

**CRIMINAL JUSTICE IN INDIAN COUNTRY: REDUCING CRIME THROUGH STATE-TRIBAL
COOPERATION**

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I. INTRODUCTION

Criminal justice in Indian Country is a complicated issue involving state, tribal and federal law enforcement agencies, prisons and judicial systems. The jurisdictional structure as applied to Native Americans and American Indian nations results in overlapping and concurrent authority among these three layers of government or in some cases--jurisdictional gaps--and is a significant contributing factor to crime in Indian Country. The rules have created a patchwork of state, tribal and federal jurisdiction that vary depending on the type of crime committed, the identity of the perpetrator, the identity of the victim and where the crime occurred.² The authority to regulate or alter the jurisdiction exercised by tribal governments lies solely with the U.S. Congress, though it is most often the tribal and state governments that struggle to deal with the realities of this system. Despite these complications, there are many actions state and tribal governments can take--absent an overarching federal policy solution--to improve law enforcement and crime rates in Indian Country.

This publication will review and analyze the complex picture of crime in Indian Country including a discussion of structural issues and root causes that contribute to this problem. This discussion, combined with startling statistics regarding crime

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² Thomas Heffelfinger, Presentation at the 29th Annual Federal Bar Association Indian Law Conference (Albuquerque, N.M., April 2004)

victimization within Native communities, make a compelling case for lawmakers--state and tribal alike--to address deficiencies in the criminal justice system as it exists in Indian Country today.

Background

Native Americans have a unique legal and political history and status. As "domestic dependent" sovereign nations, Native American tribal governments retain the right to govern their land and the internal affairs of the tribe, including exercising criminal jurisdiction. Members of federally recognized tribes generally are subject to tribal jurisdiction, so long as the crime took place in Indian Country. Indian Country is defined as all land within the limits of any Indian reservation including allotted land and rights-of-way, but excluding privately owned (fee) land, and all "dependent Indian communities" within the borders of the United States (18 U.S.C. 1151).

While tribal authority may appear straight-forward, jurisdictional complications come into play when non-Indians commit crime on tribal lands. Jurisdiction over these individuals lies with either the federal or state governments, though concurrent tribal jurisdiction is possible in some circumstances.

The current jurisdictional framework has produced instances in which no single government has the authority to exercise full jurisdiction, absent some type of cooperative agreement. To determine which law enforcement agency has the power to respond, four key questions must be answered.

- Did the crime occur in Indian Country?
- Is the victim Indian or non-Indian?
- Is the offender Indian or non-Indian?
- What is the nature of the crime?

These questions, which are often difficult or impossible to determine during the initial response phase, determine whether jurisdiction lies with the tribe, state or federal government.

The jurisdictional complexity--and possible jurisdictional gaps--has lead to disproportionately high crime rates and under-prosecution of crimes. Low prosecution rates send the message that crimes committed in Indian Country will not be taken seriously. In addition, understaffed and under-funded tribal law enforcement agencies struggle to respond. And state law enforcement are not able to enter the reservation to deal with non-Indian offenders unless an agreement exists between the state and tribal agencies. This scenario produces a number of problems at the local level, though only Congress has the authority to alter the rules of criminal jurisdiction as applied to Indian Country. Until this happens, state and tribal governments can develop their own solutions through the use of intergovernmental agreements designed to clarify the jurisdictional authority to be exercised by each government, clarify the role of first responders and provide for cross-deputization of state and tribal law enforcement officers.

Crime in Indian Country

Crime is a problem on reservations across the United States. This is a problem not only for the tribal citizens who live on the reservations but also for surrounding communities. The overall occurrence of violent crime, including domestic violence, is disproportionately high in Indian Country. American Indians are victims of violent crime at more than twice the rate of the general U.S. population. At least 70 percent of violent victimizations reported by American Indians are committed by those of another race,³ further complicating a state or tribe's authority to respond. In addition, American Indian and Alaska Native women experience sexual violence more than twice as often as other women in the U.S. In 2000, the National Violence Against Women Survey found that 34 percent--more than one in three--American Indian and Alaska Native women are raped during their life.⁴

Despite these startling numbers, studies show crime is under-reported in Indian Country. The research credits the failure to report crime to a distrust of the police, shame and humiliation associated with certain kinds of crime and fear of retaliation. These conditions exist in any small community, but are often exacerbated in Indian Country. Often tribal members are reluctant to report crime as complicated family and clan relationships between victims, offenders and even tribal police officers discourage it. Also, tribal members may be reluctant to report another Indian to a state or federal agency, which could bring the weight of a foreign system down on the perpetrator.⁵

These issues, combined with the insufficiency of law enforcement services in Indian Country, complicate reporting and make arrest and prosecution of crime difficult. Jurisdictional barriers may prevent state or tribal law enforcement personnel from responding in a timely manner, and tribal law enforcement agencies do not have the authority to address crimes committed by non-Indians who enter or reside on the reservation. Adding to this complexity is that fact that the federal government generally can respond to only the most serious crimes because of limited resources and manpower. The result is a public safety crisis affecting tribes across the country.

II. CRIMINAL JURISDICTION IN INDIAN COUNTRY

As mentioned in the previous section, criminal jurisdiction in Indian Country is divided among federal, tribal and state governments, depending on the location of the crime, the type of crime, the race of the offender, and the race of the victim. Tribal governments can exercise limited jurisdiction as a result of their retained sovereignty.

³ Lawrence A. Greenfeld and Stephen K. Smith, *American Indians and Crime* (U.S. Department of Justice Office of Justice Programs, February 1999), v – vi.

⁴ Sacred Circle, *Restoration of Native Sovereignty, Restoration of Safety for Native Women* (U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services, 2004), 7.

⁵ Stewart Wakeling et al., *Policing on American Indian Reservations* (U.S. Department of Justice, National Institute of Justice, January 3, 2000)

Tribes are also given some jurisdictional authority under the Violence Against Women Act. Federal criminal jurisdiction is derived from the Indian Country Crimes Act, the Assimilative Crimes Act and the Major Crimes Act. State criminal jurisdiction is derived from Public Law 280 and applies to specific states and reservations. The various sources of jurisdictional authority are discussed below.

Tribal Jurisdiction

Tribes generally have exclusive jurisdiction to prosecute crimes committed by one Indian against another in Indian Country. This includes all misdemeanor offenses, all crimes not covered by the Major Crimes Act (18 U.S.C. 1151), and those not subject to the General Crimes Act, also known as the Indian Country Crimes Act (18 U.S.C. 1153). Indian tribes also have exclusive jurisdiction over "victimless" crimes committed by Indians in Indian Country, such as drug possession for personal use.

General Crimes Act & Assimilative Crimes Act

The General Crimes Act was enacted by Congress in 1817 and permits the federal government to prosecute all crimes committed by non-Indians in Indian Country and some crimes committed by Indians against non-Indians. The primary function of the statute is to provide for prosecution of crimes committed by non-Indians that, at the time of its enactment, were thought to be beyond the jurisdiction of the states. In addition, Congress passed the Assimilative Crimes Act in 1825 making state criminal law applicable to areas subject to federal jurisdiction. The result of this statute is that violations under the Assimilative Crimes Act are categorized as federal offenses subject to federal court jurisdiction, but the crime is defined and the sentence prescribed by state law.⁶ These statutes were an attempt to provide a consistent application of law throughout Indian Country and to avoid potential gaps in jurisdictional authority.

Major Crimes Act

The Major Crimes Act was enacted in 1885 and subjects Indians who commit crimes in Indian Country to the same law and penalties as any other U.S. citizen committing the same crime. Crimes covered by the Major Crimes act include murder, manslaughter, kidnapping, maiming, incest, aggravated assault, assault of a person under 16 years of age, arson, burglary, robbery and other specified felonies.

The Federal Bureau of Investigation has prioritized the investigative response in relation to serious Indian Country crimes to ensure that the most egregious offenses are prosecuted. These priorities include (1) homicide/death, (2) child sexual/physical abuse, (3) violent felony assault, (4) drugs and gangs, (5) corruption/fraud against the government/theft of tribal funds, (6) gaming violations, and (7) property crimes. Though

⁶ William C. Canby, Jr., *American Indian Law in a Nutshell*, 4th Edition, (Thomson West Publishing, 2004), 158.

the priority system is designed to ensure that serious crime is prosecuted, the practical consequence is that less serious offenses--relatively speaking--are frequently overlooked.

Violence Against Women Act

Under the Violence Against Women Act (VAWA) tribal courts are able to issue civil protective orders over both Indian and non-Indian defendants, when the tribal court otherwise maintains personal and subject matter jurisdiction. This provision is important given that tribes cannot exercise criminal jurisdiction over non-Indians and many acts of domestic violence committed against Native women are committed by a non-Indian. VAWA provides tribes with a civil mechanism for asserting jurisdiction over domestic violence perpetrators who are otherwise beyond the tribe's criminal jurisdiction. VAWA also recognizes the power of tribal courts to enforce violations of orders from other states, tribes or territories as if those orders were their own (28 U.S.C. 2265).

Public Law 280

States generally are not permitted to exercise jurisdiction over crimes committed in Indian Country, with the exception of those states subject to Public Law (P.L.) 280. States are permitted however, to exercise jurisdiction over non-federal crimes committed by non-Indians against non-Indians (such as assault) and over "victimless crimes" committed by non-Indians in Indian Country.

Public Law 280, enacted by Congress in 1953, gives state and local law enforcement agencies full or partial criminal jurisdiction in Indian Country in specific states and on specific reservations. It also creates an increased and sometimes confusing state role in related civil matters. Initially, P.L. 280 did not require tribal consent for a state to assume jurisdiction. As a result, tribes subject to P.L. 280 have faulted the law's failure to recognize tribal sovereignty by not requiring prior consent of the affected tribes. States also have been opposed to P.L. 280 due to its failure to provide federal funding--an unfunded mandate on lands that are not taxable.⁷ P.L. 280 did not explicitly extinguish tribal jurisdiction, however.⁸ It only transferred federal authority to the states. Many tribes continue to exercise jurisdiction and prosecute Indian offenders under tribal law, provided they have a tribal court system and infrastructure to support this activity. Nonetheless, the transfer of jurisdiction gave state governments increased power over the internal affairs of tribes but not the resources needed to properly address criminal activity on the reservations. This scenario has produced inconsistent responses to Indian Country crime and contributed to mistrust and hostility among state and tribal officials in some instances.

⁷ John Dossett, et. al., *Criminal Jurisdiction Background Paper* (National Congress of American Indians, 2004), 7.

⁸ William C. Canby, Jr., *American Indian Law* (Thomas West Publishing, 1998), 220.

Figures 1 and 2 below illustrate which government has jurisdiction over crimes involving Indian victims or offenders and those that take place on tribal land in Public Law (P.L.) 280 and non-P.L. 280 states.

Figure 1. Criminal Jurisdiction in Non-P.L. 280 States

Crime	Jurisdiction
“Major” Crimes by Indians against Indians	Federal and/or Tribal (concurrent jurisdiction)
Non-Major Crimes by Indians against Indians	Tribal (exclusive jurisdiction)
Major Crimes by Indians against Non-Indians	Federal and/or Tribal (concurrent jurisdiction)
Non-Major Crimes by Indians against Non-Indians	Federal or Tribal (concurrent jurisdiction)
Crimes by Indians without Victims	Tribal (exclusive jurisdiction)
Crimes by Non-Indians against Indians	Federal (exclusive jurisdiction)
Crimes by Non-Indians against Non-Indians	State
Crimes by Non-Indians without Victims	State

Source: U.S. Department of Justice

Figure 2. Criminal Jurisdiction in P.L. 280 States

Crime	Jurisdiction
Crimes by Non-Indians against Non-Indians	State
Crimes by Non-Indians against Indians	Mandatory P.L. 280 states have exclusive jurisdiction. Optional P.L. 280 states have concurrent jurisdiction with the federal government. There is no tribal jurisdiction.
Crimes by Indians against Non-Indians	Mandatory P.L. 280 states have jurisdiction exclusive of the federal government, but not necessarily of the tribe. Optional P.L. 280 states have concurrent jurisdiction with the federal courts.
Major Crimes by Indians against Indians	Mandatory P.L. 280 states have jurisdiction exclusive of the federal government, but not necessarily of the tribe. Optional P.L. 280 states have concurrent jurisdiction with the federal government.
Non-Major Crimes by Indians against Indians	Mandatory P.L. 280 states have jurisdiction exclusive of the federal government, but not necessarily of the tribe. Optional P.L. 280 states have concurrent jurisdiction with the tribe.
Crimes by Non-Indians without a Victim	State (exclusive jurisdiction). Federal jurisdiction may attach in optional P.L. 280 states if the impact on an individual Indian or tribal interest is clear.
Crimes by Indians without a Victim	Concurrent state, tribal and in optional P.L. 280 states, federal jurisdiction. There is no state regulatory jurisdiction.

Source: U.S. Department of Justice.

Retrocession and Tribal Judicial Capacity

The 1968 Civil Rights Act enabled states that had assumed criminal jurisdiction in Indian Country under P.L. 280 to give jurisdiction back to the federal government through retrocession. This amendment, in part, was a response to state and tribal opposition to P.L. 280 and was designed to relieve the states' of the financial burdens

associated with it.⁹ The secretary of the Interior has the final decision-making authority over retrocession. The amendment contains no provision to require tribal consent or to allow a tribe to initiate retrocession. If a tribe wishes to influence this process, it must do so by working directly with the state or the secretary of the Interior.¹⁰ While retrocession can be a good option for some tribes, others--particularly those without judicial or law enforcement services--must rely on the state to respond to and prosecute crime.

Many tribes--both P.L. 280 and non-P.L. 280--lack the institutional infrastructure to exercise tribal authority. According to the most recent data available, 188 tribes (out of the 562 tribes within the United States) have some form of judicial system. The majority of these have a formal tribal court and a separate general jurisdiction tribal court. Roughly half have an appellate court, 80 have a juvenile court and 51 have a family court.¹¹

Law Enforcement

There are a number of practical and structural impediments to effective law enforcement and prosecution of crime in Indian Country. One major challenge for tribal courts and law enforcement agencies is the lack of necessary resources to effectively deter and respond to crime. As of 2002, approximately 1,894 law enforcement officers were working on tribal land.¹² That is far less than the 6,200 officers needed to provide basic law enforcement services to reservations, as estimated by the Bureau of Indian Affairs.¹³ Additionally, recent research has indicated that tribal law enforcement agencies only have between 55 and 75 percent of the resources and funding available to non-Indian communities.¹⁴ However, providing tribal law enforcement agencies with funding similar to comparably sized non-tribal law enforcement agencies may not be enough. Given the fact that violent crime in Indian Country occurs at a rate of two to three times the national average, a better measure of the resources needed to make tribal law enforcement effective is to bring them on par with law enforcement agencies in large urban areas that have high violent crime rates. For example, law enforcement agencies in Baltimore, Detroit, New York City and Washington, D.C. have high police to citizen ratios--from 3.9 officers to 6.6 officers per 1,000 residents; tribal police departments rarely have more than two officers per 1,000 residents.¹⁵

⁹ Carol Goldberg, *Questions and Answers about Public Law 280* (June 2005), available at www.tribal-institute.org/articles/goldberg.htm

¹⁰ Canby, *supra* note 8, 239-240.

¹¹ Steven W. Perry, *Census of Tribal Justice Agencies in Indian Country, 2002* (U.S. Department of Justice, Office of Justice Programs Bureau of Justice Statistics, December 2005)

¹² *Id.*

¹³ Eileen Luna Firebaugh, *Tribal Policing, Asserting Sovereignty, Seeking Justice* (2007).

¹⁴ Stewart Wakeling, et al., *Policing on American Indian Reservation* (U.S. Department of Justice, Office of Justice Programs, 2001), vii.

¹⁵ *Id.*

The lack of resources is complicated by a number of factors that make it difficult for tribal governments to recruit and train officers. These factors include low pay, high attrition, and the dangerous nature of tribal policing. It is common for tribal officers, once they receive training and gain experience, to transfer to police departments in surrounding agencies where the pay and working conditions are better. This results in a turnover rate of approximately 50 percent every two years, costing tribal governments millions of dollars to recruit and train replacements and leading to dangerous gaps in coverage.¹⁶

Another problem facing tribal police departments is the fact that fewer than half are part of a 911 Emergency Response System. Many of the departments that are part of such a system are part of one that is run by another agency, generally the county sheriff. Also, most tribal police vehicles are inadequate. The average tribal police department has approximately one vehicle for every two and one half officers. The vehicles also are fairly old and almost one out of five is out of service on a given day.¹⁷

An added challenge for tribal law enforcement agencies is the vast land mass that must be covered by very few officers. By 2000, there were 171 tribal law enforcement agencies and 37 law enforcement agencies operated by the BIA. The land area tribal law enforcement agencies must cover, with few full-time officers on staff, results in inadequate coverage and low officer to citizen ratios. For example, the Navajo Nation Department of Law Enforcement patrols 22,000 square miles within the boundaries of three states. The comparably sized Reno, Nevada, police department has 320 full-time officers who cover a land area of 57.5 square miles. In terms of the land area patrolled, many tribal law enforcement agencies may more closely resemble county or regional police departments.¹⁸

Finally, the complexity of tribal criminal jurisdiction is another challenge for tribal police. Depending on the circumstances surrounding the crime, jurisdiction may lie with either federal, state or tribal authorities.¹⁹ When crime occurs, the first law enforcement officials called to the scene often are tribal police or BIA officers and these officers may initiate the investigation and/or detain a suspect. At that point, a decision must be made about whether the crime warrants involvement by the FBI or state law enforcement. These officers then must decide whether to refer the case to the U.S. attorney's office, the local district attorney or the tribal court.²⁰

State and Tribal Courts

¹⁶ Firebaugh, *supra* note 13

¹⁷ *Id.*

¹⁸ Matthew J. Hickman, *Tribal Law Enforcement, 2000* (U.S. Department of Justice, Office of Justice Programs, 2000), 2.

¹⁹ *Id.*

²⁰ Dossett, et al., *supra* note 7, at 3.

Despite the instances of federal or state concurrent jurisdiction, tribal courts have the ability to exercise criminal, civil and regulatory authority in Indian Country. This authority exists even in P.L. 280 states. While federal authority was transferred to state governments under this law, tribal authority was not extinguished. The tribes retain full jurisdiction in civil matters and the tribes, concurrent with the federal government, retain full authority in criminal cases--though their sentencing authority is limited to one year pursuant to the Indian Civil Rights Act (25 U.S.C. 1301). Tribal courts have no general criminal jurisdiction over non-Indians, according to the decision in Oliphant v. Suquamish Tribe (435 U.S. 191 (1978)). This decision has been thought to contribute to the "jurisdictional gaps" that exist regarding crimes committed by non-Indians in Indian Country. As a result, there is a growing sentiment that there should be a Congressional repeal of the *Oliphant* decision to provide tribes with authority over non-Indians who commit crimes on tribal land. The Supreme Court notes, however, that absent an explicit delegation by Congress to tribes to exercise this power, jurisdiction over non-Indians is not a retained inherent power of the tribal governments. Tribal courts may, however, enforce court decorum against non-Indians through the use of criminal and/or civil contempt. This authority may be used to enforce subpoenas issued to non-Indians by a tribal court. Conversely, the state courts may also enforce its subpoenas and exercise state criminal contempt power over tribal members who flagrantly violate state authority, even if the act occurs in Indian Country (re Humboldt River Stream System Adjudication, 59 p. 3d 1226 (Nev. 2002)).²¹

As with the confusion and inconsistencies that exist in determining which law enforcement agency has the authority to act, state and tribal courts face similar complexities that make successful collaboration difficult. Fortunately, there are a number of actions state and tribal lawmakers can take to help alleviate these impediments while respecting both state and tribal sovereignty. State legislators and tribal officials from around the country have noted that information-sharing between the state and tribes is a problem, and that it is important for all tribal law enforcement agencies to have access to the state's crime database. The need for improved information-sharing also extends to the courts so that judgments or orders issued in one jurisdiction are known and enforced by neighboring jurisdictions. State and tribal governments can develop mechanisms for information-sharing and increased participation in each other's judicial proceedings so that all necessary parties are knowledgeable about the actions of the other. In addressing this issue however, it is important to be aware of the fact that many tribes are reluctant to enter crime data on tribal members into an external data base where their control of the data may be lost. In these instances, it is necessary for the state and tribe to communicate their needs and concerns in forging a solution that will provide for an appropriate amount of control among each government and a clear understanding of how the information will be used. In addition, many tribes do not have the technology to support this type of data collection and reporting. In these cases, the state legislature may want to allocate funding to support infrastructure development and capacity building, thereby facilitating strong collaboration where information-sharing is concerned.

²¹ Canby Jr., *supra* note 8.

There are a number of other actions that can facilitate cooperation among the state and tribal courts. State legislators can pass laws that require cross-recognition of judgments, final orders, laws and public acts between tribal, state and federal courts. Additionally, state legislatures and courts can work to provide ongoing education of the Full Faith and Credit provision of the Violence Against Women Act to ensure that tribal court protective orders are recognized outside the reservation. States also can monitor compliance and require accountability from state entities that refuse to enforce tribal court protective orders.²² Finally, policymakers can convene forums to increase communication among key stakeholders and provide opportunities for identifying areas for improved collaboration, including systemic change that is needed to promote more successful interactions between the court systems.

III. SOCIAL IMPLICATIONS ON TRIBAL LANDS

While any solution to the problem of crime in Indian Country must take the jurisdictional scheme and myriad law enforcement deficiencies into account, it is also necessary to examine and address the social and economic issues that contribute to crime. Native Americans remain one of the poorest minority groups in the nation. Issues associated with poverty on tribal lands and substandard health conditions--including a life expectancy rate far below the national average--all contribute to increased criminal activity and high victimization rates within Native communities. Other contributing factors include inadequate education, unemployment, high rates of alcohol and substance abuse, domestic violence, sexual assault, and mental illness and high suicide rates. The enormous health and social problems among Native American populations lead to devastating mental, physical, economic and social consequences, which can be both symptomatic of and the cause for involvement in the criminal justice system.

Education, Unemployment & Poverty

Educational achievement among Native American students is a concern in many states. Recent studies have indicated that Native Americans rank near the bottom in terms of high school graduation, with only 51 percent of these students obtaining a high school diploma. In addition, only 12.6 percent of American Indian and Alaska Native (AI/AN) individuals obtain a bachelor's degree--compared to 27 percent nationwide. Given that educational achievement is often tied to success in the job market and one's ability to rise out of poverty, poor school performance and graduation rates among AI/AN students often produces long-term consequences.

There have been a number of bills passed by the state legislatures in recent years designed to improve educational opportunities and outcomes for Native American students. Under a 2006 law in Arizona, the Office of Indian Education was created and provides technical assistance to schools to develop curriculum and instructional materials

²² Tribal Court Clearinghouse Website, *Building on Common Ground: A National Agenda to Reduce Jurisdictional Disputes Between Tribal, State and Federal Courts* (June 2005), available at www.tribal-institute.org/articles/common.htm

to decrease dropout rates and increase school attendance. The Wyoming legislature enacted a bill to maintain educational programs on the Wind River Indian Reservation intended to address conditions of unemployment and poverty. And in South Dakota, legislation was passed to provide for an Office of Indian Education, an Indian Education Advisory Council and establish certain provisions designed to enhance Indian education in the state.

In addition, economic opportunities on many reservations are scarce and this has a direct impact on the economic success of the families who live there. American Indian and Alaska Native families and individuals have higher rates of unemployment and poverty than any other ethnic or racial group. On average, nearly 13 percent of AI/AN individuals over age 16 who are in the labor force are unemployed. This is more than double the national average for unemployment at six percent. On some reservations the unemployment rate is much greater with some tribes reporting unemployment rates of 80 percent or more. Further, almost 22 percent of AI/AN families are below the poverty level, a figure that is well over twice the national average of 9 percent. The poverty rate is slightly higher among individuals than families. Over one quarter (25.7 percent) of AI/AN individuals live in poverty. Again, this rate is more than double the national average of 12.4 percent.

Recent measures passed by the state legislatures are designed to improve these conditions. During the 2007 legislative session, the Montana legislature passed a bill that repeals the termination date of the Montana State-Tribal Economic Development Commission, illustrating the legislature's commitment to fostering economic opportunities within tribal communities. Similarly, the North Dakota legislature passed a bill that creates the North Dakota American Indian Business Development Office. The purpose of this office is to assist North Dakota American Indian tribal economic development representatives, businesses and entrepreneurs with access to state and federal programs designed to support their business interests. This legislation was also enacted during the 2007 session.

Without proper resources, Native American populations remain economically distressed and vulnerable to crime and victimization. Treating and addressing these issues can help curb the cycle of poverty, alcohol, drugs, and hopelessness that can lead to criminal behavior and victimization of Native American adults and children.

Mental Health & Substance Abuse

Addressing the mental health needs of Native American adult and juvenile offenders is another way to keep crime down and prevent youth offenders from one day entering adult systems. The Bureau of Justice Statistics estimates that more than three-quarters of mentally ill offenders in jail had prior offenses.²³ While this statistic includes members of all races, one can extrapolate that given the high rates of mentally ill

²³ Paula M. Ditton, *Mental Health Treatment of Inmates and Probationers* (U.S. Department of Justice, Bureau of Justice Statistics, July 1999) 1.

offenders overall, a number of Native American offenders also may be masking some form of mental illness. It is important that mental health disorders and substance abuse problems are detected and treated among both adults and juveniles that become involved in the criminal justice system. Detecting these problems early in adolescence can curb future criminal activity that may occur if the juvenile does not receive early intervention services.

Particularly troubling is the high suicide rates among Native American youth. For example, according to the 2003 New Mexico Youth Risk and Resiliency Survey, approximately 25 percent of Native American youth in grades 9-12 attempted suicide in the state. Additionally, results from the 2005 Navajo Middle School Youth Risk Behavior Survey indicate that 25 percent of students seriously thought about killing themselves, 15 percent of students reported suicidal thoughts or a plan to kill themselves, and 13 percent of students had actually attempted suicide. The lack of access to culturally appropriate mental health services is a major problem facing Native American youth and their families.

In response, a 2007 New Mexico measure would appropriate additional money to the Department of Health to implement a Native American youth-led peer-to-peer suicide prevention program. The bill would increase the level of support directed toward community-based suicide prevention programs for Native American adolescents statewide. The measure, however, remained in committee at the close of the 2007 session.

Failure to identify and treat mental health disorders among young people can contribute to problematic behavior including continued delinquency and eventually adult criminality. Often, these youths have more than one disorder, the most common "co-occurrence" being substance abuse with other mental illness. Mental health disorders are more complicated and difficult to treat in youth than in adults. Because adolescence is a unique developmental period characterized by growth and change, mental disorders in youngsters can be altered and interrupted.²⁴

Emotional disorders occur when a child's ability to function is impaired by anxiety or depression. The Center for Mental Health Services estimates that one in 33 children and one in eight adolescents are affected by depression, a potentially serious mood disorder that afflicts many adults as well.²⁵ The occurrence of depression among juvenile offenders is significantly higher than among other young people. It is estimated that as many as one in three juvenile offenders suffers from depression, with the highest rates among the most serious male offenders.²⁶ Anxiety disorders, in particular post-traumatic stress disorder, also are prevalent among juvenile offender populations, in

²⁴ Thomas Grisso, *Double Jeopardy: Adolescent Offenders With Mental Disorders* (University of Chicago Press, 2004)

²⁵ The Center for Mental Health Services:
http://www.nmha.org/children/children_mh_matters/depression.cfm

²⁶ National Mental Health Association, *Prevalence of Mental Disorders Among Children in the Juvenile Justice System*. (Alexandria, Virginia, 2006), 2.

particular, girls. Psychotic disorders like schizophrenia, however, are rare in the general population as well as in justice system-involved youths.²⁷

Behavioral disorders are characterized by actions that disturb or harm others and that cause distress or disability. Attention Deficit Hyperactivity Disorder (ADHD) and conduct disorder are typical youth behavioral disorders. ADHD is an increasingly common disorder among children, affecting three percent to five percent, or approximately 2 million American children. Boys are affected two to three times more than girls and the disorder often continues into adolescence and adulthood.²⁸ Between 30 to 50 percent of kids in the juvenile justice systems have disruptive behavior disorders.²⁹

Substance abuse and dependency also are considered behavioral disorders. Substance abuse by a juvenile is itself a crime and one often linked to other acts of crime and delinquency. In the Justice Department's Arrestees Drug Abuse Monitoring Program, juvenile male arrestees tested positive for at least one drug in at least half the arrests in nine sites.³⁰ Studies have shown that up to two-thirds of youths in the juvenile justice system with any mental health diagnosis had dual disorders, most often including substance abuse.³¹

Screening and assessment are key to addressing mental health treatment needs of kids in the juvenile justice system. Screening is a brief process that attempts to identify those youngsters who warrant immediate mental health attention and require further evaluation. Assessment builds on information gathered at screening, providing a more comprehensive and intensive examination of problems and behaviors exhibited by a young person. Proper assessment of juvenile offenders helps inform those who make determinations of risk, placement, and treatment.

Recognizing that mental health needs of juveniles often go unrecognized and untreated, state policies designed to create prompt and complete evaluation of Native American youth in the juvenile justice system could help mitigate these problems.

The Methamphetamine Menace

Native Americans have been hit especially hard by the menace of methamphetamine due, in part, to law enforcement's limited resources being focused on

²⁷ Id.

²⁸ National Institute of Mental Health, U.S. Department of Health and Human Services, *Attention Deficit Hyperactivity Disorder* (Washington, D.C., NIMH, 2006), 2.

²⁹ National Mental Health Association, *Prevalence of Mental Disorders Among Children in the Juvenile Justice System*. (Alexandria, Virginia, 2006), 2.

³⁰ National Institute of Justice, *2000 Annual Report on Drug Use Among Adult and Juvenile Arrestees, Arrestees Drug Abuse Monitoring Program (ADAM)*. (Washington, D.C.: NIJ, April 2003), 133-134.

³¹ National Mental Health Association, *Prevalence of Mental Disorders Among Children in the Juvenile Justice System*. (Alexandria, Virginia, 2006).

the battle to simply maintain order. Drug cartels are targeting Native American populations--often to take advantage of the jurisdictional ambiguity and decreased chances of prosecution--and drug gangs are selling methamphetamine to them. This in effect, makes them victims and turns them into criminals in order to support their deadly addiction.

Methamphetamine, also known as speed, crank, or meth (hereinafter "meth") is the fastest growing drug threat in the country today. It is inexpensive because it can be easily made from readily obtainable chemicals and has a longer lasting effect than cocaine. According to the White House Office of Drug Control Policy, it is highly addictive and can cause violent and psychotic behavior. Side effects include convulsions, cardio arrhythmia and stroke.

Studies show that Native Americans use meth at a disproportionately higher rate in comparison to other groups in the United States.³² Meth use and its impact in Indian Country is devastating. Seventy-four percent of the 96 Indian law enforcement agencies nationwide have indicated that "meth posed the greatest threat to the members of the communities they serviced."³³ This harmful drug can be a temporary yet deadly distraction from the realities of poverty, low self esteem and lack of opportunity that is common in many tribal populations.

Native American children also are feeling the effects of meth and need to be protected. Exposure to the drug, and the toxic substances used to make it, pose serious health risks to children. For example, harmful chemicals in the processing and smoking of meth soak into walls and carpeting which can lead to ingestion of the drug into the body through contact with the chemical residue of the drug.

Additionally, parental addiction can be devastating for children. Ten percent of users indicated that they were introduced to meth by their parents or other family members. Further, children being raised in homes with exposure to meth can become targets for abuse by parents and parents' friends because meth users tend to be paranoid and agitated, thereby making normal child activity appear threatening to someone high on meth.

There is an urgent need for effective treatment and prevention for meth abuse and addiction for Native Americans. A growing number of states have enacted legislation to address these problems. States have expanded their child abuse or endangerment statutes to include manufacturing a controlled substance in the presence of a child. States have also increased penalties for this type of crime and have created or made this crime a separate criminal offense. Additionally, states are requiring government officials who discover children in homes containing meth to notify the proper child welfare agency.

Alcohol Abuse

³² Elizabeth Ann Kronk and Heather Dawn Thompson, *Modern Realities of "Jurisdictional Maze" in Indian Country: cases Studies on Methamphetamine Use and the Pressure to Ensure Homeland Security*, March/April @007, The Federal Lawyer.

³³ Id.

A 1999 Bureau of Justice Statistics study found that alcohol was a predominant factor for high arrest and incarceration rates of Native Americans. The arrest rate for alcohol-related offenses among Native Americans--drunk driving, liquor law violations, and public intoxication--was more than double that of the total population in 1996. Almost four in ten Native Americans held in local jails were charged with public order offenses--most commonly driving while under the influence. Among Native Americans across the United States, the arrest rate for all alcohol violations--DUI, liquor laws, and public intoxication--was 2545 per 100,000, as compared to 1079 per 100,000 for all races.³⁴

Further statistics reveal that almost half (46 percent) of all convicted Native Americans in local jails had been under the influence of alcohol when they committed the crime. This percentage rises to 70 percent when only violent crimes are considered. This is in stark contrast with all other racial groups, where a third or less were reported to be under the influence of alcohol during the commission of non-violent crimes, and 41 percent for violent crimes.³⁵

These statistics point to the need to treat alcohol abuse in Native American populations. Unfortunately, such treatment is often unavailable in the state and federal prison systems. As a result, Native Americans detained in these facilities are not likely to receive these services. Increased and expanded alcohol rehabilitation programs, treatment facilities, and detoxification centers may reduce crime and victimization in Indian Country and contribute to the overall health of the community.

Gangs

Despite recent declines in juvenile crime rates on tribal lands, the problems of youth delinquency, violence and gang activity remain. Native American juveniles are entering gangs on reservations at an alarming rate. In 1997, violent crime increased on Native American lands by 87 percent--a figure largely attributed to gang violence.³⁶

The fact that juveniles are the fastest growing population on reservations today, coupled with high levels of alcohol abuse and unemployment, creates a breeding ground for the infiltration of gangs. High levels of gang crime and violence can be overwhelming for tribal justice systems due to over-burdened tribal court dockets and insufficient law enforcement and judicial infrastructure. Gangs often operate on tribal lands because they are aware of the lack of resources and know there will be little retribution for their crimes. Tribal youth programs, geared toward preventing juveniles

³⁴ Paul Steele et al., *Crime and the New Mexico Reservation: An analysis of Crime on Native American Land (1996-2002)*, (Statistical Analysis Center, Institute for Social Research, October 2004)

³⁵ Perry, *supra* note 11.

³⁶ Juvenile Justice Bulletin, *Juvenile Arrests 2004* (December, 2006).

from joining gangs, can help keep kids safe and steer them away from future criminal behavior.³⁷

IV. CRIME AND VICTIMIZATION STATISTICS

Research links poverty with higher crime rates and shows that generally, crime and victimization rates involving Native Americans is higher than in other minority groups in many geographic locations across the county.

Crime Rates Among Adult Offenders

Whether due to factors leading to higher arrest rates among Native Americans or other causes that contribute to the commission of crime, recent studies have indicated that crime among Native American adults is somewhat higher than crime rates for other races. According to 2001 data (the most recent numbers available), the number of murder arrests per 100,000 adults was 3 for all other races and 4 for Native Americans. The number of arrests for forcible rapes was 7 per 100,000 for all other races and 8 for Native Americans. The number of arrests for robberies was 21 per 100,000 for all other races, and 16 for Native Americans. And the number of arrests for aggravated assaults per 100,000 was 116 for all other races and 131 for Native Americans. The total number of Native Americans arrests for violent crimes increased 1.7 percent from 2000 to 2001. These statistics are compared with 0.04 percent increase nationwide.³⁸

The overall arrest rate for all crimes is 21 per 100,000 Native Americans residing on reservations. Unfortunately, the federal data does not distinguish between juvenile and adult crime, nor does it specify the types of criminal charges filed.³⁹

While higher than average crime rates are troubling, these numbers pale in comparison to the victimization rates among Native Americans.

Adult Victimization Rates

Statistics show that Native Americans are victims of crime at an alarmingly higher rate than the general population. From 1992-2001, Native Americans experienced a per capita rate of violence (101 violent crimes per 1,000 Native Americans) that was more than twice that of the U.S. resident population (41 per 1,000 persons). The violent crime rate in every age group below age 35 was significantly higher for Native Americans than for all persons. Among Native Americans age 25 to 34, the rate of

³⁷ *Id.*

³⁸ Steven W. Perry, *American Indians and Crime, 1992-2002* (U. S. Department of Justice, Bureau of Justice Statistics, 2005)

³⁹ Perry, *supra* note 11.

violent crime victimizations was more than 2 1/2 times the rate for all persons the same age.⁴⁰

While most violent crime nationally is intra-racial, Native Americans are most often victimized by a perpetrator of another race. Sixty-three percent of Native Americans who were victims of violent crimes, the perpetrators were white.⁴¹ This reality further complicates questions surrounding which government--tribal, state or federal--has the authority to respond, and ultimately reduces the chances for successful prosecutions.

The high crime and victimization rates reveal a troubling picture. Particularly distressing about these figures is that while Native Americans suffer the highest crime rates of all other races, tribes typically have the least resources and funding to properly enforce the law and lock up the offending criminals.⁴² Native Americans are regulated by city, county, tribal, state and federal agencies. An assumption could be made that multiple levels of regulation would prevent the disproportionately high rates of victimization, yet the opposite is true. Instead, the jurisdictional complications and inter-agency coordination that is needed to investigate and prosecute crime often results in a failure of any government to respond. This circumstance contributes to the prevalence of criminal activity in Indian Country and results in inadequate protection against crime for Native Americans.

In an attempt to address this problem, a 2007 New Mexico bill urged the U.S. Congress to increase the authority of Navajo Nation Peace Officers over non-Indians by allowing them to investigate all crimes committed within the boundaries of the Navajo Nation and authorize the Navajo court to punish all offenders. While the measure did not pass, consideration of the measure shows an awareness of the problem at the state level, and an attempt to push for action in the federal arena. In addition, 44 states now have criminal penalties for racially-motivated hate crimes committed in their states.

Crime Rates Among Juvenile Offenders

In 2004, law enforcement agencies made an estimated 60,450 juvenile arrests of Native American youths for aggravated assault nationwide. Between 1995 and 2004, the annual number of such arrests fell 23 percent. Between 1995 and 2004, the number of arrests in most offense categories declined for juveniles, with a 31 percent decrease in violent crime and a 40 percent decrease in property crime.⁴³

The number of arrests of Native Americans (1 percent of the total) in 2001 matched the Native American population (1 percent) for all violent offenses except

⁴⁰ Perry, *supra* note 11.

⁴¹ *Id.*

⁴² Sarah M. Patterson, *Native American Juvenile Delinquents and the Tribal Courts: Who's Failing Who?*, 17 N.Y.L. SCH. J.HUM.RTS. 801 (2000)

⁴³ Juvenile Justice Bulletin, *supra* note 36.

murder. In the case of juveniles, Native Americans were less likely to be arrested than youth of all races. For example, the number of arrests per 100,000 for forcible rape was nine for all races, five for Native Americans; arrest rates for robbery were 55 for all races, 22 for Native Americans; and rates for aggravated assault were 136 for all races, and 106 for Native Americans.⁴⁴

Juvenile Victimization Rates

Native American youth do commit crimes--though arrest records would indicate that they do so less than youth of other races--the following statistics reveal they are more vulnerable to victimization than other minorities. Among Native American juveniles between the ages of 12-17 the rate of violent crime victimization was 150 per 1,000 as compared with 90 per 1,000 for non-Indian juveniles.⁴⁵

Assessing the youth violence problem can guide community-specific responses to youth crime and victimization. Programs to control and reduce youth crime must be culturally tailored for the Native American population. Recognition that youth crime is likely an extension of more serious problems including alcohol abuse, mental illness, poverty, poor health care and education, is paramount. Comprehensive policies targeted at improving overall conditions in Native American communities will go a long way to positively impact juvenile crime and high victimization rates on tribal land.

Comprehensive Juvenile Justice

Risk factors such as poverty, disrupted neighborhoods, and family violence in young people's lives have been shown to lead to crime. These factors begin to influence children at birth, thereby having a cumulative effect through adolescence and into adulthood. Later in childhood and into the teen years, other factors such as peer influences and access to drugs and firearms become additional predictors of criminality. States can craft research-based policies and initiatives to respond effectively to these risk factors and make in-roads against juvenile crime. A comprehensive inventory of policy should begin in child services and extend to adult criminal justice systems. In doing so, policies can be structured to address known links between crime and poverty, child abuse, family violence, drugs and weapons and exposure to media violence.

A wide body of recent research shows that the most effective policy solutions are those that are community based and supported by the population they intend to serve. Therefore, there is a need for collaboration between state and tribal governing officials as state policy is developed to ensure that laws are effective and operate in accordance with the legislative intent. There also is a need to increase the ability of American Indian tribes to provide adequate and appropriate juvenile justice responses to youth crime, violence and victimization. Tribal governments need tools to develop comprehensive,

⁴⁴ Perry, *supra* note 11.

system-wide approaches to reduce juvenile delinquency and victimization and to increase the overall safety of their communities.

V. SENTENCING PATTERNS AND REPRESENTATION OF NATIVE AMERICANS IN PRISON

Native Americans' unique legal and political status and accompanying jurisdictional complexities often results in tougher consequences in the justice system. There is also evidence of racial discrimination against Native Americans in sentencing and incarceration, which is evidence of possible racial disparity in the criminal justice system.

In order to appropriately consider the statistics, a few clarifying definitions are necessary. Overrepresentation refers to a situation where a larger portion of a particular group is present within the adult or juvenile justice system than would be expected based on their proportion in the general population. Disparity refers to the probability of receiving a particular outcome that differs from other groups.⁴⁶

Incarcerated Adults

High arrest and prosecution rates among Native Americans necessarily translate into more prison sentences. Statistical information gathered over the last several years support this finding. The incarceration rate for Native Americans, reflected in a 1999 Bureau of Justice Statistics (BJS) study, is startling. The study found that Native Americans were held in local jails at the highest rate of any racial group. Another study, "Jails in Indian Country, 1998 and 1999" was published by BJS in July 2000. This study found that the number of Native Americans incarcerated throughout the United States was 19,679 on June 30, 1999. On a per capita basis, Native Americans were incarcerated in prisons at a rate that was 38 percent higher than the national rate. Native Americans' rate of incarceration in both prisons and jails (non-tribal) is 15 percent higher than the overall national rate.⁴⁷

On any given day one in twenty-five Native Americans age 18 or older is under some form of criminal justice supervision. This is 2.4 times the per capita rate for Anglo Americans and 9.3 times the rate for Asian Americans. City or county jails held over three times as many Native Americans as tribal jails in 2001.⁴⁸ Also in 2001, the rate of

⁴⁶ U.S. Department of Justice, *Minorities in the Juvenile System* (U.S. DOJ, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, December 1999)

⁴⁷ Perry, *supra* note 11.

⁴⁸ T.D. Minton, *Jails in Indian Country, 2001* (U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2002)

incarceration for Native Americans was 19 percent higher than the overall national incarceration rate (849 per 100,000 vs. 690 per 100,000).⁴⁹

Interestingly, when it comes to alternative forms of supervision such as parole or probation, the rates for Native Americans are below the national average--further evidence that Native Americans are subject to harsher penalties within the justice system. Nationwide seven percent of Native American offenders were on parole, but nationwide 12 percent were on parole. Nationwide 57 percent of offenders were on probation, but only 47 percent of Native American offenders were on probation. Conversely, 26 percent of Native American offenders were in local jails, (2.9 percent of the local jail population compared to the fact that they make up only 1 percent of the national population) but only 10 percent nationwide were held in local jails.⁵⁰

And in Indian Country, there were a total of 69 jails, confinement facilities, detention centers, or other correctional facilities supervising 2,030 persons as of June 2001. This was an increase of 10 percent from 2000 when 1,853 persons were under supervision.

Recidivism Rates

The recidivism rate for Native American offenders was somewhat lower than the national rates. Within three years of release 25.4 percent of all races had received sentences for a new crime, whereas 21.3 percent of Native American offenders had received such sentences. The most dramatic difference was for drug offenses--25.2 percent nationwide compared to 12.7 percent among Native Americans--and public order offenses (21.6 percent all races compared to 7.9 percent among Native Americans). For violent crimes nationwide 20.4 percent received new sentences, as compared with 16.2 percent among Native Americans.⁵¹

A number of factors may contribute to this outcome including strong cultural influences within Native American communities that prioritize individual responsibility for personal misconduct. In addition, it is common for tribal jails to provide alcohol and substance abuse treatment--59 out of 69 jails in Indian Country provide substance abuse treatment--a service that is typically lacking in the state and federal prison systems.⁵² Given the large percentage of Native American offenders who commit crimes while under the influence of alcohol or drugs, access to treatment for these problems may curb criminal behavior in the future.

The Death Penalty

⁴⁹ *Id.*

⁵⁰ Perry, *supra* note 11.

⁵¹ *Id.*

⁵² Paula M. Ditton, *Jails in Indian Country, 1998 and 1999* (U.S. Department of Justice Bureau of Justice Statistics, Office of Justice Programs, April 2002)

Race continues to play an unacceptable role in the application of capital punishment in America today. In 2004, 28 Native Americans faced the death penalty. In 2005 this number increased to 31. This increase occurred while the number of white and black inmates sentenced to die decreased by 51 and 18 respectively (to totals of 3254 and 1805). Between 1977 to 2005, a total of 993 men were executed; 8 of those were Native Americans.⁵³

A few states in recent years have studied the issue of race and capital punishment. A 2003 study conducted by researchers at the University of Maryland revealed the state's death penalty system to be tainted with racial bias, with geography playing a significant role in who faces a capital conviction. And a 2001 in-depth and detailed study of race and the death penalty in North Carolina's history indicated that race is a factor in the capital punishment system in the state.

Why do disparate sentencing patterns occur?

Under-developed tribal justice systems and the exercise of federal jurisdiction over tribal reservations suggests a possible impact on criminal sentencing. Limited economic resources, federal jurisdiction and the increased likelihood of tougher sentences, and an unreliable criminal justice infrastructure may limit judges' power to deliver alternative sentences, such as probation, community service or treatment to Native American defendants.⁵⁴

Some argue the high incarceration rates of Native Americans is attributable to racial disparities that are seen in many aspects of the criminal justice system--from law enforcement stops and racial profiling arrests, to inadequate legal representation. Average Americans, including Native Americans, may lack an understanding of the justice system and, because of economic constraints, may not have enough money to hire appropriate counsel. Moreover, court appointed defense counsel and Native American defendants may face communication and cultural hurdles in their relationship.

Concerns also have been raised that crimes perpetrated by whites against Native Americans are investigated and prosecuted with less intensity than those committed by Native Americans against whites. Additionally, some argue that this disparate sentencing could stem from Native American defendants not being judged by a jury of their peers. In the federal system, it is unlikely there will be members of the Native American community on the jury. In addition, federal sentences for similar crimes are typically longer than sentences in state court.⁵⁵

⁵³ *Id.*; Tracy L. Snell, *Capital Punishment, 2005* (U. S. Department of Justice, Bureau of Justice Statistics, 2006)

⁵⁴ Richard Braunstein and Steve Feimer, *South Dakota Criminal Justice: A Study of Racial Disparities*, S. D. L. REV. 171 (2003).

⁵⁵ Kevin Washburn, *American Indians, Crime and the Law*, 104 U. MICH. L. REV. 104 (2006).

Racial disparities in the criminal justice system are problematic for many reasons, including the long-term impact on an individual of having a criminal record. Legal consequences of these felony convictions for Native Americans--or any race--include losing the right to vote and having to report the conviction on employment applications--which is particularly problematic given the high rate of unemployment and poverty in Native American communities. While Native Americans generally have a lower than average recidivism rate, consequences associated with having a criminal record may actually increase recidivism in the long run because they limit the extent to which the offender, once released, can become successfully reintegrated into the community.

State Studies & Legislation

State lawmakers have taken action in recent years to address the issue of possible racial disparities in criminal justice systems. In 2000, the Connecticut General Assembly passed legislation creating an inter-branch Commission on Racial and Ethnic Disparity in the Criminal Justice System. The purpose of the commission is to research and gather relevant data, examine the effects of statutory provisions and administrative policies, and develop and recommend policies and approaches to reduce disparity.

In Ohio, a six-year study sponsored by the Ohio Bar Association and the state Supreme Court, resulted in a report that pointed to racial disparities in the justice system and made recommendations to address these problems. The Ohio Commission on Racial Fairness recommended expanding diversity employment practices and training, improving statistical data on race and criminal cases from arrest to sentencing, and addressing language needs of non-English speaking persons in Ohio courts.

In South Dakota, former governor Bill Janklow commissioned a study to determine the affect of race on how people are charged, prosecuted and sentenced in the state. Research carried out by the University of South Dakota Law School found racial disparities for Native Americans in case disposition, bond determination, sentencing, time served, and type of release. The analysis, "South Dakota Criminal Justice: A Study of Racial Disparities" by Richard Braunstein and Steve Feimer, was published in the March 2003 South Dakota Law Review. Due to limited data, Braunstein and Feimer could not attribute the disparities in the criminal justice system to race alone.⁵⁶ In 2004, South Dakota's Unified Judicial System established the Equal Justice Commission to determine, study and report on whether bias in the judiciary was perceived or actual and to what extent. After its formation, the Commission conducted interviews and public hearings at fifteen sites across the state, including eight Indian reservations, three penitentiaries and the cities of Pierre, Rapid City, Sioux Falls and Vermillion. The Commission also invited submissions of written testimonials and letters from anyone in the state. Braunstein and Feimer's statistical information was also considered.

⁵⁶ The Lakota Times, "State's Equal Justice Commission prompts cultural training" By Vicky Wicks, April 17, 2007.

Overall, the Equal Justice Commission's findings included evidence that Native Americans were overrepresented in the criminal justice system and whites were underrepresented. The study also found that South Dakota has a high disparity between the Native American inmate population and the general population. According to statistics from the Department of Corrections, of those inmates serving life imprisonment for first degree manslaughter, forty percent are Native American.

The findings of the commission supported the perception among South Dakota minorities, especially Native Americans, that the judicial system shows favoritism toward Caucasians. In the conclusion the commission noted, "a justice system perceived by a substantial number of minority people to be unfair must take measures to improve its interaction with those minorities because the appearance of fairness is nearly as important as fairness itself." The commission went on to say, "in view of the fact that Native American overrepresentation is a reality, the contribution of the criminal court system itself to this overrepresentation must be closely monitored"⁵⁷ The Equal Justice Commission's findings in South Dakota demonstrate the challenges facing Native American communities and the growing concern that a double standard exists in the criminal justice system.

Incarcerated Youth

There is a large body of research indicating that Native American youths receive more severe sentences and different treatment than white youths with similar histories. The causes of disproportionate minority involvement in the juvenile justice system illustrate two schools of thought. The first is differential treatment, meaning that minority youths are systematically processed differently within the justice system. The second school of thought is differential offending, which simply means that the increased rates of crime and offending by minority youth have resulted in the overrepresentation of minority youth in the juvenile justice system.

While crime rates of Native American juveniles are similar or even slightly lower than the nationwide rate for all juveniles, the incarceration rates are markedly different. In 2003, the juvenile incarceration rate in local jails and prisons was 307 per 100,000 for all juveniles nationwide, but 496 per 100,000 for Native American juveniles.⁵⁸ In 2001, the residential placement rate--including all local jails, prisons, and juvenile detention facilities--for all juveniles was 336 per 100,000, but for Native American juveniles the rate was 608 per 100,000.⁵⁹

⁵⁷ South Dakota Equal Justice Commission 2006 Final Report and Recommendations. www.sdjudicial.com.

⁵⁸ Howard M. Snyder and Melissa Suskind, *Juvenile Offenders and Victims: 2006 National Report* (U.S. Department of Justice, Office of Justice Planning, March 2006)

⁵⁹ U.S. Department of Justice, *2004 Census of Juveniles Residing in Placement Facilities*, as reported in *Locked up and Locked Out* (Educational Testing Service Policy Information Report, 2006)

Between 2000 and 2001 the number of juveniles in tribal jails increased 13 percent. Nearly one third of these juveniles were females. In addition, 22 juveniles were held in tribal jails as adults, an increase from 14 in 2000.⁶⁰

What causes disparate sentencing patterns among youth?

Disparate sentencing patterns among Native American youth may tie back to their legal and political status and the jurisdictional rules applied in Indian Country. In particular, because most crimes committed by Native Americans in Indian Country are subject to federal jurisdiction, there appears to be an increased chance of these juveniles receiving a tougher sentence than if the case were processed in the state courts. Like Native American adults in the federal system, juveniles typically face tougher and longer sanctions when tried in federal court.

A juvenile transferred to federal court and tried as an adult is often subjected to longer sentences than either a tribal or state court generally would impose. If a judge transfers a youthful offender to adult court in the state system, the criminal sentence is usually half as long as in federal court, but without the opportunity for parole. Thus, Native American juveniles face disproportionate consequences simply due to their status. If a juvenile commits a felony crime on Native American land, the juvenile falls within federal criminal jurisdiction. Whereas if the juvenile is non-Native, he/she only will be subject to state jurisdiction, and therefore, state punishment--not the often more severe federal punishment.

It is apparent that Native American youth bare the brunt of the negative effects of the system. These include longer sentences and an increased possibility of incarceration in adult prison, where youth are more likely to be physically and sexually assaulted. They also are at a greater risk for suicide. The overrepresentation of Native American youth needs to be reported and examined more thoroughly. Moreover, the equitable treatment of minority children needs to be addressed by society and our juvenile justice systems throughout. All youth should be provided with equal opportunities in and out of the justice system so they may grow into prosperous adults.

Overall, the disparity and overrepresentation of Native Americans in the justice system is indication of discrimination. It is not surprising that, based on the aforementioned numbers, there is a poor perception and little trust by Native Americans of the criminal and juvenile justice systems. Eliminating any double standard of justice needs to be a priority for policymakers at both the state, tribal and federal level.

There also is a need for further statistical data on race and the justice system, from arrest to sentencing--including case disposition, bond determination, sentence lengths imposed, time served, and type of release. The current lack of statistical information impedes policymakers' ability to craft legislation that is tailored in scope and purpose to the problem it is attempting to address.

⁶⁰ Minton, *supra* note 47.

Bringing together state, federal and tribal law enforcement officials, policymakers, the judiciary, states' attorneys, and community groups in a collaborative effort to discuss and deal with rebuilding Native Americans' confidence in the justice system is of paramount importance. Strategies should be developed to ensure equity in legal representation and community-based resources for economically disadvantaged Native American youth and their families. Necessary changes and reforms however will not occur without recognition of the serious extent of the problems that exist.

VII. POLICY OPTIONS

General Policy Principles

The Harvard Project on American Indian Economic Development was founded in 1987, and has since been at the forefront of policy discussions aimed to promote tribal economic growth. Although the project focus is on poverty, infrastructure, and other associated economic issues, the project endorses policy principles that are equally applicable in the criminal justice context. Policymakers at all levels of government may be well-served by keeping these general principles in mind as they develop specific laws:⁶¹

- (1) *Sovereignty or self-rule.* Native peoples must have genuine decision-making power, from constitution-making to law-making to policy;
- (2) *Capable governing institutions.* Native peoples have to be able to exercise decision-making power effectively.
- (3) *A congruence of formal governing institutions and Native political culture.* There has to be a match between the formal institutions of governance and prevailing ideas within the community or nation about how authority should be organized and exercised.

These general principles can be used as a guide in addressing criminal justice in Indian Country and are aimed at promoting tribal self-governance and the development of community-based policy solutions. State and federal lawmakers should be cognizant of these principles when developing and evaluating their policy agenda and crafting strategies for successful intergovernmental cooperation.

State Legislation

States and tribes can work together to address criminal justice issues throughout Indian Country. Cooperative policy development at the state and tribal level is on the rise and is necessary to effectively reduce crime and improve law enforcement on reservations and the surrounding communities within a state. Cooperation can be

⁶¹ Stephen Cornell, *Indigenous Peoples, Poverty, and Self-Determination in Australia, New Zealand, Canada and the United States* (Harvard Project on American Indian Economic Development, December, 2006)

achieved through a variety of ways including intergovernmental agreements and improved communication. Policies developed through state-tribal cooperation can address problems in all areas of criminal justice including crime prevention and treatment, law enforcement, and probation and parole.

Prevention and Treatment

Addressing the mental and community health needs of youth--including Native Americans--is a way to keep juvenile crime down and children out of the juvenile justice system. In February 2007, the Minnesota Department of Human Services signed a tribal-state agreement with leaders from the eleven tribes in Minnesota. The agreement states that the Department of Human Services and the tribes agree that Native American children should be kept with their families whenever possible, Native American children who must be removed from their homes should be placed with extended family members or members of their tribe, and the Department should defer to tribal recommendations on matters concerning the custody of the tribe's children as long as the recommendation is consistent with federal and state Indian Child Welfare Acts.⁶² The agreement demonstrates a standing commitment of cooperation between a state agency and Native American tribes for the purpose of improving Native American children's lives. The stress of adjustment to multiple foster homes with multiple cultural values can have an impact on a child's mental well being. Keeping Native American children with their families and within their tribe promotes community wellness. Comprehensive policy can improve conditions for Native Americans and tribal communities, including the amelioration of crime. State-tribal cooperation designed to provide assistance to struggling families can help end the cycle of dysfunction in the home and unhealthy environments for children, thereby decreasing the odds that a child will become involved in the juvenile justice system.

In New Mexico, efforts to improve treatment and prevention services have been long supported. In the 1980's, Gallup New Mexico was dubbed by the media as "Drunk Town USA." In response to Gallup's unflattering moniker and the large number of American Indians in Gallup involved in alcohol related crimes and deaths, the Na'nizhoozhi Center was established in 1992. The Center was formed by a board of directors comprised of members representing the Navajo Nation, Zuni Pueblo, the City of Gallup and McKinley County. The Center provides a 28-day adult residential treatment program, out-patient services, aftercare services with a home visitation program and detoxification programs. The Na'nizhoozhi Center's emphasis on "blending Western (non- Navajo) intervention methods with traditional Navajo intervention methods has proven to be an effective model and has resulted in numerous [program participants] becoming sober."⁶³ The methods appear to be working—within the first six years of the program there was a 59 percent drop in alcohol related accidents, a 50 percent drop in

⁶² Minnesota Department of Human Services, Minnesota State/Tribal Agreement, 2007, available at <http://www.dhs.state.mn.us>

⁶³ The Na'nizhoozhi Center, information available at <http://www.wellbrietynci.org>

homicides and a 42 percent drop in deaths involving alcohol.⁶⁴ The key to the Na'nizhoozhi Center's success is the cooperation between officials from the City of Gallup, McKinley County, the Navajo Tribe and the Zuni Pueblo, working toward the common goal of reducing alcohol related crime and deaths on and off the reservations.

Another factor that makes the Na'nizhoozhi Center effective in treating alcoholism among Native Americans in McKinley County is that there is no fee for people seeking treatment in the facility. The extreme levels of poverty among Native Americans on reservations would make treatment for the disease of alcoholism impossible without centers like Na'nizhoozhi. Residential alcohol treatment programs like Na'nizhoozhi Center provide treatment for the disease of alcoholism, while keeping Native American offenders out of the already crowded tribal and county jails. The programs are cost effective too. On average, one night in jail costs the state or county \$64.10. This means, for the state to incarcerate a person with a 30-day jail sentence for a driving under the influence offense, it would cost about \$1,900. With members of tribal communities in McKinley County receiving treatment for alcoholism at the Na'nizhoozhi Center, less money may have to be spent later for incarceration of alcohol offenders in the county jail.

The Na'nizhoozhi Center is funded by the Behavioral Health Division of the New Mexico Department of Health and Human Services, as well as federal and private grants and a local liquor excise tax. State legislatures, through their appropriations process, can fund similar programs in their own states.

Law Enforcement

Racial profiling is a serious problem facing Native Americans. Montana State Representative Jonathan Windy Boy, a member of the Chippewa Cree Tribe, has introduced a racial profiling bill in the Montana House of Representatives every year since 2004. In 2007 the bill finally was signed into law by the Governor. It requires law enforcement agencies to adopt a policy that "prohibits stopping members of minority groups for violations of vehicle laws as a pretext for investigating other violations of criminal law." Effective July 2007, the law requires collection of data and periodic review of that data to determine whether certain officers or agencies have a pattern of racial profiling. If the review indicates that a pattern of profiling does exist, an investigation is required to determine if an individual officer or department practices racial profiling.

The original bill required law enforcement agencies report on each stop, but the bill was amended after numerous law enforcement agencies throughout Montana raised

⁶⁴ International Association of Chiefs of Police, *Promising Practices for Improving Safety in Indian Country* (U.S. Department of Justice, May 2006)

concerns about unmanageable amounts of paperwork that could result from such a requirement.⁶⁵

In 2004 the Kansas Legislature enacted a bill that would grant tribal law enforcement officers the authority to enforce state law within the boundaries of the reservation, subject to certain conditions.⁶⁶ Conditions include a requirement that tribes secure liability insurance coverage for damages assessed in state or federal court arising from any acts, errors, or omissions of a tribal law enforcement officer while on duty. Any claims brought against the tribal law enforcement agency are processed as if the tribes were the state pursuant to the Kansas Torts Claims Act. The tribes are required to waive their sovereign immunity to the extent necessary to permit recovery under the liability insurance. If tribal law enforcement officers are called upon to assist local or state law enforcement, the tribal officer is considered an officer of the agency requesting assistance and is granted the same powers, duties and immunities during the time of assistance. The law provides tribal law enforcement officials with the same rights and obligations of any law enforcement officer in the state of Kansas.

Since the law passed, county and tribal law enforcement have had the opportunity to evaluate its effectiveness. The major concern of both state and tribal leaders alike was the liability insurance requirement mandated in the law. Officials from the Kansas Attorney General's office explained that it is difficult for the state to know if the tribes are carrying the proper amount of liability insurance as defined in the statute. In response to this issue, a new law was passed during the 2007 legislative session to amend the liability insurance provisions in the statute. The amendments require an aggregate loss limit of \$2 million and would require insurance carriers that provide the tribe with liability insurance to notify the Kansas Attorney General's office that the tribe holds sufficient liability insurance coverage.⁶⁷

Overall, state and tribal officials seem to agree that the law has created a good environment for cooperation between county and tribal law enforcement. Representatives from both Jackson and Brown County Sheriff's Department testified that the current law is working well to create a law enforcement partnership and saves Brown County \$50,000 per year. The Chief of Police for the Iowa Tribe and a member of the Kickapoo Tribe agreed that the police powers set forth were working effectively for the reservations and there is a sense of cooperation between departments.⁶⁸

⁶⁵ H.B. 781, 2007 Reg. Session (MT 2007), information *available at* <http://leg.mt.gov/css/default.asp>

⁶⁶ S.B. 9, 2004 Reg. Session (KS 2004), information *available at* <http://www.kslegislature.org/legsrv-bills/showBill.do?id=15718>

⁶⁷ K.S.A, *supra* note 58.

⁶⁸ Kansas Legislative Research Department, *Minutes: Joint Committee on State-Tribal Relations, September 26-27, 2006, available at* http://www.kslegislature.org/committeeminutes/05-06interim_joint/joint/jtTribe0926272006.pdf

A number of other bills relating to state-tribal law enforcement agreements were passed in 2007. For example, the Wisconsin Legislature authorized the Great Lakes Indian Fish and Wildlife Commission wardens to aid or assist a Wisconsin peace officer or to make an arrest for a violation of state law under specified circumstances. In North Dakota legislation was passed that makes a tribal police officer of a federally recognized tribe eligible for a state issued peace officer license.

A bill introduced during the 2008 legislative session in Washington will establish a state-tribal agreement enabling tribal law enforcement officers to act as general authority Washington state peace officers. The bill has been passed by the House and Senate and now awaits the Governor's signature.

A number of other states have established cross-deputization and mutual aid law enforcement agreements between state and tribal law enforcement entities that vary in scope and specifics. While it is important to tailor intergovernmental agreements to meet the specific community needs, it is generally useful to include the key components of evaluation, oversight and government-to-government cooperation. Such factors are important considerations as states contemplate law enforcement agreements in the future.

Information-Sharing Mechanisms

Confusion related to state and tribal criminal jurisdictional issues make cross-jurisdictional communication vital for state-tribal law enforcement. As noted earlier, both state and tribal officials around the country have noted that information-sharing between the states and tribes is necessary, but rarely done. One Minneapolis Police Sergeant, Bill Blake, a member of the Red Lake Band of the Chippewa, is developing a database that will accurately track crimes in Indian Country. The database allows information to be shared by the tribes as well as municipal and state law enforcement. Today, the I-CARE database (Indian Crime Awareness Research and Evaluation) is limited to a few Minnesota tribes but aims to someday collect data from all tribes in Minnesota and Wisconsin, and eventually nationwide. Sergeant Blake has pointed out that current data about crime in Indian Country is sparse and unreliable because many tribes do not participate in the FBI's crime data research and the Bureau of Indian Affairs does not collect crime statistics on the reservations. The database could help tribal and state law enforcement spot trends in crime and track offenders who seek refuge in cities or other reservations. The Minneapolis Police Chief has made efforts to make space for the project and provide computers and clerical assistance. Minneapolis has heavily populated Native American neighborhoods and the city's law enforcement officers often see suspects and criminals fleeing to the reservations. The dedication to cross-jurisdictional law enforcement in Minnesota is an illustration of the necessity and the promise for state-tribal cooperation in combating these problems.⁶⁹

Sentencing, Parole and Board Representation

⁶⁹ Amy Forliti, *Interagency Crime Database to be Created*, Indian Country Today, February 16, 2007.

South Dakota's Equal Justice Commission, referenced previously, is an illustration of effective state-tribal cooperation. The Commission is co-chaired by South Dakota Supreme Court Justice John Konenkamp and Retired Chief Judge of the Oglala Sioux Tribal Court, Patrick A. Lee. Commission members include an attorney from a public defender's office, judges in South Dakota and a representative from Indian Health Services.

The Equal Justice Commission's 2006 report provided numerous recommendations for all branches of government to address disparities and to improve the criminal justice system in South Dakota. The Commission reported that all employees in the Unified Judicial System would benefit from cultural competency training to increase awareness of potential disparities in the criminal justice system and the implications of those disparities. Members of the Commission suggested UJS implement mandatory cultural competency training for personnel as well as make efforts for recruitment and retention of minority personnel within the courts and the juvenile justice system.

The Commission recommended that the legislature cooperate with other state agencies to develop and fund culturally specific programs for minority youth for both in-home and out-of-home placements in order to improve chances at rehabilitation. The Commission also recommended that the legislature fund more victim's advocacy services and other social services in rural areas.

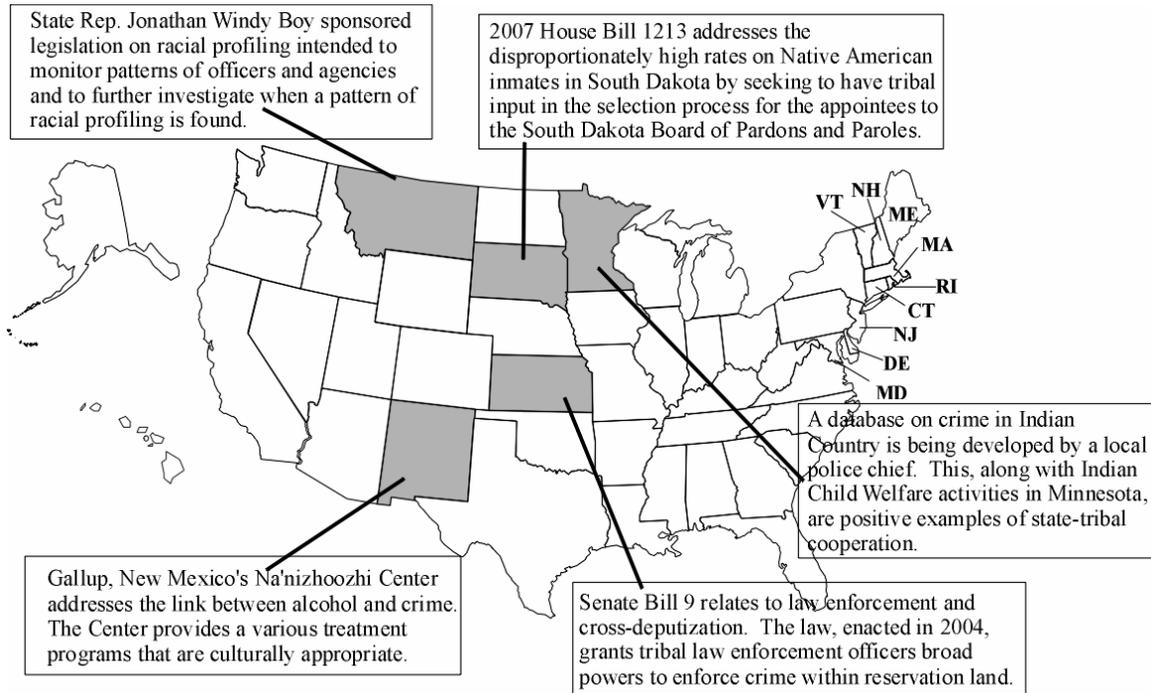
The Commission further suggests that "the Supreme Court and other appointing authorities should appoint qualified minority people to serve on the South Dakota board of Pardons and Paroles." In fact, the South Dakota legislature has introduced legislation in the past few years relating to minorities, and specifically Native Americans, serving on the state's parole board. Although there is interest in expanding the parole board to include minority members, measures introduced in the legislature have not passed.

A bill similar in purpose was considered in New Mexico with more success. During the 2007 legislative session lawmakers in the state enacted legislation that will add the Secretary of the New Mexico Department of Indian Affairs to the state's Sex Offender Management Board.

Full Faith & Credit

Finally, Oregon house bill 2364 requires that laws, official acts, rules and regulations of federally recognized tribal governments be judicially recognized. The bill also provides that certain records, reports, statements and data compilations of federally recognized tribal governments are not hearsay for purposes of the rules of evidence pertaining to state court proceedings. These requirements ensure that judgments and orders issued out of tribal courts are given full faith and credit within the state judicial system.

Figure 3. Map of Select State Actions to Reduce Crime in Indian Country



VII. Federal Legislation and Initiatives

Legislative activity at the federal level also is intended to assist tribes in the law enforcement and criminal justice arena. For example, in 2005, President Bush signed into law Senate Bill 279—a law authored by U.S. Senators Domenici and Bingaman that would essentially eliminate so-called "prosecution-free zones" in New Mexico's Indian Country. Prior to enactment of the law, there were areas within pueblo borders where crimes could essentially escape prosecution. Senator Domenici (R-NM) has stated that "under the new law, there will be no confusion over who has criminal jurisdiction when a crime has been committed."⁷⁰ Specially, SB 279 amends "the Pueblo Lands Act of 1924 to allocate jurisdiction over offenses committed anywhere within the exterior boundaries of any grant from a prior sovereign to a Pueblo Indian tribe of New Mexico to: (1) the Pueblo for any offense committed by a member of the Pueblo or an Indian or by any other Indian-owned entity; (2) the United States for any specified federal offense that is committed by or against an Indian or any Indian-owned entity, or that involves any Indian property or interest; and (3) the state of New Mexico for any offense committed by a person who is not a member of a Pueblo or an Indian, which offense is not subject to U.S. jurisdiction." The legislation comes in response to federal and New Mexico state law cases that held that neither federal officials nor the state had jurisdiction to prosecute crimes within the pueblos.

⁷⁰ Senator Pete Domenici, *Press Release*, December 21, 2005.

More recently, legislation (H.R. 545) is currently being considered by the 110th Congress regarding tribal methamphetamine use which, as described in previous sections, is a major criminal justice problem in Indian Country. The legislation would open up grants to tribal governments that are currently only available to states by amending the Omnibus Crime & Safe Streets Act of 1968 with clarifying language that provides eligibility to tribes. The federal grant programs that would be affected by the new legislation are the Community Oriented Policing Services (COPS) Hot Spots program, the Drug Endangered Children program, and the Pregnant and Parenting Women Offenders program.⁷¹ The House of Representatives unanimously passed the legislation and now the Senate is set for action.

Also on the Congressional agenda, Representative John Conyers (MI) introduced a measure (HR 1592) pending in the House Judiciary Committee, to provide federal assistance to states, local jurisdictions and Indian tribes to prosecute hate crimes. The legislation would allow the DOJ to provide technical, forensic, prosecutorial and other assistance in the criminal investigation phase of hate crimes enforcement. As of early 2008 the bill had passed the House and awaits a vote by the Senate.

Finally, Senator Byron Dorgan, chair of the Senate Indian Affairs Committee, is expected to draft new legislation in 2008 designed to improve some of the problems associated with criminal justice and jurisdictional deficiencies in Indian Country. Senator Dorgan's office has spent the last few months soliciting input from tribal governing officials across the country about what specific issues the legislation should address. Key components of the bill are expected to include:

- Appointing tribal prosecutors to deal specifically with reservation crime
- Requiring federal officials to file declination reports in order to capture the number and reasons cases were not prosecuted
- Providing clarification of the role of tribal liaisons within the justice system
- Providing clarification of the role of BIA officers as enforcers of federal and tribal law
- Providing channels for consultation between the BIA and the tribes
- Establishing minimum resource standards for P.L. 280 states
- Acknowledging and affirming tribal law enforcement as first responders
- Providing tribes with increased access to the National Crime Information Center and other national criminal databases
- Increasing the sentencing power of tribes beyond the current one year limitation.

⁷¹ Native American Report, *New Bill to Battle Meth Possible*, April, 2007. No. 07-04; President Bush's FY2008 budget request also seeks \$16 billion for the Safe Indian Communities Initiative to combat meth use in Indian Country, *see*, Indian Country Today, *Bush Budget to Funnel Money to Safe Indian Communities Initiative*, February 16, 2007, available at <http://www.indiancountry.com/content.cfm?id=1096414503>

There are other activities at the federal level, aside from legislation, that show promise for improving law enforcement and reducing crime in Indian Country. A pilot program through the U.S. Attorneys Office trains tribal law enforcement officers, as well as interested state law enforcement officials, so they may be cross-deputized as federal agents. Federal deputization provides tribal law enforcement the authority to arrest non-Indians who commit crimes on tribal land--a power they would otherwise not have. The program was a response to the high rates of crime and jurisdictional uncertainty on the Southern Ute and Ute Mountain Ute reservations in southwest Colorado. The program has grown considerably since its inception. Troy Eid, the U.S. Attorney for the District of Colorado who initiated the program, reports that to date, 140 officers have been trained--both tribal and state--including deputy sheriffs, police officers, fish and wildlife enforcement officers, Colorado Bureau of Investigations officers and the entire Cortez, Colorado police department. There also are plans to train the entire Albuquerque police department in the near future.⁷²

The amendments to the Pueblo Lands Act of 1924, legislation currently pending before Congress and cross-deputization agreements at both the federal and state level, while helpful in a targeted sense, are viewed in some legal circles as a necessary "workaround" to the Court's holding in *Oliphant* which prevents tribal governments from exercising jurisdiction over non-Indians. These interim solutions may address some of the public safety problems that currently exist on tribal lands, though there is growing sentiment that only a Congressional repeal of *Oliphant*, allowing tribes to respond to criminal activity regardless of the race of the perpetrator, will adequately address the jurisdictional gaps that can come into play when non-Indians commit crimes on tribal land. Until action occurs at the Congressional level to provide a large-scale solution, targeted legislation and state-tribal cooperative agreements may be the best option available.

VIII. Conclusion

The problems associated with the criminal justice system in Indian Country, and its impact on surrounding communities, illustrates the unique and serious nature of this situation. State and tribal governments have an obligation to serve the health, safety and welfare of their citizens. Innovative policy solutions are being developed and implemented by both sets of lawmakers, but much work remains to be done. Though the overarching problems associated with crime in Indian Country--mainly the jurisdictional framework as applied to tribal land--require Congressional redress, intergovernmental cooperation between the states and tribes is key to developing relevant policy solutions to local problems. In addition, successful programs at the state and tribal level also may influence and inform policy change at the federal level. State legislatures are positioned to develop policy designed to improve services to Native Americans involved in the state judicial systems, address the myriad criminal justice concerns in Indian Country, allocate funding to support successful initiatives and conduct oversight into the state's overall

⁷² Personal Interview, Troy Eid, U.S. Attorney for the District of Colorado, January 23, 2008.

compliance with related laws and programs. Tribal governments, fueled by successful self-governance initiatives and growing economies, are situated better than ever before to address needs within their communities and forge powerful intergovernmental agreements pertaining to the many areas in which state-tribal cooperation is a necessity. And the growing number of Native Americans holding seats in the state legislatures and other positions of influence throughout state government increases awareness and promotes the development of comprehensive policies to address crime in Indian Country.

Tribal citizens, of course, are also citizens of the state in which they reside. State legislators are elected to serve the needs of all their constituents--Native and non-Native alike. Collaborative, culturally-appropriate policy solutions can improve the lives of all people, provide for a brighter future for new generations and strengthen governance throughout the states and tribes, and across the country.