

Criminal Justice in Indian Country: State-Tribal Intergovernmental Strategies to Reduce Crime and Promote Community Wellness

By Sarah Hammond

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Overview



- Crime and victimization are disproportionately higher among Native Americans. Disparate criminal sentencing patterns exist as well as overrepresentation in prison.

- Possible explanations

- Consequences

- Policy recommendations

Social Implications on Tribal Lands



- **Economic and Social Problems - Poverty**
 - Inadequate education, unemployment
 - Lack of affordable housing, substandard health
 - High rates of alcohol and substance abuse
 - Domestic violence and sexual assault
- **State Actions - specific to Native Americans**
 - Arizona, South Dakota and California address improving education
 - Minnesota appropriates \$ to improve housing
 - Colorado and Arizona provides \$ for substance abuse treatment
 - New Mexico - health services and tutoring adults

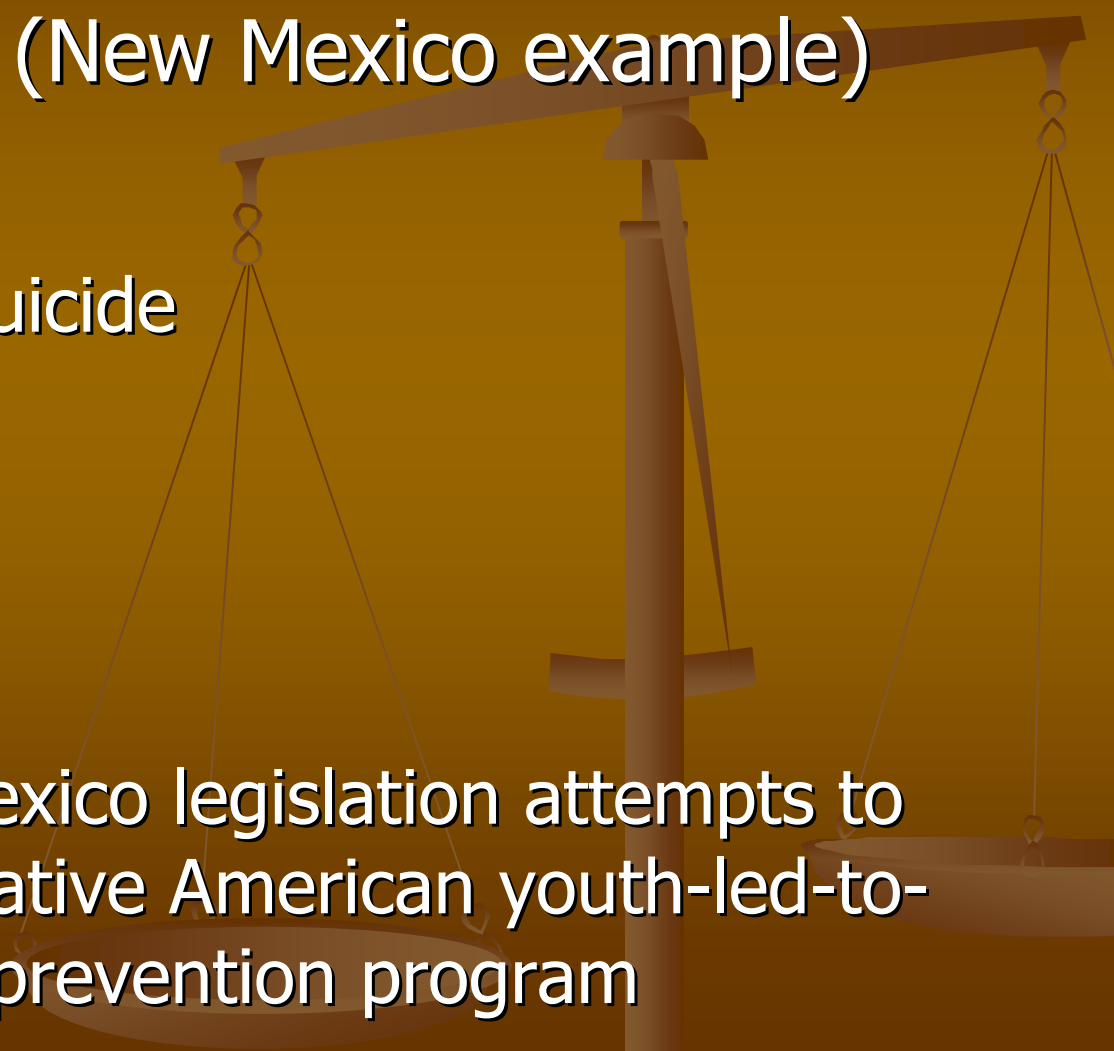
Social Implications on Tribal Lands cont...

■ Mental Health (New Mexico example)

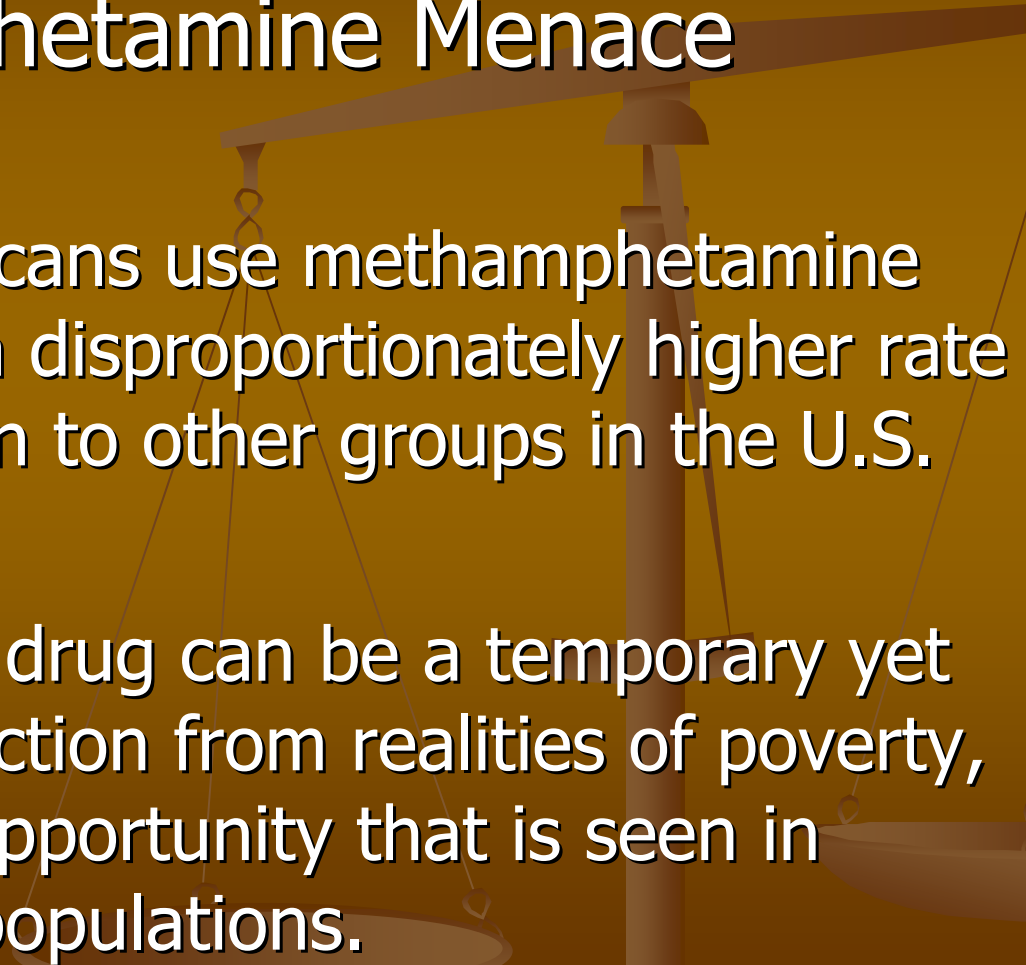
- High youth suicide

■ State Actions

- 2007 New Mexico legislation attempts to implement Native American youth-led-to-peer suicide prevention program



Social Implications on Tribal Land cont...

- The Methamphetamine Menace
 - Native Americans use methamphetamine ("meth") at a disproportionately higher rate in comparison to other groups in the U.S.
 - This harmful drug can be a temporary yet deadly distraction from realities of poverty, and lack of opportunity that is seen in many tribal populations.
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Methamphetamine cont...



■ **Harm to children**

- Health risks, parental addiction and abuse
- Passing along addiction to child

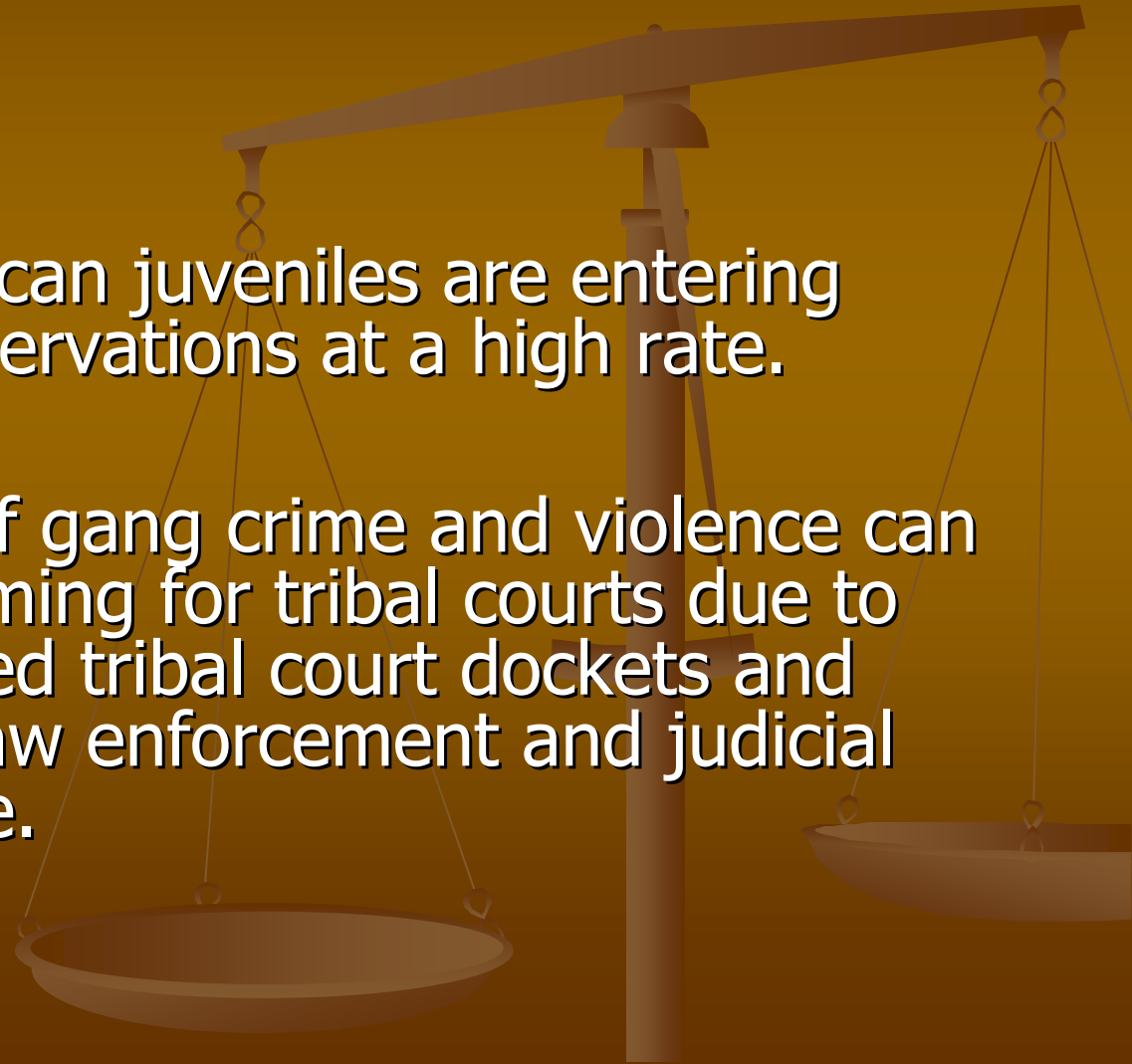
■ **State actions**

- Expanding child abuse or endangerment statutes to include "manufacturing meth in presence of child."
- Increasing penalties and making this crime a separate criminal offense.
- Laws requiring notification to child welfare agency if meth found in home with children.

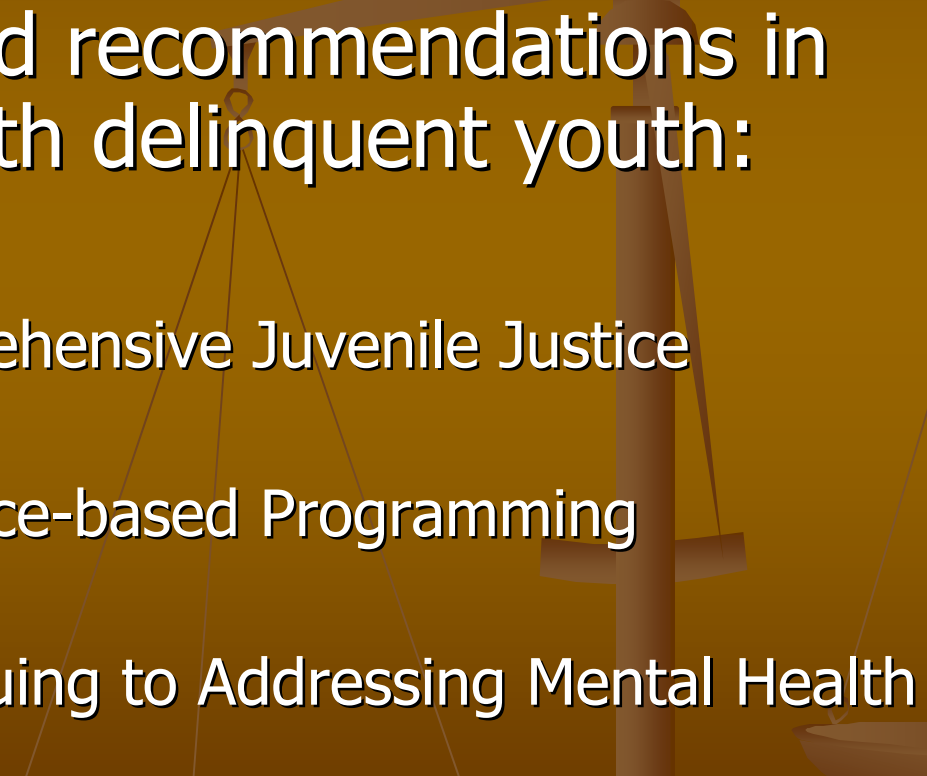
High Crime and Victimization Rates among Native American Youth

■ Gangs

- Native American juveniles are entering gangs on reservations at a high rate.
- High levels of gang crime and violence can be overwhelming for tribal courts due to over-burdened tribal court dockets and insufficient law enforcement and judicial infrastructure.



Native American Youth cont...

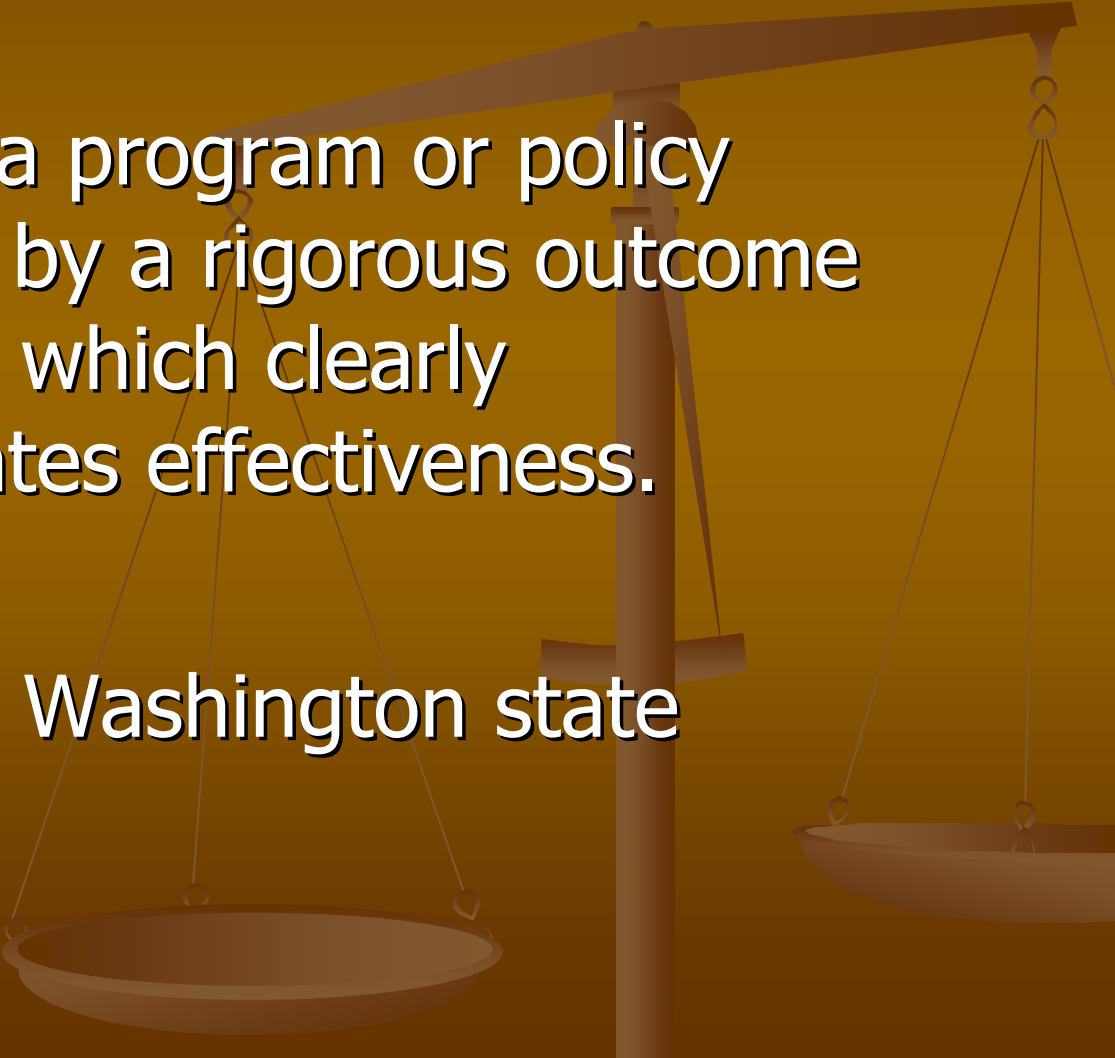
- Causes and recommendations in dealing with delinquent youth:
 - Comprehensive Juvenile Justice
 - Evidence-based Programming
 - Continuing to Addressing Mental Health Needs
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1. Comprehensive Juvenile Justice

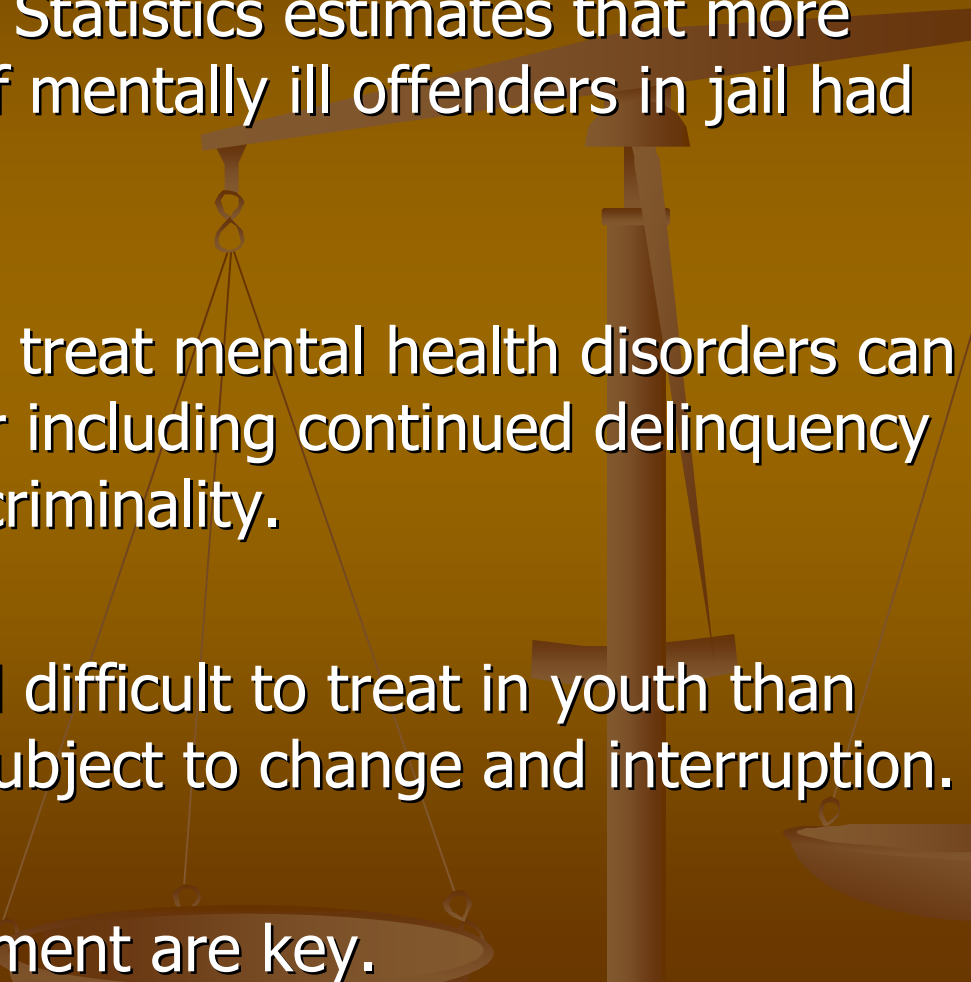


- There is a need to increase the ability of tribes to provide adequate and appropriate juvenile justice responses to youth crime and victimization.
- Tribal governments need tools to develop comprehensive, system-wide approaches to increase the safety of their communities.
- Policy should begin in children services and extend to adult criminal justice systems.

2. Evidence-Based Programming

- Describes a program or policy supported by a rigorous outcome evaluation which clearly demonstrates effectiveness.
 - Success in Washington state
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3. Continuing to Addressing Juveniles' Mental Health Needs

- The Bureau of Justice Statistics estimates that more than three-quarters of mentally ill offenders in jail had prior offenses.
 - Failure to identify and treat mental health disorders can contribute to behavior including continued delinquency and eventually adult criminality.
 - More complicated and difficult to treat in youth than adults. Youth more subject to change and interruption.
 - Screening and assessment are key.
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Sentencing Patterns and Representation of Native Americans in Prison



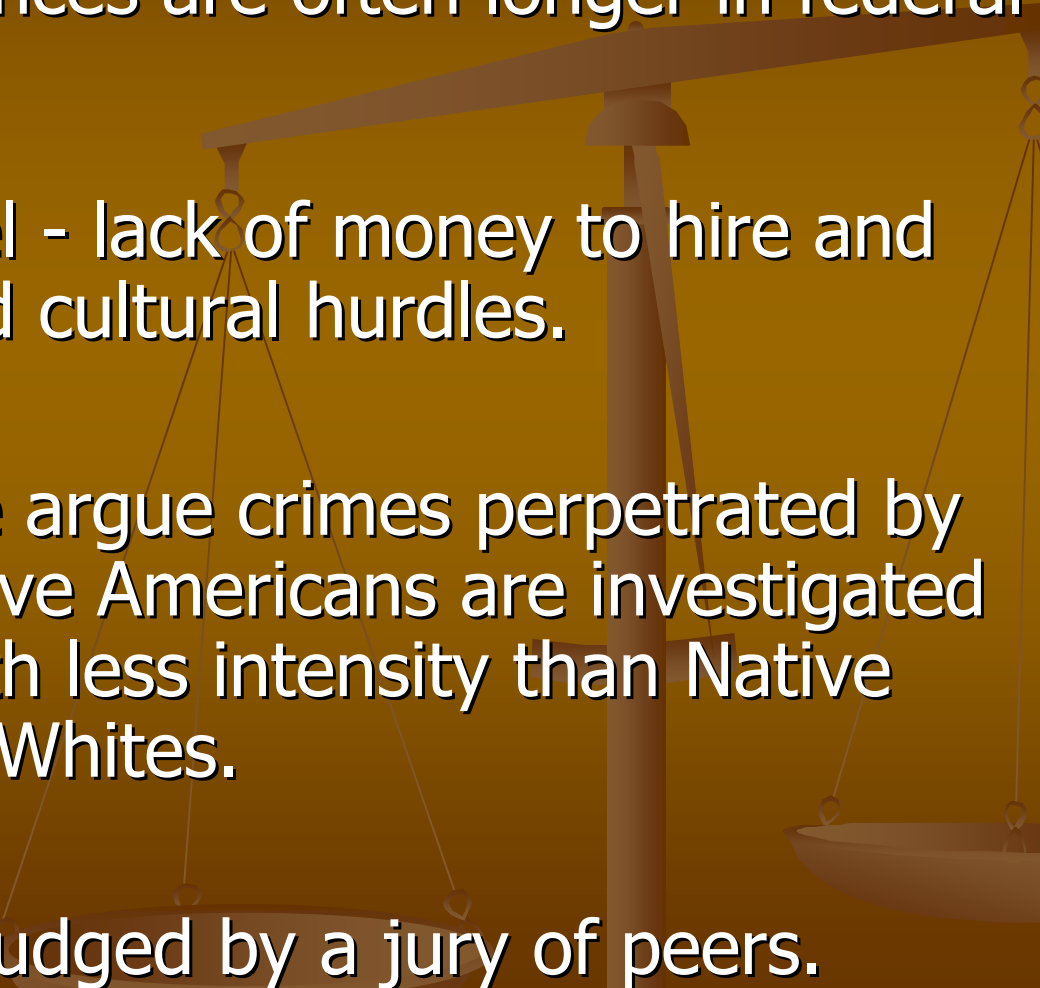
- Because of Native American's legal and political status and other jurisdictional issues and complexities, they face unique problems and, at times, tougher consequences in the justice system.
- The evidence of racial discrimination in sentencing and incarceration indicates the possibility of racial disparity in the criminal justice system as a whole.

The Death Penalty



- Race continues to play an unacceptable part in the application of capital punishment in America today.
- Specific to Native Americans, in 2004, the number of Native Americans under the sentence of death included 28 and increased to 31 in 2005.
- State studies: Maryland, North Carolina.

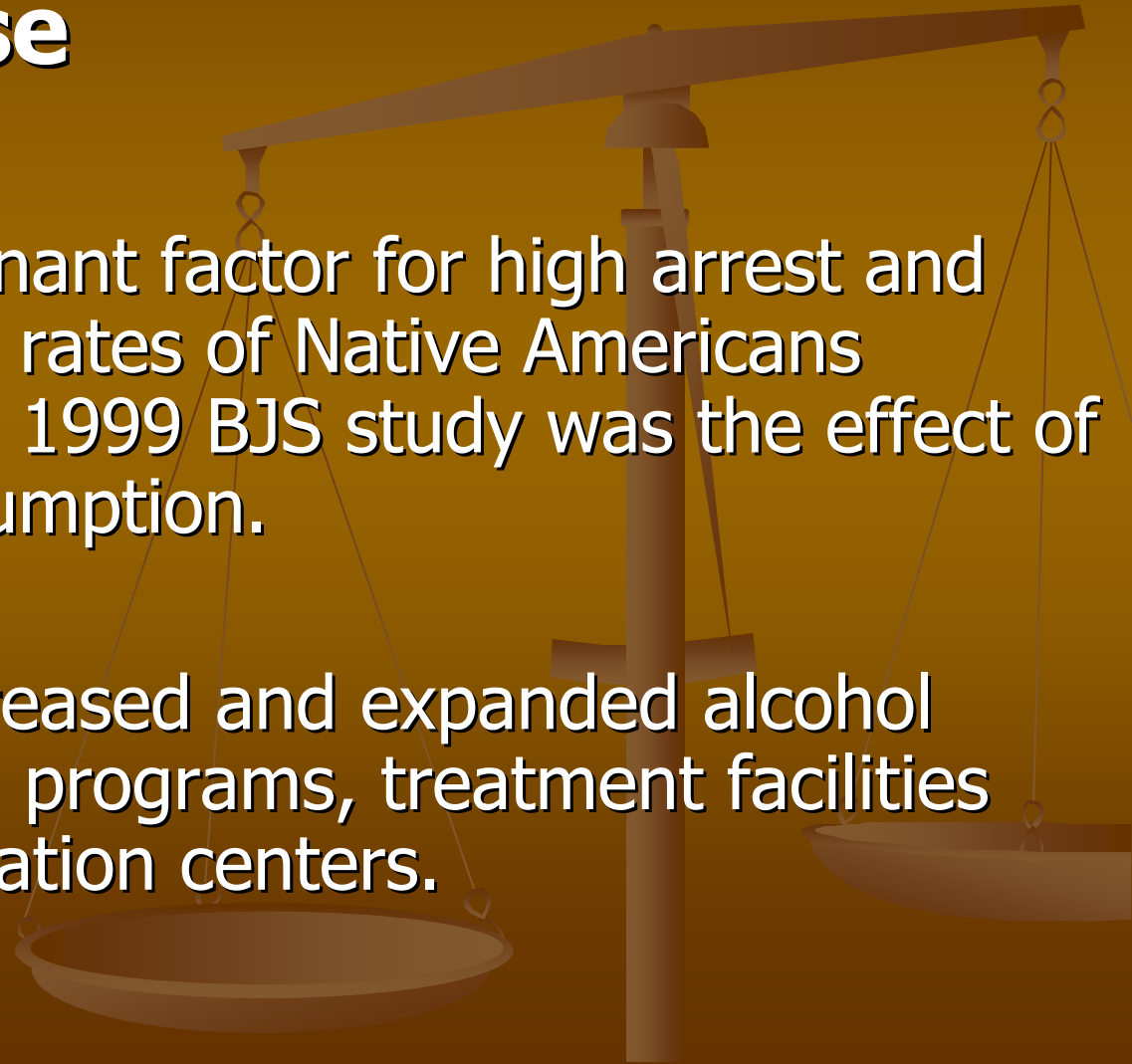
Possible Explanations for Disparate Sentencing Patterns and Consequences

- Jurisdiction - sentences are often longer in federal court.
 - Inadequate counsel - lack of money to hire and communication and cultural hurdles.
 - Prosecution - some argue crimes perpetrated by whites against Native Americans are investigated and prosecuted with less intensity than Native Americans against Whites.
 - Juries - not being judged by a jury of peers.
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Explanations for Disparate Sentencing Patterns and Consequences cont...

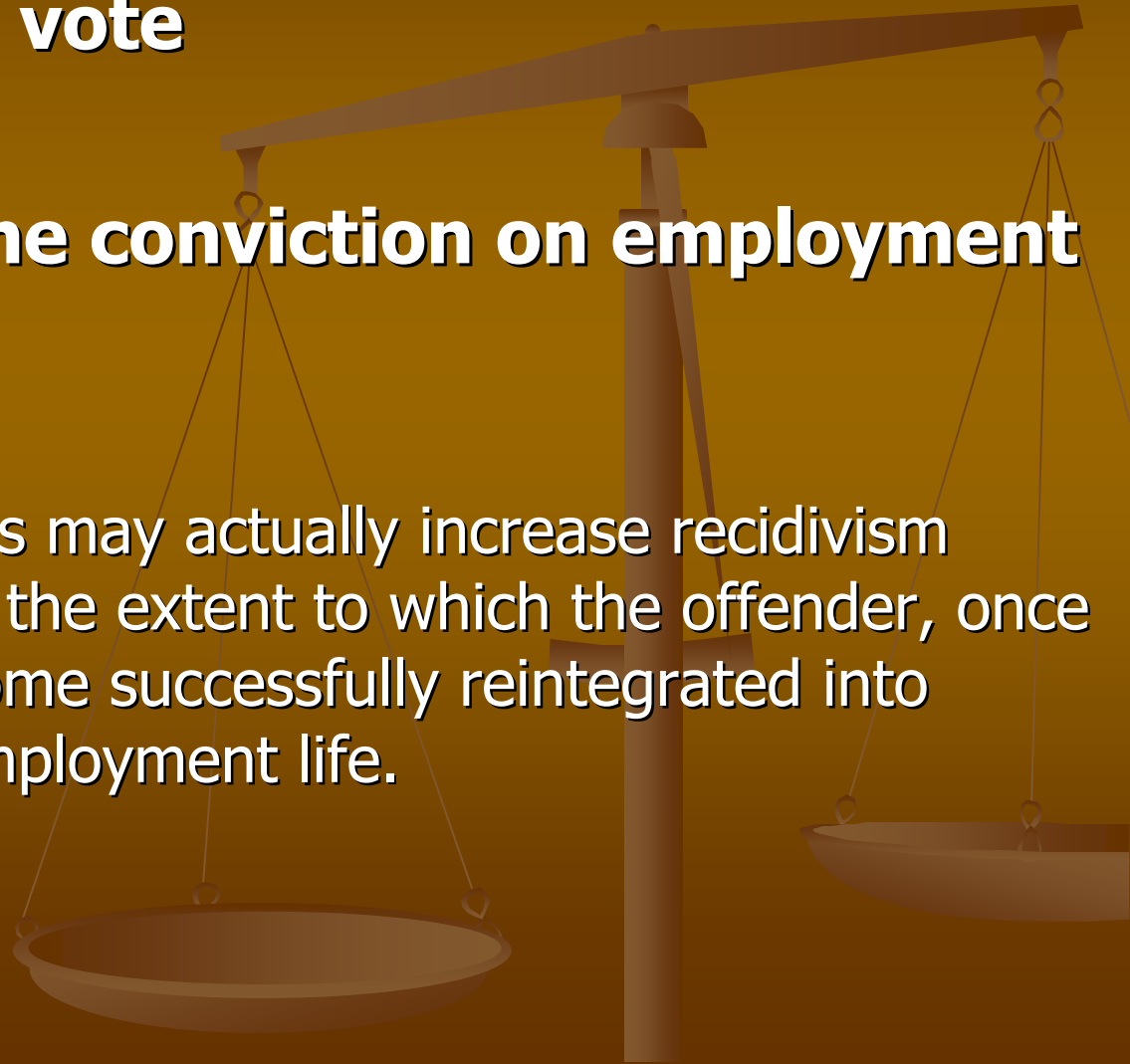
■ Alcohol Abuse

- The predominant factor for high arrest and incarceration rates of Native Americans revealed in a 1999 BJS study was the effect of alcohol consumption.
- Need for increased and expanded alcohol rehabilitation programs, treatment facilities and detoxification centers.



Consequences of Felony Conviction

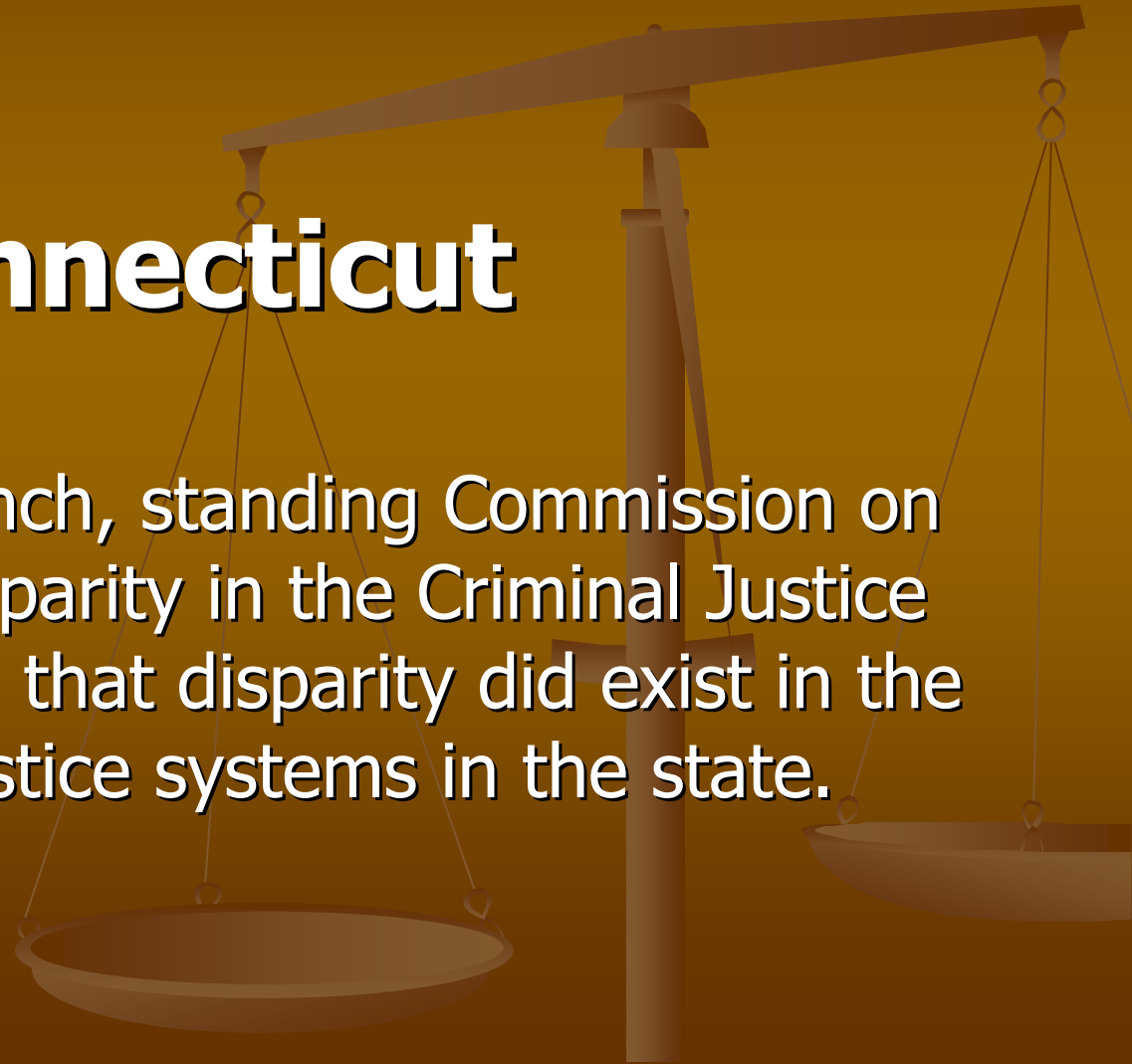
- **Losing the right to vote**
- **Having to report the conviction on employment applications**
 - Such consequences may actually increase recidivism because they limit the extent to which the offender, once released, can become successfully reintegrated into community and employment life.



State Actions Examining Racial Disparities in the Criminal Justice System

Connecticut

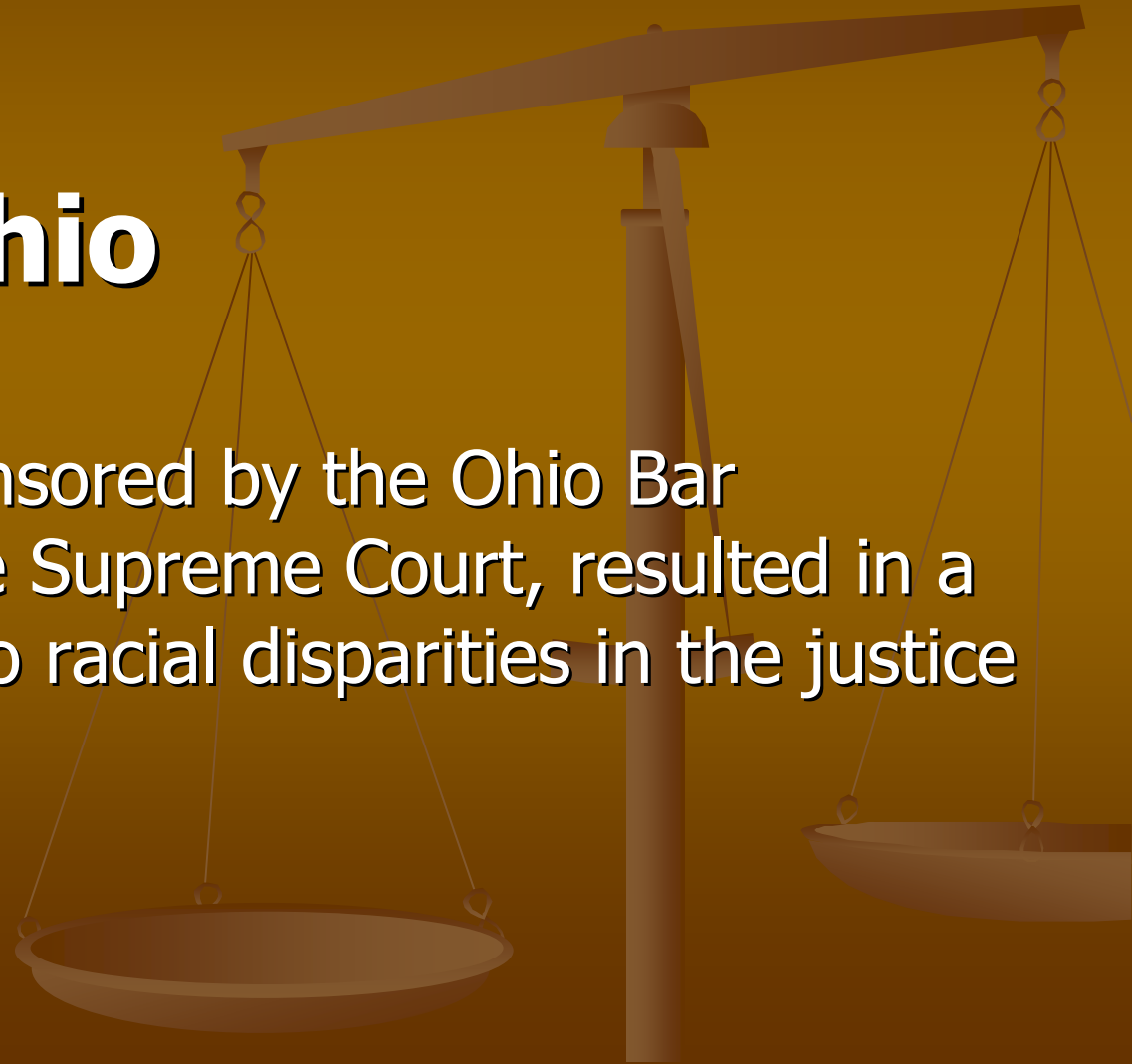
Created an inter-branch, standing Commission on Racial and Ethnic Disparity in the Criminal Justice System. Determined that disparity did exist in the adult and juvenile justice systems in the state.



State Actions Examining Racial Disparities in the Criminal Justice System cont...

Ohio

A six-year study sponsored by the Ohio Bar Association and state Supreme Court, resulted in a report that pointed to racial disparities in the justice system.



State Actions Examining Racial Disparities in the Criminal Justice System cont...

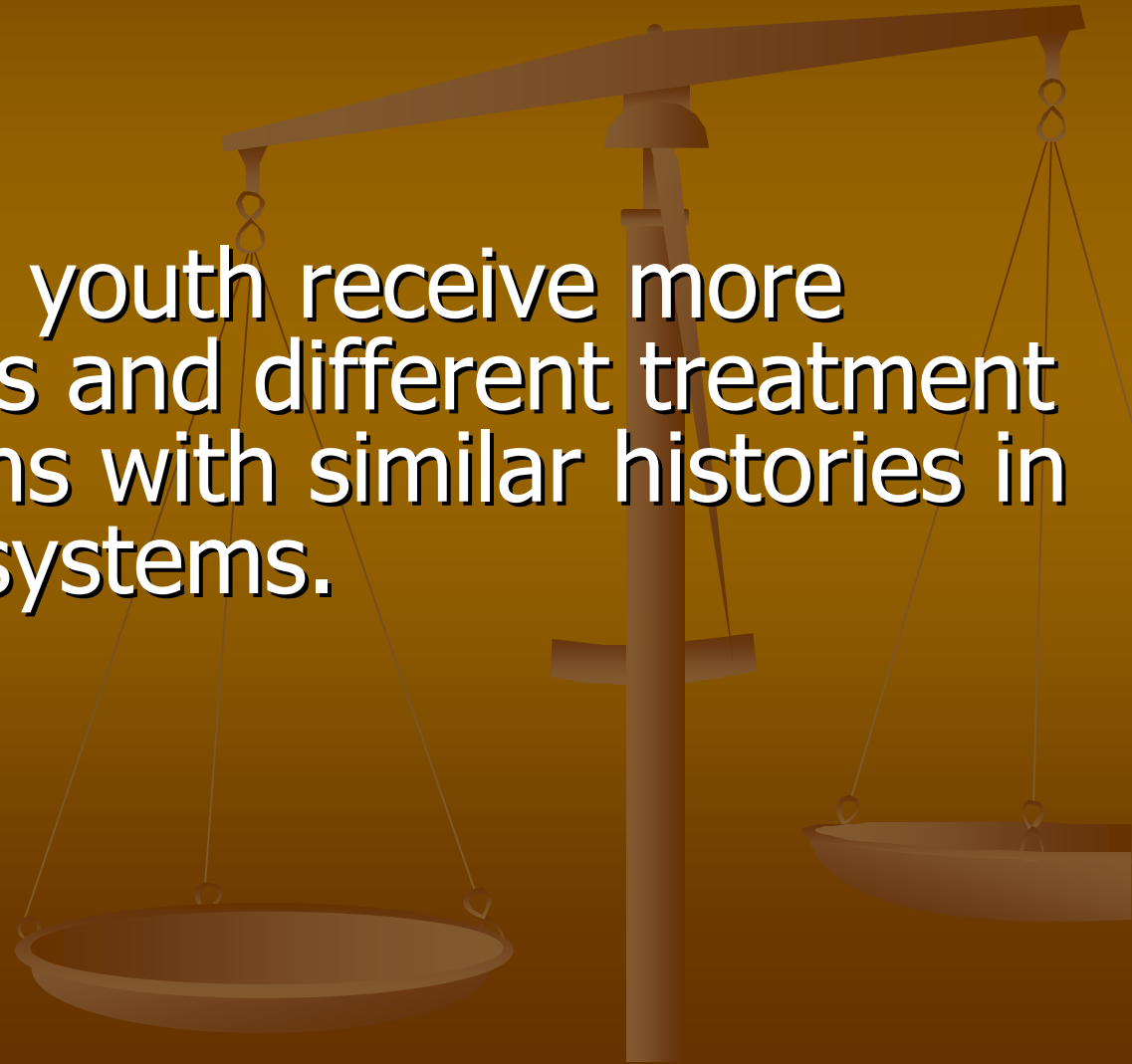
South Dakota

Established the Equal Justice Commission to determine, study and report on whether perceived bias in the judiciary was actual and to what extent. Findings included evidence that Native Americans were overrepresented in the SD criminal justice system.

(recommendations later in presentation...)

Juveniles and Disproportional Minority Involvement in the System

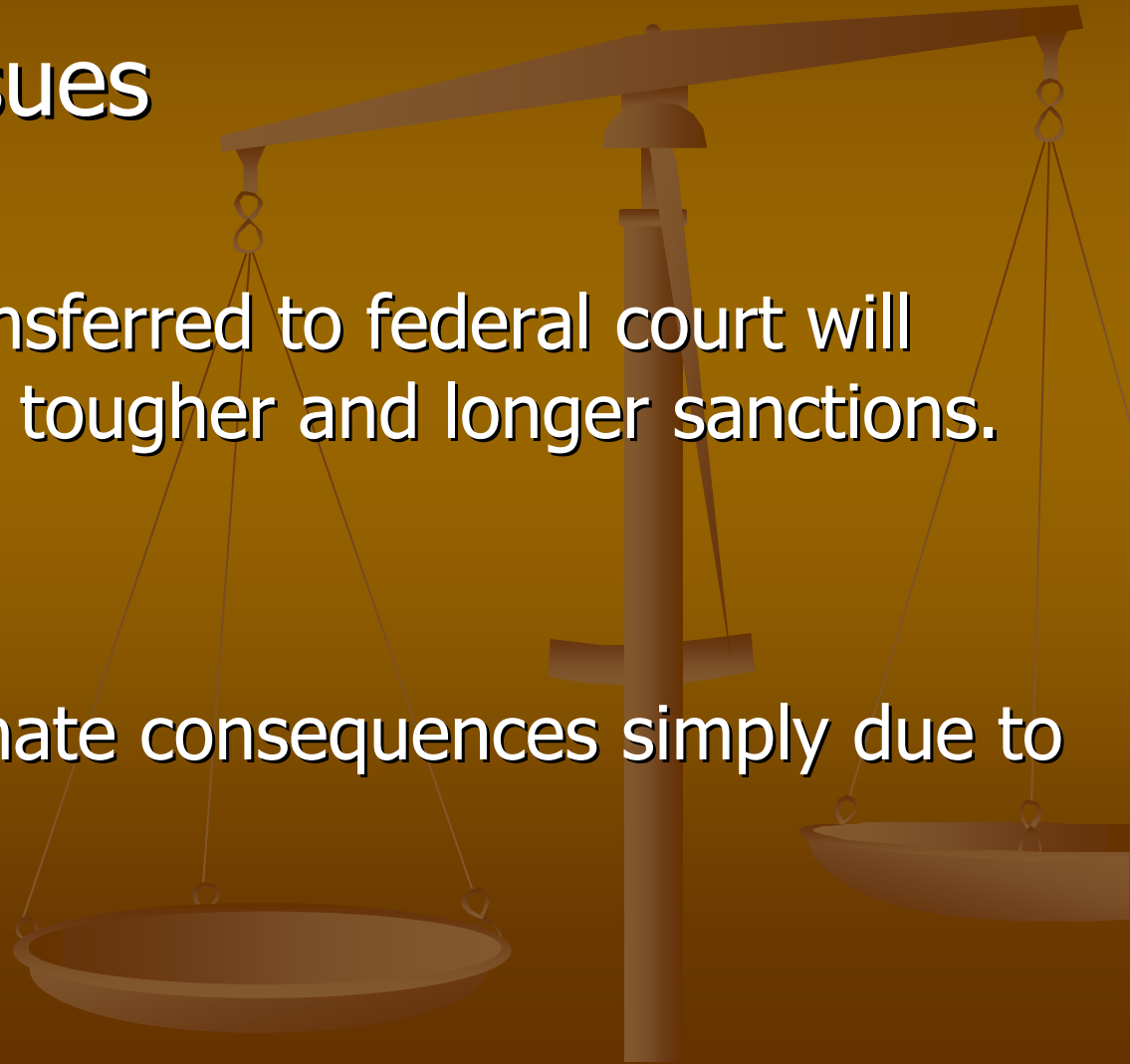
- Native American youth receive more severe sentences and different treatment than white youths with similar histories in juvenile justice systems.



Possible Explanations

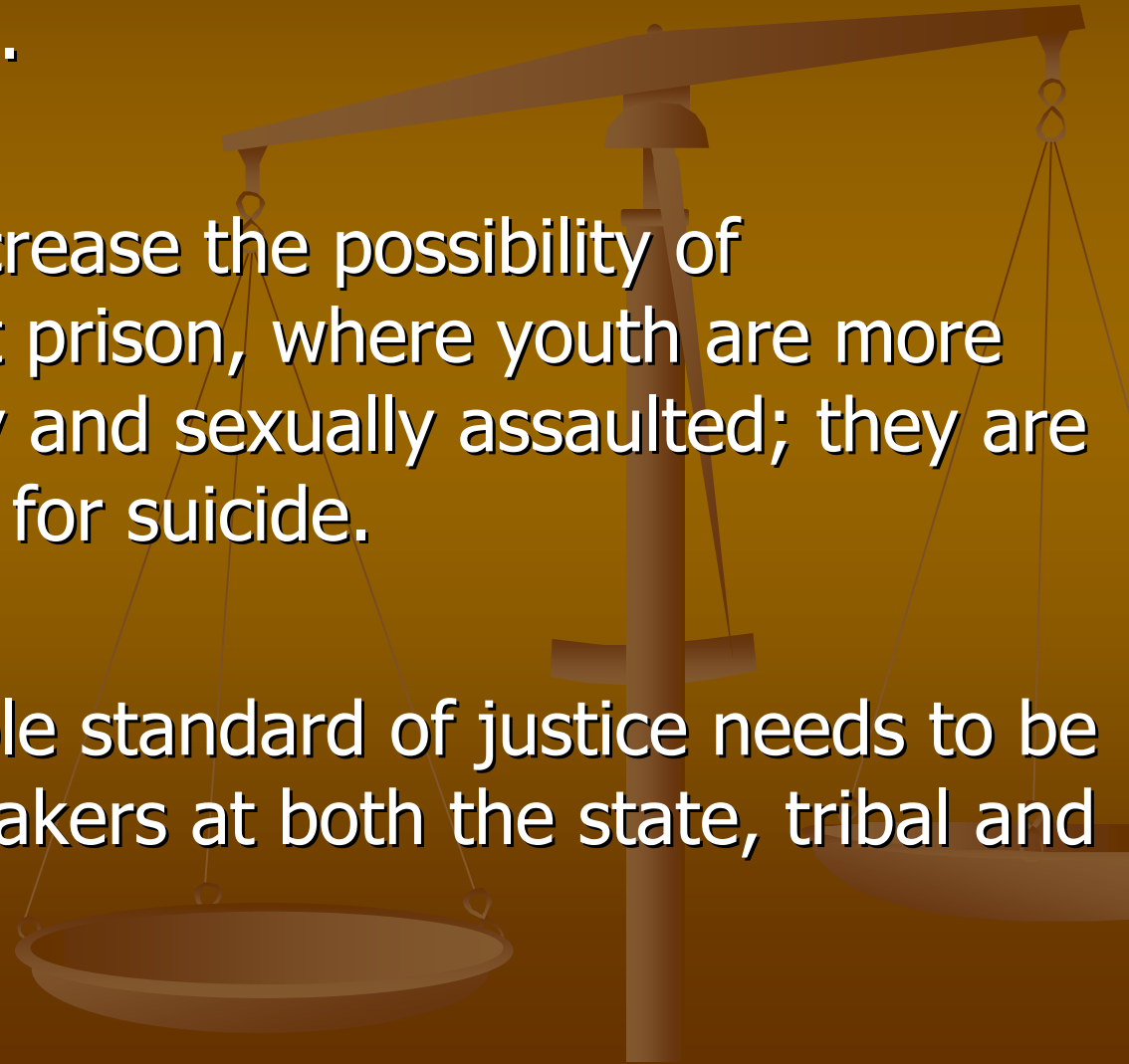
■ Jurisdictional Issues

- Juveniles transferred to federal court will typically face tougher and longer sanctions.
- Disproportionate consequences simply due to status.



Consequences and Looking Ahead

- Native American youth bare the brunt of the negative effects of the system.
- Longer sentences increase the possibility of incarceration in adult prison, where youth are more likely to be physically and sexually assaulted; they are also at a greater risk for suicide.
- Eliminating any double standard of justice needs to be a priority for policymakers at both the state, tribal and federal level.



Policy Recommendations

■ General Policy Principals:

■ The Harvard Project on American Indian Economic Development:

- 1) *Sovereignty or self-rule*: Native Americans must have genuine decision-making power.
- 2) *Capable governing institutions*: Native American have to be able to exercise decision-making power.
- 3) *A congruence of formal governing institutions and Native political culture*: Has to be a match between the governing institutions and ideas within community or nation about how authority should be organized and exercised.

State Policy Options and Examples



- Policies derived from state/tribal cooperation can occur at the crime prevention and treatment level, law enforcement level, and the probation and parole level of the criminal justice system.

Prevention and treatment:

- Minnesota - health and welfare needs of Native Americans
- New Mexico and Minnesota - alcohol treatment

State Policy Options and Examples cont...

Law Enforcement:

- Montana - racial profiling legislation
 - Kansas - law enforcement authority
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How Has It Worked?

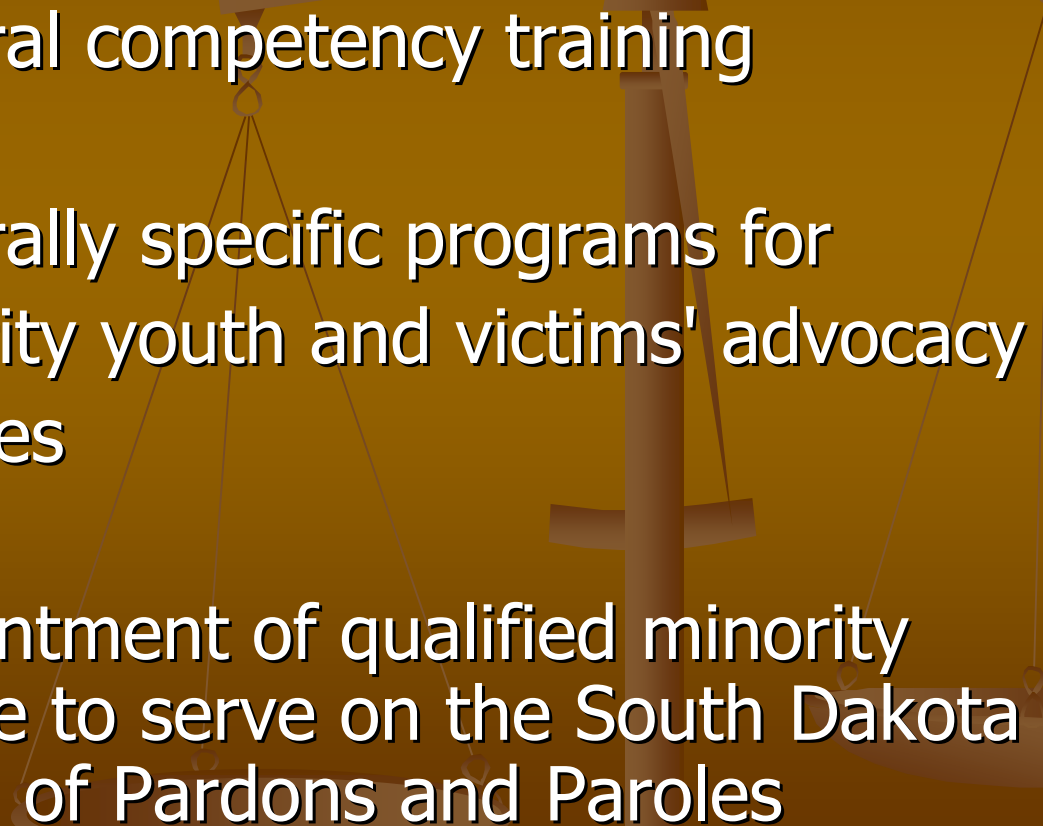


- The Kansas law created a good environment for cooperation between county and tribal law enforcement.
- Saving counties involved in the law enforcement partnership \$50,000 a year.

State Policy Options cont...

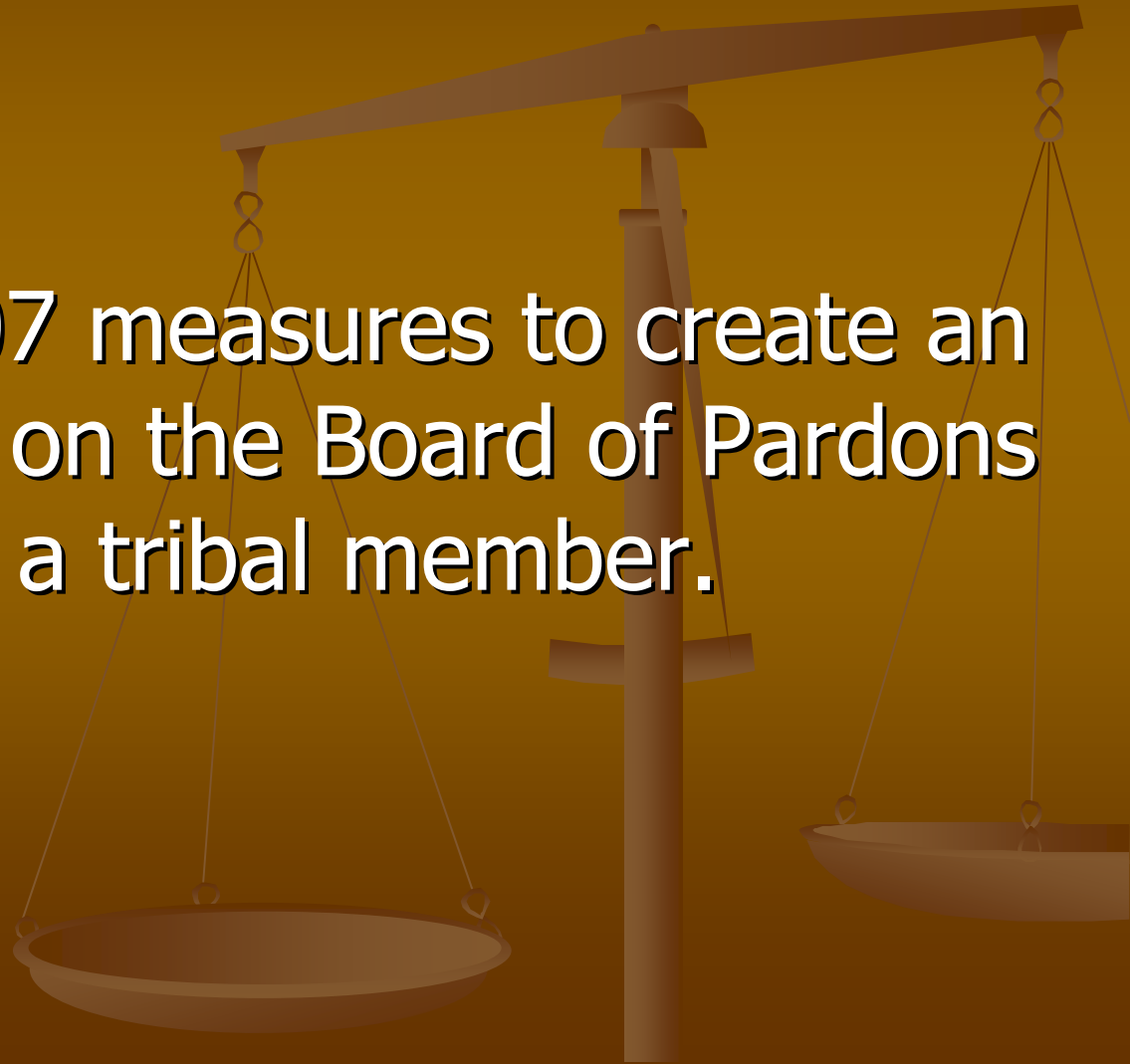
South Dakota - Sentencing and Parole:

- The Equal Justice Commission's Recommendations

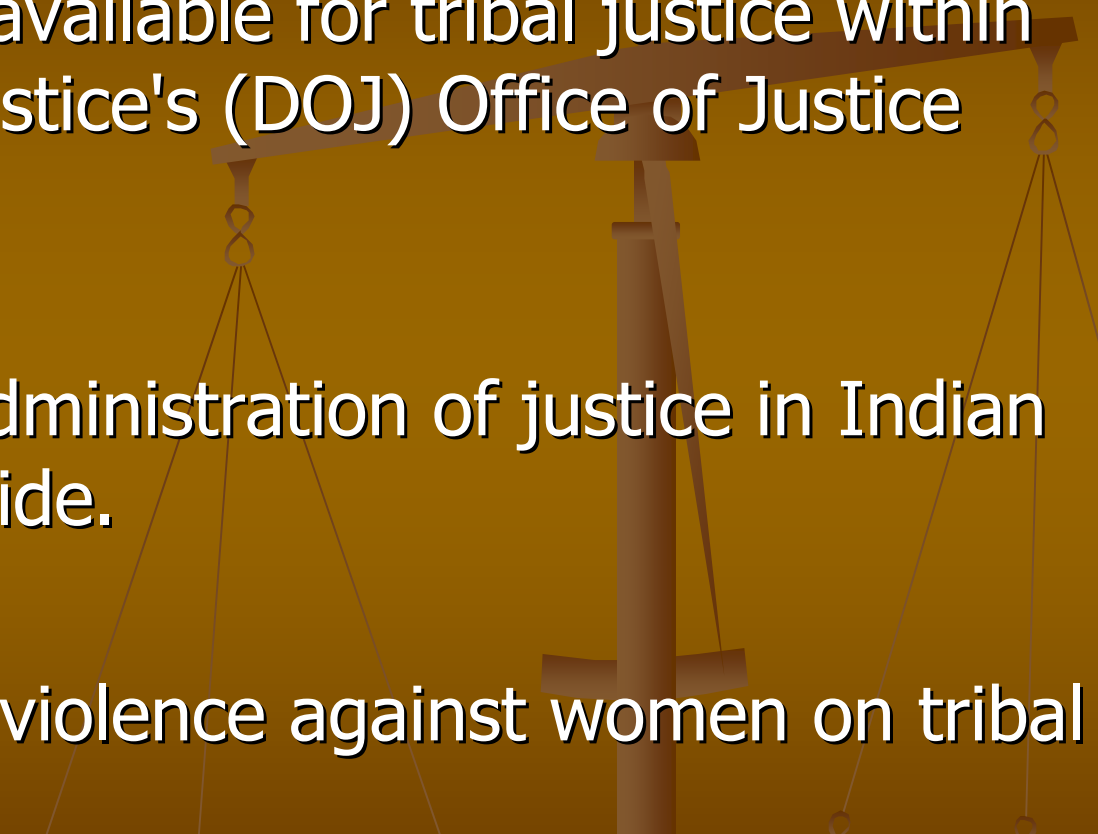
1. Cultural competency training
 2. Culturally specific programs for minority youth and victims' advocacy services
 3. Appointment of qualified minority people to serve on the South Dakota Board of Pardons and Paroles
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South Dakota Legislative Responses

- 2005 and 2007 measures to create an additional slot on the Board of Pardons and Parole for a tribal member.



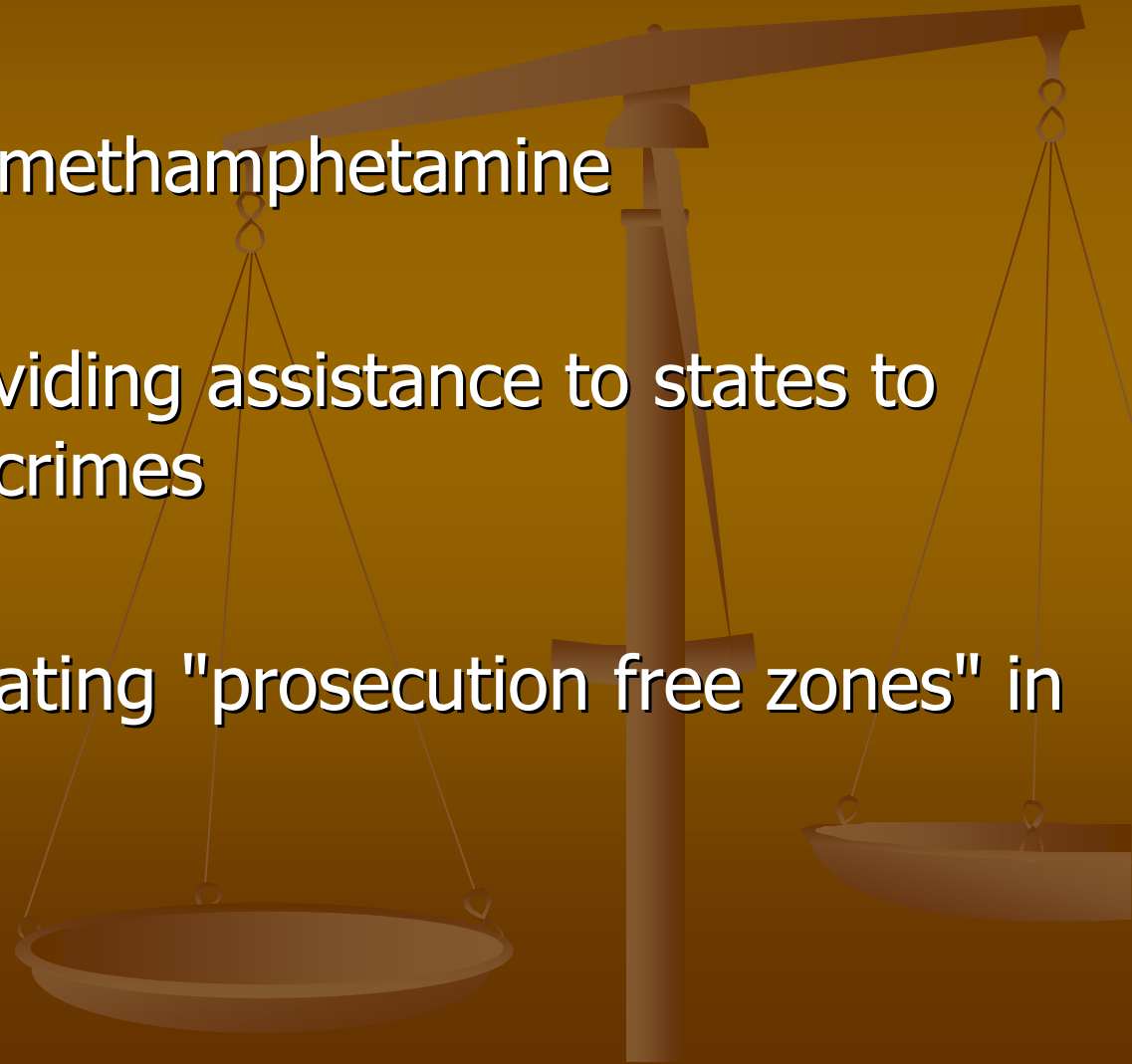
Federal Activity

- Funding sources are available for tribal justice within the Department of Justice's (DOJ) Office of Justice Programs.
 - UCLA Study on the administration of justice in Indian communities nationwide.
 - Non-profit activity re violence against women on tribal lands.
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Federal Activity cont...

■ Federal legislation:

- Pending bill re: methamphetamine
- Pending bill providing assistance to states to prosecute hate crimes
- 2005 law eliminating "prosecution free zones" in New Mexico



Conclusion



- State legislatures are positioned to develop policy designed to improve services to Native Americans involved in the state judicial systems, address the criminal justice concerns and allocate funding to support successful initiatives.
- Collaborative, culturally-appropriate policy solutions can improve the lives of all people and strengthen governance through the states and tribes and across the country.
- While innovative policy solutions are being developed and implemented, much work remains to be done!

Contact Information

Thank you!

sarah.hammond@ncsl.org
(303) 856-1361

NCSL Institute for State Tribal Relations:

<http://www.ncsl.org/programs/statetribe/statetribe.htm>

NCSL Juvenile Justice Project:

<http://www.ncsl.org/programs/cj/juvenilejustice.htm>