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**U.S. Senate Committee on Indian Affairs Oversight Hearing**

**Entitled**

**“Juvenile Justice in Indian Country: Challenges and Promising Strategies”  
July 15, 2015**

Chairman Barrasso, Vice Chairman Tester and other distinguished members of the committee, thank you for this opportunity to discuss juvenile justice in Indian Country. As Administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) at the Department of Justice’s Office of Justice Programs (OJP), I oversee programs that provide direct assistance and services to American Indian and Alaska Native tribes. We work closely with tribal elders, tribal leaders and youth, and tribal organizations to develop programs that are grounded in Native culture and practice.

**Introduction**

As you are aware, this past year OJJDP celebrated the 40<sup>th</sup> anniversary of the legislation that established our Office—the Juvenile Justice and Delinquency Prevention Act (JJDP). Our mission is to provide national leadership, coordination, and resources to prevent and respond to juvenile delinquency and victimization. Our goal is that if youth do come into contact with the juvenile justice system, that contact should be rare, fair, and beneficial to them.

Together, OJJDP and its federal, state, local and tribal partners have made significant progress in these areas during the last 40 years. For instance, the U.S. violent crime arrest rate for youth is at the lowest point since at least the 1980s, and we have seen a marked nationwide decline in the population of youth in residential placement overall, including the number of youth in residential placement for committing status offenses, like violating curfew and truancy violations. But we all know there is still much work to be done, particularly within tribes.

One of my priorities as OJJDP Administrator has been reforming juvenile justice to make it smarter—more intuitive, more responsive, and more evidence-based. In 2013, at

the direction of OJJDP, the National Academy of Sciences released a groundbreaking report on advances in neuroscience research as they relate to juvenile justice reform. Our agency is already using this information to lead reform efforts.

Another priority, and a goal that I believe we all share, is reducing out-of-home placement. Quite simply, the best way to prevent kids from going deep into the system is to keep them out of the system in the first place. Research shows—and we’ve seen firsthand—that troubled youth often have better outcomes when they receive targeted, appropriate, community-based treatment and services. This is especially true for tribal youth.<sup>1</sup> We know that tribal culture and tribal family connections play an essential role in working successfully with tribal youth in the juvenile justice system. Narrowing the “front door” to the juvenile justice system is one of the most important ways we can continue to improve outcomes for all youth. We need to provide the right services to the right kids at the right time to keep them out of the juvenile justice system. There is no such thing as a one-size-fits-all solution. This also means that we need to take a closer look at how young people and their families are treated no matter how they come into contact with our system.

### **Challenges**

We need juvenile justice reform throughout the nation, including in cases involving tribal youth. As the Committee is aware, tribal communities face unique challenges and pressures.

The first challenge is the dangerously high exposure to violence and the ensuing trauma for tribal youth. Violence, including assaults, homicide, and suicide, accounts for 75 percent of deaths of tribal youth ages 12 to 20.<sup>2</sup> These serious adversities often lead to chronic and severe trauma. Tribal youth are two and a half times more likely to experience trauma from exposure to violence than their non-tribal peers. A recent report noted that tribal children and youth experience posttraumatic stress disorder (PTSD) at a rate of 22 percent, the

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<sup>1</sup> Attorney General’s Advisory Committee on American Indian and Alaska Native Children Exposed to Violence. (November 2014): *Ending Violence So Children Can Thrive*. [http://www.justice.gov/sites/default/files/defendingchildhood/pages/attachments/2015/03/23/ending\\_violence\\_so\\_children\\_can\\_thrive.pdf](http://www.justice.gov/sites/default/files/defendingchildhood/pages/attachments/2015/03/23/ending_violence_so_children_can_thrive.pdf)

<sup>2</sup> Dolores Subia BigFoot et al., “Cultural Issues in Historical Trauma and Implications for Youth at Risk,” National Child Traumatic Stress Network and Indian Country Child Trauma Center: 19 (2007), available at: <http://www.isu.edu/irh/projects/ysp/downloads/CulturalIssuesinHistoricalTrauma.pdf>

same rate as veterans returning from Iraq and Afghanistan, and triple the rate of the general population.<sup>3</sup>

Compounding these high rates of violence in tribal communities is historical trauma, which is a cumulative emotional and psychological wounding over the life span and across generations. The Attorney General's National Task Force on Children Exposed to Violence found that the degree of violence in tribal communities is related to historical trauma and the impact of policies and practices that have proved devastating to tribal communities.

The Task Force found that children who are traumatized by exposure to violence are at greater risk for substance abuse, school failure and involvement in the juvenile and criminal justice systems. Of tribal children who enter the juvenile justice system, the prevalence of trauma symptoms due to violence exposure is estimated at 73 to 95 percent<sup>4</sup>.

When tribal youth do enter the juvenile justice system, they are often exposed to a host of other problems. Depending upon where a delinquent act takes place, the race of the victim,<sup>5</sup> the seriousness of the act, and whether PL-280 or a similar-styled law applies, one or more of three systems -- tribal, state or federal -- could have jurisdiction.

Many tribal communities have no juvenile code, and too many tribes have copied their codes from nontribal entities which do not reflect their own tribal values and beliefs. Some tribes show an over-reliance on detention, even for status offenders - including children held for truancy or curfew violations.

Even states with significant populations of tribal children and youth sometimes fail to communicate with the tribes. Neither states nor the federal government are required to notify the tribe or involve the tribe in juvenile justice proceedings involving one of their children.

Tribal youth prosecuted in the federal system may spend more time in secure confinement than tribal youth prosecuted in the state systems – sometimes by several years.<sup>6</sup> Federal sentences are usually longer than state sentences for identical crimes.<sup>7</sup> Furthermore, tribal youth prosecuted in the federal system (despite being a relatively small number of the total

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<sup>3</sup> Deters, P. B., Novins, D. K., Fickenscher, A., & Beals, J. (2006). Trauma and posttraumatic stress disorder symptomatology: Patterns among American Indian and Alaska Native adolescents in substance abuse treatment. *American Journal of Orthopsychiatry*, 76(3), 335-345.

<sup>4</sup> Attorney General's Advisory Committee on American Indian and Alaska Native Children Exposed to Violence. (November 2014): *Ending Violence So Children Can Thrive*. [http://www.justice.gov/sites/default/files/defendingchildhood/pages/attachments/2015/03/23/ending\\_violence\\_so\\_children\\_can\\_thrive.pdf](http://www.justice.gov/sites/default/files/defendingchildhood/pages/attachments/2015/03/23/ending_violence_so_children_can_thrive.pdf)

<sup>5</sup> Id.

<sup>6</sup> Id

<sup>7</sup> Id

number prosecuted federally) are placed where there is bed space contracted by the Bureau of Prisons, which may mean that they are not close to their families and loved ones.

A related challenge is that tribal youth in juvenile delinquency systems are at times not exposed to programming or education that take into account tribal culture or familial bonds. Juvenile justice systems may use practices, such as those that do not take into account historical trauma that may have worked for non-tribal youth but do not necessarily apply for tribal youth. There is always a need for tribal-based, culturally specific alternatives to detention for tribal children.

Another challenge is related to available resources. Over time, the OJP appropriation for dedicated Tribal Justice Assistance dropped from \$75 million in FY 2010 to \$35 million in FY 2015 and the funding for tribal juvenile justice declined from \$25 million in FY 2010 to \$5 million in FY 2015. There is a critical need for resources, including: increased health services, behavioral health services, substance abuse treatment, indigent defense, and an array of diversion services to keep tribal youth in their communities as opposed to being placed out of home. In addition, the availability of other supportive and preventive services, including tribal specific mentoring programs, are important to address at-risk and high-risk youth but these are also lacking.

### **Responding to the Challenges**

As I emphasized in my November 2014 testimony before this Committee, the Department of Justice, OJP and OJJDP are all fully committed to partnering with tribal governments to build a better future for all young people and to improve public safety in tribal communities. A key part of this effort was the creation of the Attorney General's Task Force on American Indian and Alaska Native Children Exposed to Violence.<sup>8</sup> The Task Force consisted of two components:

- An Advisory Committee, composed of non-federal subject matter experts, that:
  - (1) gathered information from public hearings, written testimony, site visits, listening sessions, and current research; and
  - (2) used this information to draft a report to the

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<sup>8</sup> Task Force on American Indian and Alaska Native Children Exposed to Violence website: <http://www.justice.gov/defendingchildhood/task-force-american-indian-and-alaska-native-children-exposed-violence>

Attorney General that included recommendations to effectively address children's exposure to violence in Indian Country.<sup>9</sup>

- A Federal Working Group, composed of federal officials from key agencies including the Departments of Justice and Interior and Health and Human Services who had experience with issues affecting tribal communities. This working group was positioned to take immediate steps to implement policy and programmatic changes for the benefit of tribal children exposed to violence.

The Advisory Committee, Co-Chaired by Senator Byron L. Dorgan and Ms. Joanne Shenandoah, held hearings in four locations (Bismarck, ND; Phoenix, AZ; Fort Lauderdale, FL; and Anchorage, AK) and six listening sessions nationwide which brought together national, regional, and local experts, solicited personal testimony, and provided a forum for discussion on the effects of exposure to violence and promising prevention and intervention strategies and programs.<sup>10</sup>

The Task Force is just one example of our efforts to address the trauma and victimization of tribal youth, which has a strong correlation to these youth entering the juvenile justice system. As a part of the Attorney General's Defending Childhood Initiative, OJJDP funded two sites that are tribally-directed and sensitive to tribal traditions and culture. The Rosebud Sioux Tribe in South Dakota delivers trauma-informed services, rooted in Lakota values that address educational, justice system, and health-care needs. The Chippewa Cree Tribe at the Rocky Boy reservation in Montana is involving elders and youth from throughout the community in the design of prevention and treatment programs that rely on traditional health and healing methods. These are promising approaches derived from tribal customs that are aimed at enhancing resilience in affected children, and they represent some of the exciting work already being done to support tribal children. Last year leaders from both tribes participated in a three-day training on indigenous treatment for trauma offered by the National Native Child Trauma Center.

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<sup>9</sup>It is noteworthy that while given their charge by the Attorney General, the Advisory Committee felt strongly that the problems facing American Indian and Alaska Native children are so significant that only concerted action by the Executive branch agencies and Congress would begin to address them. Accordingly, they chose to address their recommendations to entities beyond the Department of Justice.

<sup>10</sup> American Indian and Alaska Native Children Exposed to Violence Hearing Testimony: <http://www.justice.gov/defendingchildhood/task-force-hearings>

We also work closely with OJP's Office for Victims of Crime (OVC) which supports a number of programs serving tribal youth. Each year OVC provides \$3 million to the Children's Justice Act (CJA) Partnerships for Indian Communities Grant Program. The funding supports the development and implementation of comprehensive programs for abused children, and procedures to address child abuse cases in tribal courts and child protection service systems. OVC is also working with the Flandreau Indian School, a Bureau of Indian Education boarding school in South Dakota, to provide specialized mental health services to students identified as victims. To date, OVC has provided over \$1 million to support this 5-year demonstration project to establish a culturally appropriate, trauma-informed system of care for students who come to school with histories of long-term exposure to violence, trauma, and victimization.

And most recently, OVC began providing funding to the Montana Board of Crime Control to implement the Vision 21: Linking Systems of Care for Children and Youth Program. This 6-year program will enable Montana to conduct tribal and non-tribal community listening sessions and then bring together all of the systems that serve youth—from health to education to juvenile justice—to establish a streamlined approach to identify young victims and connect them to the services and resources they need to heal and thrive.

OJP's National Institute of Justice (NIJ), in partnership with OJJDP and OVC, is funding a 30-month study intended to improve the health and well-being of tribal youth who may have been exposed to violence and victimization. The study will develop and test a survey instrument and different administration modes that can effectively assess exposure to violence and victimization and determine the feasibility of using these procedures in tribal communities and settings.

As I noted at the beginning, we must work to prevent youth from entering the juvenile justice system in the first place. One way to do this is through enhancing mentoring programs. Our FY 2015 Mentoring Opportunities for Youth Initiative requires National mentoring program applicants to target mentoring services and programs to tribal youth both on and off reservations. We are giving priority consideration to Multi-State program applicants— especially those that work with tribes— that do the same. Our goal is to substantially increase the number of tribal youth that receive mentoring services from OJJDP funds over the next 18 months. We will also expand the services provided by the OJJDP National Mentoring Resource Center for tribal mentoring programs.

Through our Tribal Youth Program (TYP), we support initiatives targeting at-risk youth in a way that is directed to their specific needs. For example, the Cherokee Nation is using our funds for an in-home intervention program targeting tribal youth ages 5 - 17 who reside in Adair County, OK and their families. Youth are identified by the school through their low or declining school attendance. The program then provides intensive, individualized, in-home skill building and educational services to these youth and families. Through this effort the tribe keeps the youth in their home community as productive, contributing citizens.

The Lac Courte Oreilles Band of Lake Superior Chippewa (LCO) uses TYP funds for its Comprehensive Truancy Prevention Project. The research based, integrated curriculum targets character development and essential skills development for youth and parents or parenting figures. These systematic, step-by-step curricula alter how students think, improve their decision-making, and promote actions and behaviors focused on changing negative relationships.

TYP is also one of our efforts to help tribes improve their juvenile justice systems. For example, the Kenaitze Indian Tribe uses indigenous principles and culturally relevant practices to help tribal youth in the Central Kenai Peninsula. The project's coordinators conduct intake interviews and risk assessments for youth involved in the juvenile justice system, and also educate youth and adults on the principles and practices of the traditional Talking Circle approach to addressing difficulties and discussing important matters. The program diverts youth who might otherwise end up in district court.

Another example of our work on juvenile justice reform is our support of Tribal Healing to Wellness Courts, which respond to alcohol-related issues of tribal youth who are younger than 21. A Tribal Healing to Wellness Court is not simply a tribal criminal or family court that orders individuals to treatment. Rather, it is an innovative and collaborative legal process that adapts the drug court concept and its key components to meet the need of referred youth in a manner that respects and includes tribal traditions. Under this initiative, participating courts are developing or enhancing policy, procedure, assessment tools, or service models that address underage drinking. A second component of the initiative will deliver training and technical assistance to the participating tribal courts. All programming is based on the 10 Key Components of an effective Tribal Healing to Wellness Courts, modeled after policies developed by the National Association of Drug Court Professionals. Current funding supports five tribes — Yurok Tribe (CA), Lac Du

Flambeau Tribe of Lake Superior Chippewa Indians (WI), Southern Ute Indian Tribe (CO), White Earth Nation (MN), Winnebago Tribe of Nebraska (NE) — and a training and technical assistance provider. We will expand the program in Fiscal Year 2015 to support additional tribes.

In addition, OJJDP initiated a public-private partnership with the Annie E. Casey Foundation to expand the Juvenile Detention Alternatives Initiative (JDAI) to additional sites throughout Indian Country, including a pilot tribal site. The Department began work with the Mississippi Band of Choctaw Indians to juvenile justice system reform work in 2013. Since this time, Tribal elders and council members have participated in targeted training, and the availability of technical assistance is supporting the development of a local collaborative to lead their work in enhancing data collection, program development and court improvements.

Through our Tribal Youth Program Training and Technical Assistance Center, teams of specialists are available across Indian Country to support interventions for court-involved youth, improvements to the juvenile justice system. The Center also conducts strategic planning meetings; a National Conference; site visits; peer-learning; teleconferences; webinars; and e-mail consultations. Recently the Center developed a Community of Practice to assist tribes that are developing or revising their juvenile codes and is hosting a webinar series on cultural adaptations to evidence-based programs.

OJJDP is working with the Bureau of Indian Affairs to update the Model Indian Juvenile Code, which assists federally recognized tribes in creating individual codes focused on juvenile matters. The Code specifically addresses issues affecting tribal youth arrested for alcohol and/or drug-related offenses in Indian Country. The updated Code will reflect key changes in the field of juvenile justice, including the enactment of the Tribal Law and Order Act and the Patient Protection and Affordable Care Act.

### **CTAS and the 7 Percent Set-Aside**

Starting in Fiscal Year 2010, TYP became part of the Department's Coordinated Tribal Assistance Solicitation (CTAS) which offers tribes a more streamlined, comprehensive grant process. CTAS gives tribes the flexibility needed to better address their criminal justice, juvenile justice and public safety needs. Since Fiscal Year 2010, the Department awarded over 1,100 CTAS grants totaling almost \$530 million to American Indian tribes, Alaska Native villages, tribal consortia and tribal designees. The grants



address nine purpose areas including public safety; community policing; justice systems planning; alcohol abuse; substance abuse; corrections and correctional alternatives; violence against women; juvenile justice; and crime victims' programs.

Our commitment to improving juvenile justice in Indian Country and tribal public safety and criminal justice is clear in the FY 2016 President's Budget for the Department of Justice. The budget includes a 7% set-aside from OJP's discretionary funds for grant or reimbursement programs for flexible tribal justice assistance grants. The set-aside, estimated at \$114.4 million, will provide a consistent source of significant, tribal-specific grant funding that can be distributed through a flexible tribal assistance grants model based on the lessons learned from CTAS. It will also allow OJP increased flexibility in awarding funds and streamlining reporting requirements. The funding provided by the set-aside will enable the tribes to focus on identifying their most important criminal and juvenile justice priorities and developing innovative, evidence-based responses to address these priorities.

### **Closing Statement**

On July 9, I had the privilege of participating in the White House's inaugural Tribal Youth Gathering, which was convened in collaboration with the United National Indian Tribal Youth (UNITY) and the Departments of Justice and Health and Human Services. The Youth Gathering brought together over 850 tribal youth for a day-long convening to discuss issues that directly impact them, including cultural protection and revitalization, education, behavioral health and wellness, climate change and natural resources, tribal justice, and economic opportunity. Many of these youth have faced terrible hardships in their childhood, and their communities have suffered through the conditions we are discussing today. Despite these challenges, these young people have become leaders and are working to create a brighter future not only for tribal youth, but for youth across the entire nation. Meeting these young people inspired me, as I am sure it did all of the adults at the Gathering. They show that working together, the problems we are discussing are not insurmountable.

Mr. Chairman, we must match the dedication our tribal young people have demonstrated. We are committed to working with tribes, Members of Congress, and our partner agencies within the Department of Justice and throughout federal and state governments, to strengthen the juvenile justice system's efforts to protect public safety, hold young offenders appropriately accountable and provide services that address the needs of youth and their families. I appreciate

the opportunity to appear before you today, and I am prepared to respond to any questions you may have.