



ASSOCIATION ON AMERICAN INDIAN AFFAIRS

Protecting Sovereignty • Preserving Culture
Educating Youth • Building Capacity

Healing Native Youth through Youth Justice Reform

By Kim Mettler, Mandan-Hidatsa-Arikara Nations.¹

If you are reading this, it is presumably because you are committed to and engaged in juvenile justice reform efforts. You may not be aware, however, that the successes of this reform have not yet reached Native youth. You also may not be aware of what makes justice involvement for Native youth different than for other youth such as: the circumstances that bring Native youth² into justice-system involvement; or the disproportional representation in the system; or the involvement of their separate and sovereign Native Nations,³ for example.

Here we will provide you with information about what you can do to reduce disproportionality and improve outcomes for Native youth. We will offer suggestions for how you might work to reform punitive systems into restorative systems that can heal Native youth. They deserve the best from us, including our collaboration, partnership, innovation and creativity.

Please note that there is a link at the end of this article to request more information, training, or technical assistance. We would also like to invite you to attend our upcoming webinar

¹ Kim Mettler is a citizen of the Mandan, Hidatsa and Arikara Nations, is an attorney and has been training state and local officials about the Indian Child Welfare Act for two decades. You can learn more about Kim at <https://www.heartrivercoaching.com/>.

² The Association has eliminated the term “juvenile” in its programming or in any description referring to a Native youth who is justice involved. Using the term “youth” allows our young people to retain their humanity, dignity and their place within our circles of family, community, Tribe and universe. The term “juvenile” reduces young people to a label that is often used in a derogatory manner, stigmatizing their self-worth and identity. See also National Juvenile Justice Network’s Language of Inclusiveness, accessed December 11, 2022 at <https://www.njjn.org/our-work/guidelines-for-inclusiveness>.

³ Native youth under the age of 24 comprise almost 25% of Native Nations populations (See footnote 4). Removing Native youth from their homes, communities and Nations and placing them in justice systems is significantly detrimental to Native Nations. As the Association on American Indian Affairs states, “the strength and well-being of Native youth is inextricably connected to the continuing cultural vitality and sovereignty of Native Nations and Tribes. If we do not protect our youth, Tribes will not be able to protect their diverse cultures and sovereignty. See *Juvenile Detention Alternatives Initiative: Examining How JDAI Sites Interact with Native Youth and Tribes*. Association on American Indian Affairs, 2018 at page 1. Accessed at https://www.indian-affairs.org/uploads/8/7/3/8/87380358/2018_final_jdai_site_report.pdf.

hosted by the Annie E. Casey Foundation, on Thursday, March 16, 2023, to help youth justice staff achieve better outcomes for Native youth who are involved in the justice system.

Let Me Tell You a Story

Johnette Hawk, Lakota,⁴ sits alone on a bed in a cinder-block cell. A coverless book, a page torn from a magazine, a pen with a chewed cap and an open, worn journal rest on a rickety table. Though the fluorescent light buzzes brightly, the walls glow a dingy, dirty gray. A small window with wire-enforced glass siphons gloomy light from the outside, feeding into the dark mood of the cell.

Johnette, 17, has raven-black hair twisted into two braids that drape off her rounded shoulders.⁵ Her 5'7" frame looks small as she curls into herself, staring at the floor. Her skin, the color of tobacco, is smooth, except for her arms. They are textured by the scars from two suicide attempts and slashes from knives, razors, sharp plastic or torn pop cans used to cut herself. A long finger absently traces the map of the life engraved into her skin. She is currently incarcerated in a facility far from home. She is lonely, depressed and struggles with PTSD.⁶ She participates in a state program that will help her get her GED, but she is not receiving culturally appropriate services to address her ongoing mental health or barriers to re-entry when she is released.⁷

Her story actually begins in the 1800s when the United States first began to assert federal control over Native youth through the forced relocations of young people into its boarding schools.⁸ Johnette's great-grandparents and grandparents, both maternal and paternal, had been rounded-up, taken away from their families and sent to boarding schools far from their homes in others states as part of U.S. policy to eliminate Native cultures (and peoples, if they didn't assimilate).

Young people in the boarding schools were prohibited from speaking their languages or engaging in any cultural or spiritual practices and were severely punished when they did. They were stripped of their traditional clothing, their hair cut. Thousands of Native children and youth endured physical, emotional and sexual abuse. Many never returned home and today remain unaccounted for.⁹

⁴ Johnette Hawk is a fictitious name. Any association with a real person, any Lakota Tribe or both is unintended and purely coincidental.

⁵ Johnette is an example of one of the young people under the age of 24 that comprise almost one quarter of Native Nations populations. Indian Country Today "2020 Census: Native population increased by 86.5 percent." August 13, 2021. Accessed on December 11, 2022 at <https://indiancountrytoday.com/news/2020-census-native-population-increased-by-86-5-percent>.

⁶ Native youth experience post-traumatic stress disorder (PTSD) at 3 times the national average, which is approximately the same as veterans who have served in Iraq and Afghanistan. See "A Report Aims to Change the Way We Think About Native Justice" by Krista Langlois. High Country News published December 19, 2013. Accessed December 22, 2022 at <https://www.hcn.org/blogs/goat/a-new-report-hopes-to-shame-america-into-rethinking-native-justice>

⁷ National Congress of American Indians, Tribal Juvenile Justice Background and Recommendations at page 6. Accessed January 16, 2023 at https://www.ncai.org/resources/ncai_publications/tribal-juvenile-justice-background-recommendations

⁸ The National Native American Boarding School Healing Project. Accessed January 16, 2023 at <https://boardingschoolhealing.org/education/us-indian-boarding-school-history/>

⁹ Ibid.

The boarding schools disrupted transfers of knowledge from one generation to another about age and gender roles within their Nations and communities, understanding of one's responsibilities to their community, traditional family roles and parenting, and personal and community accountability. It introduced new kinds of violence. These disruptions, along with other historical trauma and the unresolved intergenerational trauma caused by boarding schools have been passed down and have directly created the circumstances Native youth struggle with today.

Today's American Indian and Alaska Native youth, according to the Indian Law and Order Commission, have inherited the legacy of centuries of eradication and assimilation-based policies directed at Native people in the United States, including removal, relocation, and boarding schools.¹⁰ Native youth are among the most vulnerable children in the U.S., disproportionately experiencing poverty, substance abuse, suicide, and exposure to violence and loss as compared to their non-Native counterparts.¹¹

Johnette grew up bouncing between her Native Nation's reservation, staying with relatives from her large extended family, and a city 100 miles away where she lived with her mother. She has lived in extreme poverty, and housing was not always stable, safe or habitable. Johnette remembers being homeless once, huddled with her mother against the harsh South Dakota winter while waiting to be accepted into a shelter.

Her mother tried to care for her as best as she could but struggled with her own unresolved trauma. Johnette's mother was an alcoholic, with untreated mental illness and physical ailments resulting from unattended medical issues and years of domestic abuse. This made it difficult for her to maintain a job. Johnette's father was not around.

Although very intelligent, Johnette struggled in school, and she was often bullied by other students and targeted by some teachers because she was Native and others who thought Johnette was just being lazy. She hovered between excessive absences and truancy, which marked her first encounters with both child protective services and law enforcement. She was often defiant with teachers who picked on her; she began fighting back against other students who tormented her. Over the course of her teenage years, she developed a criminal history of truancy, vandalism, underage drinking, theft, and fighting. This is not the first time she has been incarcerated.

The rest of Johnette's story and the possible outcomes for her depend on a number of factors. For example, she can potentially be prosecuted by three jurisdictions: Tribal,¹² state and federal. This maze of jurisdiction that only applies to Native youth was created by years of

¹⁰ Indian Law and Order Commission Report: A Roadmap for Making Native America Safer: hearing before the Committee on Indian Affairs, United States Senate, One Hundred Thirteenth Congress, second session, February 12, 2014. Chapter 6, Juvenile Justice at page 149.

¹¹ Attorney General's Advisory Commission on American Indian/Alaska Native Children Exposed to Violence, Ending Violence So Children Can Thrive (hereafter, the Thrive Report) 2014 at page 217.

¹² Native Nations are sovereign governments that are on equal footing with states. They have a government-to-government relationship with each other in much the same way they both have a government-to-government relationship with the federal government. Tribes have the authority to criminally prosecute their members for crimes committed within the boundaries of their lands.

assimilative federal Indian policy and Supreme Court decisions.¹³ Tribal courts generally handle the less serious crimes and crimes between Native people, while federal courts handle more serious ones, and state court jurisdiction is dependent on where the crime took place.¹⁴ If federally prosecuted, Johnette would receive a much harsher and longer sentence; there is no juvenile division in the federal system, so there is no diversion or juvenile probation. There is only punishment, not rehabilitation.¹⁵ If she is in federal or state jurisdiction, there would likely be little or no educational programs or trauma-informed, culturally appropriate services for her.

What we know for certain is this:

- She was always at greater risk of entering the justice system as Native youth are at greater risk than other youth of entering the system.¹⁶
- She and other justice-involved Native youth need support, treatment and rehabilitation in response to the levels of historical, intergenerational and contemporary trauma they have experienced.¹⁷ Experts consistently recommend these services be close to or in the youth's community for best outcomes.¹⁸
- Collaboration with Native Nations and across jurisdictions is the key to obtaining those services and supporting change.

Where To Start

Creating meaningful, inclusive justice reform and reducing disproportionality begins with engaging and building partnership with Native Nations. It has been demonstrated time and again that connecting with culture creates protective factors for Native youth. Many Native Nations have programs that serve justice-involved youth that have been successful, including Mississippi Band of Choctaw Indians, the Pueblo of Isleta, and Little River Band of Ottawa Indians.

In 2018, the Association published the results of a study it conducted to examine how Juvenile Detention Alternatives Initiative (JDAI) sites and their interactions with Native youth and Native Nations. The Association found that the responding sites did not have a reliable process for identifying Native American youth and were not engaging in outreach to the Native youths' families or Nations to gather information on the youth's status as citizens of their Native

¹³ *Native Youth Navigate Complex, Contradictory Jurisdictions* by Calah Schlabach, José-Ignacio Castañeda Perez, Matthew Hendley and Layne Dowdall. Published August 21, 2020. Accessed December 11, 2022 at <https://kidsimprisoned.news21.com/native-kids-justice-system/>.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ National Congress of American Indians, Tribal Juvenile Justice Background and Recommendations at page 6. According to one source, Native youth are confined by the justice system at rates greater than white, Hispanic and Asian youth combined, and, while arrest rates for other youth are falling, they continue to rise for Native youth. See *The U.S. Criminal Justice System Disproportionately Hurts Native People: the data, visualized* by Leah Wang. October 8, 2021. Accessed on January 9, 2023 at <https://www.prisonpolicy.org/blog/2021/10/08/indigenouspeoplesday/>.

¹⁷ Ibid at page 7.

¹⁸ National Congress of American Indians, Tribal Juvenile Justice Background and Recommendations at page 13 and at footnote 59.

Nation.¹⁹ JDAI sites relied on youth self-reporting or on a probation or police officer or youth justice worker to unilaterally identify a youth's ethnicity - which may merely be based on skin color or stereotypes.

With 574 federally recognized Native Nations in the U.S. and more than 400 other Tribes, Bands and Communities recognized by states or not yet federally-recognized, it will be difficult to engage with a justice-involved youth's Nation if you don't know what it is. These current methods being used do not support consistency or accuracy in obtaining and maintaining important information.

For one reason, centuries of genocide and assimilation policies have caused families to experience significant historical and intergenerational trauma, much of which is unresolved. As a result, some youth may not fully know their connections to a Native Nation, or they may be embarrassed or afraid to disclose the relationship. Additionally, some youth may not be old enough to consent to or share relevant information to develop an appropriate, culturally relevant case plan.

For another reason, without direct inquiry, workers rely on whether a youth "looks Native" or their surnames. Neither are reliable ways to identify Native youth and perpetuate negative stereotypes of Native Peoples. Native Nations and individual family histories are quite diverse, and as a result, not all Native people have features that fit the stereotypical image that has been promoted by the dominant culture through myth or media. Surnames cannot accurately be indicators because during the allotment era, federal Indian agents gave Native citizens European names to simplify managing the land allotment process, and names were changed when children were forced into boarding schools.²⁰ Across Southern California and the Southwest for example, it is common for Native Nation citizens to have Spanish surnames as a result of Mexican land ownership.

The only way to accurately identify Native youth and to connect them with their Nations, cultures and communities is to ask in every case and notify every Nation in which the youth may be a citizen or eligible for citizenship. Not only should the Native youth be asked their Native citizenship or heritage, but so should their family members, members of their community (such as Native Nation social workers or Native youth justice workers) and others who would reasonably be aware of the youth's status.

Engaging and Collaborating with Native Nations

Once the Native youth's Nation(s) has been identified, they should be engaged and invited to collaborate in assessing the youth, identifying appropriate services, and then connecting them. In collaborating with the Native Nation, agencies increase the pool of resources available to serve the youth, which likely include services that can address underlying trauma, provide community-based support and supervision, and provide rehabilitative support rather than punishment. All will improve outcomes, as well as culturally appropriate alternatives to detention for Native youth.

¹⁹ Juvenile Detention Alternatives Initiative: Examining How JDAI Sites Interact with Native Youth and Tribes. Association on American Indian Affairs, 2018 at page 1. Accessed at https://www.indian-affairs.org/uploads/8/7/3/8/87380358/2018_final_jdai_site_report.pdf.

²⁰ Renaming Indians accessed on December 4, 2022 at <http://nativeamericannetroots.net/diary/1458>.

But there are even more, far-reaching and impactful reasons for engaging and collaborating with Native Nations. Engaging and collaborating with Native Nations is more than a best practice - it is the gold standard in working with Native children and youth.²¹ Engaging and collaborating with Native Nations is a tenet of anti-oppressive youth justice work and youth justice reform. Moreover, engaging and collaborating with Native Nations to address the issues underlying youth involvement in the justice system, your agency becomes a partner in strengthening Native Nations and government-to-government relations - as well as strengthens your agency's ability to provide collaborative support and programming.

Resources

For those with little or no experience working with Native youth or developing partnerships with their Nations, the prospect of doing so may seem daunting and intimidating. However, there are resources available to support leadership and case managers in developing and implementing capacity to address inquiry and outreach concerns. For example, the 2016 Guidelines for Implementing the Indian Child Welfare Act contain a number of best practices that could assist states in developing processes to better team and engage with Native Nations. States that have codified ICWA, such as California, also can serve as examples.²²

If your jurisdiction is interested in receiving training or in learning more about developing an inquiry and notice process, identifying Native youth, or relationship building with Native Nations, reach out to the Association on American Indian Affairs by using this link: forms.gle/T82qhbuhegrqbYqj9.

Supporting Native youth uplifts our shared futures. Be a part of a world where diverse Native cultures and values are lived, protected and respected. #ChildrenBack #IdentityBack #CultureBack #EverythingBack

²¹ National Indian Child Welfare Association. Setting the Record Straight ICWA Fact Sheet. Accessed January 17, 2023 at <https://www.nicwa.org/wp-content/uploads/2017/04/Setting-the-Record-Straight-ICWA-Fact-Sheet.pdf>.

²² There are other recommendations that can support justice reform for Native youth. See *A Roadmap For Making Native America Safer: Report To The President And Congress Of The United States*. Chapter 6, Juvenile Justice: Failing the Next Generation. Indian Law and Order Commission. November 2013.