer. Tribal youth in both systems lose opportunities to the services and tracking that could help them reach their full potential. In this commenter's state, state authorities refuse to allow Tribes to access their state juvenile services contracts, detention facilities and information systems, and thus needed services and placement options are hugely limited. The goal across both state and Tribal systems should be uniform and that is to better serve all youth of the state.

The overrepresentation of native youth in state juvenile justice systems is very problematic, with the feeling that youth are being taken away from their families and culture, with no ability to go back and be healed in their communities, noted another commenter. More quick reaction to those youth and bringing them back to second chances and wellness in their communities is critically important.

A commenter noted that youth entry in the legal system is a youth entry in the pipeline to prison. Funding is necessary to build staff and maintain a youth shelter. If detention must be utilized, detention centers can provide an opportunity for education, individual and group counseling to address substance abuse, trauma, grief, and anger. At a minimum Tribes should develop juvenile detention centers as secure therapeutic centers, with a focus on reducing juvenile recidivism, and encouraging healthy choices, not merely a lockdown facility, removing the child from the community, and consider options for youth healing throughout the juvenile justice system.

Questions About Regulations: Do Tribes have any concerns with the proposed definition which will determine which Tribes are eligible for the pass-through funding in Title II in proposed regulations?

Multiple comments included that while Tribes commended OJJDP's proposal to adopt a definition, it was not required under the APA because the question requires public input on funding "loans, grants, benefits, or contracts", and thus any OJJDP definition could change with Administrations, which would reflect shifting priorities and not be true to Tribal needs. While it was felt that the definition contained clarity, it was recommended that Congress should amend the JJDP to include a specific statutory definition for "law enforcement function."

Another commenter asked if there was any data available about how many Tribes actually have the ability to detain or confine youth as defined in the regulations, and whether that should be considered prior to any regulation change.

In Alaska, one commenter noted that only a few Tribes would fit the criteria noted as eligible for pass through funds given the lack of law enforcement and lack of ability to detain youth. But they noted that Alaska Tribes have alternatives to deal with detention in some Tribes which should be supported, including placement with other families or being monitored, which would be better. In addition, for many Tribes it is difficult to build new facilities, so finding other ways than detention would be best. The continued recommendation was for OJJDP to consider accepting alternatives to detention for funding in Title II, and the suggestion that it would be much more successful and provide a much stronger juvenile justice system across Alaska.

TRIBAL CONSULTATION PARTICIPANTS

There were over 100 people from many Tribes who participated in the 2023 Tribal Consultations and Listening Sessions.

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- Chris Chaney, Principal Deputy Director and Jeanne Jacobs, Chief of Staff, DOJ's Office of Tribal Justice
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