

**JUSTICE FOR NATIVE YOUTH: THE GAO REPORT  
ON NATIVE AMERICAN YOUTH INVOLVEMENT  
IN JUSTICE SYSTEMS AND INFORMATION ON  
GRANTS TO HELP ADDRESS JUVENILE  
DELINQUENCY**

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**HEARING**

BEFORE THE

**COMMITTEE ON INDIAN AFFAIRS  
UNITED STATES SENATE**

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

SEPTEMBER 26, 2018

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REPORT ON NATIVE AMERICAN YOUTH  
INVOLVEMENT IN JUSTICE SYSTEMS AND  
INFORMATION ON GRANTS TO HELP  
ADDRESS JUVENILE DELINQUENCY**

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**WEDNESDAY, SEPTEMBER 26, 2018**

U.S. SENATE,  
COMMITTEE ON INDIAN AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:59 p.m. in room 628, Dirksen Senate Office Building, Hon. John Hoeven, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. JOHN HOEVEN,  
U.S. SENATOR FROM NORTH DAKOTA**

The CHAIRMAN. Good afternoon.

I call this oversight hearing to order.

Before we begin, I want to take a moment and recognize our former Chairman and member of this Committee, Senator John McCain.

As you know, Senator McCain passed away last month after a long battle with cancer. He was truly a colleague and a friend. He was one of the Committee's longest-serving members, serving twice as Chairman of this Committee.

Throughout his service in Congress, Senator McCain was a real champion for Indian Country. He was a budget hawk and a fiscal conservative but he also strongly believed the Federal Government has a solemn duty to meet its trust obligations to Native Americans.

He had a hand in some of the most significant Federal laws and policies that have benefitted Indian people, including fighting to protect the children, honoring Indian veterans, promoting transparency and integrity, advancing Native languages, regulating Indian gaming, reforming Indian housing, forest management and strengthening tribal sovereignty, self governance and self determination.

One of his last measures, now a part of his enduring legacy, was the Ashlyne Mike AMBER Alert in Indian Country Act. To the very end, Senator McCain did not forget the most vulnerable. His work will endure that others will be empowered to fulfill their responsibilities to children across Indian Country.

Senator McCain served his Country with honor, integrity, dignity, selflessness and tenacity. It was an honor and a privilege to serve with him on this Committee and in the Senate.

Senator McCain, you are missed. We thank you for your service. I would ask for a moment of silence in honor of Senator McCain. [Moment of silence.]

The CHAIRMAN. Thank you.

Today, we are examining the Government Accountability Office report on Native American youth. Native children often face significant risk factors which make them more susceptible to juvenile delinquency, substance abuse and high poverty rates.

We hear about these risk factors all too frequently. We must continue to make positive reforms to help these young people chart a different course. In light of these challenges, Senator Barrasso and I requested this study to determine how we can help Indian Country's next generation, not just survive, but to thrive.

Issued on September 5, 2018, the report is a landmark study which examines the extent to which Native American youth are involved in Federal, State, local and tribal justice systems.

It also provides a review of the Federal resources available to help Indian tribes and tribal organizations address juvenile delinquency.

The report indicated that the arrest, adjudication and confinement numbers for Native youth declined from 2010 to 2016. Though it did not formally conclude why these numbers have been declining, individuals interviewed by the GAO indicated that restorative justice may have been a significant factor contributing to the decline.

If so, we must discuss how we can continue to use restorative justice practices to keep our youth out of the criminal justice system.

According to GAO, in North Dakota in 2010, there were 1,092 Native youth in the State justice system. That was 18.4 percent of the total youth in the State system at that time.

Even though the number decreased in 2016 to 685, 17.5 percent youth in the system at that time, these numbers are still too high and certainly unacceptable.

While historically the number of Native youth has been higher in State and local systems when compared to the Federal system, our Federal system is often more problematic for Native youth.

The number of Native youth in the Federal system far exceeds other youth. Additionally, Native youth generally experience more serious charges and punishments in the Federal system.

As I mentioned, the GAO also reviewed the Federal resources available to help Indian tribes address juvenile delinquency. It highlighted that nearly \$1.2 billion in Federal dollars was available in grants from the Departments of Justice and Health and Human Services for Indian tribes and tribal organizations to combat juvenile delinquency.

However, only a little over \$207 million was awarded to Indian tribes and tribal organizations. The GAO is continuing to examine how these resources can be better mobilized to combat juvenile delinquency.

We will continue to work with the GAO as they study this staggering problem in Indian Country. In the meantime, I would like to continue working with those represented here to address the issues raised by this report.

It is essential that we take action on behalf of our Native youth and the entirety of Indian Country to reform the current justice system. For this reason, Senators Barrasso, McCain, Daines, Murkowski and I sponsored the Tribal Law and Order Reauthorization and Amendments Act of 2017.

This bill would help address several of the issues identified in the report, most notably data collection on tribal affiliation, determination of the best approach to public safety and behavioral health-related juvenile justice programs, and the development of culturally relevant evidence-based justice programs.

With that, I want to welcome our witnesses. I look forward to our witnesses. I welcome your testimony and recommendations on these issues.

Before we turn to your testimony, I would like to ask for opening statements beginning with Vice Chairman Udall.

**STATEMENT OF HON. TOM UDALL,  
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Thank you very much, Chairman Hoeven. Thank you so much for your moving statement about our friend and colleague, Senator McCain.

I would also like to say a few words about my good friend, colleague and former Chairman of this Committee, Senator John McCain.

John's outsized presence in the United States Senate and this Committee will surely be missed, but his enduring legacy will guide us for years to come. John was a leading voice on many issues throughout his decades of public service.

He was internationally known for his stances on human rights and government oppression around the globe. He was also a leading voice for Indian Country. He worked diligently on this Committee on issues critical to Native Americans like improved housing, health care, education and economic development.

We did not see eye-to-eye on every issue, but John and I agreed on the fundamentals of tribal sovereignty. The decisions made by tribes for tribes produce better outcomes. John held true to those core values throughout his tenure on the Senate Committee on Indian Affairs. His voice will be sorely missed.

Mr. Chairman, this oversight hearing involving Native youth and juvenile justice is an important one. I really appreciate your working with me in scheduling this. I continue to be inspired by the resilience and determination of youth tribal members to tackle the tough issues facing Indian Country.

At our oversight hearing on Native languages, we heard from Lauren Hummingbird, a recent high school graduate and Cherokee immersion program participant. Her powerful testimony underscored the positive cultural impact Native youth can have on their communities.

For me, it highlighted the importance of providing opportunities and resources like language and cultural programs to help lift the

next generation toward success. That lesson is particularly salient today as we turn to juvenile justice. Research tells us that risk factors, such as domestic violence, housing insecurity, unwelcoming schools, and substance abuse contribute to Native juvenile delinquency at disproportionate rates.

Many Native youth are forced to face these risk factors every day. To address juvenile justice in Indian Country, we need to find ways to decrease those known risk factors while supporting the development of more productive factors.

At our last oversight hearing on juvenile justice in 2015, much of the conversation focused on risk factors and protective factors. In fact, I recall speaking with one of today's witnesses, Professor Rolnick, about how many highly effective juvenile justice programs rely on activities that are not a part of anti-delinquency programs as we normally think of them, like the Santa Clara Pueblo's Capo Kid's Initiative which incorporates tradition and healthy extra curricula activities and their methods to reduce juvenile and young adult crime.

I am glad today's hearing will give us a chance to reexamine what we learned in 2015 in light of GAO's findings in this new report. It is unfortunate, but perhaps not unexpected, that data challenges stemming from department and jurisdictional differences are clouding our ability to track juvenile justice trends.

It is important to know where these data limitations lie and get a better picture of how Federal resources are reaching Native youth. The grants portion of the report is especially important to consider as we talk about risk factors and protective factors.

The Committee needs to have a better understanding of the universe of programs that can keep Native youth resilient and strong and to keep those most at risk from slipping through the cracks, providing quality housing through NAHASDA, immersing Native youth in their language through Esther Martinez Programs, securing additional funding through Interior Department appropriations for BIE and substance abuse, and restoring tribal jurisdiction over domestic and family violence with the Native Youth and Tribal Officer Protection Act.

All these things would go a long way toward making sure the decrease in juvenile delinquency between 2010 and 2016 observed by GAO continues for the next ten years and more. We must work together to provide tribes with more resources and ensuring Native youth get the support they need.

I look forward to working with my colleagues on this Committee to continue looking for more ways to champion Native youth. I look forward to continuing our work together, Mr. Chairman, over the last few months of this Congress to move important legislation that will help Native youth and tribal communities across the finish line.

Thank you to all of our witnesses for joining us today. Thank you again, Mr. Chairman for calling this hearing.

I yield back.

The CHAIRMAN. Thank you, Vice Chairman Udall.  
Senator Barrasso.



**STATEMENT OF HON. JOHN BARRASSO,  
U.S. SENATOR FROM WYOMING**

Senator BARRASSO. Thank you very much, Mr. Chairman. I appreciate your holding this hearing today. I thank both you and the Vice Chairman for the comments you made about our friend and colleague, Senator McCain.

This was clearly an issue that was incredibly important not just to us, but to Senator McCain. He cared deeply about the issue we will be discussing today.

I am honored to serve on this Committee. As a member and past chairman, this Committee is going to be different without his passionate advocacy for Indian Country. We certainly are all better off for having debated complex issues with him.

Senator McCain knew, and I agreed, that no issue is more important across tribal communities than those affecting children. As a matter of fact, he and I had a chance in 2016 to go to Window Rock and the Navajo Nation to visit with a number of people, tribal leaders and a school, St. Michael's School.

When he passed, many of us put on our Instagram account pictures of us doing things with Senator McCain, many in war zones. The picture I chose was one of the Navajo Nation at the school with children. You can see the love and the look in Senator McCain's eyes and the deep feelings he had to making sure the children, and most certainly the Navajo Nation, had the opportunities so necessary.

Mr. Chairman, let me say, prior to completion of the GAO report we are here to discuss today, we knew there a number of issues existed related to Native youth interactions with the justice system. As chairman, I held a similar hearing in 2015 where we considered findings from the 2013 report from the Indian Law and Order Commission and the 2014 report from the Attorney General's Advisory Committee on American Indian and Alaska Native Children Exposed to Violence Task Force.

Ms. Rolnick testified during that hearing and made a series of comprehensive recommendations, some of which are still applicable today. Ms. Rolnick, I appreciate you joining us again today to continue this important discussion.

While the GAO report and others like it fill a sizable gap in our knowledge about the number of Native youth in the justice system and the nature of interactions, the GAO found that existing data was sparse.

In their written testimonies, Dr. Goodwin, Ms. Harp and Ms. Rolnick all identified the need to have improved data collection. I believe more complete information will inform better policy and better policy will help us be better partners with tribes as we work to ensure Native youth have bright futures.

Mr. Chairman, I want to thank you again for having this important discussion. I look forward to continuing to work with you to find lasting solutions.

The CHAIRMAN. Thank you, Senator Barrasso. Thanks for your leadership on this important issue.

Are there other opening statements? Senator Heitkamp.

**STATEMENT OF HON. HEIDI HEITKAMP,  
U.S. SENATOR FROM NORTH DAKOTA**

Senator HEITKAMP. Thank you, Mr. Chairman. Thank you for calling this hearing. I think it is critically important.

I too want to share remembrances and thoughts about our colleague and friend, Senator John McCain.

An image I think got lost in the kind of flurry of amazing memorials and opportunities to recount a life well lived, a life lived with honor and duty, the image I will remember forever was a make-shift memorial at the end of their driveway, a long road at their home in Sedona. It was a lone Native American man, a soldier, saluting Senator McCain warrior-to-warrior. When I saw that image, I knew it would be one of those of which Senator McCain would be most proud because it represented the brotherhood of warriors but also represented his unique and sincere desire to improve conditions for Native Americans, especially Native American children.

One of the last bills Senator McCain was able to get passed was our bill which would allow for Amber Alert in Indian Country, a bill on which I worked very closely with Cindy, his wonderful wife, who will now pick up the legacy of doing this work.

One of the challenges and opportunities I want to talk about in brief comments here is the Commission on the Status of Native American Children which we were able to finish coming out of this Committee and now are working on getting funded.

It is not enough to do studies, to wring our hands and look at statistics. We need real solutions and real actions. I hope as we look at what will improve the lives of our indigenous and Native people in this Country; we will look at this through the lens of their children.

There are serious issues with the juvenile justice system as it relates to Native American children. I hear more and more from the children who are incarcerated, I will use that word, and detained in some ways in juvenile justice facilities that are Federal facilities with no education, no benefits, and no real opportunity for change.

We want to see what that looks like. The most important thing we can do is prevent a child from entering that system. I want everyone to understand that is the purpose of the Commission on Native American Children, to find some comprehensive approach to generational trauma and changing outcomes very early on to avoid children entering the Federal juvenile justice system.

I think John would be proud as we talk about this effort. He knew the best thing we could do is go upstream. Let us not try to just deal with the symptoms, let us try and deal with the root causes.

The CHAIRMAN. Other opening statements? If not, I will proceed to our witnesses.

Today, we will hear from Dr. Gretta L. Goodwin, Ph.D, Director, Justice & Law Enforcement Issues, Homeland Security & Justice Team, U.S. Government Accountability Office, Washington, D.C.; Ms. Caren Harp, Administrator, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, Washington, D.C.

I understand this is your first appearance before Congress since being appointed by the President and sworn in on January 19, 2018. Welcome.

We will also hear from Mr. John Tahsuda, Principal Deputy Assistant Secretary for Indian Affairs, U.S. Department of the Interior, Washington, D.C. Deputy Secretary Tahsuda was Senator McCain's former Staff Director on this Committee for how many years, John?

Mr. TAHSUDA. Two years.

The CHAIRMAN. Amazing how that works.

We will also hear from The Honorable Abby Abinanti, Chief Judge, Yurok Tribal Court, Klamath, California. Welcome.

I am going to turn to Senator Cortez Masto to introduce Ms. Rolnick.

**STATEMENT OF HON. CATHERINE CORTEZ MASTO,  
U.S. SENATOR FROM NEVADA**

Senator CORTEZ MASTO. Thank you, Chairman Hoeven and Ranking Member Udall.

I am honored to be able to introduce Professor Addie Rolnick from the UNLV William S. Boyd School of Law. As you have heard, Professor Rolnick is no stranger to this Committee having testified before in 2015.

She specializes in criminal law and procedure, Indian law and critical race theory. Her scholarship investigates the relationships between sovereign power and minority rights with a focus on indigenous peoples and equal protection doctrine, tribal court jurisdiction, the role of race and gender in the criminal, juvenile and tribal justice systems.

Professor Rolnick has written numerous articles on these issues, including Native Youth and Juvenile Injustice in South Dakota, and Locked Up: Fear, Racism, Prison Economics, and the Incarceration of Native Youth.

She has previously worked here in D.C. as an advocate on tribal criminal and juvenile justice issues. She has also assisted tribes with institution building in the areas of constitutional reform, criminal law and juvenile justice and child welfare.

I am so happy to be able to introduce Professor Rolnick to the Committee. I look forward to hearing her expert testimony. Thank you for being here.

The CHAIRMAN. Thank you, Senator Cortez Masto.

With that, we will turn to you, Dr. Goodwin, for your testimony.

**STATEMENT OF GRETTA L. GOODWIN, PH.D, DIRECTOR,  
JUSTICE AND LAW ENFORCEMENT ISSUES, HOMELAND  
SECURITY AND JUSTICE TEAM, U.S. GOVERNMENT  
ACCOUNTABILITY OFFICE**

Dr. GOODWIN. Chairman Hoeven, Vice Chairman Udall, and members of the Committee, I am pleased to be here today to discuss our recently completed work on Native American youth in the Federal, State, local and tribal justice systems, as well as the Federal grant programs that help address issues of delinquency among their populations.

Several risk factors make Native American youth susceptible to becoming involved with the justice system, including exposure to violence, substance abuse and poverty.

My testimony today will highlight two areas: first, data on the number and characteristics of Native American youth in the Federal, State and local, and tribal justice systems; and second, Federal grant programs that can help prevent or address delinquency as well as tribal governments and Native American organizations access to those grants.

Our analysis showed that from 2010 through 2016, the number of Native American youth in Federal, State and local justice systems declined across all phases of the process, arrest, adjudication and confinement. For example, arrest of Native American youth at the Federal level dropped from 60 in 2010 to 20 in 2016. At the State and local level, arrests declined from over 18,000 in 2010 to about 11,000 in 2016.

The vast majority of Native American youth who came into contact with the justice system were involved at the State and local levels, not the Federal level. For example, from 2010 through 2016, agencies reported over 105,000 arrests at the State and local levels compared to 246 arrests at the Federal level.

At the State and local levels, the offenses for which Native Americans and non-Native American youth were arrested, adjudicated and confined were generally similar. However, at the Federal level, differences were found among the most frequent types of offenses committed.

Native American youth most frequently committed offenses against a person such as assault or sex offenses while non-Native American youth most frequently committed offenses related to drugs and alcohol or public order.

For most States, the share of Native American youth involved in the State and local systems was similar to their share of the youth population in that State. In contrast, their representation in the Federal system was greater than their representation nationwide. Native American youth were 1.6 percent of the nationwide youth population but were 18 percent of the youth arrested at the Federal level.

We obtained perspectives from DOJ officials and Native American organizations about factors that might contribute to the data we observed. For example, both groups attributed the greater percent of Native American youth in the Federal system to Federal Government jurisdiction over crimes in Indian Country that States would otherwise prosecute if committed outside of Indian Country.

Regarding grant programs, we identified 122 offered by DOJ and HHS from fiscal years 2015 to 2017 that could help prevent or address delinquency among Native American youth. Approximately \$1.2 billion in first year awards were made over that period while \$207 million were awarded to tribal governments or Native American organizations.

While tribal governments and Native American organizations were eligible for almost all 122 grant programs we identified, they applied mostly for the programs that focused on their communities. DOJ and HHS officials provided perspectives on why tribal governments and Native American organizations might not apply for

grant programs that do not specify them as a primary beneficiary. These include a lack of awareness that they are eligible and concerns that their applications won't be competitive for grants that do not focus on their communities.

Tribal governments and Native American organizations identified various practices they found helpful or challenging when applying for grants. They told us being able to ask questions of agency officials during the application process was helpful. They cited short application deadlines and difficulties collecting the required data as some of the challenges when applying for Federal grants.

Chairman Hoeven, Vice Chairman Udall, and members of the Committee, this concludes my remarks. I am happy to answer any questions you have.

[The prepared statement of Dr. Goodwin follows:]

PREPARED STATEMENT OF GRETTA L. GOODWIN, PH.D, DIRECTOR, JUSTICE AND LAW ENFORCEMENT ISSUES, HOMELAND SECURITY AND JUSTICE TEAM, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Chairman Hoeven, Vice Chairman Udall, and Members of the Committee:

I am pleased to be here today to discuss our recently completed report on American Indian and Alaska Native (Native American) youth involvement in federal, state and local, and tribal justice systems, and federal grant programs available to help address issues of delinquency among Native American youth.<sup>1</sup>

In particular, I will highlight our findings pertaining to (1) what available data show on the number and characteristics of Native American youth in federal, state and local, and tribal justice systems; and (2) selected federal discretionary grants and cooperative agreements (grant programs) that could help prevent or address delinquency among Native American youth, and tribal governments and Native American organizations' access to them.<sup>2</sup>

According to recent reports and agency research,<sup>3</sup> several risk factors make some Native American youth susceptible to becoming involved with justice systems at the federal, state and local, and tribal levels.<sup>4</sup> These risk factors include exposure to violence; substance abuse; poverty; limited job market skills; and tribal communities' limited funding for mental health, education, housing, and other services.

Native American youth who commit offenses can enter one or more justice systems at the federal, state and local, and tribal levels. Although these justice systems have unique characteristics, youth generally proceed through certain phases, including arrest, prosecution and adjudication, and in some instances, placement and confinement in a detention facility.<sup>5</sup>

<sup>1</sup> GAO, Native American Youth: Involvement in Justice Systems and Information on Grants to Help Address Juvenile Delinquency, GAO-18-591 (Washington, D.C.: Sept. 5, 2018).

<sup>2</sup> Discretionary grants are competitive and the granting agency has discretion to choose one applicant over another. Cooperative agreements are similar to discretionary grants in that federal agencies generally award them based on merit and eligibility; however, federal agencies generally use cooperative agreements when they anticipate that there will be substantial federal, programmatic involvement with the recipient during the performance of the financially-assisted activities, such as agency collaboration or participation in program activities.

<sup>3</sup> Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence, Ending Violence so Children Can Thrive (November 2014), available at <https://www.justice.gov/sites/default/files/defendingchildhood/pages/attachments/2014/11/18/finalaianreport.pdf>; Indian Law and Order Commission, A Roadmap for Making Native America Safer: Report to the President and Congress of the United States (November 2013), available at <https://www.aisc.ucla.edu/iloc/report/>; and Department of Justice Office of Juvenile Justice and Delinquency Prevention, Literature Review: A Product of the Model Programs Guide-Tribal Youth in the Juvenile Justice System (Washington, D.C.: Development Services Group, Inc., 2016), available at <https://www.ojdp.gov/mpg/litreviews/Tribal-youth-in-the-Juvenile-Justice-System.pdf>. The Indian Law and Order Commission was established by the Tribal Law and Order Act of 2010, Pub. L. No. 111-211, tit. II, § 235, 124 Stat. 2258, 2282 (2010).

<sup>4</sup> Our discussion of Native American youth in justice systems (i.e., federal, state and local, and tribal) generally included persons who were (a) under 18 years of age at the time of arrest, adjudication, or confinement; and (b) identified as Native American based on descriptions and definitions of the agencies providing the data we reviewed.

<sup>5</sup> Our use of the term "adjudication" refers to youth in both a juvenile justice system and prosecuted in adult criminal court. Our use of the term "confinement" refers to youth committed

Continued

When a Native American youth enters the federal criminal justice system, the Department of Justice (DOJ) and Department of the Interior (DOI), among others, have responsibility for investigating and prosecuting his or her act of delinquency or crime. Additionally, federal agencies including DOJ and the Department of Health and Human Services (HHS) provide funding through grant programs that grantees could use to help prevent or address juvenile delinquency.<sup>6</sup>

Outside Indian country, a state generally has jurisdiction to proceed against a youth who has committed a crime or act of juvenile delinquency.<sup>7</sup> Federal law limits federal jurisdiction over youth if a state has jurisdiction over the youth and has a system of programs and services adequate for their needs.<sup>8</sup> State and local justice systems have specific courts—often at the county or city level—with jurisdiction over youth alleged to have committed an act of juvenile delinquency or a crime.<sup>9</sup> Inside Indian country, youth (and adults) may fall under federal, state, or tribal jurisdiction depending on several factors.<sup>10</sup> These factors include the nature of the crime, the status of the alleged offender and victim—that is, whether they are Indian or not—and whether jurisdiction has been conferred on a particular entity by statute. The Major Crimes Act, for example, grants the federal government criminal jurisdiction over Indians in Indian country charged with serious, felony-level offenses enumerated in the statute, such as murder, manslaughter, kidnapping, burglary, and robbery.<sup>11</sup> State jurisdiction in Indian country is generally limited to two instances: when both the alleged offender and victim are non-Indian, or when a federal statute confers, or authorizes, a state to assume criminal jurisdiction over Indians in Indian country.<sup>12</sup> Otherwise, only the federal and tribal governments have jurisdiction in Indian country.

For our September 2018 report, we analyzed federal, state and local, and tribal arrest, adjudication, and confinement data from 2010 through 2016 (the most recent available) from DOJ and DOI. We also analyzed DOJ and HHS grant program award documentation from fiscal years 2015 through 2017, and application information for a sample of the grant programs chosen based on the amount of funding awarded and other factors. Additionally, we also interviewed officials from DOJ,

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to facilities such as federally operated prisons; juvenile facilities overseen by the federal government; and state, local, and tribal jails.

<sup>6</sup>In our September 2018 report and this testimony statement, we use the term “juvenile” when referencing justice systems and “youth” when referring more generally to individuals under the age of 18 at the time of arrest or confinement. In addition, we use the term “Native American” to indicate both Alaska Native and American Indian individuals, including the youth in the data we reviewed. However, we use the term “Indian” in reference to definitions established by statute or law.

<sup>7</sup>Federal law defines the term “Indian country” as all land within the limits of any Indian reservation under the jurisdiction of the U.S. government, all dependent Indian communities within U.S. borders, and all existing Indian allotments, including any rights-of-way running through an allotment. See 18 U.S.C. § 1151. With certain exceptions, there is generally not Indian country in Alaska.

<sup>8</sup>See 18 U.S.C. § 5032.

<sup>9</sup>Typically, justice systems refer to unlawful acts committed by youth as acts of juvenile delinquency, and unlawful acts committed by adults as crimes.

<sup>10</sup>See 18 U.S.C. §§ 1152 (codifying the General Crimes Act, as amended); 1153 (codifying the Major Crimes Act, as amended); and 1162 (codifying state criminal jurisdiction provisions of Public Law 280, as amended). The federal government also has jurisdiction to prosecute crimes of general applicability, such as violations of the Controlled Substances Act of 1970, 21 U.S.C. § 801 et seq., and crimes that relate specifically to Indian tribal organizations and resources without regard for the Indian status of the alleged offender or victim. See generally 18 U.S.C. §§ 1154–70. Additionally, the Federal Juvenile Delinquency Code applies to all juveniles alleged to have committed an act of juvenile delinquency, other than a violation of law committed within the special maritime and territorial jurisdiction of the United States for which the maximum authorized term of imprisonment does not exceed 6 months, and therefore generally applies to juveniles outside and inside of Indian country. See 18 U.S.C. § 5032.

<sup>11</sup>See 18 U.S.C. § 1153.

<sup>12</sup>Public Law 280 gave certain states—Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin—exclusive criminal jurisdiction over offenses committed by or against Indians in Indian country, except as specified in statute, thereby waiving federal jurisdiction in those states. 18 U.S.C. § 1162. A 2010 amendment to this statute enabled tribes in Public Law 280 states to request concurrent federal jurisdiction. See Pub. L. No. 111–211, tit. II, subtit. B, § 221(b), 124 Stat. 2272 (codified as amended at 18 U.S.C. § 1162(d)). Because of this amendment, federal courts in Public Law 280 states can exercise jurisdiction over certain crimes if the tribe requests concurrent federal jurisdiction and the Attorney General consents to it. Specifically, after the tribal request and consent of the Attorney General, federal and state courts in Public Law 280 states have jurisdiction concurrent with the state for (1) major crimes committed by Indians against Indians and non-Indians under the Major Crimes Act; (2) crimes by non-Indians against Indians under the Indian Country Crimes Act/Assimilative Crimes Act; and (3) crimes committed by Indians against non-Indians under the Indian Country Crimes Act/Assimilative Crimes Act.

HHS, and 10 tribal governments or Native American organizations chosen to include successful and unsuccessful applicants to the grant programs, among other things.<sup>13</sup> Additional information on our scope and methodology can be found in our September 5, 2018 report. For specific information about the different databases from which we gathered our data, see appendix I. Our work was performed in accordance with generally accepted government auditing standards.

**Available Data Indicate Native American Youth Involvement in Justice Systems Declined from 2010 through 2016 and Differed in Some Ways from That of Non-Native American Youth**

In our September 2018 report, we found that from 2010 through 2016 the number of Native American youth in federal and state and local justice systems declined across all phases of the justice process—arrest, adjudication, and confinement—according to our analysis of available data. At the federal level, arrests by federal agencies dropped from 60 Native American youth in 2010 to 20 in 2016, and at the state and local level, arrests of Native American youth declined by almost 40 percent from 18,295 arrested in 2010 to 11,002 in 2016.

Our analysis also found that the vast majority of these Native American youth came into contact with state and local justice systems, not the federal system. For example, from 2010 through 2016, there were 105,487 total arrests of Native American youth reported by state and local law enforcement agencies (LEAs). In contrast, there were 246 Native American youth held in federal custody by the U.S. Marshals Service due to arrest by federal LEAs during the same period.

We also found a number of similarities between Native American and non-Native American youth in state and local justice systems. For example, the offenses that Native American youth and non-Native American youth were arrested, adjudicated, and confined for were generally similar.<sup>14</sup> In contrast, our analysis also showed a number of differences between Native American and non-Native American youth in the federal justice system. For example, our analysis showed variation in the types of offenses committed by each group. From fiscal years 2010 through 2016, the majority of Native American youth in the federal justice system were arrested, adjudicated, or confined for offenses against a person, with the top two specific offenses being assault and sex offenses.<sup>15</sup> In contrast, the majority of involvement of non-Native American youth in the federal system during the same period was due to public order or drug and alcohol offenses at all three stages, with the top two specific offenses being drug and immigration related.<sup>16</sup> Our September 2018 report contains additional information on the differences between Native American and non-Native American youth involved with the federal justice system.

Further, we found that the percent of Native American youth involved in most state and local systems was generally similar to their representation in the youth populations in those states. For example, our analysis found that the majority (about 75 percent) of Native American youth arrested by state and local LEAs from calendar years 2010 through 2016 were located in 10 states: Alaska, Arizona, Minnesota, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Washington, and Wisconsin. These 10 states had among the highest percent of Native Americans in their states' overall youth populations, according to 2016 U.S. Census

<sup>13</sup>In our September 2018 report, we defined "tribal governments" as the governing bodies of federally recognized tribes. We defined "Native American organizations" as organizations affiliated with federally recognized tribes, such as tribal colleges and universities, as well as non-tribal organizations that focus on serving American Indian and Alaska Native populations, such as urban Indian organizations. In addition, we did not include Native Hawaiian and Pacific Islander governmental entities and organizations in our definition of "tribal governments and Native American organizations" for the purposes of our September 2018 report.

<sup>14</sup>Additional discussion on similarities between Native American and non-Native American youth involved with the state and local justice systems can be found in our September 2018 report.

<sup>15</sup>The data sources we reviewed for our September 2018 report contained hundreds of specific offenses, such as simple assault, illegal entry, and rape. To analyze the data, we categorized specific offenses for all data sources into 1 of 22 offense categories, such as assault, immigration, and sex offense. To determine the 22 categories, we considered categories used in our prior work and consulted FBI's Uniform Crime Reporting offense codes. The placement of specific offenses into offense categories was carried out by a GAO analyst, reviewed by additional GAO analysts, and confirmed by a GAO attorney. We then grouped the offense categories into five broad categories—drug and alcohol, person, property, public order, and other. To determine the five broad categories, we considered categories presented in National Center for Juvenile Justice's annual Juvenile Court Statistics reports. The placement of offense categories into a broad category was carried out by a GAO analyst and confirmed by a GAO attorney.

<sup>16</sup>For the purposes of our analysis in our September 2018 report, public order offenses could include disorderly conduct; fraud, forgery, and counterfeiting; immigration; obstruction of justice; probation parole; status offenses; traffic violations; and weapons violations.

estimates we reviewed.<sup>17</sup> In 2016, the largest number of arrests by state and local LEAs occurred in Arizona and South Dakota.

In contrast, we found that representation of Native American youth arrested, referred for adjudication, and confined at the federal level during the period reviewed was greater (13 to 19 percent) than their representation in the nationwide youth population (1.6 percent).

DOJ officials told us that the population of Native Americans in the federal justice system has historically been higher than their share in the nationwide population, and they attributed this and other differences shown by our analysis to federal government jurisdiction over certain crimes in Indian country, as well as the absence of general federal government jurisdiction over non-Native American youth. According to DOJ officials, this jurisdiction requires the federal government to prosecute offenses that would commonly be prosecuted by states if committed outside of Indian country. According to DOJ officials, a small handful of federal criminal statutes apply to all juveniles, such as immigration and drug statutes, but the federal government has been granted greater jurisdiction over Native American youth than non-Native American youth by federal laws that apply to crimes committed in Indian Country, such as the Major Crimes Act. For example, one DOJ official noted that the Major Crimes Act gives the federal government exclusive jurisdiction over crimes such as burglary and sex offenses committed in Indian country. This differs from the treatment of non-Native American youth, who are not prosecuted in the federal system for the same types of offenses, because the federal government does not have jurisdiction over those youth for such offenses. Non-Native American youth are instead subject to the general juvenile delinquency jurisdiction of state and local courts.

Additionally, DOJ officials stated that tribal justice systems are often underfunded and do not have the capacity to handle Native American youths' cases. Therefore, they stated that when both federal and tribal justice systems have jurisdiction, the federal system might be the only system in which the youth's case may be adjudicated. For these reasons, the percentage of Native American youth offenders in the federal justice system is higher than non-Native American juveniles in accordance with population size, according to DOJ officials.

Representatives from four of the five Native American organizations we interviewed, whose mission and scope of work focus on Native American juvenile justice issues and that have a national or geographically specific perspective, noted that federal jurisdiction is a key contributor to the higher percentage of Native American youth involved at the federal justice level. Additionally, representatives from all five organizations noted, similarly to DOJ officials, that federal jurisdiction over crimes in Indian country is typically for more serious offenses (specifically under the Major Crimes Act), such as offenses against a person.<sup>18</sup>

Comprehensive data from tribal justice systems on the involvement of Native American youth were not available. However, we identified and reviewed a few data sources that provided insights about the arrest, adjudication, and confinement of Native American youth by tribal justice systems. See appendix II for a summary of our analysis of data from these sources.

**DOJ and HHS Offered at Least 122 Grant Programs; Tribal Governments or Native American Organizations Were Eligible for Almost All but in a Sample of Applications We Reviewed, Applied Primarily for Programs Specifying Native Americans**

In our September 2018 report, we identified 122 discretionary grants and cooperative agreements (grant programs) offered by DOJ and HHS from fiscal years 2015 through 2017 that could help prevent or address delinquency among Native American youth.<sup>19</sup> DOJ and HHS made approximately \$1.2 billion in first-year awards

<sup>17</sup> According to 2016 census estimates, the following states had the highest percent of Native Americans among the overall youth population: Alaska: 19 percent; South Dakota: 14 percent; New Mexico: 13 percent; Oklahoma: 12 percent; Montana: 11 percent; North Dakota: 9 percent; Arizona: 7 percent; Wyoming: 4 percent; Washington: 2.7 percent; Oregon: 2.4 percent; Nebraska: 2.3 percent; Idaho: 2.1 percent; and Minnesota: 2 percent. For the remaining states, the percent of youth who were Native American was less than 2 percent.

<sup>18</sup> See our September 2018 report for additional information on perspectives we collected from agency officials and the five Native American organizations regarding factors that might contribute to the data characteristics we observed.

<sup>19</sup> To identify grant programs for our September 2018 report, we conducted a keyword search of "youth or juvenile" in Grants.gov—an online repository that houses information on over 1,000 different grant programs across federal grant-making agencies. We reviewed the search results of the three departments with the highest number of grant program matches—DOI, DOJ, and HHS. Within DOI, we considered grant programs from the Bureau of Indian Affairs and Bureau



through the 122 programs over the period, of which the agencies awarded about \$207.7 million to tribal governments or Native American organizations.<sup>20</sup> A list of the 122 programs, which focus on a range of issues such as violence or trauma, justice system reform, alcohol and substance abuse, and reentry and recidivism, can be found in our September 2018 report.

The 122 DOJ and HHS grant programs we identified included 27 programs that specified tribes or Native Americans as a primary beneficiary and 95 programs that did not specify these populations but could include them as beneficiaries.<sup>21</sup> For example, the Department of Justice's Office of Juvenile Justice and Delinquency Prevention offered the Defending Childhood American Indian/Alaska Native Policy Initiative: Supporting Trauma-Informed Juvenile Justice Systems for Tribes program for funding in fiscal year 2016. The goal of this program—increasing the capacity of federally recognized tribes' juvenile justice and related systems to improve the life outcomes of youth who are at risk or who are involved in the justice system and to reduce youth exposure to violence—explicitly focused on tribal communities. On the other hand, the Sober Truth on Preventing Underage Drinking Act grant program, which HHS's Substance Abuse and Mental Health Services Administration offered for funding in fiscal year 2016 to prevent and reduce alcohol use among youth and young adults, is an example of a program that did not specify tribes or Native Americans as a primary beneficiary but could include them as beneficiaries.

We found that tribal governments and Native American organizations were eligible for almost all of the grant programs we identified. Specifically, they were eligible to apply for 70 of 73 DOJ programs and 48 of 49 HHS programs. However, although tribal governments and Native American organizations were eligible to apply for almost all of the programs, we found in a non-generalizable sample of applications we reviewed that they applied primarily for the programs that specified tribes or Native Americans as a primary beneficiary. For example, we reviewed applications for 18 DOJ grant programs and found that tribal governments and Native American organizations accounted for over 99 percent of the applications for the 5 grant programs within the sample that specified tribes or Native Americans as a primary beneficiary. However, tribal governments and Native American organizations accounted for about 1 percent of the applications for the 13 programs in the sample that did not specify tribes or Native Americans as a primary beneficiary.

We interviewed officials from DOJ's Office of Justice Programs (OJP) and seven HHS operating divisions to obtain their perspectives on why tribal governments and Native American organizations might not apply for grant programs that do not specify them as a primary beneficiary.<sup>22</sup> They identified various reasons, including that tribal governments and Native American organizations might not be aware that they are eligible to apply for certain grant programs; might believe that their applications to grant programs that do not specify tribes or Native Americans as a primary beneficiary will not be competitive with other applications; or might prefer to apply for those grant programs that specify tribes or Native Americans as a primary beneficiary.

We also interviewed representatives from 10 tribal governments and Native American organizations, who provided perspectives on whether or not a grant program's focus on tribes or Native Americans as a primary beneficiary affected their decision to apply for the program.<sup>23</sup> Officials from 6 of 10 tribal governments and

of Indian Education; however, we ultimately removed DOI from the scope of our review because DOI officials informed us that the bureaus did not have any relevant grant programs from fiscal years 2015 through 2017.

<sup>20</sup>The \$1.2 billion does not include noncompetitive supplemental or continuation awards that agency officials sometimes provide grantees on an annual basis subsequent to the first year of funding. For example, the fiscal year 2017 funding opportunity announcement for HHS's Cooperative Agreements for Tribal Behavioral Health program estimated it would provide up to \$200,000 per year for up to 5 years to grantees. If a grantee received \$200,000 per year over a 5-year period, the \$1.2 billion total would include only the first year in which the grantee received \$200,000.

<sup>21</sup>We determined which of the 122 grant programs we identified specified tribes or Native Americans as a primary beneficiary and which did not by reviewing whether the title, executive summary, overview, or purpose of their funding opportunity announcements specifically referenced tribes or Native Americans as the main or one of few beneficiaries of the proposed grant program funding.

<sup>22</sup>The seven HHS operating divisions were the: Administration for Children and Families; Centers for Disease Control and Prevention; Health Resources and Services Administration; Indian Health Service; National Institutes of Health; Office of Minority Health; and the Substance Abuse and Mental Health Services Administration.

<sup>23</sup>Specifically, we collected perspectives from officials from seven federally recognized tribes, one of which included input from an affiliated tribal university; and three Native American or

Native American organizations indicated that they would consider any grant program that met the needs of their communities, while the remaining 4 indicated that a grant program's focus or lack thereof on tribes or Native Americans could affect their ability to apply for it.<sup>24</sup>

Officials from the 10 tribal governments and Native American organizations also identified various federal practices they found helpful or challenging when applying for grant programs related to preventing or addressing delinquency among Native American youth.<sup>25</sup> When asked what federal practices, if any, were particularly helpful when applying to receive federal funding, they most frequently responded that they found it particularly helpful to be able to call or meet with federal officials if they had questions about or needed help on their applications. Regarding the biggest challenges, they cited short application deadlines, difficulties collecting data for grant program applications, and a scarcity of grant writers and other personnel needed to complete a quality application.

In addition, DOJ OJP and HHS officials provided perspectives on why some tribal governments and Native American organizations might be more successful in applying for federal funding than others. The officials stated, among other things, that larger and better-resourced tribal governments and Native American organizations were more successful at applying for federal funding and that previously successful grant program applicants were more likely to be successful again.

More detailed information on the perspectives from tribal governments, Native American organizations, and agency officials regarding the factors they believe affect the ability of tribal governments and Native American organizations to apply successfully for federal grant programs can be found in our September 2018 report.

Chairman Hoeven, Vice Chairman Udall, and Members of the Committee, this completes my prepared statement. I would be pleased to respond to any questions you may have at this time.

#### APPENDIX I: DATA SOURCES FOR FEDERAL, STATE AND LOCAL, AND TRIBAL JUSTICE SYSTEMS BY PHASE OF THE JUSTICE PROCESS

For our September 2018 report, we obtained and analyzed record-level and summary data from federal, state and local, and tribal justice systems from 2010 through 2016.<sup>1</sup> Figure 1 illustrates the data sources we included in our report for each phase of the justice process (arrest, adjudication, and confinement) in each justice system (federal, state and local, and tribal). Generally, state and local entities include those managed by states, counties, or municipalities.

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ganizations, which included an urban Indian organization; a non-profit that seeks to provide social services, education, and behavioral health services; and a tribal organization that represents and facilitates services for a group of federally recognized tribes.

<sup>24</sup>Three of the six tribal governments and Native American organizations that indicated that they would consider any grant program that met the needs of their communities also indicated a preference in some instances for grant programs that focused on tribes or Native Americans.

<sup>25</sup>In addition to applying for federal grant programs, some of the tribal governments and Native American organizations indicated they had also pursued non-federal funding that could help prevent or address delinquency among Native American youth. For example, officials from one federally recognized tribe explained that they applied for funding from the Ford Foundation and the Walmart Foundation. Officials from two other federally recognized tribes stated they received grant program funding from state governments.

<sup>1</sup>Generally, record-level data include information about one individual at one point in time. In contrast, the summary data we obtained generally include information about multiple individuals for a certain period—such as a month. See GAO, *Native American Youth: Involvement in Justice Systems and Information on Grants to Help Address Juvenile Delinquency*, GAO-18-591 (Washington, D.C.: Sept. 5, 2018).

**Figure 1: Data Sources for Federal, State and Local, and Tribal Justice Systems**

Justice system	Phase of the justice process			
	Arrest	Adjudication	Confinement	
Federal		DOJ, U.S. Marshals Service (USMS) Administrative data <sup>a</sup> Contains data on USMS custodies (adults and youth) resulting from arrests.	DOJ, Executive Office for United States Attorneys Administrative data <sup>a</sup> Contains data on referrals for federal prosecution and case processing (adults and youth).	DOJ, Federal Bureau of Prisons Administrative data <sup>a</sup> Contains data on individuals (adults and youth) admitted to a Bureau of Prisons facility or contract facility.
State and local	Department of Justice (DOJ), Federal Bureau of Investigation Uniform Crime Reporting Summary Reporting System Summary data Predominantly contains data on arrests (adults and youth) from state and local law enforcement agencies, but also contains some data from federal and tribal law enforcement agencies.	National Center for Juvenile Justice, National Juvenile Court Data Archive <sup>b</sup> Easy Access to Juvenile Court Statistics online tool Summary data Contains case processing data and statistics from state and local courts with jurisdiction over juveniles.	DOJ, Office of Juvenile Justice and Delinquency Prevention Census of Juveniles in Residential Placement Survey data Contains data on youth placed in state and local residential facilities.	
Tribal		Department of the Interior, Bureau of Indian Affairs (BIA) Juvenile Detention Centers Administrative data <sup>a</sup> Admissions files contain data on Native American youth arrested and held in BIA operated facilities in Indian country.	DOJ, Bureau of Justice Statistics Survey of Jails in Indian Country Annual bulletins Contains data and statistics on Native American adults and youth confined in tribal detention facilities in Indian country.	

Source: GAO analysis of DOJ, Department of Interior, and National Center for Juvenile Justice data. | GAO-18-697T

<sup>a</sup>Administrative data generally include information collected by the agency to help manage its operations. For example, these data can include the age and gender of an individual, the offense related to the case, dates related with the case, and outcomes of the case.  
<sup>b</sup>DOJ's Office of Justice Programs provides funding for the National Center for Juvenile Justice's Easy Access to Juvenile Court Statistics.

**APPENDIX II: GAO FINDINGS REGARDING AMERICAN INDIAN AND ALASKA NATIVE YOUTH INVOLVEMENT WITH TRIBAL JUSTICE SYSTEMS**

Comprehensive data from tribal justice systems on the involvement of American Indian and Alaska Native (Native American) youth were not available. However, in our September 2018 report, we identified and reviewed a few data sources that can provide certain insights about the arrest, adjudication, and confinement of Native American youth by tribal justice systems.<sup>1</sup> The following is a summary of our analysis of data from these sources.

**Arrests.** Although comprehensive data on the number of tribal law enforcement agency (LEA) arrests were not available, we obtained and reviewed admission records from three juvenile detention centers in Indian country managed by the Department of the Interior's Bureau of Indian Affairs (BIA).<sup>2</sup> Based on those records, at least 388 Native American tribal youth were admitted to these three facilities in 2016, as shown in table 1. In the Northern Cheyenne facility, for which we obtained records for 5 years, the number of youth admitted increased yearly between 2012 and 2016, from 14 to 204.

<sup>1</sup> See GAO, *Native American Youth: Involvement in Justice Systems and Information on Grants to Help Address Juvenile Delinquency*, GAO-18-591 (Washington, D.C.: Sept. 5, 2018).

<sup>2</sup> As of April 2018, there were 205 known tribal LEAs, 20 tribally operated juvenile detention centers, and three BIA-operated juvenile detention centers in Indian country, according to BIA officials. Additionally, there were 89 total detention programs, of which 15 housed Native American youth, as well as adults.

**Table 1: Number of Native American Youth Admitted to Juvenile Detention Centers Operated by the Bureau of Indian Affairs, Calendar Years 2012–2016**

Juvenile detention center	2012	2013	2014	2015	2016
Northern Cheyenne	14	92	84	170	204
Standing Rock <sup>a</sup>	Not applicable	Not applicable	Not applicable	Not applicable	131
Ute Mountain Ute <sup>b</sup>	Not available	56	89	63	53

Source: GAO analysis of Bureau of Indian Affairs data. | GAO-18-697T

Notes: Race is self-reported by the juvenile at the time of admission to the facility and then confirmed by facility staff.

Each number represents one detention; it does not necessarily represent a unique individual, as some individuals returned to the juvenile detention center two or more times.

<sup>a</sup>The Standing Rock Youth Services Center opened in May 2016.

<sup>b</sup>Records for 2012 were unavailable for our review.

According to BIA officials, this growth in the number of youth admitted to the Northern Cheyenne facility likely reflects an increase in admissions of Native American youth from surrounding tribes. Specifically, because the Northern Cheyenne facility is centrally located, the officials said that the facility admits youth from other tribes, which have grown accustomed to sending their youth to the facility. BIA officials also noted that the Northern Cheyenne facility services an area where there is a high rate of delinquency among youth, and because the facility works well with Native American youth struggling with delinquency issues, many tribes elect to send their delinquent youth to the facility. Further, since 2012, the Northern Cheyenne facility increased its bed space and staff, thus increasing its capacity to admit more youth, according to BIA officials.

Even though comprehensive tribal arrest data were not available, we reported in September 2018 that the Department of Justice's (DOJ) Bureau of Justice Statistics (BJS) was undertaking an effort to increase collection of arrest data from tribal LEAs. Specifically, this data collection activity is the Census of Tribal Law Enforcement Agencies.<sup>3</sup> This collection activity, which BJS plans to conduct in 2019, is to capture information including tribal LEA workloads and arrests, tribal LEA access to and participation in regional and national justice database systems, and tribal LEA reporting of crime data into FBI databases.

**Adjudication.** Comprehensive data were not available to describe the extent to which tribal courts processed Native American youth or found them guilty. However, BJS concluded a tribal court data collection effort—the National Survey of Tribal Court Systems—in 2015. Through this survey, BJS gathered information from more than 300 tribal courts and other tribal judicial entities on their criminal, civil, domestic violence, and youth caseloads, and pretrial and probation programs, among other things.<sup>4</sup> DOJ officials told us that BJS has analyzed the data, and plans to release results in the future.

**Confinement.** According to data published by BJS, the number of youth in Indian country jails declined from 190 in 2014 to 170 in 2016 (about an 11 percent decrease).<sup>5</sup>

<sup>3</sup> See Department of Justice, Bureau of Justice Statistics, *Tribal Crime Data Collection Activities*, 2017 (July 2017); and Department of Justice, Bureau of Justice Statistics, *Tribal Crime Data Collection Activities*, 2016 (July 2016).

<sup>4</sup> The National Survey of Tribal Court Systems gathered information on the administrative and operational characteristics of tribal justice systems (including budgets, staffing, the use of juries, and the appellate system); indigent defense services; pretrial and probation programs; protection orders; criminal, civil, domestic violence, and juvenile caseloads; implementation of various enhanced sentencing provisions under the Tribal Law and Order Act of 2010; and indigenous or traditional dispute forums operating within Indian country.

<sup>5</sup> To determine the number of Native American youth confined in tribal operated jails in Indian country, we analyzed data reported by BJS in its Jails in Indian Country Survey for 2014, 2015, and 2016. The number of Native American youth confined was a mid-year count, as of the last weekday in June for each year. According to the 2016 survey report, there were at least 18 Indian country jails included in the survey, which held juveniles ages 17 and younger.

The CHAIRMAN. Thank you, Dr. Goodwin.  
Ms. HARP.

**STATEMENT OF CAREN HARP, ADMINISTRATOR, OFFICE OF  
JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S.  
DEPARTMENT OF JUSTICE**

Ms. HARP. Chairman Hoeven, Vice Chairman Udall and members of the Committee, I am honored to appear before you today.

My name is Caren Harp. I am the Administrator of the Justice Department's Office of Juvenile Justice and Delinquency Prevention.

OJJDP's mission is to provide national leadership, coordination and resources to prevent and respond to juvenile delinquency and victimization. We accomplish this mission by helping States, tribes and communities develop effective and equitable juvenile justice systems.

OJJDP is one of six components of the Office of Justice programs, the Justice Department's primary funding, research and statistical arm. Each of these components makes substantial investments in tribal public safety and none of those investments are more important than the ones affecting Native American youth.

The GAO report issued earlier this month examines many of these programs in the context of tribal youth involvement in the juvenile justice system. Between fiscal years 2015 and 2017, the Office of Justice Programs awarded more than \$600 million to address delinquency among Native American youth.

We supported a tribal youth training and technical assistance center, we worked directly with young people through our Intertribal Youth Leadership Initiative, and provided mentoring opportunities for both on-reservation and off-reservation youth.

Support for tribal youth is built into programs across the Department of Justice. A significant amount of tribal funding comes through the Coordinated Tribal Assistance Solicitation or CTAS.

CTAS allows tribes to apply for more than one grant through a single, streamlined application. We have awarded more than 2,000 grants under this program.

Our commitment to tribes remains strong. We are awarding more than \$226 million to tribal communities in fiscal year 2018 funds. About half of that amount comes under the CTAS umbrella. The remainder is allocated under a 3 percent set aside of the Crime Victims Fund which will benefit more than 170 tribal communities.

The department's investments in tribal youth are extensive and span the agency. Our Bureau of Justice Assistance funds innovative tribal court models that address delinquency using culturally-relevant, restorative justice practices.

Our Bureau of Justice Statistics initiated the national survey of tribal court systems in 2014 and is preparing to administer the first census of tribal law enforcement agencies.

The National Institute of Justice manages a substantial portfolio of tribal research that includes studies of violence and victimization among tribal youth. Our COPS Office, Office for Victims of Crime, Office for the Chief Information Officer and the Department's Office of Tribal Justice support the Tribal Access Program, TAP as

we call it. TAP gives tribes access to Federal databases that enable law enforcement to share information on registered sex offenders.

In all of its grant programs, the department builds in robust safeguards against waste, fraud and abuse. Our Office of Audit Assessment and Management leads our efforts to ensure that we manage Federal funds effectively and efficiently.

We are continuously reviewing and working to improve grant management policies, procedures and systems. We regularly monitor grantee compliance.

Finally, I would be remiss if I failed to recognize the department's non-grant making components. The Office of Tribal Justice and the tribal liaisons in the U.S. Attorney's Offices work closely with tribal officials to improve enforcement, reduce crime and develop strategies for combating delinquency.

Their efforts are critical to meeting the needs of tribal youth at every phase of the justice process.

The Department of Justice is fully engaged with tribes in improving public safety in Indian Country. We remain especially committed to empowering tribal youth to live productive, law abiding lives.

On behalf of my colleagues, I am grateful for the support of this Committee. I look forward to working with you to help secure a bright future for our American Indian and Alaska Native youth.

Thank you and I look forward to any questions you may have. [The prepared statement of Ms. Harp follows:]

PREPARED STATEMENT OF CAREN HARP, ADMINISTRATOR, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEPARTMENT OF JUSTICE

Chairman Hoeven, Vice Chairman Udall, Members of the Committee, it is an honor to appear before you today. My name is Caren Harp, and I am the Administrator of the Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP). OJJDP's mission is to provide national leadership, coordination, and resources to prevent and respond to juvenile delinquency and victimization. Our goal is to help states, tribes, and communities develop and implement effective and equitable juvenile justice systems that enhance public safety, hold youth accountable, and empower youth to live productive, law-abiding lives. As OJJDP Administrator, I oversee OJJDP grant programs and other efforts that meet the Department's juvenile justice priorities.

OJJDP is one of six components of the Office of Justice Programs (OJP), the Justice Department's primary grant-making, research, and statistical arm.<sup>1</sup> OJJDP and its fellow offices invest substantial resources each year in tribal public safety activities, none more important than those that affect Native American youth. The Government Accountability Office's report, *Native American Youth: Involvement in Justice Systems and Information on Grants to Help Address Juvenile Delinquency*,<sup>2</sup> (GAO Report), examined many of these programs, placing them in the context of tribal youth involvement in our federal, state and local, and tribal justice systems.

The GAO Report outlines the Department's considerable funding investments in tribal communities, continuing to this day. In FY 2018, the Department is awarding more than \$226 million to improve public safety in tribal communities. About half of that—more than \$113 million—comes through a mechanism called the Coordinated Tribal Assistance Solicitation (CTAS), which allows tribes to apply for more than one grant by submitting a single application. CTAS also gives tribes greater

<sup>1</sup> Collectively, OJP, the Office on Violence Against Women (OVW), and the Office of Community Oriented Policing Services (COPS) are the Department's grant-making components.

<sup>2</sup> GAO-18-591, *Native American Youth: Involvement in Justice Systems and Information on Grants to Help Address Juvenile Delinquency*, September 5, 2018. The report examines unique challenges faced by Native American youth, and addressed two major areas: (1) what available data shows about the number and characteristics of Native American youth in federal, state and local, and tribal justice systems, and (2) federal discretionary grants that could help prevent and address delinquency among Native American youth as well as access to those grants.

flexibility to use grant programs to address their criminal justice and public safety needs. More than 130 tribes, Alaska Native villages, tribal consortia, and tribal designees will receive grants under the CTAS umbrella.

In addition, OJP's Office for Victims of Crimes (OVC) will be awarding grants under the Tribal Victim Services Set-Aside Program, a 3-percent set-aside of the Crime Victims Fund authorized by the Consolidated Appropriations Act, 2018. More than 170 Native American and Alaska Native communities will benefit from this new source of funding, which is designed to expand and improve services to victims who live in tribal communities.

The Department's investments in Indian country extend beyond these grant resources. The GAO report addresses many of these efforts.

### **I. Justice System Data Collection**

A number of Department of Justice components contributed to the GAO Report and are involved in these data collection and reporting efforts: the Federal Bureau of Investigation, the U.S. Marshals Service, the Executive Office for U.S. Attorneys, the Bureau of Prisons, the Bureau of Justice Statistics (BJS), and OJJDP.

The Tribal Law and Order Act of 2010 (TLOA), P.L. 111-211, § 201(a) at 124 Stat. 2261, directed the Department to collect data related to crimes in tribal communities. BJS is set to administer the first Census of Tribal Law Enforcement Agencies in April 2019. BJS also completed the first National Survey of Tribal Court Systems, which had an overall 80 percent response rate among the 237 tribal courts during 2014.<sup>3</sup> These data collections specifically gather needed information on the administration and operational characteristics of these core tribal justice agencies.

In addition, BJS established several tribal justice panels to ensure that tribal governments, their law enforcement agencies, and their courts have a central role in the development, design, and implementation of the data collection programs. These tribal justice panels comprise tribal leaders, law enforcement officials, and court representatives from across the country, along with representatives from OJP, the Department's Office of Tribal Justice (OTJ), the FBI's Indian Country Crimes Unit, and the Department of the Interior's Office of Justice Services. Their role is to ensure a tribally-centered and coordinated approach to establishing data collection systems that address tribal public safety challenges and close the gaps in knowledge about crime and justice in Indian country. TLOA requires BJS to report to Congress annually its activities related to the tribal data collection analyzed. In July 2018, BJS released the *Tribal Crime Data Collection Activities, 2016–2018*, which summarizes the efforts to date.

### **II. Grant Programs and Resources that Address Juvenile Delinquency**

The Department provided GAO application and award information from 73 FY 2015–FY 2017 grant programs, representing approximately \$605 million in grants designed to help prevent or address juvenile delinquency among youth.<sup>4</sup> DOJ and HHS collectively awarded \$207.7 million to tribal governments and Native American organizations. HHS awarded \$106.5 million and the Department awarded \$101.2 million.<sup>5</sup> The Department's grants were funded by OJP components: OJJDP; OVC; the Bureau of Justice Assistance (BJA); the National Institute of Justice (NIJ); and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART Office).

The following section includes details on CTAS grants that have supported efforts to address juvenile delinquency and support tribal communities.

#### *Coordinated Tribal Assistance Solicitation (CTAS)*

OJJDP, OVC, BJA, OVW, and the Office of Community Oriented Policing Services (COPS) have coordinated funding to support CTAS by Purpose Area since FY 2010.<sup>6</sup> By the end of FY 2018, the Justice Department will have awarded more than 2,000 CTAS grants totaling more than \$940 million to hundreds of American Indian and Alaska Native communities. Through CTAS, applicants apply under one solicitation,

<sup>3</sup>Bureau of Justice Statistics, Tribal Crime Data Collection Activities, 2016–2018.<https://www.bjs.gov/content/pub/pdf/tcdca1618.pdf>

<sup>4</sup>GAO Report, p. 57.

<sup>5</sup>GAO Report, p. 57.

<sup>6</sup>Applicants have the option to select the Purpose Area(s) that address their public safety, criminal and juvenile justice and victimization needs. For the FY 2018 application period, there were nine Purpose Areas: (1) Public Safety and Community Policing (COPS Office), (2) Comprehensive Tribal Justice Systems Strategic Planning (BJA), (3) Tribal Justice Systems (BJA), (4) Tribal Justice Systems Infrastructure Program (BJA), (5) Violence Against Women Tribal Governments Program (OVW), (6) Children's Justice Act Partnerships for Indian Communities (OVC), (7) Comprehensive Tribal Victim Assistance Program (OVC), (8) Tribal Juvenile Healing to Wellness Courts (OJJDP), and (9) Tribal Youth Program (OJJDP).

which allows tribes to plan comprehensively and strategically allocate resources. In addition, one budget worksheet is required, one system of submitting grants electronically is used, and application support is available through a dedicated Response Center.

The Department provides training and technical assistance for tribes interested in applying for CTAS. Each year, the Department organizes a webinar series that provides detailed information on each section of the solicitation. In FY 2017, the Department offered two in-person Accessing Grants to Strengthen Tribal Justice System Capacity grant writing workshops targeting tribes that historically were unsuccessful for receiving funds under the CTAS program. The workshops were offered on January 18–19 in Columbia, South Carolina, and January 24–25 in Anchorage, Alaska. Many tribes that participated in the training did go on to receive funding in the subsequent application cycles. The workshops helped increase the success rate of the Cherokee Nation in Oklahoma from 37 percent to almost 50 percent for receiving grants in FY 2017. It helped raise the Nez Perce Tribe’s success rate for receiving CTAS grant awards to more than 40 percent, as well.

OJJDP also has an online tool that offers information on developing high-quality CTAS applications.<sup>7</sup> This resource is available to all federally recognized tribes.

#### CTAS Purpose Area 4

Under CTAS Purpose Area 4, Tribal Justice System Infrastructure Program, tribes receive funding to renovate, expand, or replace existing buildings (prefabricated or permanent modular facilities only). These modifications enhance staff, resident, detainee, and inmate safety and security for the following tribal justice-related facility types: single jurisdiction or regional tribal correctional facilities, correctional alternative or treatment facilities, multipurpose justice centers (including police departments, courts, and/or corrections), and transitional living facilities (halfway houses). Ensuring that these supports are in place enhances the safety and security of Native youth.

One example is the Eight Northern Indian Pueblos Council, which constructed the Butterfly Healing Center, a residential and outpatient treatment center for Native American youth ages 13 through 18. Prior to constructing the center, the Council lacked alternative sentencing options and resources to divert juveniles from receiving formal criminal justice records in the state or federal system. The tribe now provides treatment for youth that covers spiritual, physical, psychological, medical, and cognitive health.

Another example of CTAS’s impact is the work of the Yurok Tribe—the largest tribe in California. As a result of BJA funding, the Yurok Tribe was able to construct a fully functional Multipurpose Justice Center that accommodates a courtroom, mediation area, self-help center, probation, judge’s chambers, clerk of the court, administration area, public restroom and lobby areas, and cuff bench for in-custody defendants. With additional BJA funding, the tribe is expanding the Justice Center to incorporate the Yurok Tribal Police.

#### CTAS Purpose Area 6

Purpose Area 6, the Children’s Justice Act Partnership for Indian Communities Program (CJA), assists American Indian and Alaska Native communities in developing, establishing, and operating programs to improve the investigation, prosecution, and handling of child abuse cases, especially child sexual abuse, by providing trauma-informed, culturally appropriate services to child abuse victims and their families.

#### CTAS Purpose Area 8

CTAS Purpose Area 8, Tribal Juvenile Healing to Wellness Courts, supports tribes seeking to develop new court-based programs to respond to the alcohol and substance use issues of juveniles and young adults under the age of 21. Federally recognized tribes that have an existing court system and are interested in developing a new Justice Healing to Wellness Court are eligible to apply.

Another example of the impact of CTAS funding is the work of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians’ Tribal Court, which has enhanced services to include a Youth Wellness Court. The tribe used grant funds to hire an Associate Judge, Tribal Presenting Officer (prosecutor), and Tribal Defense Advocate (public defender). The court holds weekly sessions for wellness cases and

<sup>7</sup>The tool can be found at <https://tribalyouthprogram.org/funding-opportunities/2018-ctas/>. This guide contains strategies to: (1) Read and comprehend a complex grant solicitation (2) Coordinate a robust grant-writing team (3) Identify and articulate the needs of the community through data driven processes (4) Generate and capture ideas and solutions from the community (5) Organize key community players to execute the proposed program.



the Wellness Case Manager works with Tribal Youth prevention programs, which are funded through a CTAS Purpose Area 9 Tribal Youth Program grant.

#### CTAS Purpose Area 9

CTAS Purpose Area 9, Tribal Youth Program, supports and enhances tribal efforts to prevent and reduce juvenile delinquency and ensure a fair and beneficial juvenile justice system response to American Indian and Alaska Native youth. The funding in this purpose area is available to create, expand, or strengthen tribal-driven approaches along the juvenile justice continuum, from prevention to intervention and treatment.

Tribes successfully employ a variety of approaches to their youth programming using Purpose Area 9 funding. These approaches include equine therapy, diversion, and Tribal Court Appointed Special Advocates, a cultural tribal youth program based on a model known as the Healing Canoe Journey, which is considered a best practice model in cultural prevention for Pacific Northwest Tribes.

#### *Office of Juvenile Justice and Delinquency Prevention*

OJJDP also funds other initiatives that address juvenile delinquency in Indian Country, including the Tribal Youth Training and Technical Assistance program, the National Intertribal Youth Leadership Initiative, and several mentoring initiatives.

- The OJJDP Tribal Youth Training and Technical Assistance Center provides comprehensive training and technical assistance for OJJDP tribal grantees. The Center works with grantees through a strategic planning process and offers ongoing support throughout the course of their grant program. All tribes, regardless of whether they are funded by OJJDP, are eligible to participate in an array of trainings, webinars, and online virtual simulation trainings.
- The National Intertribal Youth Leadership Initiative builds on the successes of past OJJDP Tribal Youth Summits and expands the leadership development support that OJJDP offers to tribal youth. The initiative supports regional learning events for tribal youth focused on developing leadership skills. Building on these events, the youth will develop community service projects related to juvenile delinquency issues in their community. This may include a community awareness project on opioid abuse, a presentation on positive decision-making skills, supporting a drug take-back day, or other related activities.
- The Department also funds a number of mentoring programs through the Mentoring Opportunities for Youth Initiative solicitation. Mentoring promotes positive behaviors, attitudes, and outcomes for youth and reduces risk factors associated with delinquency and juvenile justice system involvement, such as poor school attendance, school failure, and alcohol and drug abuse. It has been shown to improve academic performance and/or social or job skills, support behavioral or other personal development, and reduce consumption of alcohol and other drugs. While these funds support mentoring programs operated by mentoring organizations, the services may be available to tribal youth (on and off reservation). Starting in FY 2015, OJJDP added a requirement to Category 1: National Mentoring within the Mentoring Opportunities for Youth solicitation that applicants must target mentoring services and programs to American Indian (AI) and Alaska Native (AN) youth both on and off reservations. In addition, OJJDP created a category in the FY 2018 Mentoring Opportunities for Youth solicitation specifically identifying tribes as eligible for \$1.25 million each to support mentoring services for youth impacted by opioids.

#### *Bureau of Justice Assistance*

BJA funds a number of programs that address juvenile delinquency. For example, BJA sponsored a pilot program and practice guide to assist with the development of joint jurisdiction courts. Jurisdiction is exercised jointly when the tribal court and state or federal court judges convene to exercise their respective authority simultaneously. These courts bring together justice system partners and allow the system to work collaboratively and creatively toward better results for individuals involved in the adult and juvenile justice systems. There are seven active joint jurisdiction courts and others in the planning process. More information is available on the joint jurisdiction courts webpage at <https://walkingoncommonground.org/>.

Another example is the Shingle Springs Rancheria and El Dorado County Superior Court Family Wellness Court, which provides system-involved youth and their families with a court-supervised alternative that emphasizes culturally-appropriate restorative justice practices. BJA funded the initial joint jurisdiction court pilot sites, then provided intensive technical assistance to three regions to plan their joint

jurisdiction courts. BJA's work on this initiative informed an update to *A Manual for Developing Tribal, Local, State & Federal Justice Collaborations, Second Edition*. This publication can assist tribes, states, counties, and others in planning a joint jurisdiction collaboration.

*National Institute of Justice*

NIJ has supported research and evaluation studies on tribal crime and justice issues since the 1980s. In partnership with OVC and OJJDP, it is funding the Tribal Youth Victimization Study. This effort will develop a process for collecting self-report data on American Indian and Alaska Native youth violence and victimization. NIJ also has developed a comprehensive research program on violence against American Indian and Alaska Native women consisting of several projects that will be accomplished over an extended period. The primary goal of these projects is to document the prevalence and nature of violence against Indian women living on sovereign tribal lands.

*Grant Oversight and Management*

Guarding against waste, fraud, and abuse with both tribal and non-tribal grantees is a top priority of the Department. OJP's Office of Audit, Assessment, and Management (OAAM) works to improve the efficiency and effectiveness of justice programs and operations by ensuring oversight and review of grants management policy and procedures, grants management systems, and grants compliance. OAAM continually improves and refines our risk tools and makes improvements to our oversight processes.

*Tribal Access Program*

The Tribal Access Program (TAP) funded by SMART, COPS, and OVC, and supported by OTJ and Justice Management Division's Office of the Chief Information Officer, offers tribes valuable tools to improve public safety. TAP allows tribes access to federal databases so that law enforcement may more quickly share information on registered sex offenders and protection orders. It also enables tribes to more effectively serve and protect their communities by ensuring the exchange of critical data across the Criminal Justice Information Services systems and other national crime information systems, for both civil and criminal purposes.

The SMART Office also is working regularly with federally recognized tribes that have elected to implement the Sex Offender Registration and Notification Act (SORNA). Over 130 tribes have already substantially implemented SORNA and more continue to work towards this goal.

*Additional DOJ Tribal Collaboration*

In addition to grant programs, the Justice Department remains committed to addressing juvenile delinquency at every phase of the justice process (arrest, adjudication, and confinement) as it implements TLOA. OTJ and the network of tribal liaisons in the United States Attorneys' offices and specialists throughout the country collaborate with tribes to improve law enforcement functions and reduce crime. For example, each U.S. Attorney's office with jurisdiction in Indian Country regularly consults with tribes to develop strategies to combat juvenile delinquency. These offices each have a tribal liaison to link efforts between the Department and tribal leadership. The Executive Office for U.S. Attorneys also trains federal, state, local, and tribal attorneys and law enforcement staff on law enforcement issues in Indian country.

As the Department continues to enhance its public safety efforts in tribal communities, we remain committed to addressing juvenile delinquency while empowering youth to live productive, law-abiding lives. Thank you, and I look forward to addressing your questions.

The CHAIRMAN. Thank you, Ms. Harp.  
Deputy Assistant Secretary Tahsuda.

**STATEMENT OF JOHN TAHSUDA, PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR**

Mr. TAHSUDA. Thank you, Mr. Chairman.

If I could briefly clarify, thank you for mentioning my tenure with the Committee. I wanted to make sure I clarify that during my tenure at the Committee, I worked for Senator McCain for two

years when he was the Chairman, for approximately one year as the Deputy Staff Director; and approximately one year as the Staff Director. I wanted to make sure that was clear on the record.

Thank you, Chairman Hoeven, Vice Chairman Udall, and members of the Committee.

I am the Principal Deputy Assistant Secretary for Indian Affairs at the Department of the Interior. Thank you for the opportunity to provide a statement on behalf of the department.

The department recognizes the tremendous challenges faced by many juveniles in Indian Country. Over a quarter of these children live in poverty, compared to 13 percent of the general population.

Native children are exposed to violence at extremely high levels, and are at a greater risk of experiencing trauma compared to their non-Native peers. According to the U.S. Department of Justice's Defending Childhood Initiative, exposure to violence causes major disruptions of basic cognitive, emotional and brain functioning essential for optimal development and, thus, if exposure to violence goes untreated, these children are at a significantly greater risk than their peers for aggressive, disruptive behaviors; school failure; and alcohol and drug abuse.

In light of these significant challenges facing our Native youth, the BIA has recognized that the conventional juvenile justice approach of simply incarcerating juveniles is often ineffective and may, in fact, increase delinquency rates.

The BIA has long urged tribal policy makers to transition toward less punitive models of juvenile justice. We are encouraged that the juvenile systems do offer solution-focused alternatives to incarceration and more restorative approaches and early intervention options for juveniles within Indian Country.

The BIA Office of Justice Services regularly engages in crime prevention and community involvement projects to reach youth at the local level throughout Indian Country. Local BIA and tribal law enforcement agencies often host Law Enforcement Days where officers can display and demonstrate patrol and emergency response vehicles and equipment, K-9s, and advanced technologies.

These events, along with Toys for Tots, Shop with a Cop, DARE, and suicide awareness/prevention events, seek to connect with juveniles in a consistent and positive manner.

The BIA also funds 16 School Resource Officers located at Indian Country schools. These police officers work full time in the child's environment, providing presentations on stranger danger, anti-bullying, and the dangers of gangs and illegal drugs.

Utilizing these officers to build trust with elementary and middle school age children in numerous Indian communities is our fundamental prevention component and evidences our commitment to keeping juveniles out of the justice system when at all possible.

The BIA conducts Tribal Court Assessments, which include a component to evaluate the challenges and successes of juvenile justice systems in Indian Country. For example, Juvenile Wellness Courts provide options for effective drug and alcohol treatment programs as well as bringing in culturally-based practices, such as "traditional talking circles" which have been effective in combating truancy in some tribal courts.

The BIA has also funded juvenile specific requests from various tribal courts. For example, the Pueblos of San Ildefonso and San Felipe recently received funding to train their probation officers in juvenile issues, and the Rosebud Sioux Tribal Court received funding for two juvenile probation officers.

The Lower Sioux Indian Community in Minnesota has a juvenile population that represents 38 percent of tribal members. The BIA was able to provide funding to the Lower Sioux Tribal Court for a truancy prevention specialist to work with youth who exhibit challenging behaviors and reduce the number of youth involved in truant activities.

The BIA has also funded public defender positions in tribal courts to work specifically with youth involved in the justice system. Specifically, Healing to Wellness Courts require the youth to be represented by a public defender to attend the weekly staffing meetings, subsequent multidisciplinary team meetings, and the court hearing.

We agree with our colleagues at the Department of Justice that if youth come into contact with the juvenile justice system, the contact should be both just and beneficial. In certain circumstances, incarceration is appropriate. The BIA works to ensure that academic education and mental health counseling are implemented inside of BIA and tribal youth jails to appropriately support those youth needing incarceration.

In BIA-run juvenile detention facilities, the Office of Justice Services contracts to provide qualified teachers and educational support for juveniles. Over the past year, we provided educational support to 258 juveniles of varying ages, academic and maturity levels, incarceration periods, and interests. A number of positive outcomes were achieved, including strong engagement and participation in academic activities by juveniles with past disruptive behaviors in school.

Again, thank you for the opportunity to provide this statement. The BIA is committed to continuing its efforts in early intervention to reach youth throughout Indian Country and provide solution-focused and restorative approaches to minimize repeated engagement with the justice system.

I look forward to working with the Committee on juvenile justice issues affecting our Native youth. I am happy to answer any questions the Committee may have.

[The prepared statement of Mr. Tahsuda follows:]

PREPARED STATEMENT OF JOHN TAHSUDA, PRINCIPAL DEPUTY ASSISTANT SECRETARY  
FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Good afternoon, Chairman Hoeven, Vice Chairman Udall, and Members of the Committee. My name is John Tahsuda and I am the Principal Deputy Assistant Secretary for Indian Affairs at the Department of the Interior. Thank you for the opportunity to provide a statement on behalf of the Department. The Department recognizes the tremendous challenges faced by many juveniles in Indian Country. As indicated in the Government Accountability Office report that is the focus of this hearing, Native children are among the most vulnerable groups of children in the United States.

More than a quarter of these children live in poverty, compared to 13 percent of the general population. Native children are exposed to violence at extremely high levels, and are at a greater risk of experiencing trauma compared to their non-Native peers. According to the U.S. Department of Justice's (DOJ) Defending Child-

hood Initiative, exposure to violence causes major disruptions of basic cognitive, emotional and brain functioning that are essential for optimal development and, thus, if exposure to violence goes untreated, these children are at a significantly greater risk than their peers for aggressive, disruptive behaviors; school failure; and alcohol and drug abuse.

In light of these significant challenges facing our Native youth, the BIA has recognized that the conventional juvenile justice approach of simply incarcerating juveniles is often ineffective and may, in fact, increase delinquency rates. The BIA has long urged tribal policy makers to transition toward less punitive models of juvenile justice. The BIA also encourages juvenile systems to offer solution-focused alternatives to incarceration and more restorative approaches and early intervention options for juveniles within Indian Country.

The BIA Office of Justice Services regularly engages in crime prevention and community involvement projects to reach youth at the local level throughout Indian Country. Local BIA and tribal law enforcement agencies often host “Law Enforcement Days” where officers can display and demonstrate patrol and emergency response vehicles and equipment, K-9s, and advanced technologies. These events, along with Toys for Tots, Shop with a Cop, DARE, and suicide awareness/prevention events, seek to connect with juveniles in a consistent and positive manner.

The BIA also funds 16 School Resource Officers located at Indian Country schools. These police officers work full time in the child’s environment, providing presentations on stranger danger, anti-bullying, and the dangers of gangs and illegal drugs. Utilizing these officers to build trust with elementary and middle school age children in numerous Indian communities is our fundamental prevention component and evidences our commitment to keeping juveniles out of the justice system when at all possible.

The BIA conducts Tribal Court Assessments, which include a component to evaluate the challenges and successes of juvenile justice systems in Indian Country. For example, Juvenile Wellness Courts include options for effective drug and alcohol treatment programs as well as bringing in culturally-based practices, such as “traditional talking circles” which have been effective in combating truancy in some tribal courts.

The BIA has also funded juvenile specific requests from various tribal courts. For example, the Pueblos of San Ildelfonso and San Felipe recently received funding to train their probation officers in juvenile issues, and the Rosebud Sioux Tribal Court received funding for two juvenile probation officers. The Lower Sioux Indian Community in Minnesota has a juvenile population that represents 38 percent of Tribal members. The BIA was able to provide funding to the Lower Sioux court for a Truancy Prevention Specialist to work with youth who exhibit challenging behaviors and reduce the number of youth involved in truant activities, and to address the adverse effects of those activities.

The BIA has also funded public defender positions in tribal courts to work specifically with youth involved in the justice system. Specifically, Healing to Wellness Courts require the youth to be represented by a public defender to attend the weekly staffing meetings and subsequent multi-disciplinary team meetings and the court hearing. Tribal courts at Bay Mills and Leech Lake have received funding for Juvenile Public Defenders as well as Juvenile Case Wellness Managers for Healing to Wellness Courts.

In Alaska, the BIA funded the Central Council of the Tlingit and Haida Indian Tribes’ request for a Juvenile Healing to Wellness Court, and the Native Village of Barrow was funded for a Juvenile Intake Program position within their court. According to the Barrow court, the opioid crisis is affecting many of the youth, and the Juvenile Intake Program will assist in providing culturally-specific assistance to those youth in crisis.

We agree with our colleagues at the Department of Justice that if youth come into contact with the juvenile justice system, the contact should be both just and beneficial. In certain circumstances, incarceration is appropriate. The BIA works to ensure that academic education and mental health counseling are implemented inside of BIA and tribal jails to appropriately support those youth needing incarceration.

In BIA-run juvenile detention programs, the Office of Justice Services enters into commercial contracts to provide qualified teachers and educational support for juveniles. Over the past year, we provided educational support to 258 juveniles of varying ages, academic and maturity levels, incarceration periods, and interests. A number of positive outcomes were achieved, including strong engagement and participation in academic activities by juveniles with past records of disruptive behaviors in school. Overall, discipline issues in the classrooms were largely non-existent, and academic credit was maintained for some juveniles when they transitioned back to

their schools. Further, multiple juveniles requested to study for the GED or HiSET tests.

A current Memorandum of Agreement between the BIA, Bureau of Indian Education, and the Department of Health and Human Services (HHS) outlines commitments to ensure that appropriate mental health counseling is implemented effectively inside juvenile detention centers. Our common goal continues to focus on improving the good health, wellbeing and proper placement for Native American youth.

Finally, the BIA, in conjunction with the DOJ Office of Juvenile Justice and Delinquency Prevention, has developed a comprehensive Model Juvenile Code designed to incorporate assessments that identify needs and prescribe services and solutions to address those needs by working with HHS and incorporating all types of services available. The hope is to create options for tribes to incorporate much needed services including specialized traditional remedies that address issues affecting Native juveniles in crisis.

A number of the BIA activities I have described are also vitally important to reducing recidivism for juveniles. For example, BIA's educational programs for incarcerated juveniles assist in preparing them to function outside the justice system and have resulted in strong engagement and participation in academic activities by juveniles with past records of disruptive behaviors in school. Wellness Courts funded by BIA help to reduce recidivism by providing options for effective drug and alcohol treatment programs and cultural-specific assistance. BIA also staffs a Recidivism Coordinator in the Office of Justice Services who has been working closely with the Pueblos of San Felipe and San Ildefonso and judges from those Pueblos on juvenile recidivism. These judges also serve on the U.S. Sentencing Commission Indian Task Force, which has made recidivism one of their priorities.

BIA is also focusing on preventing the need for juvenile incarceration, through the BIA's School Resource Officer program, discussed above, which works to build trust with elementary and middle school age children in numerous Indian communities.

Juvenile recidivism could be further reduced through a number of avenues. A recently expired recidivism program provided the authorities and resources to assist in addressing juvenile recidivism. State notification to tribes when a juvenile who is a tribal member interacts with the justice system (including when the issue occurs off reservation) allows a tribe to coordinate with the state to provide resources to the juvenile to keep the juvenile from re-offending. The most pressing need, however, is the need to ensure access to services.

Juveniles within the state and tribal justice systems are in desperate need of services, such as mental health counseling, substance abuse counseling, vocational training, and life skills training. These items are often court-ordered if the services are available. At present, in many tribal courts, these services are not readily available. Additionally, detention facilities continue to face obstacles in obtaining medical and mental health treatment for adult and juvenile inmates. Likewise, Wellness Courts are in need of case managers and traditional mentors to assist juveniles in the system, particularly since traditional and community means are often more successful in addressing recidivism in the juvenile community.

Again, thank you for the opportunity to provide this statement. The BIA is committed to continuing its efforts in early intervention to reach youth throughout Indian Country and provide solution-focused and restorative approaches to minimize repeated engagement with the justice system. I look forward to working with the Committee on juvenile justice issues affecting our Native youth.

I am happy to answer any questions the Committee may have.

The CHAIRMAN. Thank you.  
Judge Abinanti.

**STATEMENT OF HON. ABBY ABINANTI, CHIEF JUDGE, YUROK  
TRIBAL COURT**

Ms. ABINANTI. Good afternoon to Yurok's Senator McCain.  
[Greeting in native tongue.]

I thank you for this opportunity to address you. I appreciate the words I have heard from you all today. The words I have heard from the staff people here are right and they have given you the information that you need to make a start. I appreciate that this is happening.

I would say the best information is always going to come from the people you are trying to help. When you look at the situation in our homes and our homelands, the border towns, including those children, the rural areas in America are suffering. They are suffering because we are not given enough help. I do not want anybody's children left behind because it is not right. It is not the world's way and it is not ever acceptable to any of us.

As we help ourselves in the programs we set up and I try to set up, I try to work with the children who come before me, all of the children. I feel a responsibility to them, as you must also.

I would say looking at all those numbers, they are horrible numbers, they are not just numbers; they are children. They have names and faces. We need to say what can we do to keep this from having? A lot of it is going to be related to education and helping put out teams, as the Bureau indicated, to help our children stay in school. You cannot run any nation in the world now with 11-year-old dropouts. I have more 11-year-old dropouts than you ever want to know.

That cannot be allowed to continue. It needs a strengthening of infrastructure in the villages. We were invaded a long time ago, we picked up a lot of bad habits and bad things have happened.

We are ready to walk away from that and walk into the future with our partners in our rural communities, to try to say to each other this is what we need to do to go forward. We need to work with each other. These programs need to be available to all of our children in these schools to move forward. We cannot have the truancy rates that we have now and expect anything good to happen because it will not.

When I talk about infrastructure, I am talking about what happens when you have a village, you have an invasion and you have now. Today, you call the village an infrastructure. You have to know these children and you have to get them to school. You cannot have them wandering around during the day. You cannot have them unhappy.

As talked about, historical trauma was a real event and those real events result in real behavior. We must learn, as the adults in their community, to overcome that behavior so we can help them through their schooling so they are prepared to come here, talk with you, work with you, and help this Country move forward.

When we look at the concepts of restorative justice and working together, truly we are looking at taking responsibility. To me, that is what I mean as a Yurok when I say restorative justice. We are responsible to and for, and you must exercise that to be a Yurok. There is no other way. That is my expectation of you. That is what you will do.

We need help to do that. We need help for our adults to learn how to do that and how to keep their kids in school. It is not something we had. Somehow, people skipped over all that learning process and expect us to do it. It does not happen that way.

You have to create an infrastructure that supports it. I am saying all these numbers, all these facts, all of those were true, but when you look to an infrastructure, look to one that creates a systemic change for our children. In my mind, that has to be related to the schools.

Thank you.  
 [The prepared statement of Ms. Abinanti follows:]

PREPARED STATEMENT OF HON. ABBY ABINANTI, CHIEF JUDGE, YUROK TRIBAL COURT

### **Introduction**

Good afternoon Chairman and distinguished Committee members. I am Abby Abinanti, Chief Judge of the Yurok Tribal Court, and I am a Yurok Tribal member. I am a graduate of Humboldt State College and the University of New Mexico School of Law. When I was admitted to the California State Bar in 1974, I was the first California Native woman admitted to the California State Bar. I am one of a very limited number of attorneys who have been practicing tribal child welfare law since prior to the 1978 enactment of the Indian Child Welfare Act. I served as a California Superior Court Commissioner for the City and County of San Francisco assigned to the Unified Family Court for the 18 years before retiring in September 2011. I have continued to serve as Chief Judge for the Yurok Tribal Court since my appointment in March 2007, and run the Yurok Tribal Court's Wellness Court Program. Additional tribal court experience includes serving as Chief Magistrate, Court of Indian Offenses, for the Hoopa Valley Indian Reservation from 1983–1986 and as a Judge by special appointment for many other tribal courts including Shoshone-Bannock Tribal Court (1985), Hopi Tribal Court (1986), and Colorado River Indian Tribe (1994). I have served as the President of the Board of Directors of the Tribal Law and Policy Institute since its establishment in 1996.

The Yurok Tribe is the largest federally recognized tribe in California. The Tribe's reservation, the second largest in California is located on the lower Klamath River in Humboldt and Del Norte Counties in Northern California. The Yurok Reservation extends for one mile on either side of the Klamath River, from the Pacific Ocean at the mouth of the river to upstream approximately 45 miles to just above the Yurok village of Weitchpec and the confluence with the Trinity River.

While our tribal membership is approximately 6,200, there are more than 10,000 Yurok descendants living on the reservation and throughout the most rural areas Del Norte and Humboldt Counties. The Tribe has a very active culturally based Tribal Court and Education and Social Services Departments that provide services to Yurok families, including youth and juvenile delinquents. The Tribe works closely with Del Norte and Humboldt Counties to provide services.

As my testimony will explain, the GAO report is a positive step toward gathering information and data regarding Native American youth in involvement in the justice system and grants to support such work. There is a great need for more accurate data regarding tribe specific juvenile involvement. This Committee should consider authorizing a pilot project to develop data collection systems to track Native American juvenile justice statistics. Further, there should be an increase in educational grants to tribes directly as a means to prevent juvenile delinquent behavior. Finally, if efforts through education fail, and Native American youth find themselves in the justice system, Tribal Courts are best suited to provide restorative justice that leads to positive lifelong results. Federal funding to support tribal courts in PL-280 states should be increased as well as tribal court jurisdiction to process juvenile claims.

### **Discussion**

#### *I. More Data Is Needed Regarding Native American Youth In Justice Systems*

As the GAO Report on "Native American Youth Involvement in Justice Systems and Information on Grants to Help Address Juvenile Delinquency" notes accurate figures as to juvenile justice issues in Indian Country are hard to obtain. The lack of data regarding Native American juvenile incarceration remains lacking and is an obstacle to finding solutions. For example, looking only at P.L. 280 states, such as California, there is little data available because State systems are not required to accurately report tribal contact/incarceration rates for juveniles or adults. The question of whether an arrestee is Native American and if so, what tribe are not an arrest intake questions. Tribes in adult matters can access public records and go through the tedious process of "hand" reviewing all arrests to discern tribal affiliation. As to juveniles, however, the Tribes are left to having parents, caretakers (including foster care parents) report to the Tribes—only when and if they seek the assistance of the Tribes. The Yurok Tribe has resorted to inferential reporting primarily by looking at school related figures and/or foster care referrals which are compiled on a more reliable basis. While this helps, states should be required to collect tribe specific data and then share with the tribe to more accurately understand the scope of the problem of Native American youth in the justice systems. A critical step in collecting data is federal grants to support pilot programs for developing



data collection systems in Native American juvenile justice. We strongly urge this Committee to develop such a pilot program.

## *II. Juvenile Justice In Yurok Country*

The Yurok Tribal Court does not currently have a delinquency court or the staff to manage a juvenile detention or treatment center for juvenile youth. Truancy court is handled in Del Norte and Humboldt as criminal courts, such that parents can be jailed if their children are truant. Juvenile Justice and truancy is an area that both counties are interested in creating joint jurisdiction court with the Yurok Tribe.

Del Norte and Humboldt Counties have identified that Native American children are at greatest risk of maltreatment based on the disproportionate number of Native American children in foster care in both Counties. Though the Native population of both Counties does not exceed 9 percent, the rate of Native children in foster care has been as high as 40 percent and continued to be high in 2018. The Yurok Tribe represents the largest population of children in foster care within both Counties. Educational results for foster children show that these children are at substantially higher risk than the children who are not in this system.

Yurok tribal members make up about 25 percent of those in local jails on any given day, or one out of four inmates. By comparison, Yurok make up 6 percent of the Humboldt County total population, and 5 percent in Del Norte County. This means we are over-represented in the local criminal justice system at a rate up to 5 times our share of the population. In addition, our counts indicate that Yurok tribal members are 11 times more likely to be incarcerated in the local jail than the average American. In addition, the response rate (911 calls etc.) in rural California is considered the worst in the nation and the Yurok Tribe is located in the most impoverished and rural communities within these poor rural counties. The Yurok Tribal Court attempts to track adult members incarcerated in the local county jails.

Equally disturbing are the increasing numbers of Yurok adult women incarcerated. (Many of these women are parents.) In 2015, women made up 9.5 percent of those held under the jurisdiction of state or federal correctional authorities in the United States, including jails, prisons and the supervision population (Bureau of Justice Statistics, National Prisoner Statistics, 2005–2015). Yet, women make up approximately 30 percent or three out of every ten Yurok offenders in the local jails, and this figure does not include those on probation, which would only increase the female share of tribal offenders. This means tribal women are five times more likely to be incarcerated than their non-Native peers. The Yurok Wellness Court and Victims Advocate Program have partnered to offer girls programming to address the issue of increased involvement of young women in truancy behavior, and criminal behavior. Advocates seek to assist families who bring these young women to the attention of the Court either because they are in foster placement or because they are co-referred to the delinquency court. The Youth Court will maintain contact with youthful offenders even when they are placed out of state through Wellness Court hearings. (After care services are minimal.)

With additional funding and jurisdictional authority, the Tribal Court could develop a delinquency court that holds children, parents (native and non-native) accountable, and provides critical culturally appropriate support programs. Doing so has been a long term goal of the Tribe reflected in part by H.R. 3847, the Yurok Lands Act. The bill, if made law, would provide critical support for the Yurok Tribe's governmental services, including the Tribal Court.

## *III. Education and the Juvenile Justice System*

Children on the Yurok Reservation attend schools in the State of California Klamath-Trinity United School District. There are two elementary schools on the Yurok Reservation. Children must attend off-reservation middle and high schools, as much as 60 miles away from their homes. The Tribe has an education department that works closely with the schools serving Yurok children. Unfortunately, these schools have largely failed Yurok students; most of them dropping out in middle school, and a small percentage of those making it to high school, actually graduate.

The high school dropout rate is as high as 80 percent for incarcerated juvenile delinquents. To avoid dropping out, several juvenile delinquents attend local continuation schools. Yurok students make up a disproportionately high percentage of students in continuation schools. These schools support high-risk students. While Yurok students may graduate, their attendance at these schools means that they were most likely involved with the juvenile justice system or suspended or expelled from traditional schools. More concerning is the undocumented truancy issues due to illness or lack of transportation that leads to falling behind in school curriculum,

which generally leads to behavior problems, truancies, and a downward spiral to juvenile delinquency.

The Tribe strongly believes that early intervention into truancy and behavior problems at schools is the best prevention measure for juvenile delinquency. The Tribe has several education programs including tutoring, school transportation services and many others offered to help students. Tribal control of education to provide culturally appropriate instruction and activity is key. In addition, the Tribe was featured in Anna Deavere Smith's 2016 Broadway production "Notes from the Field: Doing Time in Education," which was culled from more than 200 interviews centering on the realities of the U.S. education and justice systems that push poor students from schools to prisons. Directed by Leonard Foglia ("Master Class"), "Notes from the Field" had a run at the American Repertory Theater in Cambridge, Mass. prior to the run at Second Stage on Broadway. (An earlier version of the show, directed by Leah C. Gardner, played at Berkeley Rep last year.)

This anecdotal representation concerned a young man who had started his interfacing with justice system at the age of 8, and was on his third strike by the time the Yurok Tribal Court intervened to successfully divert him from the criminal justice system. (See also "Tribal Justice" a documentary film by Anne Makepeace produced in 2017 which highlighted this case and others in an effort to show the advantages of locally controlled tribally justice systems.) Anecdotal information while illustrative has not allowed us to secure the funding needed to make long term improvements. The Tribe is capable, with assistance of establishing data collection and remediation programs that can and will prove the value of our efforts. We can only do so with the assistance of federal funding in educational areas that is sufficient to provide systemic interventions.

#### *IV. Opioid Crisis In Yurok Country*

The Yurok Tribe is also a plaintiff in *Yurok Tribe v. Purdue Pharma LLP et. al.* an opioid class action lawsuit. This case details the horror that has been inflicted on our families by this latest epidemic. Much of this harm has been introduced by opioid manufactures and distributors and medical providers and is having a significant impact on minors and family units. The details of that harm is set out in the complaint. In sum, the Yurok Reservation community has one of the highest opioid usage, addiction, and overdose rates in the County. As a result, Yurok family units are being torn apart. Children often don't have healthy parents or other care providers which results in increased likelihood of juvenile delinquent behavior.

#### *V. Increase Education and Juvenile Delinquency Grant Funding for Tribes*

The Tribe is severely limited in it's approaches by piecemeal justice initiatives which must interface with the State court system. Over 90 percent of our funding is federal based, that means we must compete for pilot project and ongoing program funding once we discover causation issues in the hopes of establishing corrective/sustainable measures to make systemic changes. It is clear from this brief summary that our educational issues need to be addressed in a serious comprehensive manner if we wish to address juvenile delinquent behavior and the resultant long term effects which lead to lifelong involvement with the justice system and failed communities.

Pilot projects which are systemically motivated e.g., educational interventions that target suspensions/truancy and parental/caregiver interventions can yield long term benefits. There is no shortcut to reversing the harms of inadequate educational responses. (There are many reasons education is problematic in our community including the historical intergenerational trauma of boarding schools.) However, it is a better approach to strengthen the family/community/tribal child to lessen the number of young people whom are being sentenced to facilities for unacceptable behaviors. Re-entry issues can and should be treated differently and require additional staff; too often aftercare planning is neglected as the treatment is treated as incarceration completed with no follow up which leads to the defeat of recidivism.

Systemic pilot projects can be created as community demonstration projects designed to reverse trends. Or we can continue to proceed with program funding for limited impact programs in the hopes that community wide solutions can grow from limited impact programming. The truth is, however, that infrastructure is needed. It can be postponed but it can not be avoided.

#### *VI. Grant Programs Mentioned in the GAO Report the Yurok Tribe has Applied for and Received or Been Denied*

Yurok has received a number of the grants some of which are addressed in the GOA report that we are grateful for, but we have significant unmet needs in the area of juvenile justice. Below is a list of Grants that the Yurok has applied for and were either awarded or not.

2014

FEMA Public Safety—funded BIA Public Safety—funded

2015

DOJ 2015 Combined Tribal Assistance Solicitation—awarded DOJ O V A W A Grants to Encourage Arrest Policies & Enforcement of Pro of Protective Orders—awarded HumCo Police Office & Juvenile Probation Officer—not awarded HUD Klamath Glen Youth Center—not awarded I WOULD MOVE THE PENDING TO THE BOTTOM OF THIS LIST N7 Yurok Youth Recreation Program—pending HAF Yurok Youth Cultural & Environmental Stewardship Program—pending Youth outside Yurok Youth Cultural & Environmental Stewardship Program—pending

2016

YT Environ Stewardship Mentoring & Skill Building Program—Education—not awarded YVFD & YTEP Measure Z Funds—tribal police—not awarded Yurok 2016 DOJ-BJA CTAS—tribal court—funded Basketball uniforms—funded

Yurok Healing Families Program—tribal court—funded Grants to Exercise Special DV Criminal Jurisdiction—tribal court—funded

2017

Youth Center Remodel (Bates Bldg.)—funded Substance Abuse Treatment Capacity in Adult Wellness—not funded USDA Youth Center Equipment—Not funded 2017 DOJ CTAS—Purpose Area 1,3,5, & 6—tribal court—funded Conserv Trails to Traditional Ecological Knowledge—funded HUD Ke'pel Head Start—Not funded Girls & Young Women's Support Group—Wietchpec—funded Archie Thompson Sr. Baseball field-Klamath—not funded

2018

PFC & Tribe Youth Leadership Project- Playground—funded DOJ CTAS Yurok CTAS FY 2018 A1, A3, A4, A6, and A7 First nations language immersion emersion—Future Teacher Program—not funded DOJ Yurok Opioid Affected Youth Initiative—Pending Yurok Youngest Opioid Victims Assistance (YOVA) Project—pending

#### *VII. Culturally Appropriate Prevention, Response, And Re-Entry*

In recent years the Tribe's membership/leadership has renewed their commitment to reinvigorating our culture. We survived a horrendous/debilitating invasion that created many hardships heretofore unknown to the People, some of those hardships continue or new ones arise. However, the People have a core strength and a worldview that focuses on our responsibility to and for ourselves, our lands, all the beings in our world and our neighbors who also are struggling in a time of concern for all. We do not intend to walk away from any of those cultural responsibilities. We are stronger every year as we increase our cultural participation and return to our responsibilities in dance/language and stewardship.

#### **Conclusion**

Thank you for the opportunity to testify to the Committee. The GAO report is a positive step toward gathering information and data regarding Native American youth in involvement in the justice system and grants to support such work. There is a great need for more accurate data regarding tribe specific juvenile involvement. This Committee should consider authorizing a pilot project to develop data collection systems to track Native American juvenile justice statistics. Further, there should be an increase into educational grants to tribes directly as a means to prevent juvenile delinquent behavior. Finally, if efforts through education fail, and Native American youth find themselves in the justice system, Tribal Courts are best suited to provide restorative justice that leads to positive lifelong results. Federal funding to support tribal courts in PL-280 states should be increased as well as tribal court jurisdiction to process juvenile claims involving native and non-native parents.

The CHAIRMAN. Thank you, Judge.

Ms. ROLNICK.

#### **STATEMENT OF ADDIE ROLNICK, PROFESSOR OF LAW, WILLIAM S. BOYD SCHOOL OF LAW, UNIVERSITY OF NEVADA**

Ms. ROLNICK. Thank you, Chairman Hoeven, Vice Chairman Udall, Senator Cortez Masto, for your attention to this issue, for

asking me to come here today, for ordering the report, and for your work on TLOA II which has some very important provisions in it. I want to thank the Pomonkey and Piscataway people whose land we are on.

Judge Abinanti, I learn from your writing, judging and advocacy every day. I feel lucky to sit next to you here.

I want to focus on the report and I will answer questions about anything else if you like.

It is an important report. Two of the major findings in the report are that Native youth involvement in the State and Federal systems at least has declined and that there are more than 100 Federal grants available that could be used to address Native youth.

It might be tempting, based on that information, to conclude that things are fine. I caution you, and I think you all understand this, against such a conclusion. Here is why.

Starting with State systems, justice system involvement, arrests and beyond that has declined for all youth. The findings here are consistent with that. It is unclear exactly why this is but I know organizations like the Juvenile Detention Alternative Initiative has been involved with States trying to bring down the general use of detention and incarceration.

This is good news but there is some evidence it is not reaching Native youth and the disparities faced by Native youth are persisting. Even though all youth are being detained and confined at lower rates, the disparity between Native and White youth is getting bigger in some places.

What is in the report is consistent with what I have found in other research, that Native youth continue to face significant disparities at several points in the system. It has never been worse at the point of arrest. Native youth are not generally overrepresented at arrest. They are in a few States, but that is not the biggest disparity.

There are a few offenses for which they tend to be arrested, usually alcohol-related offenses more often. Otherwise, that is not where they are overrepresented. Where we see it is at pre-adjudication detention and post-adjudication confinement. They continue to be overrepresented at those stages.

That is particularly worrisome because if they are coming in for alcohol-related and low level offenses, you might expect they would be more likely to be diverted out of the system and they would be more likely to not be detained or confined. In fact, the opposite seems to be happening in State systems.

The report also makes clear that we cannot really see anything at the national level. We have to look at the State and even the county levels. When we look at States with large proportional Native American populations, we see, for the most part, the higher the percentage of the population is Native in the State, the larger minority population is Native youth, the worse they do.

This suggests to us that Native youth are facing some of the same disparities at the same level as we associate with African-American youth, but it only shows up when they are the biggest minority in the State.

An interesting exception to this, I do not know what is behind it, is that New Mexico has a large portion of Native youth and they

seem to do better in terms of disparities. At all of the stages, they are one of the States where Native youth are underrepresented at arrest and confinement.

One thing I know is that New Mexico is one of only two States with the tribal notification law. They have a State law requiring State officials to notify tribes when children come into the system.

I think there is a lot to look into about how that law is working but that is something I think all States should do. Perhaps that is one of the reasons why they are doing a bit better with Native youth in their State system.

I also want to highlight the issue of status offenses which appears in the report but is not highlighted. There is some evidence that Native Youth are really overrepresented in arrest, detention and confinement for status offenses.

These are offenses that would not be crimes if adults committed them, things like running away from home. Native girls are even further overrepresented among those children. This is a real concern, especially because Federal law says that you are not supposed to lock kids up for status offenses, ever.

If Native youth are being locked up pre- and post-adjudication and placed out of the home at higher rates than other youth, something is really wrong. I cannot say more because I do not know why it is happening, but it is a real issue of concern.

In the Federal system, some of this data is new to me and it is interesting that it looks like the numbers and proportions of Native kids in the Federal system have gone down. I am not sure why that is and I think there are questions to ask about it.

My greater concern is that we know very little about the qualitative experience of Native youth in the Federal system. We know very little about where they go and very little about what services they have.

I understand, although it is not listed in here, that the facilities where children are sent are contract State and local facilities in South Dakota, Texas, Pennsylvania and New Mexico. Some of those are secure and some are non-secure. I visited one of those. I think there are some big questions about what is happening to kids in that system.

The most important takeaways for me from this report are about youth in tribal systems and data collection. With regard to youth under tribal jurisdiction, the report underscores that we know almost nothing.

I do know the number of Native youth under BIA tribal jurisdiction in detention and incarceration has declined over the past 15 to 20 years but during the same period, the number of juvenile facilities has nearly doubled. We are or have been continuing to build detention facilities for fewer youth.

For a long time, this was an issue of where Federal funding was targeted and that may be changing. I hope it is.

I think many others have said this. With regard to funding, of the 122 programs, only 27 of those are specifically for tribes and Native youth. Tribes may be able to apply for the others but it is not clear to me that they can apply for direct funding. Sometimes they can only apply for pass-through funding from the State. They are competing against entities with much greater resources.

This report does not suggest to me there are plenty of resources for tribes. I know there are not. I think tribal leaders have been clear that they need flexible, independent funding for juvenile justice programs, that grants that are short term and insufficient to sustain an entire program are not going to allow tribes to develop the kinds of programs we need.

Finally, we are not going to ever have the data we need until the research and funding is focused on Native youth specifically. All the general efforts just miss them. They forget to count them. They do not know how to define them. We are totally unable to compare the numbers.

All the reform efforts, if they do not center tribes, meaning the tribes have the first say in what happens, the ability to direct other governments and are the primary beneficiaries of the funding, none of this is going to change.

Thank you.

[The prepared statement of Ms. Rolnick follows:]

PREPARED STATEMENT OF ADDIE ROLNICK, PROFESSOR OF LAW, WILLIAM S. BOYD  
SCHOOL OF LAW, UNIVERSITY OF NEVADA

Good afternoon Chairman Hoeven, Vice Chairman Udall, and Members of the Committee. Thank you for inviting me to testify today about Native youth in the juvenile justice system. My name is Addie Rolnick. I am a law professor at the University of Nevada, Las Vegas. For fifteen years, I have been engaged in research, advocacy, and tribal institution-building to improve juvenile justice for Native youth. I thank the Committee for its attention to such an important and oft-ignored issue and for requesting the comprehensive GAO report that we are here to discuss today.

I will focus my remarks today on the September 2018 GAO report entitled Native American Youth Involvement in Justice Systems and Information on Grants to Help Address Juvenile Delinquency. I also include here as an attachment my 2015 testimony before this Committee, which addresses this issue more broadly and contains detailed recommendations for legislative action.

#### **General Recommendations**

In 2015, I recommended greater tribal control over juvenile justice, more flexible funding for tribes, more stringent data collection and communication requirements for states and federal agencies, and more research. I reiterate those recommendations again today. After consideration of the GAO Report, I believe the most urgent priorities for Congress must be to:

- Fund targeted research on Native youth, particularly Native youth under tribal jurisdiction. This research should include mapping tribal systems, gathering data on youth outcomes, and evaluating promising tribal juvenile justice programs.
- Require better data collections and more transparency. Specifically, states should be required to collect data on tribal affiliation and should utilize a standard definition (or definitions) of Native American at every stage of data collection. The Bureau of Prisons should be required to disclose to tribes and to the public details about where children under federal jurisdiction are held and what kinds of services they receive.
- Change the law to make state and federal actors more accountable to tribal governments by (1) amending the Federal Juvenile Delinquency Act to require a waiver of tribal jurisdiction, and (2) require states to notify a child's tribe when that child enters the state juvenile justice system, a requirement that is essential for all Indian country youth and important for Native youth outside Indian country.
- Increase flexible, long-term/renewable grants available to tribes through a direct (not pass-through) funding arrangement. Funding for non-Native organizations desiring to work with Native youth should not decrease the funding available to tribes for the same purpose.

I would be happy to provide the Committee upon request with information on any other aspects of juvenile justice for Native youth. My research in this area is also set forth in the following publications:

- *Untangling the Web: Juvenile Justice in Indian Country*, 19 N.Y.U. J. OF LEG. & PUB. POL. 49 (2016), provides a comprehensive overview of Native youth under tribal, state and federal jurisdiction and sets forth specific policy recommendations.
- *Locked Up: Fear, Racism, Prison Economics, and the Incarceration of Native Youth*, 40 AM. INDIAN CULTURE & RESEARCH J. 55 (2016), investigates some of the factors, particularly federal funding incentives, that may contribute to over-incarceration of Native youth under tribal jurisdiction.
- *Native Youth and Juvenile Injustice in South Dakota*, 62 S.D. L. REV. 705 (2017), provides a snapshot of how the overall issues relating to juvenile justice affect tribal youth in South Dakota.
- *Recentring Tribal Criminal Jurisdiction*, 63 UCLA L. REV. 1638 (2016), describes why it is important and legally correct for tribes to be the first movers and decisionmakers in the context of criminal and juvenile justice, with state and federal jurisdiction functioning as a fallback.
- *A Tangled Web of Justice: American Indian and Alaska Native Youth in Federal, State, and Tribal Justice Systems* (Campaign for Youth Justice, July 2008) is a policy brief on Native youth in tribal, federal, and state juvenile justice systems.

### The GAO Report

The September GAO report provides an invaluable summary of available information on Native youth in the juvenile justice system from 2010–2016, including information on how many young people came under the jurisdiction of each sovereign, what offenses were committed by those young people, and what happened to them once they entered the system. I recently reviewed much of the same data for a report on Native girls and juvenile justice (the research was undertaken with the National Crittenton Foundation and was part of the OJJDP’s National Girls Initiative), and my commentary draws from that report, which has not been released. Having just finished my own summary and analysis of available federal data, I know that gathering and analyzing this information was not easy. The Committee and the GAO have provided an important service to Indian country by making it available in a single report. Bringing the data together yields several important insights, all of which are consistent with my own review of the data, including:

- The vast majority (89 percent) of Native youth under federal jurisdiction are boys.<sup>1</sup> Fewer than ten girls were arrested and entered the federal system each year during the study period.
- The districts of South Dakota and Arizona sent more youth into the federal system than any other districts.<sup>2</sup>
- Native youth are significantly over-represented at the arrest stage in the state juvenile justice systems of South Dakota and Alaska and at the post-adjudication confinement stage in North Dakota and South Dakota. South Dakota and Alaska have the highest proportion of Native youth of any state (15 percent and 20 percent respectively). Native youth make up nine percent of the youth population in North Dakota.<sup>3</sup>
- Native youth are under-represented at the arrest stage in the juvenile justice systems of New Mexico and Oklahoma and under-represented at the post-adjudication confinement stage in New Mexico. This is especially significant because Native youth constitute a relatively large share of the youth population in New Mexico (14 percent) and Oklahoma (12 percent).<sup>4</sup> These two states are also the only states which require state and local juvenile justice officials to notify and attempt to involve an Indian child’s tribe.<sup>5</sup> While this may be unrelated, further inquiry into the reasons for underrepresentation, and the possible role of tribal notification laws, is warranted.

The Report also suggests that Native involvement in the juvenile justice system has declined, and it details a range of federal funding opportunities that could po-

<sup>1</sup> Report, at 45.

<sup>2</sup> Report, at 22.

<sup>3</sup> Report, at 27 n. 41.

<sup>4</sup> Id.

<sup>5</sup> NM Law and Report, OK Law.

tentially be used for Native youth. I caution the Committee not to interpret the report as evidence that there is no need to address juvenile justice issues for Native youth. I explain the specific reasons for this in detail below.

*1. An Overall Decline in Arrests Tells Us Little About Whether Native Youth Are Being Treated Appropriately, Effectively, or Fairly*

The report includes some good news: arrests of Native American youth by state and federal law enforcement agencies appear to have declined somewhat steadily over the six-year period. This is consistent with an overall decline in youth arrests across all racial groups, which researchers have noted over the past decade. It is too early and the information too incomplete to know the reason for this decline, but if it reflects either fewer offenses committed or a turn toward addressing young offenders through less punitive measures, that would be a positive change. I note, however, that arrests appear to have declined consistently during the six-year period except for a brief uptick in 2015. The Report does not indicate why that year is an outlier, nor can it assure us that the decline will continue. Furthermore, as the Native organizations consulted for the Report pointed out, it is likely that state officials are under-counting Native youth or counting them in an inconsistent manner.<sup>6</sup>

A decline in arrest and referrals means that fewer Native youth are coming into the juvenile justice system than in previous years, but I caution the Committee not to conclude based on this report that there is no problem and no need for solutions and financial investment. In 2013 and 2014, two federal reports concluded after substantial inquiries that the juvenile justice systems serving Native youth were “failing” youth and “retraumatizing” them.<sup>7</sup> This has never been a problem of overall numbers. Native youth make up only 1–2 percent of the nationwide youth population,<sup>8</sup> so if relative attention is based only on total numbers, Native youth will always be ignored. In fact, this invisibility is part of what led to the current problem: the federal and state juvenile justice systems were not designed for Native youth, and Native youth fare poorly and are sometimes treated unfairly as a result. Tribal systems, which are designed for Native youth, are unsupported and understudied. There is little or no communication between jurisdictions and state and local officials are free to ignore or marginalize Native youth and tribal communities without legal or financial repercussion when setting juvenile justice policy.

*2. The Report Underscores the Lack of Reliable Data and the Need for Further Study, Especially of Youth in Tribal Systems*

As the Report notes, the existing information is incomplete and its dependability is difficult to assess primarily because of small overall numbers of Native youth and because of variation in how the category of Native American is defined across jurisdictions and agencies. Statistics on youth of color depend either on self-identity (what racial box a person checks on a form) or ascribed identity (how an authority figure decides to categorize a person). Both are especially complicated for Native youth. The U.S. Census counts American Indian and Alaska Native youth in two ways. The first category, “AI/AN-only” includes only those people who self-identify as American Indian or Alaska Native.<sup>9</sup> The second category, “AI/AN-plus” includes AI/AN-only people plus those who self-identify as American Indian or Alaska Native along with any other racial categories.<sup>10</sup> Including multi-racial people doubles the number of people in the AI/AN category nationwide (from 1 percent to 2 percent),<sup>11</sup> so accurate numbers require understanding which group forms the best baseline for the issue in question. State and local data may not distinguish between single-race and multi-race identifiers, making it difficult to tell who is being counted. Moreover, self-identity measures may also include many youth who identify as Native, but do not legally count as American Indian and may not be affiliated with any tribe, effectively overstating the number of youth who would be affected by a jurisdiction-based reform and potentially skewing statistics about the experiences of Native girls. There is evidence that, in some contexts, people who are not tribally affiliated and

<sup>6</sup>Report, at 29.

<sup>7</sup>Indian Law and Order Commission, *A Roadmap for Making Native America Safer* 149 (2013); Attorney General’s Advisory Committee on American Indian and Alaska Native Children Exposed to Violence, *Ending Violence So Children Can Thrive* 24, 59 (2014).

<sup>8</sup>Report, at 27 n. 41.

<sup>9</sup>Tina Norris et al., *The American Indian and Alaska Native Population: 2010, 2010 Census Briefs* (United States Census Bureau, 2012): 3–5.

<sup>10</sup>*Ibid.*

<sup>11</sup>*Ibid.*



who do not publicly identify as Native American will so identify on official forms, especially when given a multi-racial option.<sup>12</sup>

The legal Indian category, which includes youth affected by special tribal jurisdictional rules, does not depend on self-identity; it depends instead on tribal affiliation. The way the Native category is defined, including whether it relies on self-identity, official ascription, or legal Indian status, varies across jurisdiction, agency, and decision point. It is important to understand that we may be counting different young people each time we repeat a statistic about “Native youth.”<sup>13</sup>

The Report also contains very little information on Native youth under tribal jurisdiction, a population I estimate to be at least 1/3 of all system-involved Native youth. Many of the national datasets used to measure risk factors, system involvement, and outcomes among youth in the delinquency system do not gather data from tribal law enforcements agencies, tribal courts, or tribal facilities. If they do include tribal agencies, they may only receive data from a handful of tribes. The Bureau of Justice Statistics plans to conduct a census of tribal law enforcement agencies and recently finished collecting data for an update to its survey of tribal court systems, which was last conducted in 2002. Each will collect data from approximately 300 tribal agencies.<sup>14</sup> Without tribal data, it is also difficult to know how well tribal systems are meeting young people’s needs and which reforms may be needed there.

There is currently no single source of information on youth who are involved in tribal juvenile justice systems but are not held in secure confinement, and there is scant documentation of the types of non-detention options available in tribal justice systems. In addition to a national picture of these young people, there is a need for in-depth case studies of individual tribal juvenile justice systems. Such studies will yield more detailed information about Native youth under tribal jurisdiction, identify variation among tribes and regions, and help identify the programs and practices that work for Native youth, including Native girls.

### 3. *The Report Suggests that Racial Disparities in Detention and Confinement Persist in State Systems*

According to the Report, Native youth are over-represented at the arrest stage in the justice systems of seven states.<sup>15</sup> This over-representation was at least five percentage points higher in four states and at least 15 percentage points higher in two states. The states with the worst disparities (Alaska and South Dakota) are also the states in which Native youth make up the largest share of the population compared to other states.<sup>16</sup> Three of the states in which Native youth are over-represented (Alaska, Minnesota and Oregon) are Public law 280 states, which means that those states have jurisdiction over Native youth within and outside of Indian country.

This over-representation is significant because, at the national level, available data over the last 10–15 years has shown that Native youth are arrested at largely the same rates as other youth. They are, however, over-represented in arrests for certain offenses, generally low-level and alcohol and drug related offenses. The report confirms this as well: Native youth nationally are over-represented among arrests for alcohol offenses, and the top four offenses for which Native youth were arrested were larceny/theft, alcohol-related offenses, assault, and status offenses.

Greater disparities emerge at the pre-adjudication detention and post-adjudication confinement stages. Given the offenses for which Native youth are most likely to be arrested, one might expect that they would be under-represented among youth who are detained, placed out of home, and confined. This is because juvenile justice expert agree that detention and confinement should be reserved for violent and serious offenders. Yet, the Report indicates that Native youth are over-represented

<sup>12</sup>D’Vera Cohn, “American Indian and White, but not ‘Multiracial,’” *FactTank: News in the Numbers*, Pew Research Center, June 11, 2015, <http://www.pewresearch.org/fact-tank/2015/06/11/american-indian-and-white-but-not-multiracial/>.

<sup>13</sup>The authors thank Neelum Arya for insight on the issue of how Native youth are counted in juvenile justice statistics.

<sup>14</sup>*Tribal Crime Data Collection Activities*, 2017 (United States Department of Justice Bureau of Justice Statistics, 2017).

<sup>15</sup>These states are: Alaska, Minnesota, Montana, North Dakota, Oregon, and Wyoming. Report, at 33.

<sup>16</sup>Report, at 27 n. 1.

among youth in *post-adjudication confinement*<sup>17</sup> in 16 states.<sup>18</sup> This over-representation was at least 5 percentage points higher in six states and at least 15 percentage points higher in North Dakota and South Dakota. The Report does not focus on pre-adjudication detention, but my own research has shown that, despite the overall decline detention for all youth, the Native-white disparity in detention has in some cases worsened.

Of particular concern is the relationship between status offenses and out of home placement. The Juvenile Justice and the Tribal Law and Policy Institute issued a report in 2014 finding that Native youth are more likely to be detained and placed out of home for status offenses than other youth.<sup>19</sup> We found that this disparity was apparent at both the detention and confinement stages, and that it was even greater for Native girls. This should be an area of serious concern, as federal law prohibits locking up youth for status offenses and experts recommend against out-of-home placement.

Finally, as the Report notes, Native involvement in state juvenile justice systems was greatest in states with a higher-than-average Native youth population.<sup>20</sup> This suggests that, where Native youth are visible, they not treated fairly by the justice system. Indeed, my research suggests that while overall rates of youth involvement in the justice system may be declining, the disparities faced by Native youth are in many cases worsening.

4. *The Report Reveals a Substantial Reduction in the Number of Native Youth in the Federal System, but Does Not Provide Details About the Kinds of Placements, Programs, and Services Available to Youth Under Federal Jurisdiction*

The Report's findings on Native youth in state and local systems are generally consistent with my own findings. The data included for the federal system, however, is new. Because the Bureau of Prisons and federal law enforcement agencies do not make data publicly available, the latest publicly accessible data for youth in the federal system was from prior to 2011.<sup>21</sup>

The data presented show a striking decline in the number and share of Native youth under federal jurisdiction. For example, the number of Native youth arrested by federal officials in 2016 is one third of what it was in 2010.<sup>22</sup> Native youth also appear to make up a much smaller share of youth in the federal system at every stage than they did in previous years. Table 5 shows the percent of youth in the federal system who were Native American at the custody/detention, adjudication, and post-adjudication confinement stages for 2010–2016, and at no time did Native youth make up more than 30 percent of all youth in the federal system. By contrast, Native youth accounted for about 40 percent of youth arrested by federal officials between 1999 and 2008.<sup>23</sup> While it is possible that the differences between the 2011 report and the 2016 report are due to methodological or dataset variation, or to a larger number of non-Native youth entering the federal system, the Report suggests that it is due instead to an overall decline in Native youth under federal jurisdiction. I am cautiously optimistic about this, but I encourage the Committee to inquire further with the responsible agencies and affected tribes to determine the reasons for such a change.

The Report does not include information about where young people under federal jurisdiction are held and what kinds of programs and services are available to them. The Bureau of Prisons does not directly operate any juvenile facilities, so youth are sent to one of the state, local, or private facilities with which BOP contracts. The Report indicates that BOP oversees eight such facilities, but does not name them or describe their location or characteristics.<sup>24</sup> We still know very little about the qualitative experience of Native youth under federal jurisdiction. This is frustrating because federal agencies have this information, but do not make it widely available.

<sup>17</sup> Confinement data used in the report is based on the Census of Juveniles in Residential Placement, but the Report authors excluded youth who were being held pending trial or adjudication. Report, at 27 n.40.

<sup>18</sup> These states are: Washington, Oregon, Utah, Nebraska, Oklahoma, Iowa, Wisconsin, Mississippi, New Hampshire, Maine, Montana, Wyoming, North Dakota, South Dakota, Minnesota, and Alaska. Report, at 35.

<sup>19</sup> Coalition for Juvenile Justice & Tribal Law & Policy Institute, *American Indian/Alaska Native Youth & Status Offense Disparities: A Call for Tribal Initiatives, Coordination & Federal Funding* (2015).

<sup>20</sup> Report, at 21.

<sup>21</sup> William Adams, et al., *Tribal Youth in the federal; System, Final Report (Revised)* (2011).

<sup>22</sup> Report, at 21.

<sup>23</sup> Adams, at 39.

<sup>24</sup> Report, at 45 n. 55.

5. *The Review of Available Grants Illustrates the Continuing Need for Flexible, Consistent Funding for Tribal Juvenile Justice Systems*

To adequately address juvenile delinquency in a manner that reflects tribal community priorities, cultural practices, and geographic circumstances, tribes must have access to flexible, stable funding for all aspects of tribal juvenile justice systems, particularly treatment and alternatives to detention. The Report details more than 100 grant programs that could be used for Native youth. However, of the grant programs described in the report, very few are targeted to Native youth and/or available to tribes as direct applicants. Many of them are short-term grants and provide only a small amount of funding. These are not the kind of grants that allow tribes to create and sustain innovative programming. In addition, many of the listed programs have not been funded since 2015. The list of potential programs is informative, but it should not be viewed as evidence that tribes are receiving the resources they need; they are not.

The article *Native Youth & Juvenile Injustice in South Dakota* by Addie C. Rolnick has been retained in the Committee files and can be found at <http://scholars.law.unlv.edu/facpub>.

The CHAIRMAN. Thank you, Ms. Rolnick.

We will now have five minutes rounds of questioning.

This is a question for all of you. The GAO report highlighted risk factors and challenges Native youth face. It also discusses the difficulties of examining this particular problem in Indian Country due to the lack of data and inconsistent tracking of the Native status of youth in the juvenile system.

For this reason, Senators McCain, Barrasso, Daines, Murkowski and I co-sponsored the Tribal Law and Order Reauthorization and Amendment Act of 2017, S. 1953. How do you think this bill will help address the issues raised in the GAO report?

We will start with you, Dr. Goodwin.

Dr. GOODWIN. Thank you, Senator.

As everyone suggested, and as we found in our report, some of our major challenges with pulling together the report had to do with data and what kind of data was out there and available.

We reached out to DOJ officials, also talked to Native American organizations and tribal communities to give us a sense for why we were seeing what we were seeing. You are correct. One of the things the tribal organizations said to us was they were concerned that whatever we were seeing, the numbers might be under-reported because when a youth comes into contact with a law enforcement entity, they might not be collecting their Native American status. We are very clear about that in our report, that there are concerns that what we found in the data might be under-reported.

The legislation you are putting forward could be helpful, but we also have to be mindful that we are talking about youth. Some of the information and data around the youth cannot be made publicly available.

When we were doing this report, we had numerous conversations with people at DOJ. It took us a while to get the data we got because we had to assure them we would maintain the confidentiality of that data.

As we move forward, we really do need to have a discussion about how can we pull together the data in such a way that we can get some of these questions answered and alleviate some of our concerns while also maintaining the confidentiality of the juvenile data we have.

The CHAIRMAN. But they need to track that data and provide it, right?

Dr. GOODWIN. I would say that would have been really good for our report if we had at least had a tracking. Another issue that came up was we were not able to track the youth across the phases of the process, the number of different data systems or data sources that we used in order to at least see where the youth are at certain points in time. The way the data is set up right now, you cannot track across.

We might not see you at arrest, adjudication and confinement if we are only looking at one system. That is an issue. Your proposed legislation would start to alleviate some of those concerns.

The CHAIRMAN. Ms. Harp.

Ms. HARP. I think when we talk about the data and limitations with it, there certainly are problems. That is clear on its face. Part of it, though, is these collections of data are voluntary; there is no requirement that the tribe collect and report them.

We have the complexity back and forth of the jurisdictional issues. That is a challenge for us. There are infrastructure problems, as we have discussed, data infrastructure problems.

I think certainly the department would be willing to sit down, look at the Act and figure out how it might work, make sure we honor the sovereignty of the tribes but at the same time, balance unintended consequences or against the advances we could make with a good data collection system.

The CHAIRMAN. Deputy Assistant Secretary Tahsuda.

Mr. TAHSUDA. Thank you, Mr. Chairman.

The question of the lack of data is a little unique for us, I guess I would say, because we deal specifically with Indian kids, primarily on the reservation or in Indian communities. If it is data about whether they are Indian or not, we have pretty good data on that because that is mostly everyone we deal with.

What I think we actually do a pretty good job on is the data we think is important for us in dealing with the juveniles, particularly focused on recidivism. When they come into our system, when they come through the tribal courts, we track them to the tribe. When they are placed in the facility, we try to keep that child connected to their tribal community as well as their family.

The success that we have in reducing recidivism is because of that track, we are able to not only connect them culturally, but also to provide education. When they leave the facility, they are connected with an education institution they can continue to follow through with.

However, the challenge for the entire system is that we do not actually have that many juveniles in our system. The vast majority of Indian juveniles are in either State, local or Federal facilities. We do not have the connection with them that would be helpful, I think.

I find it really interesting and instructive with New Mexico having their system and, at least anecdotally, maybe that is affecting positively their ability to reduce the number of juveniles in the system.

Maybe if we had better communication with other systems, like the State or Federal systems, with these children, we could help

out in making sure they are connected while they are in the facility and renew their family and community connections once they leave. I think that would be a big positive impact for them.

The CHAIRMAN. Judge?

Ms. ABINANTI. That is true except in Public Law 280 States where our children are incarcerated by the State and the figures do not go up. As you are aware, California has the largest Native American population and is a 280 State.

In addition, I think as we start to gather that data, you will see more and more youth incarcerated in adult prisons in the age group of 18 to 23 because there is a common look away from the kids until they are old enough to lock them up because we do not have enough for juvenile detention. That is across the Country.

You are going to see an upswing in that age group of people being incarcerated. We are seeing it. I imagine that is going to spread out. Where that goes, I do not know but it is happening.

The CHAIRMAN. Ms. Rolnick?

Ms. ROLNICK. Thank you.

I really appreciate the inclusion of any juvenile provisions at all in the Tribal Law and Order Reauthorization and Amendment Act. It is hard to get attention to juvenile issues, so I appreciate the Committee's attention there.

There are two provisions I think are particularly helpful. I also have a suggestion for additional pieces.

One is the inclusion of agencies that work with Native youth on the Coordinating Council for Juvenile Delinquency Prevention. That council having the inclusion of officials from Federal agencies that work with tribes is going to be a lot more helpful, I think, in including Native youth.

I do not know why I did not know this before but I just recently learned that the Fact JJ, the council in juvenile justice, is the organization of State advisory groups that advises on juvenile justice and you have to be on a State advisory group in order to be on that council. That also should include tribal leaders.

There is no way that tribal voices are going to be heard at the juvenile justice level if they cannot be in the room with the State advisory group leaders, being on that council.

The other provision I think is really important is the amendment to the Federal Juvenile Delinquency Act that would basically require Federal prosecutors to get a waiver of tribal jurisdiction, as they have to do with States, before they proceed against Native youth.

It does not mean you cannot take Native youth to Federal court, but it requires some coordination with the tribe so it allows the tribe to direct how the resources are being distributed. It avoids a double prosecution in which the tribe and the Federal Government go after the same kid maybe with different purposes.

I think it is equally important or maybe more important given the numbers the States have to do that too. The States need to minimally collect the data about whether and what tribe a child is from. They should also be required to notify the tribe. As Judge Abinanti said, that is essential for tribes in PL-280 States.

All of their children, even the children on the reservation, are in the State system. If the State does not have to talk to them at all

about what is going on with those children, then the tribes will not be able to do anything.

The CHAIRMAN. Thank you.

Vice Chairman Udall.

Senator UDALL. Thank you, Mr. Chairman.

Professor Rolnick, when we spoke at this Committee's last juvenile justice hearing, we discussed the Santa Clara Running Club, a running program that involves people of all ages at Santa Clara Pueblo in New Mexico. The program promotes health, community, culture and, as you pointed out, serves as sort of a preventive juvenile justice initiative for the Pueblo.

Can you talk more about the importance of protective and preventive programs such as this running club? Can you give us examples of other preventive programs that exist throughout Indian Country?

Ms. ROLNICK. Thank you.

I wish I could give you examples. What I have found is that at this point, until I take the time and raise the money to travel out regularly to all of the different reservations, I am not going to be able to give anymore examples. There is no data I can sit there and collect on these programs so it is what I go out and see.

However, I really appreciate your words earlier about the importance of preventive programs but you said programs that are outside the rubric of juvenile justice. I think that is a really important point.

The more that I visit tribes, I think there are some youth committing violent crimes, but I think I have yet to see any on a visit. I have been to jails and the kids there are usually there for drinking. There was no one to pick them up and no where to put them, so they are still in a jail.

It seems like if these kids are not getting in a lot of trouble, I think a lot of tribes, I do not want to speak for the tribes, but they could have an entire system that was not even a juvenile justice system. It would be all of these other programs.

There would be running clubs and it would be housing. If they could handle the problems they were having with their kids not just any kind of incarceration, but maybe any kind of juvenile justice system at all. We are not seeing kids who are getting in a lot of trouble. We are seeing kids who could be helped in other ways.

It is unfortunate that the only way we know how to deal with children is once they start getting in trouble, pulling them in under a court. I think it is really important that you highlighted that program and noted that those kinds of programs are probably more important.

Senator UDALL. One of the points I was making here is by using cultural knowledge and traditional practices, many Native youth have been able to successfully reintegrate back into tribal communities and heal their trauma and what they have been through.

Have you seen that, Judge, in your experience?

Ms. ABINANTI. I think that is true. I think now there is an increasing movement. There is a new book out by Catia Riesling Balding who is from the north in California talking about the return of coming of age ceremonies for girls. These are not for the

faint at heart, let me just say. It involves a lot of rigor to prepare for and have these ceremonies.

I know other communities are also practicing them more. As time goes on, I think they will contribute to the benefit. We are looking at those kinds of programs. We are looking at working with the schools to release our children to go to dance, to participate in dance, making sure the dance leaders use part of the daytime to ensure the children are doing their homework. That becomes part of their responsibility, the dance leaders, to do that. That has had a very positive effect.

It increases, as has the language classes, not to mention that I now have a seventh grader tutoring me in Yurok which is really good. She is sort of mean, other than that. She has spent a little too much time around her grandmother, I think. I am not quite sure but she does make me toe the line.

Senator UDALL. Thank you.

Several of the witnesses, Judge, I think you were included, mentioned our program in New Mexico with the tribal notification system which requires the State to notify the tribe when one of its members enters the juvenile justice system beyond the tribal system.

Ms. Harp, has the department considered requiring States to report tribal-specific data when dealing with tribal youth in State courts as part of the requirements for any justice-related grants that the State may receive from the Department of Justice?

Ms. HARP. Not that I am aware of. I am not certain what our authority would be to make that happen. I think the tribal liaison certainly in the EOUSA's offices, the US Attorney's offices, are great at building relationships with tribes and communicating with them.

I think our States, those who pass through significant amounts of Title II money, do a great job of communicating with their States but I do not know they have any systems in place to notify every single time a child comes into the system.

It is certainly something to look at because there is that question. New Mexico is doing well. I think Oklahoma is also doing well with keeping their kids out of pre-trial detention, their Native youth out of pre-trial detention. I think it bears looking at.

Senator UDALL. As Ms. Goodwin mentioned, the data shows we are moving in the right direction but unless you have the full data picture and see what is going on within the tribe and off-reservation, only then do you really know what is happening.

With that, Mr. Chairman, I yield back.

The CHAIRMAN. Senator Heitkamp.

Senator HEITKAMP. Thank you, Mr. Chairman.

The level of frustration we all have about the lack of statistics and data is overwhelming. We do not know how many missing and murdered indigenous women there are. GAO was asked to report on human trafficking in Native American Country. They came back and told us they cannot tell us. Now, you are telling us you cannot tell us how many kids are in detention and are not getting services in detention.

This is not a new problem. When I was attorney general in the 1990s, I used to track Native American children victimization. Ms.

Harp, can you tell me what the relative comparative rates of victimization of children because of abuse and neglect is for Native American kids versus a White kid in America?

Ms. HARP. No, Senator, I cannot right now but I will get that information for you.

Senator HEITKAMP. You used to track it. I can tell you this. At the time when I was looking at statistics, it would be two to three times higher. The most abused and neglected kids in America are Native American kids and we expect different outcomes.

I am not here so much to derail the work that is being done. I understand the challenges but I am always amazed by the lack of urgency. Deputy Secretary, you talked about there are 16 school resource officers. How many tribal schools do you have?

Mr. TAHSUDA. We have I believe 183 schools in our system. We directly operate I believe 53 of those.

Senator HEITKAMP. You have 16 tribal resource officers?

Mr. TAHSUDA. Yes.

Senator HEITKAMP. Can you tell me how far away your schools would be from any first responder in any given day if there was a school shooting at a tribal school?

Mr. TAHSUDA. That would very much depend on the school's location and the State.

Senator HEITKAMP. I can tell you in North Dakota, it is a ways away.

Mr. TAHSUDA. Yes.

Senator HEITKAMP. We have been fighting to get two resource officers and an MOU signed. It just becomes virtually impossible many times to get services.

The point I want to make is that there needs to be a much more aggressive attitude about trying to figure out what is going on with Native kids. I hope the Commission will spur some of that discussion. I hope we will be able to figure out what works and what would not work.

Incarcerating kids, if they are Native, for drinking and not if they are White does not seem very fair. Was that what you are telling me? If you look at statistics in State and local systems, is that probably what you would see?

Ms. ROLNICK. The only thing out there to qualify that is I am sure there is another reason on paper besides that they are drinking that they are incarcerated but, yes, I think that is what is happening.

Senator HEITKAMP. Judge, if you could offer some words of advice, these are the three things we ought to be focused on in order to advance the opportunities for children in Native American Country, what three things would you tell us?

Ms. ABINANTI. To the last point, we refer to those crimes as felony stupid which get you locked up.

To the three points, I would say youth wellness courts and truancy courts. When I say courts, I mean in the sense that I operate them, not in the sense of, in California, if you are truant, you can lock up the child's parents, a very useful technique, I am sure.

The third thing would be to offer the programming that allows children to go to dance and to have running clubs. We were trying to raise money last week to figure out how we could start a ten-



person team to prepare for the Indigenous Olympics in 2020. We could not figure out how to do it, even though two of my staff said, we will coach.

Those kinds of things are the three I would say.

Senator HEITKAMP. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you. Thank you all for being here.

I just have to echo Senator Heitkamp's words. I see the frustration as well and I felt it when I was attorney general of the State of Nevada. That is one of the reasons I wanted to be here.

Professor Rolnick, we had a conversation earlier. I think all of what we are trying to achieve here starts with accurate collection of the data. The challenge we have is collecting that data.

Can you talk a little bit about the challenges you have in collecting data and getting accurate information, if you don't mind?

Ms. ROLNICK. Yes. Some of this is in the report but I will just say I have encountered it as well.

Across the Country, Native youth and Native people are 1 to 2 percent of the population. They are 1 percent if you just count people who identify as Native only and 2 percent if you count people who identify as Native plus another race. The base population you are dealing with doubles depending on kind of how you count it.

The definition sometimes is based on self identity, what does the kid say? Sometimes it is going to be based on someone who picks them up and puts them in whatever category it is. Sometimes it might be based on actually trying to find out whether they qualify as an Indian kid under the Federal law. At every stage, you are counting different sets of youth.

One of the things I want to do is compare disparity rates but at the level of the Federal data that is collected, we do get some information from tribes when it comes to arrest data and none when it comes to confinement data. The confinement data comes from a database where no tribes report.

We are using entirely different populations. Since the overall population is so small, I try to rely on what is fair but statistically, probably none of this means anything because we are comparing apples to oranges at every stage.

States are not even doing what I think is the basic thing which is they do not have a line to write tribal affiliation, even if they did nothing more than that. They are not doing that as far as I know. Only two of them are.

Statistically there is such a small population that nationally they are often sort of left out as insignificant. If you look at national level data and larger efforts, very few efforts even count what is going on with Native kids because they are such a small population.

It is usually more helpful to look at States or counties with a lot of Native youth because then they will register higher. That is where you see the disparities. That is why I am concerned overall but they are sort of statistically and, kind of on a policy level, invisible. Because of that, the collectors of data haven't bothered to even standardize the definitions.

It is almost impossible to collect this data.

The one thing I want to say is I feel funny. I am an academic and I am supposed to collect data, especially around criminal juvenile justice. It is what I am supposed to show, but I am skeptical of it, in a way, and also know, because I have worked with tribes for a long time, that what is showing up in the data is the same thing tribes have been saying for a long time.

We did not listen to tribal leaders when they said this. We keep trying to collect data to prove it and the data is no good. Then we say we cannot prove it. We could have been already making some of these changes.

We should collect more and better data but we should also listen to what the tribes are saying, ask them what they need and do that and not wait for the data to be collected.

Senator CORTEZ MASTO. Thank you. That is why I bring this up because I was not here in 2015. I am assuming this is a conversation you had in 2015 when you were all here.

Collecting the data, and also understanding where to go to collect it, really the challenge we have is you have the Federal system; the States, depending on the arrangements made or whether the Public Law 280 is applicable; and then you have tribes, right, the tribal jurisdiction?

It does not seem like it is rocket science that we know they are there, bridging the gap and figuring out how we get grant funding or funding pilot projects to start collecting the data and then connecting all of that.

Judge Abinanti, thank you so much for being here. You are in one of those States, California, a PL 280 State. I suspect your challenge is because State law has primary jurisdiction over any type of criminal activity. It is the district attorneys that are going to be prosecuting, is that right?

Ms. ABINANTI. Correct.

Senator CORTEZ MASTO. Each district attorney is not going to define and/or collect the information the same across the State of California, is that correct?

Ms. ABINANTI. Also correct.

Senator CORTEZ MASTO. You have a lot of counties there and many district attorneys. I see the problem and I think we all do but I think it is time now to stop talking about it and put systems in place where we can start accurately collecting this data.

For purposes of BIA as well as the Office of Juvenile Justice and Delinquency, you know the issues. How do we address this? How do we make this change? How do we connect it? How do we bring everyone together to start collecting this information? What should we be doing at the Federal level? Let me start with you, Mr. Tahsuda.

Mr. TAHSUDA. Thank you, Senator.

Again, when you talk about outside of our system, probably the biggest help for us and more than us, for the tribes, would be some type of notification, that communication about where their kids are and what system they are in. I assume that would be extremely helpful to them. If the tribes have the information and we have the information, we can connect the dots.

There is still the question of adequate services that could be provided to a child. We do what we can with the resources we have. We provide an education for them and some counseling services. We are working to increase partnerships with HHS and the Department of Education about getting more of those programs for the kids we have.

Again, that does not help the kids who are in the State system. At the very least, I guess if we could help make the connection with the tribe and the community, they can also at least assist in trying to keep the connection with the child, with the community, with the culture, and so forth.

I think almost anyone would agree you would have a better outcome for the child if they can stay connected to their community and their culture.

Senator CORTEZ MASTO. I think we all agree with that.

I know I am running out of time. Judge, did you have another comment you wanted to make?

Ms. ABINANTI. I was going to say one way to do it is to incentivize the counting so that part of what is happening is that the children are in a system and not getting specialized help. If you gave that system an incentive to count them, that might help, if I have 40 percent of the foster kids in one of the counties where a reservation is, are Native and were 9 percent of the population.

Senator CORTEZ MASTO. Right. Thank you.

I know I went over my time. Thank you so much for the conversation today.

The CHAIRMAN. Senator Smith.

**STATEMENT OF HON. TINA SMITH,  
U.S. SENATOR FROM MINNESOTA**

Senator SMITH. Thank you very much, Chairman Hoeven.

I would like to keep on what my colleague was just asking about. This is open to all of you. What are some other ways we could provide incentives like Judge Abinanti discussed, other ways we could provide better incentives for data collection or other ways we could make it easier to gather the data?

Ms. ROLNICK. This is not exactly an incentive but I think there was a comment earlier about whether or not the Federal agencies have the authority to make States gather the data. The way to fix that is not an incentive but a hammer.

The Juvenile Justice and Delinquency Prevention Act is where States get a lot of their money. All but one State gets money for juvenile justice from that. It is possible to add requirements, requirements of notification, or requirements of data collection.

The States have resisted that and it has been difficult to get tribal provisions in that bill but that is definitely possible to do. There are a lot of other things in that bill that funding is contingent on. There is no reason that tribal data collection and notification cannot be another one.

Senator SMITH. Thank you.

Does anyone else have a comment on that? Ms. Harp?

Ms. HARP. Actually, JJDPDA, the tribes are not covered by the JJDPDA. They are not required to meet the core requirements of

JJDPA in order to get any of the Title II pass through that States provide.

The law says they are only required to attempt to comply with core requirements. That is the extent of it. States do not go out into Indian facilities and do any monitoring because again, the States do not have the authority to do that because the tribes do not have to comply. They only have to try to do that.

As you are probably aware, most of the States only get a matter of hundreds of dollars of the pass through because it is based on the percentage of Native you in the State. That is part of the problem.

The funding for Title II continues to dwindle. I do not know there is going to be a lot of incentive there unless we experience some increase in funding for Title II.

I think the idea of using a hammer, when we talk about hammers, there is always a balancing point when it comes to using them because JJDPA has so many requirements, the SAG membership, the 28 certifications, the difficulty of becoming eligible in the first place.

Senator SMITH. Sometimes we make data collection so difficult that it makes it difficult especially for small organizations. Is that a problem or not?

Ms. HARP. It absolutely is, specifically with Title II. We are trying to ease some of that but the idea of the hammer, I think we can certainly talk about it and find ways to do it or find ways to consider it, but a hammer without funding with JJDPA is really risky because if the States back out of it altogether because it is just not worth it, they don't get very much money. The dollar amount is \$400,000.

Ms. SMITH. I just read this on another issue. I get what you are saying.

Did you want to add something?

Ms. ROLNICK. Just to clarify, tribes are not eligible. I think they would like to be eligible for direct funding and not pass-through funding. They are not covered but they also are not eligible. They have been left out for the most part of that law and not because they wanted to be.

What I am thinking is just add a line, add a blank for tribal affiliation, ask that question. That I don't think is an onerous data question requirement. If tribes are under States when it comes to getting that Federal money, then the States are supposedly responsible for those kids, I am not actually talking about reporting on kids who are in tribal or Federal facilities. These are kids in the State system, so the question is are you keeping separate data for the kids coming in under your jurisdiction to figure out whether they are tribal kids or not?

It does not seem like it is honest. It seems it is consistent with the fact that tribes are not eligible to get that money directly and the State is therefore responsible for the tribal kids in the system. I just wanted to clarify. I think that is a difficult requirement.

Senator SMITH. Thank you very much.

I am about out of time but Judge Abinanti, I am very interested in what you were talking about with Senator Udall and also with Senator Heitkamp about the basic concept of getting upstream of

the juvenile justice system or making the juvenile justice system work better and the shortcomings. When kids have so many challenges, they get into the juvenile justice system and then they are in a terrible bind.

I was really interested in what was included in your testimony around how your truancy courts work. I would love it if you could just talk a bit more about that.

Ms. ABINANTI. The truancy court I referenced is basically in a dream state at this point. I have talked to both DAs in Humboldt and Belmont Counties and they really support the concept of doing a joint court because of public schools.

We would sit, as we do in dependency now, as joint judges in those courts because I believe that we need wrap around services. We need to help the parents get to their place where they feel comfortable to advocate for their children instead of saying oh, they are treating you badly, you can stay at home, which is the default position.

They need to get past the issues of the boarding schools and those things, and the reasons they did not send their kids to school and also learn how to advocate. It is really hard when you have parents who cannot read and write.

We are starting to offer more GED classes to parents and having tutoring programs in their homes so they don't have to go and feel embarrassed for those kinds of things. I think that is important.

I think the community infrastructure we had prior to these times does not support what is needed in these times. We have to look at the infrastructure and say mothers, yes, it is good to learn how to gather acorns because we like acorns and still use them, but now you have to do this too.

You never knew about that but now we are going to help you learn about that. We will go with you a few times until you can figure out how to do this and how to talk to these people who are strangers to you. You can do this and your children need you to do it.

Senator SMITH. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Dr. Goodwin and Ms. Harp, I have a question for you.

As I mentioned, the GAO reviewed the Federal resources available to help Indian tribes address juvenile delinquency. It highlighted that nearly \$1.2 billion Federal were available as grants from the Department of Justice and the Department of Health and Human Services for Indian tribes and tribal organizations to combat juvenile delinquency; \$1.2 billion was available.

However, only \$207 million was awarded to Indian tribes and tribal organizations. Can you tell me why?

Dr. GOODWIN. I will start and I will let Ms. Harp finish.

One of the things we found with this report, as you stated, \$1.2 billion was made available and only \$207 million was actually awarded to tribal organizations. What is interesting about that is if you look at that, of the 122 programs, 27 of those were specific to Native American organizations and tribal governments and 95 of them would have included all of them.

Of those 27 specific grant programs, that was \$250 million. Of the 95 grant programs, we are looking at \$944 million. I really want to focus on that \$944 million that is not specifically targeted for Native American organizations.

The tribal governments and Native American organizations were only awarded \$14 million of that money. One of the things we did when we looked at this, we pulled together a sample of the declination letters to get a sense for why the tribes might not have been awarded some of these funds.

Some of the things we saw were the application, some of the information was inconsistent and some information did not meet the criteria. We learned that in our conversations. Then we spoke to some of the tribal governments and organizations to ask them what would be helpful for you when you are filling out these forms.

One of the things they talked about is being able to contact the officials to ask simple questions about the types of information they needed. They also talked to us about the short application deadlines for some of them made it really difficult to pull together the information and also pulling together the required data was also difficult depending upon how well sourced they were.

Another thing we heard from the DOJ officials in particular was that some of the better sourced tribal governments and Native American organizations did do better when they were applying for grants.

Those are some of the thing we heard. I am sure Ms. Harp has more detailed information.

The CHAIRMAN. Of the \$1.2 billion, how much of that is tribal specific?

Dr. GOODWIN. Of the \$1.2 billion, \$250.2 million.

The CHAIRMAN. That is \$250.2 million?

Dr. GOODWIN. Yes.

The CHAIRMAN. Tribal specific?

Dr. GOODWIN. Tribal specific.

The CHAIRMAN. So the amount awarded is still \$50 million under the tribal specific, not to mention tribal eligible?

Dr. GOODWIN. Yes.

The CHAIRMAN. Ms. Harp, can you comment on that?

Ms. HARP. It is a problem having tribes apply for this money as well as getting them successfully to apply for the money, getting the money awarded. Looking at the reasons why their grant applications are not succeeding is important. We need to do that.

We have held some accessing grants to strengthen tribal justice system capacity grant writing workshops around the Country, one in South Carolina and one in Alaska. That is just two and they were well attended. The tribes were there and that was great but it is not enough. We are going to have to do a good deal more to help the tribes apply effectively for the money. We realize that.

At some point, getting them incentivized or getting them to want to go through the struggle of trying to apply for and competing for grants, I think either it is because they are afraid they are not going to get them and don't want to put the time into it because it is so time consuming. I am not sure but we need to get them more invested in wanting to apply for grants.

This idea that they want someone to talk to while they are there or while they are doing it and they need a longer time to get things turned around, those might be adjustments we can make. There might be ways we can help with that.

The CHAIRMAN. It would seem to me, you tell me what you think, both in terms of tracking this data and having DOJ involved in tracking this data, making sure we know what is going on so we can better address the problems and then having some kind of outreach to make sure we help tribes utilize these dollars to attack the problems seem like very productive uses of your time and efforts in your role and something you should focus on.

We are going to want to hear about the progress you are able to make in that regard.

Dr. GOODWIN. Senator Hoeven, one of the things I want to put on the table is the grants we looked at were competitive grants because we wanted to examine how accessible they were to the tribal governments and Native American organizations.

As you know, we have ongoing work to delve further into the whole conversation around grants and how accessible they are. We are going to expand our look from competitive to all of the grants that might be available to help issues around juvenile justice and delinquency.

The CHAIRMAN. I think that is really good. That may be very helpful.

Ms. Harp.

Ms. HARP. I just wanted to point out part of the problem also is the larger tribes apply for grants, get the money and continue to improve their systems, but it is actually some of the smaller tribes that are in greater need for that money. They do not have the infrastructure, the ability or the capacity to apply successfully for those grants. That is a group we really need to focus on.

The CHAIRMAN. We will look forward to your ideas to accomplish that and want to track the progress you make doing that. I am sure you will be invited back in that regard.

Did anyone else want to offer any thoughts on that, any of the other witnesses?

[No audible response.]

The CHAIRMAN. Vice Chairman Udall.

Senator UDALL. Mr. Tahsuda, your thoughts on this. It seems to me your agents specifically do what he was talking about in the discussion between the two witnesses here. The Department of the Interior, specifically the agency you are working with, is supposed to have this fiduciary responsibility, trust responsibility doing the training, making sure that HHS and DOJ work with the tribes and work through the grant process to ensure that eligible tribes and tribal organizations can access grants fairly.

What have you done on this? I am going to ask are you aware what his part of the operation is after he answers and Ms. Harp, what they have been doing specifically to help with this? This is a huge problem.

Chairman Hoeven brought this out. Apparently, only 1 percent of the DOJ grants that did not mention tribes is the number of how much tribes are getting. There is a real lack of fairness here.

Mr. TAHSUDA. Thank you, all good points and good question, Vice Chairman.

For us specifically, we do not have a lot of grants focused on this. We have base funding. Of course the tribes are eligible to access that funding through self governance or self determination contracts. That is our primary mechanism to support the tribes.

We either provide the direct service ourselves or the tribes can contract to provide that for them.

Senator UDALL. Do you help with the grant writing? That has been one of the big problems, the lack of resources to hire grant writing. It sounds like you have the resources to help them hire grant writers, especially these smaller tribes she is talking about.

Mr. TAHSUDA. I guess I would say we, of course, struggle mightily with the resources we have for the breadth of programs we offer. I think we could certainly be helpful probably to the department in that we have long experience in working with the tribes.

I would point to self governance and self determination as an example where we are actually required by the law to assist the tribe in working through any impediments to it successfully submitting a contract, getting a contract awarded, or an annual funding agreement in place.

We are required by that and have been required for years, so we have good experience in that. I think we would be happy if the Department of Justice wanted to ask us to help them work with the tribes on that. It would certainly be far more helpful if they could assist us with the resources, if it takes additional resources to do that.

If it did not take any additional resources on our part, we would be happy to do that. Anything we can do that would assist the tribes in this endeavor, obviously we would love to do that.

Senator UDALL. I would like to see you in an affirmative relationship rather than asking them, you assisting them and working with HHS and the Department of Justice to get this done.

Dr. Goodwin, from our interviews looking at this, with my staff looking at this as the specific causes, you have the one I mentioned, lack of resources to hire grant writers, difficulty navigating Federal grant databases, unclear eligibility, and unclear descriptions of eligibility activities for tribes interested in using funding for culturally-appropriate activities.

There is a real gap here, is there not, and huge potential if these agencies all worked with each other to get resources into this juvenile justice area. Is that correct?

Dr. GOODWIN. There is, Senator. I have one thing I want to say about the Department of the Interior and BIA.

When we were pulling together our list of grants for review, we went to grants.gov and did a search on juvenile and delinquency programs. We came up with over 1,000 of them. We were focusing just on the grants that were competitive.

BIA, actually we did not look at any grants from BIA because when we spoke with them, they told us they did not really have any competitive grants as related to juvenile justice or addressing issues around delinquency. They actually do not show up in our list of grants.



The two agencies we focused on for this report are DOJ and HHS. Those were the two agencies that had the highest numbers of grants. Again, we were doing this for competitive grants. For the next review we will be doing for you, we are going to be pulling in all of the grants, the competitive and non-competitive grants.

You are correct, probably we could all benefit from the agency sitting down and having a conversation about how to make this process a little smoother for the tribal governments and the organizations.

Senator UDALL. Yes. Ms. Harp, please go ahead and answer.

Ms. HARP. Thank you.

I just wanted to remind everyone, and it came to my mind as you were talking, the Coordinating Council on Juvenile Justice exists just to solve these kinds of problems or to bring Federal agencies together must for this kind of conversation.

It has not met in a while. It is supposed to meet quarterly. Now that I am here and we are doing it, our first meeting will be in December. It will have all the Cabinet agencies required by the statute. We will certainly invite Interior. This will be the topic of discussion for our first Coordinating Council meeting.

Senator UDALL. Thank you.

I would focus on what you talked about, the smaller tribes that are having the biggest problem. How do you deal with that issue because I think if you looked at the juvenile issues across the board, you are probably going to see the ones that get the fewest resources have the biggest problems, wouldn't you guess?

Ms. HARP. Yes, sir. It is the smallest tribes that probably have the greatest need. They are the ones with the least ability to access the money, yes.

Senator UDALL. Thank you, Chairman Hoeven.

The CHAIRMAN. Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you. Let me follow up on the conversation because I really appreciate, Ms. Goodwin, the discussion about the comprehensive grant review you are undertaking. When can we expect to see that?

Dr. GOODWIN. That work is just beginning. As you know, this was a massive undertaking for this particular engagement because we needed to identify where these grants were. Now that we know where they are, we have started moving forward on that next one. I will circle back with the scope.

Senator CORTEZ MASTO. You are still looking at it?

Dr. GOODWIN. We are still looking at it.

Senator CORTEZ MASTO. Here is what I am interested in because I do not know if any of you have ever applied for a Federal grant. I have. You need a four year degree in grant writing just to be able to do so. It is a challenge.

What I am interested in is streamlining and making it a little bit easier for folks that have to apply for it, but I also know one of the challenges is the match, sometimes there is a match that the tribes just cannot come up with, a dollar match.

There are the burdens sometimes of the hoops that you have to jump through on a regular basis just to keep \$10,000 or \$20,000 of a grant that is out there. I am really interested in how we, at the Federal level, can help streamline some of these and get the

money we intend out there to help those tribes or organizations it is intended for and not make it a hindrance or barrier for them to get access to those dollars.

Dr. GOODWIN. Okay.

Senator CORTEZ MASTO. I am all about oversight, accountability, tracking it, and making sure there is no fraud. I think we can do that without making it so difficult to apply.

Here is the other thing I am interested in. I am glad you mentioned the Coordinating Council because I think this is a great opportunity. Most States, particularly the State of Nevada, even in my office as AG and now as a United States Senator, I have a team that focuses just on grant writing, literally to provide assistance to organizations, whether State agencies or individuals, that need help in applying for these grants.

I do not know if there is a way at the Federal level we can put together some sort of program that just provides assistance. Obviously, we do not want to provide it in a way that gives them a leg up if they are competitive grants but there has to be a way to provide some sort of technical assistance or some sort of assistance.

I do not know what that would look like, so I am interested to see what the Coordinating Council comes up with. If we streamline the grants and make it much easier, we may not have to worry about that.

I am really interested in your report. I appreciate the conversation today. Thank you.

The CHAIRMAN. Vice Chairman Udall.

Senator UDALL. Ms. Goodwin, the GAO told my staff last week that the lack of comprehensive data sources was a problem throughout your investigation. Specifically, you mentioned the paper files are being used to track critical information regarding Native youth in BIA-operated detention systems.

Can you please explain the data situation at BIA-operated facilities and are they actually using paper to track individuals incarcerated at BIA facilities?

Dr. GOODWIN. The team went over to BIA to look at information as related to these facilities. Yes, the team had to look through the paper files. That, of course, can be problematic because you have people filling out forms, forms could be misplaced, or there is no central location for them. That was an issue for us when pulling together our data.

I am sure Mr. Tahsuda has even more insight into what could be done to help alleviate that process, but for us, as the agency going in to look at this information, it was challenging because we had to go through paper files.

Senator UDALL. Mr. Tahsuda, the lack of comprehensive, easily accessible data on Native youth in the Federal justice system is, frankly, appalling to me. To be frank, this data issue is not limited to the BIA's handling of juvenile records; it has come up many, many times before.

What is the department doing to address widespread data deficiencies that impede planning, investigations, research and general fulfillment of its trust responsibilities?

Mr. TAHSUDA. I am sorry, was that directed to me?

Senator UDALL. Yes.

Mr. TAHSUDA. As with a lot of our systems, it has taken us some time to get into the modern age. We do now have a detention database in-house. I will have to get back to you about that particular information. I assume we are in some transition period in which we are taking paper records and getting them into the database.

Again, I guess I would say I do not know that it is an acute problem for us in that we do not actually have that many juveniles in our system. In fact, we have much greater capacity in our juvenile detention facilities than we actually house juveniles.

Our daily average population is only 20 percent of our total bed population in our system juvenile facilities. I think we are getting everyone into this database but I think the information is there.

Senator UDALL. Dr. Goodwin.

Dr. GOODWIN. I just wanted to follow up on that point.

Another thing we did was we tried to look at these detention facilities as related to the tribal justice system. We looked at three detention centers in Indian Country, the Northern Cheyenne, Standing Rock and Ute Mountain Ute.

The Northern Cheyenne facility saw an increase in their admissions from 2012 to 2016 where it went from 14 to 204. We did ask BIA why that was happening. They told us some of the surrounding tribes were sending their youth to that particular facility.

As relates to Standing Rock, that facility just opened in May 2016 but in that year, they had 131 admissions to their facility. For the Ute Mountain Ute facility, that fluctuated but we actually saw a decline from 89 in 2014 to 53 in 2016.

We were able to get some information related to the tribal systems but not as much as we would have liked, of course.

Senator UDALL. Thank you.

The CHAIRMAN. Senator Cortez Masto, any other questions?

Senator CORTEZ MASTO. No.

The CHAIRMAN. If there are no other questions, the hearing record will be open for two weeks.

I want to thank all of our witnesses for being here today. We appreciate it very much.

With that, we are adjourned.

[Whereupon, at 4:25 p.m., the Committee was adjourned.]



## A P P E N D I X

### RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. STEVE DAINES TO GRETTA L. GOODWIN

Now, the GAO report we're focusing on today reflects some troubling realities for Montana. As the report details, in most states, the percentage of Native American youth confined at state and local detention facilities or arrested by state and local law enforcement agencies was similar to the percentage of native youth in the state's population. But in Montana, those rates of arrest and confinement for Native American youth were between 5–15 percent higher than the percentage of native youth in Montana's population.

I'm also concerned to know that Native American youth admitted to Northern Cheyenne juvenile detention center, one of BIA's three juvenile detention facilities, increased yearly between 2012 and 2016, from 14 to 204. That's nearly a 15-fold jump.

*Question 1.* Dr. Goodwin, what do you attribute that sharp increase to?

Answer. As we reported in September 2018, we obtained and reviewed admission records from three juvenile detention centers in Indian country managed by the Department of the Interior's Bureau of Indian Affairs (BIA). One of those juvenile detention centers was the Northern Cheyenne facility in Montana, for which we obtained records for 5 years—2012 to 2016. Our analysis showed that the number of youth admitted to that facility increased from 14 to 204 during this time period, as you stated in your question.

We noted in our September 2018 report that comprehensive data on the number of tribal law enforcement agency (LEA) arrests were not available. However, we also reported that, according to BIA officials, the growth in the number of youth admitted to the Northern Cheyenne facility from 2012 to 2016 likely reflected an increase in admissions of Native American youth from surrounding tribes. Specifically, BIA officials noted that the Northern Cheyenne facility admits youth from other tribes, which have grown accustomed to sending their youth to the facility, because the facility is centrally located. BIA officials also noted that the Northern Cheyenne facility services an area where there is a high rate of delinquency among youth, and because the facility works well with Native American youth struggling with delinquency issues, many tribes choose to send their delinquent youth to the facility. Further, since 2012, the Northern Cheyenne facility increased its bed space and staff, thus increasing its capacity to admit more youth, according to BIA officials.

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### RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. STEVE DAINES TO HON. ABBY ABINANTI

*Question.* Can you share more of your perspective on the specific benefits of culturally appropriate native youth delinquency prevention and response, including for youth while they are incarcerated?

Answer. Providing culturally appropriate prevention and response to delinquent behavior strengthens Native American youth's identity through connecting themselves to their village, family, and community. It teaches self-confidence and pride, and helps them define an identity for themselves that is relevant to their daily lives through such activities as increased interaction with elders, fishing, hunting, making regalia, and learning about Native American culture. It allows them to receive services, help, and training in a manner that is consistent with their personal world view and beliefs. This improves results because youth actively engage and commit to the process, as opposed to being an unwilling or inactive participant as they so often are in the state process.

Further, often the goal of culturally appropriate responses is different than the state systems' goals: typical state programs are punitive while tribal culturally appropriate program aim to rehabilitate and restore through increasing understanding of one's place in the world, repercussions of actions, and acceptance of self-responsi-

bility. These are all principals of Yurok culture that inform human behavior. A Yurok child cannot be “reformed” until he or she knows family home villages, the role of family and individuals, and accepts responsibility as a village member.

To start this process as a judge, every child that comes before me is acknowledged as a part of a village, an extended family, and the larger tribal community. They have names and faces, and it is as a unique individual that I hold them accountable. As Yuroks, they are responsible to their community and for themselves, just as their community is responsible to and for them. Through the court response, youth learn that Yurok people bless the deep river, the tall redwood trees, the rocks, the mounds, and the trails. Youth are encouraged to connect to their culture and to their community to better take responsibility for themselves and, when prevention fails, for addressing the problems that brought them into my court. This process connects them to the community—both land and people—as opposed to incarceration, separating them further from the source that would make them whole.

A second key to preventing delinquency is to keep our youth in school. The high truancy and dropout rates among our children limit their futures. Children who are truant and chronically absent are more likely to engage in substance abuse than non-truant, non-absent peers, and those children were more likely to abuse substances whilst truant/absent.<sup>1</sup> Truancy and chronic absenteeism are extremely high on the Yurok Reservation. For the 2016–2017 school year, in Del Norte County the rate of chronic absenteeism among Native American students was 31.4 percent compared to a rate of 21.5 percent for the County as a whole. Similarly, in Humboldt County the rate of chronic absenteeism among Native American students was 25.7 percent compared to 15.2 percent for the County as a whole.

The problem of youth delinquency does not reside in the youth alone. Yurok families have experienced historical and multi-generational trauma that affect the youth. From the mid-1800s children were forcibly removed from their families and sent to boarding schools to be trained as laborers and servants. The children were forced into labor, beaten for speaking their language or practicing their culture, children in the late 1800s and early 1900s were also used as indentured slaves. This is not ancient history: during WWII Yurok boys were sent to factories and trained to build military equipment and then, when they were of age, drafted into the military to fight for the United States.<sup>2</sup> These forced removal practices continued through the 1950s.<sup>3</sup> Today’s parents and grandparents experienced and bear the scars of this trauma. It is necessary to help Yurok adults learn how to be present for their children, traditionally, and also through education and wellness so they are better able to fight for systemic change that is culturally appropriate. In fact, including the entire family in the response is culturally proper and traditional.

Yurok parents, like other Native Americans, often self-medicate in response to historical trauma.<sup>4</sup> The deceptive marketing and over-prescription opioids have added another trauma to the families who must now try to rebuild their lives. Substance abuse is a major factor in the placement of Yurok children in foster care. Under the Indian Child Welfare Act “ICWA”, the Tribe provides to all Yurok tribal members across the United States, a caseload that currently includes a total of 269 child welfare cases. Many of these child welfare cases are a result of opioid abuse in the home. Presently, 28 percent of child welfare cases reported from the Tribe’s Weitchpec Office caseload have been referred as a result of documented Opioid Use Disorder in one or both parents. This is likely an underestimate of the extent of the problem, considering the reported over-prescription rates. It is necessary to help Yurok adults learn how to be present for their children, through education and wellness, so they are better able to support and keep their children in school.

Further, it is important to create a truancy and delinquent act notice requirement of Native American children so the tribe is given the opportunity to assist in the response to a delinquent or truant act. A cultural response to either truancy or a delinquent act is a benefit in itself, but also can allow the Yurok Tribal court through joint jurisdiction courts to provide assistance in its Wellness program. This will offer an alternative to the current system of incarceration of parents of truant children in California, and allow a more culturally appropriate response solution by trying to heal the entire family rather than separate the family from one another

<sup>1</sup> Henry, K. L., & Thornberry, T. P. (2010). Truancy and escalation of substance use during adolescence. *Journal of Studies on Alcohol and Drugs*, 71 (1), 115–124

<sup>2</sup> Lowry, Chag 2007. *The Original Patriots*. 270 pp

<sup>3</sup> Haig-Brown, C. 1988 *Resistance and Renewal: Surviving the Indian Residential School*. Vancouver, Tilacum Library.

<sup>4</sup> Maria Yellow Horse Brave Heart (2003) The Historical Trauma Response Among Natives and Its Relationship with Substance Abuse: A Lakota Illustration, *Journal of Psychoactive Drugs*, 35:1,7–13, DOI: 10.1080/02791072.2003.10399988

and incarcerate the parent(s). Not only will this allow for healthier families but it develops respect for the children's background and culture, and the school system.

Culturally, the Yurok villages and the village leaders are best situated to develop an infrastructure that can respond to the injuries caused by the historical events that impact the Yurok and partially cause the struggles for parents and children. Wellness, education, and local support can overcome these struggles, and help the tribe, and this Country, to move forward with the next generation of Native American youth earning an education, learning skills, and finding paths that have positive outcomes.

### **Pilot Program**

To assist in combating youth delinquency, the best preventive program is to improve education for children and parents. To make education more relevant to the children's culture and daily lives while promoting wellness and limiting the effect of opioids and drug use, will develop more healthy families and children. This could be structured through a pilot program that provides better representation of tribal children in the education system and allows for notice to the tribes of children who are struggling in school, or are in the delinquency courts, so the tribe can provide a culturally appropriate response. Notice to tribes can be structured similarly to the way tribes are noticed in ICW A cases, and should be mandated in a similar fashion.

The Yurok Tribe, like many tribes, is located in an extremely rural community. Currently most Yurok children are educated in state public schools. The State of California does not properly provide the required response to the educational struggles in Yurok Country or other public schools that Yurok children are attending. An approach to addressing these problems could be to develop a pilot project that includes the following components:

(1) *Educational swat teams inclusive of attorneys for the family to appear at all Individualized Education Program (IEP) hearings, and for all suspensions.* The benefit here is proper representation in the education system and early notice of problematic behavior to the Tribe to facilitate tribal assistance to the families that support these kids. Currently, the IEP, truancy and suspension process is tightly linked to delinquency. The benefit of this support to the children is that it would allow for the tribe and tribal members to be better heard in the education system, and help to better educate the families about the education system they are in. This improvement in representation would assure legitimate due process for Native American children, and compel the schools to create the proper IEP to enable students to address their education needs. These supports would help reduce the middle school dropout rate that directly relates to the juvenile delinquency in Yurok Country.

(2) *Training that teaches parental advocacy and supports parents to advocate for their children.* The teams ideally would include attorneys, paralegals and support staff, with the goal of representation, self-advocacy. These efforts would offer early intervention which would increase potential success, and in practice would derivatively allow earlier data collection for a category that is a struggle: tribal youth, and we would better understand the dropout rates and causes.

(3) *Education for the parents,* the adults in these families that the children are relying on, is equally important. Active efforts, like private tutors for the parents and guardians of these children who have not received a high school degree or a GED that assists them in enrollment and completion of on-line GED or equivalent programs. Educated parents will understand education more which will enable them to be to keep the family on track and be selfadvocates through the education and delinquency systems.

(4) *Support for joint jurisdiction delinquency and truancy courts in PL-280 States.* The Yurok, Del Norte and Humboldt Counties have already begun creating joint jurisdiction courts to hear civil matters, including juvenile delinquency matters. The joint court has improved outcomes for Yurok students by allowing the tribe to become involve 4 earlier in court cases, provide advocacy to the student and family, and be involved in the disposition of the case. This is critical because the Tribe's early and active involvement enables culturally appropriate responses and thereby, improves responses. It is also helpful to families combating the Del Norte and Humboldt Counties policy of incarcerating parents of truant children; this practice is more harmful than helpful. It can be changed through the joint jurisdictional court and the Yurok Tribe's wellness court that allows for a diversion program and provides family services to address the underlying issues causing student truancy and delinquent behavior.

(5) *Nationwide opioid shut-out to all medical/dental facilities for children* assuring opioids are not provided for wisdom teeth or athletic injuries of our youth. Tribes rely on federal programs for medication and do not have the expertise to question the one medical source available in these rural communities.

Congress should consider authorizing and fund all or a combination of these programs. These programs should be at least three years long with the opportunity to be expanded into five year programs if performance and outcomes indicate progress. Just as in addressing grant writing concerns, the lengthier programs seem particularly important to the process of collecting data about native children to better provide comprehensive responses to the current youth education and delinquency systemic failure.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO  
HON. ABBY ABINANTI

*Question 1.* With your experience in the tribal judicial system, do you believe that the federal government is doing enough to make available federal funding accessible for tribal governments, regardless of size, resources, or grant-writing capacity?

Answer. No, the Federal Government is not doing enough to make federal funding available to tribes. As an initial matter, federal funding would be best spent on tribal education programs to prevent Native American children from entering the juvenile justice system. Currently, tribal governments are not eligible for federal education funding in the Elementary and Secondary Education Act (ESEA). In 2018 Congress appropriated almost \$60 billion in federal funding for education through the ESEA. The lack of tribal eligibility for this funding is a huge missed opportunity to empower tribes to participate in education programs that would result in preventing students from becoming a part of the juvenile justice system. Specifically, tribes should have access to funding to support tribally operated schools, legal advocates for children and parents at suspension/truancy related hearings and IEP meetings/hearings, and work in educational governance. My first recommendation is to amend the ESEA to authorize tribes as eligible entities for the federal education funding in the ESEA.

Further, should Native American children become involved in the juvenile justice system, tribes could provide support services if there was more federal funding available to tribes for this purpose. At Yurok, the Tribal Court would be capable of processing juvenile justice cases if we had federal funding to support the work. While the GAO report on Native American Youth involvement in Justice Systems and Information on Grants to Help Address Juvenile Delinquency (“GAO report”), reports there are 122 discretionary grants and cooperative agreements to address juvenile delinquency and \$207.7 million went to tribal governments and Native American organizations in fiscal years 2015–2017,<sup>1</sup> this is insufficient to address the problem. The lack of federal funding at Yurok has prohibited the Tribe from more aggressively developing culturally appropriate responses to delinquency and hearing such cases in the Yurok Tribal Court. If more funding was available to tribes, Yurok could develop a tribal juvenile code and build culturally appropriate services to support Yurok children in the juvenile justice system. Such a system would greatly improve juvenile justice for Yurok children because those cases are currently in Del Norte and Humboldt Counties which are chronically underfunded and systematically biased. In California and other P.L. 280 states that might include the support of joint truancy courts, which would allow the State statutorily established truancy courts to partner with Tribal Courts and jointly resolve attendance issues. My second recommendation is to increase federal grant funding to tribes to support juvenile justice systems.

With respect to the limited existing grant programs, there are several systematic problems that prevent tribes from being awarded federal funding, evidenced by the disproportional amount of funds granted to tribes as compared to available funding. The GAO report noted that DOJ and HHS made approximately \$1.2 billion in first-year awards to grantees and only \$207.7 million went to tribal governments or Native American organizations.<sup>2</sup> Grant and program requirements are developed and scaled for states and counties, which typically have more resources than tribes. Tribes, particularly those with fewer financial resources, lack the capacity to meet grant and program requirements that are tailored for states and counties. To solve this problem, the federal agencies should work with tribes to:

- (1) develop tribal mentorship programs to aide tribes applying for grants;
- (2) create funding opportunities that are tailored to tribal needs; and
- (3) investment in pilot programs built around tribal juvenile justice problems that can provide data, develop culturally-relevant, evidence-based programs and

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<sup>1</sup> <https://www.gao.gov/products/GAO-18-591>

<sup>2</sup> <https://www.gao.gov/products/GAO-18-591>



offer proof-of-principal, as required by the federal government for evidence-based programs.

(4) develop resources for tribal parents who must heal their relationship(s) with the education system that historically concentrated on forcing Native children (often now the parents) to lose their identity. This created a historical wrong that is now manifesting in parent behavior of avoiding or being confrontational to the educational system teaching their children.

In sum, the federal government is not doing enough. To fix this the federal government should amend existing laws authorizing education and juvenile justice grants to ensure tribes are eligible and amend existing programs requirements to support tribes.

*Question 2.* What can Congress and federal agencies do to make federal funding more accessible to Tribes?

Answer. First, Congress should ensure that Tribes are eligible for all federal funding to support juvenile justice. Often times only states or local governments are eligible for funding sources that support critical juvenile justice programs. Tribes should be added as eligible entities. Second, Congress should consider making minor amendments to the grant making process. Although the Yurok Tribe has had recent successes with grant applications, the amount of time and effort required to apply for funding becomes prohibitive when the funding amount is low and the requirements of the applications or the programs frequently exceed tribal capacity. Grant applications that go un-funded take no less time than those that succeed and grant writing efforts take time away from implementing the very programs they fund. The application process could be improved by:

- (1) increasing the time between the release of the notice of funding availability and the due date;
- (2) staggering the release of funding opportunities so that multiple complex applications are not due simultaneously;
- (3) reaching out to tribes to announce the availability of funds; and
- (4) increasing the grant period for implementation to address the complex realities of implementing funded programs in Indian Country.

The design of many programs assumes that data required for the grant application and program implementation exist which is often not the case for tribes or other communities in rural areas. Assistance with data collection and restructuring the way the federal government collects, processes and shares data, and the type of data collected on juvenile justice in tribal communities will be necessary to address some of these problems. (For instance, counties often will collect racial data as it participants are Native American, but not political data as in they are Yurok citizens.)

Tribes rarely have a pool of qualified staff or ready-to-implement culturally-appropriate programs to implement the grant programs that are funded. The guidelines for federal programs rarely allow sufficient time or resources to hire and train personnel and create the programs. One solution is to extend the implementation period of programs and to include funding for the costs of training personnel and developing programs. Additionally, a series of pilot programs for grants and for juvenile delinquency should be developed in collaboration with tribes, which can then be implemented and tested by tribes so that there are proven, evidence-based programs that can be implemented in Indian Country to address the failings of the juvenile system in our communities.

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**\*RESPONSES TO THE FOLLOWING QUESTIONS FAILED TO BE SUBMITTED AT THE TIME THIS HEARING WENT TO PRINT\***

WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO CAREN HARP

### **Consultation with Stakeholders**

*Question 1.* When developing and implementing programs for Native youth who enter the justice system and cited in your testimony, do you conduct consultation with tribal stakeholders? If so, please provide a summary of the consultation efforts undertaken by the Department on juvenile justice and explain the areas in which tribal stakeholders have indicated a need for resources through your consultations.

*Question 2.* How does the Department of Justice determine if grant programs are serving the needs of Indian Country?

*Question 3.* How will the Department work to make grant programs for accessible for Tribes with limited resources?

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WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO JOHN TAHSUDA

**Data on Juvenile Delinquency in Indian Country**

*Question 1.* According to Government Accountability Office (GAO) statements to Committee staff, the lack of a centralized data tracking system at the BIA stalled the overall investigation by the GAO into juvenile justice trends at the Bureau's corrections facilities. GAO also flagged the inadequate collection of data and outdated information technology systems as two of the five areas the Bureau and other federal agencies inefficiently administration of Indian programs. What is the Department doing to address widespread data deficiencies that impedes planning, investigations, research, and general fulfillment of its trust responsibilities in the areas of justice, transportation, energy, education, and self-governance?

**Consultation with Stakeholders**

*Question 2.* When developing and implementing programs for Native youth who enter the justice system, do you conduct consultation with tribal stakeholders? If so, please provide a summary of the consultation efforts undertaken by the Department on juvenile justice and explain the areas in which tribal stakeholders have indicated a need for resources through your consultations.

