

Chapter 4: Reentry in Tribal Communities

Introduction

Reentry is a process of using “programs targeted at promoting the effective reintegration of offenders back to communities upon release from prison and jail,” which “is intended to assist offenders in acquiring the life skills needed to succeed in the community and become law abiding citizens.”¹ Indian tribes have always had mechanisms to maintain peace, law, and order; to resolve disputes and conflicts between community members; and to correct those who violate community laws and mores.² Tribes continue to build upon cultural strengths and indigenous approaches to create responsive systems to address crime, violence, and victimization problems. While acknowledging that reentry should begin in jails or prisons, successful strategies also depend on community-based supports that include family, community, and tribal government support systems. As noted by a tribal member during the TLOA focus group meetings, “We do not throw away our tribal members.”

I. Reentry Data

AI/AN adults and juvenile offenders serve short- and long-term sentences or commitments in jails and prisons that are located on and off tribal lands and operated by federal, tribal, state, and local authorities. Where an AI/AN person is detained often depends on where the crime occurred, jurisdictional authority, the seriousness of the crime committed, whether the victim and perpetrators are tribal members, and the availability of confinement facilities. In 2009, of the 29,400 confined Indian offenders, most were held in off-reservation jails (9,400, 32 percent) or state prisons or facilities (14,646, 50 percent). Federal prisons held 3,154 Indian prisoners, representing 11 percent of the total Indian people confined in midyear 2009.³

Since the majority of AI/AN offenders serve sentences and juvenile commitments in correctional facilities off tribal lands, it is even more critical for tribes to have reentry programs that can prepare them for their return to the community. Within correctional facilities where long-term stays are most likely to occur, the programming opportunities are usually greater than those found in county jails, tribal jails and BIA jails located in Indian Country; however, it is even more unlikely that culturally developed programming for AI/AN is provided. As noted in a recent report by the Urban Institute, “a critical challenge in handling youth in the federal system is the lack of residential facilities close to the communities of the offenders,” and “such

¹ www.reentry.gov

² A.P. Melton, “Indigenous Justice Systems and Tribal Society,” *Judicature* (1995), 79(3) 126–133; L. Bond, L. Bond-Maupin, C. Chicago Lujan, and M. Bortner, “Jailing of American Indian Adolescents,” *Crime, Law and Social Change* (1995) 23:1–16; C. Zuni, “Strengthening What Remains,” *Kansas Journal of Law and Public Policy* (1997), 7(18); J. Zion, “The Dynamics of Navajo Peacemaking,” *Journal of Contemporary Criminal Justice* (1998) 14(1):58–74; B.J. Jones, *Role of Indian Tribal Courts in the Justice System*, Native American Topic-Specific Monograph Series, March 2000.

³ Todd Minton, *Jails in Indian Country, 2009*, (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2011), 2..

distances likely hamper sustained contact with vital social supports necessary for successful transition back to the community once confinement ends.”⁴

II. Challenges in Short-Term (Jail) Reentry

System Challenges

Since the mid 1970s, tribal courts have increasingly used jail commitments to address local crimes. While some jails and detention centers are located on tribal lands, most commitments are served in off-reservation jails. Of the 565 federally recognized Indian tribes, only 80 have jails or detention facilities in their communities. In midyear 2009 these tribal facilities held 2,176 Indian people representing seven percent of 29,400 Indian people confined in a correctional facility, both pre-trial and post conviction. Approximately 72 percent were adult males (n=1,571), 16 percent were adult females (n=348), eight percent were juvenile males (n=183), and three percent juvenile females (n=74)⁵.

The multipurpose use of jails affects their ability to provide programs and services and develop reentry plans. Jails typically house both adjudicated and non-adjudicated inmates, who have shorter stays. Within tribal jails, the average length of stay is five and a half days. Short jail stays present both an opportunity for early intervention and challenges in connecting the inmate with services to aid reentry. Program services can address long-term needs such as substance abuse, co-occurring and mental health disorders, and sex offender treatment. For adults, identification and coordination with good alternatives to incarceration, such as peacemaker courts and community courts for low-risk offenders, and Healing to Wellness courts and monitoring tools with supervision for mid- to high-risk offenders, can help address the factors driving recidivism.

Juvenile Detention Center (JDC) system and policy changes enhance resources for restorative practices programs and family and community engagement at each stage of detention, from placement to reentry, through coordinated support of federal, tribal, state and local partners. Juvenile reentry requires working with local schools and families to help youth transition back into school and home.

Tribes that do not have jails in their communities contract with other facilities for adult and juvenile offenders. These facilities are sometimes located far away in other tribes' reservations or in cities. The long distances present problems in maintaining staff and family contact, which hinders participation in rehabilitation efforts and developing reentry plans. Once offenders are transferred to off-reservation jails, tribal justice agencies have no control over the treatment and services they receive. Together, these issues hinder effective reentry planning for adults and juveniles.

⁴ William Adams and Julie Samuels, *Tribal Youth in the Federal Justice System*, (Washington DC: Urban Institute Report, 2011), 25.

⁵ Minton, *Jails in Indian Country*, 8.

Data, Infrastructure, and Program Challenges

Jail is often the first opportunity for offenders to be assessed to identify their criminogenic needs.⁶ Unfortunately, jails in general have limited capacity to provide individualized assessments and programming. As a result, problems persist and some individuals may reoffend due to inadequate reentry support to address ongoing criminogenic needs such as substance abuse, mental illness and unemployment. Evidence-based services including assessing need and offering prerelease and community-based interventions can prevent reoffending. These should be developed for adult, juvenile and specific gender populations. The alternatives to incarceration discussed in Chapter Two will be critical elements of the reentry response for those jail populations.

An important role for tribal justice systems is to support and develop community-based resources and programming for ex-offenders and their families. To ensure that reentry programming and planning is culturally responsive, tribal leaders may need to negotiate intergovernmental agreements with state, municipal or county jails.⁷ To accomplish this work, tribes would benefit from training and technical assistance to support information sharing, analysis, and collaboration.

Tribes are especially challenged by the breadth and depth of services needed by reentering youth. Many of these needs apply to adult offenders as well. These include behavioral health needs such as suicide prevention and access to psychiatric medications; substance abuse treatment and mental health services; educational programming that addresses preexisting issues such as learning disabilities, school failure, truancy, and drop-out status; assistance to repair disrupted family relationships and dysfunctional family situations; reconnection to cultural and spiritual practices needed for well-being and emotional health; and career preparation or training. There is a need for more federal funding and a unified federal approach to child, youth and family needs in Indian Country.

Tribal communities would benefit from an overall framework that aligns tribal youth policies across federal agencies in accordance with relevant provisions of the TLOA. The Juvenile Justice and Delinquency Prevention Act (JJDP) stipulates that states in their three-year plans must include the juvenile justice needs of Indian tribes. Federal partners such as DOJ's Office of Juvenile Justice and Delinquency Prevention (OJJDP) can assist in the coordination of federal funding resources to tribal JDCs for education, behavioral health, and vocational training services to enhance academic success and pro-social behavior for detained and reentering AI/AN youth. These efforts should be coordinated with the Bureau of Indian Affairs (BIA), Indian Health Service (IHS), the Bureau of Indian Education (BIE), and community providers who offer essential educational and behavioral health services for youth, including detention.

⁶ Criminogenic factors are 1) anti-social personality, 2) anti-social attitudes and values, 3) anti-social associates, 4) family dysfunction, 5) poor self-control, 6) poor problem-solving skills, 7) substance abuse, and 8) lack of employment and/or employment skills.

⁷ There are some strong examples of collaboration to support these goals. See Walking on Common Ground at <http://walkingoncommonground.org/>; and the New York Federal, State Tribal Courts Forum at <http://www.nyfedstattribalcourtsforum.org/history.shtml>

Challenges in Engaging Community and Family

Offenders are often out of touch with the effects of their actions and incarceration on their families. Additionally, little attention is given to establishing culture-based conflict resolution or peacekeeping systems that can help offenders apologize to victims and families, make amends or reparation, and regain trust. Facility staff may be reluctant or not know how to work with tribal officials who can support victim-offender mediation where it is appropriate or agreeable with victims.

Incarcerated youth may not have a positive relationship with a caring adult in their family or community. Many families need guidance and some need intervention regarding parenting skills, housing and economic resources support, and more. For example, parents with substance abuse or mental health issues should be assessed and offered treatment and support services to address the needs of the family as a whole. Supportive relationships with someone in a reentry case management role are key for youth to stabilize in the community.

Reentry is intrinsically a community-level concern and can provide support for ongoing rehabilitation and access to resources for employment, housing, and educational opportunities. Communities lack education about offender needs and risks. The reentry process could be improved through coordination with community leaders, community-based social services agencies and other community residents and volunteers that can provide cultural support, such as spiritual advisors, counselors and healers.

Although victim safety is considered highly important, victims are often uninformed about the status and whereabouts of offenders. If an offender has been incarcerated, he has probably not had the opportunity to make reparation and mend relationships prior to release. Inclusion of victim concerns is critical in reentry plans because those concerns could affect whether ex-offenders are accepted back into their families and communities. Strategies such as peacemaker courts can help to address the rehabilitation process.

III. Challenges in Long-Term (Prison) Reentry

Some tribal jails have adults or juveniles serving sentences or commitments longer than a year, but most AI/AN offenders returning from long-term corrections have served time in off-reservation federal Bureau of Prisons (BOP) or BIA facilities, or state prisons. In particular, AI/AN people living in P.L. 280 jurisdictions are most likely to serve time in state prisons located off-reservation because the state has criminal jurisdiction over crimes committed on tribal lands.

The challenges tribes encounter with reentry from prisons differ from those involving jail reentry. A major difference is that tribes have minimal influence in how adult prisons and juvenile correctional systems are managed and operated by federal and state agencies. Consequently, tribes must have effective intergovernmental relationships to influence how

AI/AN offenders are treated during their incarceration and the preparation they receive to return home. Some significant missing elements in reentry from prisons are regular coordination and information sharing with tribal justice staff, such as probation and parole officers to assist with reentry planning. Intergovernmental agreements may be necessary for federal and state agencies to proactively involve tribal justice agencies or other allied tribal agencies in reentry planning.

Intergovernmental relations may help alleviate resistance or reluctance by federal and state agencies in working with tribes through cross-agency training and education. Building knowledge, skills, and abilities across agencies should include cultural education, understanding state and federal correctional systems, working with tribal governments and tribal communities, developing collaborative reentry processes from federal and state correctional facilities to tribal communities, and understanding overlapping laws and policies. Agreements and contracts with off-reservation jails should include provision of programs and services, including enhancing skills of staff and programming on culturally appropriate elements.

System Challenges

Under the Major Crimes Act, the federal government may have jurisdiction over more serious crimes even if the crime occurred on tribal lands. In these cases, the tribal or BIA facility will likely detain defendants after arrest, before they are turned over to the U.S. Marshals Service (USMS). If convicted, an offender will then serve time in a BOP prison or contracted bed and the Federal Probation Service (FPS) will provide post-release supervision. As a result, reentry planning should include gathering data about tribal affiliation and building strategic partnership with tribal and federal justice partners. Agreements should be drafted which set expectations for agency staff for collaboration, including roles and responsibilities, and education for agency staff on tribal jurisdiction and the cultural history, values and resources of those tribes. They should also share information about pre- and post-release risk assessments and services to assist in supporting a successful reentry.

Similar challenges face AI/AN persons convicted of offenses committed off tribal lands, or if the state has jurisdiction to prosecute a case on tribal lands, especially with P.L. 280 states. In these cases, the state correctional staff may not be aware of offenders' AI/AN heritage or have the resources and staff time to develop strategies, given the long distance of federal and state prisons from many tribes and the logistical challenges to engaging family and community in transition planning.

Finally, federal agencies are responsible for ensuring tribal involvement with youth in federal custody who are placed in state or contracted juvenile facilities as there are no federal juvenile detention facilities. Tribal agencies may not be clear about where federal authority ends and state authority begins over youth reentry planning. Tribal liaisons in federal agencies are not the norm because of the lack of resources, staff, and time.

Tribal justice agencies such as adult and juvenile probation and parole officers can assist with reentry planning and facilitate coordination, information sharing, and case management. They are also critical partners in developing strategies to enhance the limited transitional services and tribal-based halfway houses on the reservation that are critical to the transition from long-term confinement. Many allied agencies are needed to provide the essential bundled services and resources to support returning ex-offenders and their families. Intergovernmental relationships are especially important for tribes located in P.L. 280 jurisdictions because in those states most tribal offenders serve adult sentences or juvenile commitments in state facilities.

Data, Infrastructure, and Program Challenges

Successful reentry of adults and juveniles requires enhanced services during and after incarceration. Acclimating to free society takes time. Ex-offenders require training to cope with life after prison. They are held back by the lack of transitional living resources on or near tribal communities. An ex-offender may be placed in a halfway house or be supervised in a parole office that is far from the reservation. The ex-offender's support services such as treatment, employment, and education also may be located off the reservation, and transportation can be a problem.

Due to the lack of collaboration and information sharing discussed above, tribal justice systems may not be aware of an ex-offender's risks, needs, and history of interventions. This makes development of transition plans and community-based resources difficult both on the individual level and on the tribal level. People should be informed about who is coming into their communities, but even where the needs of the ex-offender are known, many tribal communities face limited resources to support offender reentry, including treatment, housing, employment, and education. They need tools to help them assess and plan strategies to coordinate education, employment, and social, behavioral and mental health services. Some returning youth or adults, such as sex offenders, the learning disabled, or the elderly, may require extensive and specialized services, monitoring or supervision, and would benefit from a coordinated approach that leveraged the expertise of the BOP, FPS and state and local partners.

Challenges in Engaging Community and Family

Offenders returning from prison have been disconnected from their families, friends, and communities for a long time and may require support to rebuild trusting relationships with families and relatives or gain community acceptance. In some instances, reentry may have to focus on repairing damaged relationships with family members, relatives, and (as appropriate) victims and their families. Tribal members who serve longer sentences may also have to overcome stigmas associated with their crimes.

Offenders may not know how, or may be reluctant, to contact their tribes or families after long-term confinement. The ex-offender may be confronted with negative family or peer influences and limited formal supports from the tribal community. This can cause an adult offender to be released in urban areas where culturally relevant services and family support are difficult to

obtain. Strategies to keep ex-offenders engaged in programs and services once they return home are essential to ensure ongoing attention to risks that could cause reoffending or relapse.

Communities should be engaged in developing strategies to address the critical issues of community safety and housing options, especially for sex offenders or those convicted of drug-related crimes. Businesses can also be engaged to hire ex-offenders and to provide resources that will help them to write a resume, complete an application, practice interview techniques, establish good work habits and participate in mock job fairs. Finally, tribal leaders should be involved in reentry planning. They need to be notified by federal and state facilities through the tribe about offenders returning to their communities.

Cross Cutting Issues: Diversity and Leader, Community and Family Engagement

Tribes are diverse in their location, size and needs. They need reentry assistance that encompasses their values and history and includes planning for sustainability and continuity. Tribal leaders discussed the need to engage families and communities in developing tribal justice strategies to reflect the values of tribes in developing holistic approaches to tribal justice.

IV. Reentry Strategies Being Used In Indian Country

Below are a few examples of programs discussed in focus groups and consultations that suggest promising results.

- **Day School:** The Rosebud Sioux Tribe (Rosebud Sioux) and Todd County, S.D. created a day school in the JDC for detained and ex-offenders. Transportation is provided to ex-offenders to continue their education, and mental health services via video conference consultations allow for extended family participation.
- **Traditional Practices:** The Rosebud Sioux, Hualapai, and Mississippi Band of Choctaw Indians provide traditional practices and healing ceremonies such as Sweat Lodge, Pipe Ceremony, and one-on-one sessions with an elder and a detained juvenile to address behavioral health issues. The San Carlos Apache Tribe in Arizona utilizes a traditional form of counseling for youth; bead therapy using a talking circle format; use of elders to provide gender specific sweat lodges; and youth and family engagement.
- **Youth Green Reentry Program:** Hualapai JDC is in phase one of developing a “green building” class for detained youth, where they will develop skills and abilities to read and create “green blueprints” for sustainable green buildings in the community.
- **Family Group Decision Making Conferencing:** This restorative practices process, based in research, includes case management (pre- and post-release), strengthening families, achieving youth and family safety, and placing family at the center of the decision making process. The roots of FGDMC are from the Maori People in New Zealand.

- **Adult Community Support:** The Muscogee (Creek) Nation Reintegration Program (MCN) in Oklahoma provides service to ex-offenders transitioning from a correctional facility back into the tribe. Services include parole and court advocacy; specialized reentry classes; clothing, food, and employment referrals; job advocacy; mental health and substance abuse referrals; educational opportunities; and temporary and long-term affordable housing.
- **Transitional Housing:** The Keweenaw Bay Indian Community Supportive Housing Program in Michigan provides safe and affordable housing and employment for tribal members and other Indians, recognizing the unique needs of individuals who are transitioning out of criminal justice facilities and treatment centers or who are coping with homelessness.
- **Federal Probation:** The Offender Orientation Program Serving Native American Offenders, developed by the District of New Mexico's Federal Probation and Parole Services, explains the roles of probation officers in the supervision process to enable the family members to understand that the ultimate goal is the offender's success. Post release, offenders and their families are required to attend an orientation meeting with federal probation and parole services, where supervision conditions and treatment requirements are reviewed.
- **Parent Strategies:** The Storybook Project by the Salt River Pima Maricopa Jail can help incarcerated parents provide positive interaction and modeling for their children during incarceration. The Jail staff records the incarcerated parent reading a book, and the recording and book are sent to the child to listen and read along.

V. Recommendations and Strategies

Elements of a Tribal Reentry Program

- **Jail reentry needs assessments, data collection and planning:** An important first step is for tribes to assess their reentry programming and services needs for adults and youth through data collection and analysis of information, including surveys and talking circles, program reviews, assessments of resources on or near tribal communities, and gaps. They should conduct planning sessions with federal, tribal, state, and local practitioners to design and implement tribal reentry plans that evaluate needs, target populations, program effectiveness, and resources. These plans should inform reentry policies and protocols for offenders being released into tribal communities from tribal and other authorities, including federal, state and local.
- **Critical elements of evidence-based reentry program:** All reentry programs should have some basic, evidence-based elements:
 - use of a risk assessment tool;
 - creation and management of an individual reentry plan;
 - access to AI/AN data collected by the tribe or the external agencies;

- services to address identified needs, including education, mental health treatment, substance abuse treatment, life skills, job training, and mentoring;
- structured reentry and reintegration from long-term confinement, and continuity of care at the community level; and
- for those in jail short term, focus on alternatives to incarceration.
- **Elements in a tribal or BIA correctional facility:** BIA and tribally operated correctional facilities have an important role in supporting efforts to coordinate the access of partners, provide pre-release programming that builds pro-social skills and reduces criminogenic needs to reduce recidivism. While a short jail term may limit the intensity of services, reentry plans should include local community based resources.
- **Elements in a contracted state prison or jail:** Within state facilities that are contractually or jurisdictionally housing AI/NA offender populations, pre- and post release services should be the same: risk assessments, reentry plans, and services including education, mental health treatment, substance abuse treatment, life skills, job training, and mentoring, and sharing information about pre-release assessments and programming.
- **Elements in a federal prison:** Most federal prisons offer critical support services pre- and post-release, including facility-based services in BOP facilities, specialized programming, transitional housing, and services and supervision. To be most effective, federal agencies such as BOP, FPS, and the Executive Office for the U.S. Attorneys, National Indian Country Coordinator (USAO), should coordinate with BIA and tribal justice agencies on reentry planning and transition and information sharing about returning tribal members.
- **Transitional and halfway houses on tribal land:** Explore replication of promising practices such as the planning and construction of transitional living units in Indian Country to address the demands and needs for adult juvenile detention alternatives. Transitional living units allow for long-term residential settings for rehabilitation in a group living environment, and could be joined with other efforts in a Tribal Justice Center.
- **Supportive policy for federally incarcerated juveniles:** Explore the results of the recent Urban Institute report on juveniles under federal jurisdiction and explore impacts and recommended policy change for violent youth in federal custody. The plan should explore the roles of tribal and state juvenile justice and detention in supporting and housing these youth, as well as coordinate with tribal communities.
- **Tribal youth and adult engagement:** With support from DOJ's Tribal Youth Program and National Reentry Resource Center, develop a permanent forum for formerly detained AI/AN youth and adults to be at the table with federal, tribal, and state partners and be included in developing strategies to address the reentry issues they face and identify best practices that would yield better reentry results.

Resources that federal agencies will make available within six months:

- DOJ's Second Chance Act's (SCA) Demonstration, Mentoring, Correctional Technology Jobs and Co-Occurring Substance Abuse and Mental Health Disorders grant programs

can support these activities, along with support from DOJ's National Reentry Resource Center.

- DOJ's Tribal Juvenile Detention and Reentry Green Demonstration Program funds vocational training programs to assist with job readiness (pre- and post-release). OJJDP's Tribal Youth National Training and Technical Assistance and Tribal Juvenile Detention and Reentry Program Training and Technical Assistance can also assist.

Resources that federal agencies will make available within twelve months:

- With DO, DOJ and HHS, educate tribes on resources to support planning and funding such as SCA, Indian Alcohol and Substance Abuse Program (IASAP), Tribal Youth Program, IHS, Circles of Care, and the Tribal Action Plans.
- Provide forums for multidisciplinary teams to receive cross-agency training on issues related to the Tribal Justice Plan.
- Obtain results of the DOJ-funded LSI-R⁸ validation project⁹ in reference to AI/AN populations to inform development of assessment tool(s).
- Explore educational programming resources provided by DOI to address offender educational needs and incorporate the achievement of educational needs in reentry plans.
- Coordinate with the FPS and Pretrial Services Indian Country Steering Committee¹⁰, to promote and encourage U.S. Probation/Pretrial Offices (USPO) to provide training in TLOA, coordinate with Steering Committee safety academies, share legal, evidence based practices and other related materials; support the partnership of the BOP and DOI with the tribes in arranging for halfway houses and other BOP contracts; and collaborate and partner across federal, state, tribal jurisdictions to ensure the optimal services delivery in relation to re-entry in Indian Country.
- Coordinate with the USAO National Indian Country Coordinator, who will in turn coordinate with the Tribal Liaisons and Victim-Witness Specialists in USAOs having Indian Country jurisdiction.
- The BOP and the Workgroup would assess the capacity and interest of tribes to undertake a halfway house for tribal members who are returning from federal incarceration. Explore possible strategies to assist tribes in building the skills and infrastructure needed to support these activities for interested tribes.

If additional resources become available, it is also recommended that:

- DOJ, DOI, and the Workgroup assess and explore ways to build and enhance existing training, especially in juvenile justice and with state and local staff.
- The Workgroup review existing screening and assessment tools and develop culturally relevant tools that work for AI/AN populations in developing reentry plans.

⁸ Level of Service Inventory-Revised.

⁹ This project is being led by Criminal Justice Institute.

¹⁰ The Indian Country Steering Committee (ICSC) is a partnership between the chiefs of several districts with high NA/AI populations, and the Office of Probation and Pretrial Services to identify issues, trends, needs, and best practices.

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- The Workgroup explore options to fund the construction of new transitional living or halfway houses or renovation of existing facilities to assist offenders returning to tribal communities.
- DOJ and DOI would support transitional living facilities on tribal land by placing halfway houses within Multipurpose Justice Centers, but funding would be needed for planning, construction and operations.
- DOJ in partnership with the Workgroup and in coordination with tribal partners will lead strategies to build peer-to-peer learning and networking opportunities, including mentoring.
- Encourage federal, tribal, and state policy changes that promote the accessibility of tribal elders as resources, and to provide tribal best practices and traditional healing venues to detained and reentering tribal youth.