

Excerpt from:

# Native American Legislative Update: August 2015

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## Caught in the Juvenile Justice Web

The Senate Committee on Indian Affairs held a hearing on July 15, "[Juvenile Justice in Indian Country: Challenges and Promising Strategies](#)". The testimonies reiterated shocking realities: Native youth are 1.5 times more likely to be incarcerated than white juvenile offenders; they are overrepresented in both federal and state facilities and overall receive harsher sentences. They are [twice as likely to be incarcerated for minor crimes](#), including alcohol use, than any other racial group. Often Native Americans enter the system as juveniles, sometimes as early as 5 years old, and never find a way out. Senator Tester reported that in Montana 1 in 5 men in prison and 1 in 3 women in prison is Native American. It is clear that the current system is failing. Congress can help by providing funding for rehabilitation and community services, along with jurisdiction clarifications.

Crimes committed on reservations are generally jointly under the jurisdiction of the tribe and the federal government, bypassing the state government because of tribal sovereignty. Too often, a juvenile offender is tried in the federal court without consultation with tribal authorities and federal courts provide more punitive rulings. Native youth who are tried by state authorities without input by local tribes are also worse off. The dubbed "bewildering jurisdiction web" is not attuned to cultural needs or the prevalence of trauma in Native American communities. Federal and state enforcement supersession undermines the efforts from tribes to reform their own systems and take care of Native youth across the board.

Professor Addie Rolnick from Boyd School of Law at the University of Nevada testified with some clear recommendations of creative solutions that Congress could take up, including amending the Tribal Juvenile Act to clarify deference to tribal authority over federal authority for prosecutions, or an amendment to the Juvenile Justice and Delinquency Act adding tribal authorities as recipients for federal funding and encouraging states to be more responsive to tribes for funding needs. Congress could also look into creating new legislation that would always require states and federal authorities to defer to tribal jurisdictions anytime a Native juvenile is in question, similar to the Indian Child Welfare Act which requires tribal notice of all adoptions of Native children.

However, reforms must go deeper than the existing justice system. We've seen the ill effects of [incarceration](#) on both adults and juveniles -- for communities with high rates of historical trauma and post-traumatic stress disorder, incarceration actively hurts rehabilitation efforts. Tribes, noticing the harmful effect of imprisonment on Native youth, have continually asked the federal government to move away from the incarceration centered juvenile justice system.

Darren Cruzan, Deputy Director of the Office of Justice in the Bureau of Indian education agreed that by the time Native youth are in the system, it's because they have already been failed. Senator Tester shared that Native children in Montana are suspended or expelled from school at disproportionate rates *and* are 26% more likely to be part of juvenile justice system. The two go hand in hand -- focus must be how to "heal our kids, rather than how we will punish them."

In Indian Country there are high rates of drug and alcohol abuse, prevalence of early childhood trauma from exposure to domestic, physical and sexual abuse, healthcare and education inadequacies along with high rates of poverty. The prevalence of these risk factors in Native American communities heightens youth delinquencies. Simply incarcerating juveniles does nothing to address the root causes of behavior, and evidence shows it more frequently does more harm than help. Witnesses at the hearing testified that part of reforming the juvenile justice system for Native youth *must* include investing in creating healthy communities as a preventative measure.

Tribes are largely eager to activate creative solutions that heighten young Native Americans' sense of purpose, cultural understanding and community belonging, rather than isolating them further through incarceration. Often they have [traditional justice processes](#) they are utilizing, or have utilized in the past, but many lack the proper resources and federal support to fully enact rehabilitation services.

Senator Daines, also from Montana, offered that increased efforts to develop local programming that involve tribes have the chance to provide a true support system for youth, before they get lost in the federal system. The hearing focused on the work that the Native American Services wing of the Boys and Girls Club does to provide programming for children outside of school. The investment of time, funding and energy for Native youth, along with local integration of varied tribal customs has demonstrated success. Expansion of efforts like this, the revitalization of education, cultural immersion, health and other social services put Native youth on a more promising path – one where they are surrounded by care and community, not prison walls.