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Serious & Violent Native American
Youthful Offender Project

Serious & Violent Native American Youthful Offender Project

Final Report

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Submitted by the

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OVERVIEW

The serious youthful Native American and Alaska Native juvenile offender is processed through the federal and state systems in a manner not equaling the processing of non-Native Americans charged with similar offenses. The driving factors are the location of the offense, the relative willingness of the United States attorney to accept a case for prosecution, the limitations imposed on Courts of Indian Crimes to effectively sanction this level of offender, and the tribes' inability to access state resources through lack of comity and lack of full faith and credit toward tribal court orders. Judicial comity is the principle by which courts of one jurisdiction will observe the laws and judicial decisions of another. State and federal courts depend on comity to keep many of their results in line with one another. This practice has a real value in securing uniformity of decisions and in discouraging repeated litigation of the same question. Article IV, Section 1, of the U.S. Constitution requires that "full faith and credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State."

These principles do not apply to the tribal courts with respect to state courts. One way that this is most evident is in the tribe's inability to access proper treatment options for the Native American youthful offender in the state juvenile justice system.

During 1995, 468 juveniles were referred to federal prosecutors for investigation, 49% of these cases were declined for further action. In the same year, 122 juveniles were adjudicated as delinquent in the federal courts, 47% for either a violent or drug related offense. Of the total number of juvenile delinquents confined by the Federal Bureau of Prisons, 61% were Native Americans (Bureau of Justice Statistics, January 1997). In the New Mexico juvenile justice system, Native American youths comprise 7% of the total state commitments for acts committed on non-Indian land and its these matters that are being heard in state court. However, regarding offenses committed on tribal lands, since tribal courts do not have comity with state courts they are unable to sentence Native American juveniles to state juvenile institutions or use any other correctional options.

Except for New Mexico, which allows for full faith and credit of tribal court orders in the areas of Children's mental health and developmental disabilities, no other state is currently engaged in a thoughtful resolution of the problem of Native American youthful offenders accessing state resources through mutual recognition of tribal court orders. There is a genuine need for a "rational and measured approach" to the increasing problem of violent juvenile crime, on and off reservations. However, there has not been a systematic attempt to document recent statutory changes and the impact of those changes on the Native American and non-Native American juvenile populations (Coalition for Juvenile Justice, 1994). This is especially so in the examination and treatment of serious Native American youthful offenders.

The significant policy issues over what to do with serious and violent juvenile offenders must be debated with the best outcome information available. Reasoned change is best based on sound information. "The state of New Mexico took a bold step several years ago by making the imposition of an adult sentence upon a juvenile offender a

dispositional decision in the juvenile court rather than a separate transfer decision" (Coalition for Juvenile Justice, 1994). New Mexico's unique approach to sanctions against serious and violent juvenile crime has not been fully studied to determine if this approach is effective. Even though most states are revising their statutory response to juvenile crime, none have addressed the pressing issues of the tribal courts need to deal with their youthful offenders who frequently cross-venue. Complicating this problem is the lack of accessible programs and facilities to meaningfully secure and treat the Native American youthful offender.

LITERATURE REVIEW

Crime Victimization

In a recent review of federal statistics on Native Americans and Crime, the findings show that an alarming rate of victimization for Native Americans. Across all age groups and all races, Native Americans experience a higher rate of victimization. In fact, nearly a third of all Native American victims of violence are between the ages of 18 and 24—the highest per capita of any racial group in this age group (Greenfeld, 1999). In addition, the rate of violent crime experienced by Native American women is 50% higher than that reported by black males (Greenfeld, 1999). However, it is important to note that approximately 70% of the victimization of Native Americans was reported to be committed by a person of another race.

Drugs and alcohol play a large part in both the victimization of Native Americans and the commission of offenses. Of all races, Native Americans reported violent victimization by someone under the influence of alcohol (Greenfeld, 1999). Accidents, accounting for about one-fourth

of all Native American deaths are estimated to be up to 75% alcohol-related (Lex, 1985).

Crime and Alcohol

While research in the 1970s showed that Native Americans had the highest arrest and crime rates in the nation, arrest rates for Native American youth in 1997 were about the same as the rates among white youth and a fifth of that of Black youths (Jensen, 1977; Levy, 1974; Greenfeld, 1999). Research in the 1980s indicated that crime among Native American youth was increasing (Harring, 1982). While the literature has focused on violent offenses (Greenberg, 1981), the greatest increase in crime among Native American youth under 18 was for more minor alcohol violations such as DUI, liquor law violations and public drunkenness. In fact, in these three categories crime by Native American youth was more than double the national rate (Greenfeld, 1999).

Regardless of the type of offenses, it is well documented that Native American crime is alcohol related (Grobsmith, 1989). About half of convicted Native American inmates in local jails had been consuming

alcoholic beverages at the time of the offense for which they had been convicted. An estimated 7 in 10 Native Americans in local jails convicted of a violent offense had been drinking when they committed the offense (Greenfeld, 1999). As reported in the Federal report, the following table shows a breakdown of inmates reporting the use of alcohol at the time of committing their offense:

<u>Offenses</u>	<u>All races</u>	<u>Native Americans</u>
All offenses	39.5%	48.8%
Violent	40.6%	71.0%
Property	32.8%	37.1%
Drug	28.8%	14.3%
Public-order	56.0%	60.2%

Although the rate of arrest and violent crime commission are the same or lower within the Native American population compared to other races, Native Americans are incarcerated in jail and in prison at a higher rate. In fact, in 1997, Native Americans were held in jail at a rate of 1083 per 100,000, the highest rate of any racial group. On a per capital basis, Native Americans had a rate of prison incarceration 38% higher than the national rate (Greenfeld, 1999). Finally, in 1994, of the 124 juvenile

delinquents confined under Federal jurisdiction, 75 were Native Americans—about 60% of such juveniles.

Repudiating Alcohol Myths

It is important to address the myth factor related to Native Americans, crime and alcohol. While those studies which have been published show a high rate of alcohol involvement with Native Americans, the actual rate of crime, and in particular that of violent offenses, is lower for Native Americans than other races (Greenfeld, 1999).

Furthermore, it is important that this discussion on the youthful offenders not perpetuate the inaccurate perceptions of the drinking Native American and the increase in crime. As one researcher describes, “although approximately 70% of Americans say they drink, the rate is closer to 40% among surveyed tribes. This may mean that Native Americans who drink experience very adverse consequences, not that problem drinking is endemic among Native Americans” (Nofz, p. 67). This is particularly important in order to address the biases that may exist in the way in which crime is reported as well as in the development of treatment approaches (Esqueda, 1997).

Treatment Interventions and Services

There is little information on the type or availability of services on the reservations for juvenile offenders or for alcohol-related issues. However, the importance of enhancing prevention and intervention services to juveniles on the reservation has been strongly supported by the literature. Grobsmith (1989) found strong a correlation between early substance abuse and the onset of juvenile criminal activity within a Native American population. Alcohol is involved in both suicides and homicides among young Native Americans, who have a suicide rate almost double that of the rest of the overall population (U.S. Department of Health and Human Services, 1987).

Several authors have discussed the use of task-centered group interventions that maintain the autonomy of the group members while emphasizing community inclusion (Nofz, 1988; Edwards, 1984). Because of the strong sense of responsibility to family, kinship group and tribe, those interventions, which are most effective, build upon the recognition of these factors and the strengthening of these relationships (DuBray, 1985). In addition, task-centered approaches do not focus on the

problems within an individual personality, but on selected tasks around
the amelioration of issues within a given context.

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GOALS & OBJECTIVES

The goal of this project endeavored to strengthen tribal courts through comity principles and increase tribal access to local resources that are currently unavailable. This will have direct impact on the tribes' ability to develop innovative approaches to deal with the Native American youthful offender. When this approach is applied, it will be the first time sovereign tribal nations and the state in which they reside have engaged in applying concrete solutions to the issue of serious and violent Native American youthful offenders.

The first objective of the project was to study the Native American youthful offender at the federal and state level. A profile of the Native American youthful offender was obtained as well as dispositional options available at both the federal and state level. These options should preserve the tribal community connections while providing access to effective rehabilitation.

The second objective of this project produced an adaptable, model Children's Code template for the 22 separate Native American jurisdictions that will integrate with the existing New Mexico State Children's Code. It provided the essential structure for collaboration and mutual respect for jurisdiction for the various tribes that will allow them to apply sanctions to Native American youthful offenders immediately, appropriately and with respect for the cultural context of their community.

The third objective was to educate New Mexico Legislators before the 1999 legislative session as to the importance of comity and full faith and credit for the tribal courts. During that session, the New Mexico Council on Crime and Delinquency was available to assist legislators in their understanding of the model children's code template and the insertion of full faith and credit principles into the delinquency section of the New Mexico Children's Code.

PROCESS

The New Mexico Children's Code, and the process with which it was developed, has been widely embraced by most juvenile justice professionals. This Code currently includes a full faith and credit provision in the mental health and developmental disability section, which has been accepted by the state and tribal jurisdictions. The next logical step would be to include the full faith and credit concept with applicability to the Youthful Offender and Delinquency sections of the NM Children's Code.

METHODOLOGY

The purpose of the first objective was to examine the trends in juvenile crime on the New Mexico reservations and to identify tribal, judicial and social services used to respond to Native American youthful offenders. Data was collected from 14 tribes throughout New Mexico on a wide range of information on juvenile crime, tribal responses, and services provided for juvenile offenders on the reservations.

Instrument development

A comprehensive coding tool was developed to gather data from the tribes (see Appendix) The tool provided the structure for an in-depth interview on the juvenile justice system structure, types of processing of juvenile offenses and interventions applied for varying levels of delinquency. In addition, the instrument included a coding scheme for collecting offense data for the past five years as well as services available, used, and needed for juvenile offenders.

Problems with the data

There were problems with the data collection process that ultimately affected the quantity and quality of the data. Because of the quality of the data collected, there was little substantial analysis that could be conducted. These problems stemmed from difficulties in the implementation of the data gathering process. The instrument was not to be utilized as a mailed survey as the questionnaire was constructed as a coding source. The comprehensiveness of the questionnaire items was utilized in anticipation of different tribal systems, different data

systems as well as varying information availability and would have been difficult to interpret as a survey.

The instrument was then mailed out to all the tribes rather than individually collected. Finally, only fourteen of the tribes completed the survey and only one was usable in its entirety.

Findings

Because of the problems with the data, these findings should be interpreted as descriptive only of the tribes who completed the surveys and not generalizable to other tribes in New Mexico. The findings are, however, similar to those reported nationally thus the picture they provide is presumably not greatly skewed for those they represent.

Table 1: Population of Juvenile Offenders on the Reporting Pueblos Age 10-17
(Includes Mescalero, Jicarilla, Nambé, San Juan, Santa Ana, Santo Domingo, Taos)

	1995	1996	1997
Male	702 77.7%	472 69.6%	487 68.3%
Female	201 22.3%	206 30.4%	226 31.7%
Total	903 100%	678 100%	713 100%

Table 2: Number of Arrests for Reporting Pueblos Age 10-17
(Includes Mescalero, Laguna, San Felipe, San Ildefonso, Santo Domingo)

	1995	1996	1997
Male	138 79.3%	194 70.5%	311 77.2%
Female	36 20.7%	81 29.5%	95 23.6%
Total	174 100%	275 100%	403 100%

Table 3: Number of Charges for Reporting Pueblos Ages 10-17
(Includes Mescalero, Laguna, Nambe, San Felipe, San Ildefonso, Santa Ana, Santo Domingo, Zuni)

	1995	1996	1997
Male	740 68.1%	719 71.5%	851 70.8%
Female	347 31.9%	287 28.5%	351 29.2%
Total	1087 100%	1006 100%	1202 100%

Table 4: Use of Detention for Reporting Pueblos Ages 10-17
(Includes Mescalero, Laguna, Nambe, Santa Ana, Taos)

	1995	1996	1997
Male	90 81.1%	145 74.0%	223 84.4%
Female	21 8.9%	51 6.0%	53 19.2%
Total	111 100%	196 100%	276 100%

Table 5: Number of Dispositions for Reporting Pueblos Ages 10-17
(Includes Mescalero, Nambe, San Felipe, San Ildefonso, Santa Ana, Santo Domingo, Zuni)

	1995	1996	1997
Male	604 67.1%	601 74.1%	644 68.6%
Female	296 32.9%	210 25.9%	295 31.4%
Total	900 100%	811 100%	939 100%

Table 6: Number of Formal Dispositions for Reporting Pueblos Ages 10-17
(Includes Mescalero, Nambe, San Felipe, Santo Domingo, Zuni)

	1995	1996	1997
Male	779 88.5%	878 87.1%	1051 85.2%
Female	101 11.5%	130 12.9%	182 14.8%
Total	880 100%	1008 100%	1233 100%

Table 7: Number of Informal Dispositions for Reporting Pueblos Ages 10-17
(Includes Mescalero, Nambe, San Felipe, San Ildefonso, Santo Domingo, Taos, Zuni)

	1995	1996	1997
Male	111 70.7%	149 63.9%	247 68.6%
Female	46 29.3%	84 36.1%	113 31.4%
Total	157 100%	233 100%	360 100%

**Table 8: Number with Formal Dispositions Most Likely to Impact on State System: Includes residential and non-residential treatment programs, detention and off-reservation programs.
(Includes Mescalero, Nambe, San Felipe, Santo Domingo, Zuni)**

	1995	1996	1997
Male	101 90.2%	171 86.8%	248 90.8%
Female	11 9.8%	26 13.2%	25 9.2%
Total	112 100%	197 100%	273 100%

**Table 9: Number with Informal Dispositions Most Likely to Impact on State System: Includes substance abuse treatment, mental health treatment, and off-reservation programs.
(Includes Mescalero, San Felipe, Santo Domingo, Taos, Zuni)**

	1995	1996	1997
Male	28 66.7%	56 61.5%	90 73.8%
Female	14 33.3%	35 38.5%	32 26.2%
Total	42 100%	91 100%	122 100%

**Table 10: Delinquent Offenses for Reporting Pueblos Ages 10-17
(Includes Mescalero, Jicarilla, Laguna, Nambe, Pojoaque, San Felipe, San Ildefonso, San Juan, Santa Clara, Santo Domingo, Taos, Zia, Zuni)**

	1995	1996	1997
Personal Offenses	206 15.0%	334 19.9%	230 20.6%
Property Offenses	456 33.2%	599 35.6%	362 32.4%
Public Violations	231 16.8%	363 21.6%	60 5.4%
Drug/Alcohol Offenses	479 34.9%	385 22.9%	467 41.7%
Total	1372 100%	1681 100%	1119 100%

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Proportion of Enrolled Pueblo Population Represented Within Each Summary Chart
Based on 1990 Census

	Population 1990 Census	Table #1 Population of Delinquents	Table # 2 Total Arrests	Table #3 Charges	Table #4 Detention	Table #5 Dispositions	Table #6 Formal Dispositions	Table #7 Informal Dispositions	Table #8 Formal Dispositions /Impact	Table #9 Informal Disposition /Impact	Table #10 Delinquent Offenses
Mescalero	2,516 4.43%	X 4.43%	X 4.43%	X 4.43%	X 4.43%	X 4.43%	X 4.43%	X 4.43%	X 4.43%	X 4.43%	X 4.43%
Jicarilla	2,375 4.18%	X 4.18%									X 4.18%
Laguna	3,634 6.39%		X 6.36%	X 6.39%	X 6.39%						X 6.39%
Nambe	329 0.58%	X 0.58%		X 0.58%	X 0.58%		X 0.58%	X 0.58%	X 0.58%		X 0.58%
Pojoaque	177 0.31%										
San Felipe	1,859 3.27%		X 3.27%	X 3.27%		X 3.27%	X 3.27%	X 3.27%	X 3.27%	X 3.27%	X 3.27%
San Ildefonso	347 0.61%		X 0.61%	X 0.61%		X 0.61%	X 0.61%	X 0.61%			X 0.61%
San Juan	1,276 2.24%	X 2.24%									X 2.24%
Santa Ana	481 0.85%	X 0.85%		X 0.85%	X 0.85%	X 0.85%	X 0.85%				
Santa Clara	1,246 2.20%										
Santo Domingo	2,947 5.18%	X 5.18%	X 5.18%	X 5.18%		X 5.18%	X 5.18%	X 5.18%	X 5.18%	X 5.18%	X 5.18%
Taos	1,212 2.13%	X 2.13%			X 2.13%			X 2.13%		X 2.13%	X 2.13%
Zia	637 1.12%										
Zuni	7,073 12.44%			X 12.44%		X 12.44%	X 12.44%	X 12.44%	X 12.44%	X 12.44%	X 12.44%
Total	26,106										
Pueblo Enrolled Population	56,838 45.9%	7 Included 19.59%	5 Included 19.89%	8 Included 33.76%	5 Included 14.38%	7 Included 27.36%	5 Included 25.91%	7 Included 28.65%	5 Included 25.91%	5 Included 27.46%	13 Included 41.47%

Table of Total Number of Arrests, Charges, Detention, Petitions and Dispositions for Reporting Pueblos by Males and Females 1995—1998

	FEMALES				MALES			
	1995	1996	1997	1998	1995	1996	1997	1998
Arrests	41	90	97	105	169	204	326	229
Charges	351	287	352	242	749	719	857	755
Detention	26	54	56	5	103	155	238	34
Petitions	147	116	87	93	350	479	402	188
Dispositions	300	210	295	208	613	601	644	663

Table of Tribal Sanctions Applied for Reporting Pueblos by Males and Females 1995--1998

	FEMALES				MALES			
	1995	1996	1997	1998	1995	1996	1997	1998
Declined to Prosecute	0	4	10	8	2	5	19	15
Fined as Delinquent	8	5	9	9	94	75	88	111
Probation as Delinquent	7	7	11	8	77	116	234	71
Incarcerated as Delinquent	0	3	3	3	86	93	132	173
Waiver to Adult Court	0	0	0	0	0	0	0	2
Fined As Adult	0	0	0	0	0	0	1	1
Probation as Adult	0	0	0	0	0	0	0	2
Incarcerated as Adult	0	0	0	0	0	0	0	2
Total Delinquency	15	15	23	20	257	284	454	355
Total Adult	0	0	0	0	0	0	2	3

Formal Dispositions for Reporting Pueblos by Males and Females 1995—
1998

	FEMALES				MALES			
	1995	1996	1997	1998	1995	1996	1997	1998
Consent Decree	3	1	9	2	8	18	21	9
Treatment Program	5	9	6	4	64	100	151	119
Community Service	17	27	32	22	376	364	463	394
Supervision	55	70	108	41	273	314	303	221
Tribal Intervention	15	6	8	1	21	11	17	2
Detention	6	13	17	6	34	62	64	26
Residential Tx Program	0	4	2	4	3	8	26	26
Off-reservation Program	0	0	0	0	0	1	1	0
Non-member Indian cases	0	0	1	2	3	1	4	5
Total Formal Dispositions	101	130	182	80	779	878	1046	797

Informal Dispositions for Reporting Pueblos by Males and Females 1995-1998

	FEMALES				MALES			
	1995	1996	1997	1998	1995	1996	1997	1998
Deferred for Treatment	14	6	16	24	43	13	19	53
Deferred for Drug/Alcohol Tx	6	10	13	17	15	24	39	34
Mental Health Treatment	7	22	17	18	14	26	39	34
Educational Program	6	6	14	7	25	6	16	14
Community Service	6	30	23	21	18	52	95	63
Off-residential Program	0	6	2	4	0	10	17	17
Early Curfew	0	1	4	2	1	2	6	1
Total Informal Dispositions	39	81	89	93	116	133	231	216

Informal Tribal Processes for Reporting Pueblos by Males and Females 1995--1998

	FEMALES				MALES			
	1995	1996	1997	1998	1995	1996	1997	1998
Counseling by Extended Family	18	32	43	30	30	28	51	32
Counseling by Tribal Leaders	13	12	11	4	10	25	28	19
Intra-Family Meetings	5	6	4	4	15	16	11	6
Community-Wide Meetings	9	19	22	13	80	76	97	66
Total Tribal Processes	45	69	80	51	135	145	187	123

To address the second objective of producing an adaptable model Children's Code amendment allowing for full faith and credit between tribal courts and the state, a legal analysis of the New Mexico Children's Code with respect to Native American youthful offenders provided legislative, policy, and legal information in preparation for full faith and credit and comity principles to be applied to tribal courts. The strategy in this project built upon previous research on the New Mexico Children's Code. This project conducted focus groups and included tribal entities to garner an understanding of their unique needs. Topics covered in these focus groups included strategies for preserving the community connection for Native American youthful offenders while providing access to effective rehabilitation through culturally – sensitive programs.

The third objective was addressed through meetings with New Mexico Legislators in their respective Interim Committees. The New Mexico Council on Crime and Delinquency educated and answered questions regarding the comity and full faith and credit principles for tribal courts with respect to the Children's Code. During the legislative

session, the staff was available for questions and assisted legislators as requested.

The Project Director continued the educational process by meeting with key decision-makers that will be influenced by these decisions. The Supreme Court /Office of Native American Affairs joint tribal-state relations effort culminated in the establishment of a joint tribal-state judicial task force comprised of six representatives from the state districts and six representatives from the tribal courts. This provided an important addition to the efforts of this project by being able to address such things as children's court rules and procedures once the legislation passed. Additionally, it will be able to review the model joint power agreements to help with local adaptations.

OUTCOMES

The production of the model Children's Code amendment that will resolve the unaddressed areas of the Native American youthful offender was a fundamental outcome for this project. The template provides an understanding of the full faith and credit principle for tribal courts with respect to the New Mexico Children's Code Youthful Offender/Delinquency provisions

The project described here will be considered effective if the goal of strengthening tribal courts and increasing tribal access to local resources for addressing Native American youthful offenders is met with a demonstration of a clear potential for adaptation by other states and tribes. The development of a Children' Code template when successfully utilized by New Mexico and New Mexico tribes will be one such indicator of effectively meeting the goal. Furthermore, the establishment of full faith and credit linkages between state and tribal courts and the implementation of comparable youthful offender codes across

jurisdictions will provide a substantial basis for replication in other states. Finally, legislation assessing full faith and credit issues with tribal courts in New Mexico is also considered an indicator of successful outcome.

RESULTS

Legislation regarding full faith and credit for tribal courts was drafted and introduced in the 1999 New Mexico Legislative Session. After numerous committee hearings, meetings with legislators and a public forum, two identical bills, one originating in the House and one in the Senate passed and were signed by the Governor. The successful passage of this legislation will allow the state and all Native American jurisdictions in the state of New Mexico to enter into Intergovernmental Agreements with the various executive departments of the state. This legislation was worded thus:

“A tribal court order pertaining to an Indian child in an action under the Children's Code shall be recognized and enforced by the district court for the judicial district in which the tribal court is located. A tribal court order pertaining to an Indian child that accesses state resources shall be recognized and enforced pursuant to the provisions of intergovernmental agreements entered into by the Indian child's tribe and the department or another state agency. An Indian child residing on or off a reservation, as a citizen of this state, shall have the same right to services that are available to other children of the state pursuant to Intergovernmental Agreements. The cost of the services provided

to an Indian child shall be determined and provided for in the same manner as services are made available to other children of the state utilizing tribal, state and federal funds and pursuant to Intergovernmental Agreements. The tribal court, as the court of original jurisdiction, shall retain jurisdiction and authority over the Indian child." (NMSA 32A-1-8 (E))

Three statewide forums were held after the passage of the legislation to inform the Native American tribes of the new statutory language. The meetings were well attended by Native Americans and included discussions on how to address the differences between Native American and non-Native American juvenile justice practitioners. This difference of opinion hinders effectively meeting the needs of the Native American youth. Another important issue was the development of the Intergovernmental Agreements. The language desired from the perspective of the Native American tribes was discussed and a draft model subsequently completed. This model was presented to the Children, Youth and Families Department of the State of New Mexico for comment and review.

The Children, Youth and Families Department had several issues and concerns regarding the draft model. It appeared that progress would be stalled until these issues were addressed. A statewide summit

was held to bridge the gap between the Native American tribes and the Children, Youth and Families Department. This summit addressed the issues of tribal-state relations, cultural sensitivity, fiscal responsibility, as well as many other areas of concern.

APPENDICES

Survey

New Mexico Native American Youthful Offender

Reports

- Tribal-State Relations and the Mutual Recognition of Judgments
- Mutual Recognition of Court Orders

Legislation

New Mexico Legislation Chapter 46

Model Template

Model Tribal-State Agreements (DRAFT)

Summit

Second Native American Juvenile Justice Summit

*THE NEW MEXICO NATIVE AMERICAN
YOUTHFUL OFFENDER PROJECT*

COVER SHEET

NAME OF RESEARCHER COMPLETING SURVEY:

DATE SURVEY COMPLETED:

NAME OF TRIBE:

NAME OF TRIBAL REPRESENTATIVES INTERVIEWED/CONSULTED:

NAME OF TRIBAL REPRESENTATIVE FOR FOLLOW-UP CONTACT:

PHONE NUMBER AND ADDRESS OF FOLLOW-UP CONTACT:

LOCATION OF DATA (LIST AGENCIES OR OTHER PLACES WHERE DATA WAS AVAILABLE):

COMMENTS ON DATA COLLECTION

**THE NEW MEXICO NATIVE AMERICAN
YOUTHFUL OFFENDER PROJECT**

SECTION 1: REFERRAL TO AND PROCESSING THROUGH THE TRIBAL JUVENILE JUSTICE SYSTEM

1. WHAT TYPE OF COURT DOES THE TRIBE USE FOR JUVENILE JUSTICE:

TRIBAL COURT	1	YES	2	NO
TRADITIONAL COURT	1	YES	2	NO
FEDERAL COURT SYSTEM	1	YES	2	NO
PEACEMAKERS	1	YES	2	NO
OTHER, Please specify	1	YES	2	NO

2. PLEASE PROVIDE THE DEFINITION OF DELINQUENCY AS USED BY THE TRIBAL SYSTEM:

3. PLEASE PROVIDE THE DEFINITION OF STATUS OFFENSE AS USED BY THE TRIBAL SYSTEM:

4. WHAT AGENCIES CAN REFER DELINQUENTS TO THE TRIBAL JUVENILE JUSTICE SYSTEM?¹

SCHOOL SYSTEM	1	YES	2	NO
PARENTS/GUARDIANS	1	YES	2	NO
PRIVATE PARTY/INDIVIDUAL	1	YES	2	NO
SOCIAL WELFARE AGENCY	1	YES	2	NO
LAW ENFORCEMENT	1	YES	2	NO
PROSECUTOR/PRESENTING OFFICER	1	YES	2	NO
TRIBAL OFFICIALS	1	YES	2	NO
FEDERAL LAW ENFORCEMENT	1	YES	2	NO
OTHER, please specify	1	YES	2	NO

¹ Delinquency refers to both delinquent offenses and status offenses as defined in Questions 2 and 3.

5. WHAT AGENCY HANDLES THE REFERRALS AND THE PROCESSING OF CASES THROUGH THE TRIBAL JUVENILE JUSTICE SYSTEM?

JUVENILE JUSTICE/PROBATION SERVICES	1	YES	2	NO
PROSECUTING ATTORNEY	1	YES	2	NO
SOCIAL WELFARE AGENCY	1	YES	2	NO
SPECIALIZED PRESENTING OFFICERS	1	YES	2	NO
TRIBAL REPRESENTATIVE	1	YES	2	NO
OTHER, Please specify	1	YES	2	NO

6. WHAT TYPES OF LEGAL REPRESENTATION ARE AVAILABLE TO DELINQUENTS?

PUBLIC DEFENDER	1	YES	2	NO
PRIVATE LAWYER	1	YES	2	NO
PRESENTING OFFICERS	1	YES	2	NO
FAMILY, RELATIVES OR FRIENDS	1	YES	2	NO
OTHER TRIBAL REPRESENTATIVE	1	YES	2	NO
OTHER, Please specify	1	YES	2	NO

7. PLEASE INDICATE IF THE FOLLOWING STEPS ARE TAKEN IN PROCESSING A TYPICAL DELINQUENCY CASE THROUGH THE TRIBAL JUVENILE JUSTICE SYSTEM (IF DIFFERENT, PLEASE EXPLAIN).

WHEN A JUVENILE IS ACCUSED OF A DELINQUENCY

❖ ARE JUVENILES GIVEN NOTICE OF CHARGES	1	YES	2	NO
❖ ARE JUVENILES ADVISED OF RIGHTS	1	YES	2	NO
❖ DO THEY HAVE A RIGHT TO AN ATTORNEY OR LAY COUNSEL:				
> AT TIME OF QUESTIONING	1	YES	2	NO
> AT ALL JUDICIAL PROCEEDINGS	1	YES	2	NO
❖ TIME LIMITS:				
> NOTICE OF DETENTION	1	YES	2	NO
> FILING OF PETITION	1	YES	2	NO
> NOTICE OF HEARING	1	YES	2	NO
> HEARING/PROCEEDING	1	YES	2	NO
❖ AT THE JUDICIAL PROCEEDING DOES THE JUVENILE HAVE THE OPPORTUNITY:				
> TO PRESENT WITNESSES	1	YES	2	NO
> TO BE HEARD OR PRESENT EVIDENCE	1	YES	2	NO
❖ IS THERE A RIGHT TO AN APPEAL	1	YES	2	NO

SECTION 2: STATISTICS ON STATUS OFFENDERS AND DELINQUENCY CASES/PETITIONS

** Where indicated, please supply the most current data possible for 1998 and indicate through which month.

13. PLEASE INDICATE THE POPULATION OF DELINQUENTS **ON** THE RESERVATION AGED 10-17 THAT ARE UNDER THE JURISDICTION OF THE TRIBE FOR YEARS 1995-1998. IF NUMBERS ARE NOT AVAILABLE, PLEASE ESTIMATE.

POPULATION OF DELINQUENTS ON RESERVATION AGED 10-17

YEAR	MALE	FEMALE
1995		
1996		
1997		
1998		

14. PLEASE INDICATE THE POPULATION OF DELINQUENTS **OFF** THE RESERVATION AGED 10-17 THAT ARE UNDER THE JURISDICTION OF THE TRIBE FOR YEARS 1995-1998. IF NUMBERS ARE NOT AVAILABLE, PLEASE ESTIMATE.

POPULATION OF DELINQUENTS OFF RESERVATION AGED 10-17

YEAR	MALE	FEMALE
1995		
1996		
1997		
1998		

15. PLEASE INDICATE THE NUMBER FOR EACH OF THE FOLLOWING:

	1995		1996		1997		1998	
	M	F	M	F	M	F	M	F
LAW ENFORCEMENT CONTACT, NO ARREST								
REFERRALS								
ARREST/CUSTODY								
CHARGE/ACCUSED								
DETENTION								
PETITION								
DISPOSITION								

16. PLEASE INDICATE THE NUMBER OF CASES WHICH WERE DISPOSED OF INFORMALLY USING ALTERNATIVES TO PROSECUTION, DETENTION OR COMMITMENT:

	1995		1996		1997		1998	
	M	F	M	F	M	F	M	F
WARNING AND RELEASE								
DEFERRED DISPOSITION PENDING TREATMENT								
SUBSTANCE ABUSE TREATMENT								
MENTAL HEALTH TREATMENT								
EDUCATIONAL PROGRAM								
COMMUNITY SERVICE								
OFF-RESERVATION PROGRAM								
OTHER								

17. WHAT NUMBER OF CASES WERE RESOLVED USING THE FOLLOWING PROCESSES?

	1995		1996		1997		1998	
	M	F	M	F	M	F	M	F
COUNSELING BY EXTENDED FAMILY MEMBERS								
COUNSELING BY TRIBAL LEADERS								
INTRA-FAMILY MEETINGS								
COMMUNITY-WIDE MEETINGS								
OTHER, Please specify								
1.								
2.								
3.								
4.								

18. PLEASE INDICATE THE NUMBER OF CASES WHICH HAD THE FOLLOWING FORMAL DISPOSITIONS**:

	1995		1996		1997		1998	
	M	F	M	F	M	F	M	F
CONSENT DECREE/DEFERRED SANCTION								
TREATMENT PROGRAM								
COMMUNITY SERVICE								
SUPERVISION								
TRIBAL INTERVENTION								
DETENTION								
RESIDENTIAL TREATMENT FACILITY								
OFF-RESERVATION PROGRAM								
OTHER								
**NON-MEMBER INDIAN CASES								

**OF THE COLUMN TOTALS, HOW MANY WERE NON-MEMBER INDIAN CASES.

19. HOW MANY DELINQUENTS WHO COMMITTED AN OFFENSE ON-RESERVATION WERE DISPOSED OF BY THE **FEDERAL** SYSTEM FOR A DELINQUENT OFFENSE?

	1995		1996		1997		1998	
	M	F	M	F	M	F	M	F
DECLINED TO PROSECUTE								
FINED AS DELINQUENT								
PROBATION AS DELINQUENT								
INCARCERATION AS DELINQUENT								
WAIVER TO CRIMINAL COURT								
FINED AS ADULT								
PROBATION AS ADULT								
INCARCERATION AS ADULT								
OTHER, Please specify								
1.								
2.								

SECTION 3: TYPES OF OFFENSES

21. PLEASE CIRCLE THE MINIMUM AGE THAT A DELINQUENT MAY BE FOUND TO BE A STATUS OFFENDER.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 NA

22. PLEASE INDICATE THE MAXIMUM AGE THAT A DELINQUENT MAY BE FOUND TO BE A STATUS OFFENDER.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 NA

23. PLEASE INDICATE THE MAXIMUM AGE WHICH A DELINQUENT CAN REMAIN UNDER THE AUTHORITY OF THE JUVENILE JUSTICE SYSTEM.

14 15 16 17 18 19 20 21 22 23 24 25 NA

24. PLEASE INDICATE THE NUMBER OF STATUS OFFENSES.

	1995	1996	1997	1998
RUNAWAY				
TRUANCY				
UNDERAGE DRINKING				
INCORRIGIBLE/ UN-MANAGEABLE BEHAVIOR				

25. PLEASE WRITE IN THE OFFENSE TYPE AND NUMBER OF OFFENSES FOR THE YEARS 1995-1998 IN THE FOLLOWING TABLES. PLEASE INDICATE THE NUMBER THAT WERE GANG RELATED AND/OR DRUG/ALCOHOL RELATED.

YEAR 1995

OFFENSE TYPE	NUMBER OF OFFENSES	NUMBER GANG RELATED	NUMBER DRUG/ALCOHOL RELATED
Homicide (Murder)			
Manslaughter			
Assault & Battery			
Domestic Violence			
Harassment & Stalking			
Kidnapping			

Crimes Against Children & Dependents			
Sexual Exploitation of Children			
Weapons & Explosives			
Sexual Offenses			
Trespass			
Property Damage			
Larceny			
Theft			
Burglary			
Fraud			
Forgery			
Receiving Stolen Property			
Crimes Against Public Peace			
Interference with Law Enforcement			
Glues			
Controlled Substances			
Use			
Possession			
Distribution			
Alcohol			
Use			
Possession			
Distribution			
Worthless Checks			
Arson			
Embezzlement			
Misbranding			

YEAR 1996

OFFENSE TYPE	NUMBER OF OFFENSES	NUMBER GANG RELATED	NUMBER DRUG/ALCOHOL RELATED
Homicide (Murder)			
Manslaughter			
Assault & Battery			
Domestic Violence			
Harassment & Stalking			
Kidnapping			
Crimes Against Children & Dependents			
Sexual Exploitation of Children			
Weapons & Explosives			
Sexual Offenses			
Trespass			
Property Damage			
Larceny			
Theft			
Burglary			
Fraud			
Forgery			
Receiving Stolen Property			
Crimes Against Public Peace			
Interference with Law Enforcement			
Glues			
Controlled Substances			
Use			
Possession			
Distribution			
Alcohol			
Use			
Possession			
Distribution			
Worthless Checks			
Arson			
Embezzlement			
Misbranding			

YEAR 1997

OFFENSE TYPE	NUMBER OF OFFENSES	NUMBER GANG RELATED	NUMBER DRUG/ALCOHOL RELATED
Homicide (Murder)			
Manslaughter			
Assault & Battery			
Domestic Violence			
Harassment & Stalking			
Kidnapping			
Crimes Against Children & Dependents			
Sexual Exploitation of Children			
Weapons & Explosives			
Sexual Offenses			
Trespass			
Property Damage			
Larceny			
Theft			
Burglary			
Fraud			
Forgery			
Receiving Stolen Property			
Crimes Against Public Peace			
Interference with Law Enforcement			
Glues			
Controlled Substances			
Use			
Possession			
Distribution			
Alcohol			
Use			
Possession			
Distribution			
Worthless Checks			
Arson			
Embezzlement			
Misbranding			

YEAR 1998

OFFENSE TYPE	NUMBER OF OFFENSES	NUMBER GANG RELATED	NUMBER DRUG/ALCOHOL RELATED
Homicide (Murder)			
Manslaughter			
Assault & Battery			
Domestic Violence			
Harassment & Stalking			
Kidnapping			
Crimes Against Children & Dependents			
Sexual Exploitation of Children			
Weapons & Explosives			
Sexual Offenses			
Trespass			
Property Damage			
Larceny			
Theft			
Burglary			
Fraud			
Forgery			
Receiving Stolen Property			
Crimes Against Public Peace			
Interference with Law Enforcement			
Glues			
Controlled Substances			
Use			
Possession			
Distribution			
Alcohol			
Use			
Possession			
Distribution			
Worthless Checks			
Arson			
Embezzlement			
Misbranding			

SECTION 4: RESOURCES AND SERVICES AVAILABLE

26. PLEASE INDICATE WHICH AGENCY/AGENCIES PROVIDE(S) THE FOLLOWING SERVICES FOR DELINQUENTS AS PREVENTION; ALTERNATIVES TO INCARCERATION; DISPOSITION? (If service is not available, list NONE. Use the following numbers to indicate which agencies provide the service: 1--Tribe, 2--BIA, 3--IHS, 4-- School system, 5--State agency, 6--Federal agency (other than BIA/IHS), 7--OT--other tribe, 8--Other (List agency). FOR THE LAST TWO COLUMNS, INDICATE THE NUMBER OF BEDS/SLOTS AVAILABLE FOR JUVENILES PLACED THROUGH THE TRIBAL COURT SYSTEM AND THE NUMBER OF TIMES THE SERVICE WAS ACTUALLY USED.

SERVICE TYPE	PREVENTION	ALTERNATIVE DIVERSION	DISPOSITION	#OF BEDS/SLOTS AVAILABLE	#OF TIMES USED IN 1997/8
Truancy programs					
Educational programs					
Boarding schools					
Vocational training programs					
Special education programs					
Foster home					
Shelter care					
Group home					
Family support programs					
Family counseling					
Other social services					
Detoxification					
Outpatient substance abuse treatment program					
Residential substance abuse treatment program					
Group counseling for substance abuse					
Individual counseling for substance abuse					
Outpatient mental health treatment					
Residential mental health treatment					
Group counseling for mental health					
Individual counseling for mental health					
Public/Community service					
Volunteer work					
Job Corps					
Military service					

Public defender services					
Formal supervision/probation					
Staff secure placement (e.g., group home, therapeutic foster care)					
Juvenile detention facility					
Adult jail					
Juvenile correctional institution					
Adult correctional facility					
Reintegration centers					
Half-way houses					
Transitional living programs					
Off-reservation programs: Please specify					
1.					
2.					
3.					
4.					
5.					
Other tribal options: Please specify					
1.					
2.					
3.					
4.					
5.					

ADDITIONAL COMMENTS

**TRIBAL-STATE RELATIONS
AND THE
MUTUAL RECOGNITION OF JUDGMENTS**

Prepared by the American Indian Law Center, Inc.¹

Tribal governments do have relationships with state and local governments. It is simply an illusion to claim that no such relationship exists, it just ranges from bad to good. Whether that relationship can be defined as good or bad, whatever its nature, most likely the relationship just evolved without thought, often as the result of crises, outside exigencies, or immediate needs. Tribal and state courts have similarly defined relations. Arguably, if there is a bad relationship between the two systems which doesn't allow for some form of recognition of the other jurisdiction's court orders, the border between the reservation and state land acts as a complete barrier that works to both government's disadvantage. For example, in the area of law enforcement, if lawbreakers can escape into the other government's jurisdiction, each would become a lawless sanctuary to the other. If off-reservation businesses fear not being able to collect debts, the residents will be unable to buy cars or washing machines or refrigerators on credit.

The purpose of this paper is to assist in developing a thoughtful process for both tribal and state representatives which will help them evaluate whether adopting some form of mutual recognition of court orders is beneficial for their respective governments. The issue of tribe-to-tribe agreements, while important, is not addressed in this paper. The characteristics of the tribal-state relationship are not all good or all bad for each government. It is up to each government to determine if the relationship is important for its members or citizens as well as for its own governmental purposes. While not every problem is solved by negotiation and sometimes litigation may be inevitable, litigation is terribly expensive both in money and heightened bad feeling, leaving no room for agreement when it might be logical or better.

The relationship between tribes and states has moved to the forefront of Indian law in the last several decades, generated not only by the issues associated with gaming, but also by every other conceivable issue faced by all governments: law enforcement, environmental controls, taxation, domestic relations, to name a few. Much of this increased focus is related to the more aggressive stand taken by tribes demanding to have their governments recognized as legitimate sovereign entities not subject to state incursion, while states have become more active in attempting to interject their authority wherever it appears that it is to the state's advantage or the

state's perception that it must do so. It is also related to the federal government's recognition and active support for each tribal government's right to determine its own governmental priorities and leaving the tribes less enmeshed, perhaps shielded, by the federal relationship. Notwithstanding the causes that have spurred this increased attention to tribal-state relations, the majority of officials from both governments recognize that sometimes it is better to work with each other to solve issues that cross their boundaries.

In fact, many modern problems cannot be solved unless cooperation happens. Here in New Mexico, for example, one issue has been clean water in our rivers. Unfortunately, it took losing a suit in federal court to convince the city of Albuquerque to work with the Pueblo of Isleta, but eventually the city accepted the inevitable and now, not only are the members of Isleta Pueblo benefiting, but so are the citizens of Albuquerque who will have water with a higher quality than the city wanted to provide at first. The overarching point is that there is much common ground and, historically, tribes and states have eventually cooperated in areas of mutual interest.

The pivotal issue for this paper is the sharing of resources to help children in trouble, primarily in the area of delinquency, less so in the area of abuse and neglect. New Mexico tribes do not have access to, in even close to adequate numbers, programs for youths and their families, whether prevention or treatment oriented, or institutions, whether detention or mental health facilities. The tribal demand for resources to help children and their families is at a critical point because for most tribes, children make up more than 50 per cent of the tribal on-reservation population.² This is a staggering statistic, especially in view of the "greying" of the U.S. population, presenting unique challenges to tribes in providing programs and resources such as mental health programs and access to institutions or even recreation. In this era of large federal spending cutbacks, especially in the arena of social services, funding support for tribal programs has taken more than its share of cuts. Further, DoI-BIA funding is not being made available to persons living off-reservation³ even though the problems occur on reservation or other members of the family live on the reservation.

Officials from New Mexico executive branch departments as well as some New Mexico legislators recognize that while state resources are limited, they are certainly less limited than those available to most tribes. Holding facilities for tribally-charged or adjudicated delinquents are not available in New Mexico except on a severely limited basis, especially for long-term placement. Many tribes pay local non-tribal facilities to hold youth, but this is very expensive and limited tribal court budgets cannot sustain long-term placement. As a result of these facts and the possible impact of tribal delinquents not being faced with detention falling not only on the tribes but on neighboring communities, a number of New Mexico officials recognize that the

state should provide services or assistance to their citizens who are members of a tribe or Pueblo living on trust land. Tribal officials are eager to have access to resources that may be the only resources available or they may expand the program.. Tribes, for their part, have begun to demand that their fair share of state-controlled monies awarded by the federal government based, in part, on reservation populations, as well as the economic contribution made by Indian people in the form of monies generated by tourism related activities and by taxes paid by Indian people.

The relationship between New Mexico and the tribes located in the state remains tenuous to a certain degree. Historic problems remain fully within the tribal conscious. The long history of the terrible treatment suffered by the people of New Mexico tribes followed by many years simply of being ignored by the state are still vivid. A few years of state officials approaching tribes on a government-to-government relationship will not erase people's feelings or memories. And certainly, the state's gaming legislation has exacerbated feelings of distrust.

The nature of the evolution of tribal-state relations in this country was not a thoughtful process by which careful analysis helped develop the relationship. At the time this nation was formed and for a time afterward, state legal authority had no place in Indian country. The tribal-federal relationship was exclusive⁴ in Indian country. Tribes had sovereign governments predating the founding of the U.S. and case law recognized that they were entitled to be treated as limited sovereigns. However, as problems about state-tribal relations emerged, the states or other entities often took them to Congress or to the courts. The solutions were devised as a reaction to a specific issue in a specific context rather than from thoughtful analysis of its impact on the Indian nations or on the United States. Gradually, the original fundamental theory of exclusive tribal-federal relationship eroded to that of a balancing test which was used to determine whether on specific issues and depending upon the "nature of the state, federal, and tribal interests at stake", state authority would be unlawful.⁵ This federal erosion, still ongoing today, certainly contributes to tribal unease about the tribal-state relationship. Recent attempts in the U.S. Congress to circumscribe tribal sovereignty and federal protections which guard tribal existence and land as well as funding are frightening. As a result of all of these very real threats, tribes may want to simply ignore or escape all contact with states, hoping to avoid perceived dangers to their governments and people. The reality, though, is that contacts cannot be avoided and if they can be managed in some way that lessens the threats to tribes, negotiations can be successful.

Options regarding mutual recognition range from a government refusing to grant any recognition to granting some kind of limited recognition similar to comity to allowing full recognition based on the doctrine of full faith and credit. The subject matter of judgments that tribes or states would be willing to recognize can be defined or limited, such as not allowing debt

collection cases, or refusing to enforce child custody determinations between tribal members who have been living off the reservation for less than one year.

Because the doctrines of comity and full faith are repeatedly cited as the bases for tribal state-tribal relations, we will briefly define and describe them. They are the source of much confusion because people refer to them constantly while not always understanding what they mean. However, we think it is more accurate to refer to mutual recognition of the other government's judgments or tribal-state agreements as the source of the relationship between the two governments.

The Constitution demands that every state give "Full Faith and Credit . . . to the public Acts, Records, and judicial Proceedings of every other State."⁶, but it does not define what full faith and credit (FFC) means, leaving that to Congress. The important points to remember are that FFC for states is mandatory and tribes do not fit within this Constitutional provision requiring deference between states. Congress has enacted a number of laws to define FFC. The most recent federal statute commands that deference be shown to the judicial proceedings of states, territories, or possessions of the United States⁷ by the other states, territories or possessions. Some legal authorities have argued that tribes fit within that statutory definition; however, this argument was rejected recently by the federal courts⁸ on the basis that if Congress wished to include tribes in that definition, it would have done so specifically. In fact it has enacted legislation specifically granting tribal judgments such recognition, e.g., the Indian Child Welfare Act.⁹ To add to the confusion, a number of states have enacted statutes using the term "full faith and credit" to recognize in some manner the judgments of tribal courts, but then this usage is not at the federal constitutional level and just makes the use of the term even more muddy.

Comity is a doctrine of discretion by which one jurisdiction voluntarily recognizes another jurisdiction's court order. It is used usually when a federal or state court is asked to enforce a court order from another country. Some state courts have used comity principles in decisions recognizing tribal court orders. Obviously, since it is not Constitutionally-compelled, comity is essentially defined by each jurisdiction for itself. Definitions can range from giving it the same standards as FFC to completely rejecting recognition of another jurisdiction's court orders. Comity can be defined either by a state's legislature or by case law. Since most people are confused by the two doctrines, they are usually referred to in the same phrase, and essentially are not helpful.

The major reason for tribes to seek state recognition of their court orders and judgments regarding delinquents or children is access to state resources. Recognition is achieved by legislative action, state court case decision, or state-tribal agreement. The first two methods

require only state action; the last requires tribal and state cooperation. The federal role in this process is negligible unless trust property is impacted or unless a specific federal statute specifically claims a role for the federal government. Each method involves a different branch of state government with different challenges attached to each process. Legislative action is the most diffuse since it involves statutes through both the Senate and the House which are comprised of a large number of people with differing political philosophies and constituencies. Judicial decision-making is governed by rather complicated rules as well as precedent which means that it may be difficult to determine outcomes, it is expensive, and is in a different cultural context. Agreements negotiated by the executive branch may be easier to reach since the power structure is less diffuse; however, if the Governor or other officials are not disposed to negotiate, agreements will not be reached. There is no hard rule about which is the better method; issues, political beliefs, personalities, are just a few of the variables that could impact this area.

Each of these methods have been used in New Mexico. Two sections of the New Mexico children's code contain provisions recognizing tribal orders pertaining to children, but, unfortunately, they have not been implemented¹⁰, mainly because of confusion about how to implement them, especially because of concerns about payment for use of resources. State case law has recognized tribal court orders involving money damages and punitive damages.¹¹ State-tribal agreements regarding certain areas of children's law have been negotiated between the New Mexico Department for Children, Youth and Families and a number of tribes.¹² Which method is better? There is no right answer since it depends on the subject matter, the needs of each government, and their willingness to work with each other.

Each government has legitimate concerns about enforcing the court orders of the other government. Tribes have basic fears about their sovereign status and worry that any negotiation will be viewed as giving up some attribute of sovereignty to their disadvantage. They are concerned that if they open the door slightly, the state will attempt to push it open to the tribes' disadvantage. Tribes worry about becoming adjuncts of state courts for commercial purposes. They do not want to become collection arms for debt collectors, mainly because they are troubled about the fairness of the process to individuals who may not understand state law or who may have been cheated by unscrupulous sellers.

The sovereignty concern that allowing even the slightest encroachment will lead eventually to its complement abridgement is, at the most basic level, the real fear of many tribal people. Thoughtful legal writers point out that every action taken by a government, both tribal and state, is an exercise of sovereignty and this includes negotiating with other governments. They also assert that every government agrees to some limit on its sovereignty when it determines that doing so would be for the good of its members/citizens and will not harm the

government. For example, all states as well as the federal government and a few tribes have adopted tort claims acts which allow individuals to sue the particular government for harm done to them by the negligence of its employees or agents. The various statutes differ in definitions, the kinds of negligence covered, the process in bringing the claim, but they all abridge to some extent the sovereign power of their government. Each tribe and its officials must determine if it is sufficiently worthwhile for the tribe to exercise its sovereign power to negotiate agreements or to recognize state court judgments. One limit on the power of governments to make agreements is their own law. Tribes can't make agreements violating their laws and neither can states. State regulations and practices regarding an issue in negotiation may not be the tribe's preference, but it may be too cumbersome to get the state to adopt new regulations or create a whole new procedure for tribal clients. Therefore, tribes will have to weigh this during the negotiations to determine if an agreement is possible. Is it worthwhile to agree to comply with state regulations regarding the kinds of resources that are available to deal with delinquents in state custody in order to have access to those resources for tribally-adjudicated delinquents? This is a decision for each tribe to make. What is the danger of doing this? Again, this is for the tribe to determine.

State concerns about enforcing tribal judgments focus on the adequacy of tribal process: does it meet basic constitutional requirements of due process and were parties' basic rights protected? Are the lines between judicial decision making and executive branch concerns clearly divided? Another fear is the drain on state resources if tribal orders prescribe specific, very expensive institutionalization or treatment not ordinarily provided to children in state court jurisdiction.

Finally, the issue of who pays underlies every state concern and, perhaps, the federal interest. Many negotiations have failed because of this. The state has to accept that even though tribal members may live on trust land, they are, in fact, state citizens entitled to state services and resources. Merely because a tribal court adjudicates a youth as a delinquent does not absolve the state of this responsibility. Another piece of the problem is the fear that the federal government will reduce its funding for tribal programs and institutions on the basis that state resources have been made available, even on a limited basis, to the tribes.¹³ Each government has very real concerns that the other simply will not enforce its judgments or will want to retry the case fully.

Yet there are benefits to agreement. Expensive hard fights over jurisdiction are avoided while parties protect their legitimate interests. Tribes get access to resources, experience, and expertise. States get access to additional resources including cultural support as well as specialized experience and expertise. Thoughtful agreement allows sound policy to be developed in areas of law where jurisdiction is unclear, avoiding costly litigation and bad feelings. By

recognizing common interests the parties can reach “mutually worthy and attainable goals through compromise.”¹⁴

There is no absolute guarantee that the state will not attempt to expand its powers wherever possible or where it thinks it is important to do so. This will happen anyway if the state thinks the issue is sufficiently critical. However, we are dealing here specifically with issues relating to delinquency and access by the tribes to state resources and access by the state to tribal resources. The access most likely will result in a broader range of services and programs available to Indian children, a more culturally friendly environment, protection of their relationship with their tribe, recognition that tribal services are worthwhile.

Even though the federal juvenile justice system can play an important role in the tribal system, in reality that role is limited. In reality, the U.S. attorney charges tribal juveniles only when major crimes, usually the most serious involving the loss of life, are committed. The remaining crimes, even if they fall within federal jurisdiction, are declined by the U.S. attorney and left to the tribal government to handle as tribal delinquent acts.¹⁵ As a result, federal resources are not available to tribes unless the juvenile is federally charged. Certainly, federal institutions are not available to tribes on a negotiated basis for tribally-adjudicated delinquents.

We pointed out before that negotiations between the two governments are exercises of sovereign power and that sovereigns do decide, issue by issue, that sometimes it is better for its citizens to circumscribe its sovereign powers in some limited fashion. Of course, it is more daunting for tribes to consider doing this because they believe that underlying the relationship is a struggle for their survival. Even when a tribe does enter into agreements, it should retain its prerogative to decide to withdraw from them if the agreements are not working to the benefit of the government or the people. Each agreement must clearly reserve to the negotiating government some way of canceling if certain problems arise. Yet, in the end, more so for tribes than for the state, the governments must make a leap of faith for its children.

ENDNOTES

1. The American Indian Law Center, Inc. has long been a leader in the study of the field of tribal state relations because we recognized as far back as 1975 that this relationship, on a day-to-day basis, is probably as important to tribes as the federal-tribal state relationship is. The interplay between tribes and states has gotten more active as the years have passed. Along with

the National Conference of State Legislatures, the National Congress of American Indians, and the National Tribal Chairmen's Association, the Law Center formed the Commission on State-Tribal Relations in 1977 to study and develop recommendations to improve tribal-state relations. Our work in this arena continues today even though the Commission no longer exists, because we believe that the tribal-state relationship is a reality that faces both sovereigns over significantly important issues ranging from water and air quality to resources for children and families.

We want to thank those who, over the years, have engaged in discussions with us about the philosophical underpinnings of tribal-states relations. These include Robert N. Clinton, Kevin Gover, Robert Laurence, John La Velle, Nell Jessup Newton, William Rice, and Frank Pommersheim. We want to acknowledge several articles, two of which that grew out of these discussions, that have contributed to this paper: P.S. Deloria and Robert Laurence, *Negotiating Tribal-State Full Faith and Credit Agreements: The Topology of the Negotiation and the Merits of the Question*, 28 Georgia L. Rev. 365 (1994); Hon. Richard E. Ransom, Hon. Christine Zuni, P.S. Deloria, Robert N. Clinton, Robert Laurence, Nell Jessup Newton, M.E. Occhialino, Jr., *Recognizing and Enforcing State and Tribal Judgments: A Roundtable Discussion of Law, Policy, and Practice*, 18 Am. Ind. L. Rev. 239 (1993); Frank Pommersheim, *Tribal- State Relations: Hope for the Future?*, 36 S.D. L. Rev. 239 (1990); Gover, Stetson, and Williams, P.C., *Tribal-State Dispute Resolution: Recent Attempts*, 36 S.D. L. Rev. 277 (1990).

2. American Indian Law Center, Inc. and Walter R. McDonald & Associates, Inc., *Study of Tribal and Alaska Native Juvenile Justice Systems, Final Report*, (1992), prepared for the Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

3. The Law Center staff is aware of one recent sad case involving children in foster care on the reservation. Their mother had to live off the reservation because of family issues. The tribal court wanted to reunify the family, but was informed by a B.I.A. employee that social services funds could not be used to provide reunification services to any person living off the reservation. The tribal court and the attorneys involved are still trying to solve the problem.

4. *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832)

5. Pommersheim, note 1 above, at p. 251.

6. U.S. Const. art. 4, §1.

7. 28 U.S.C. §1738 (1988)

8. *Wilson v. Marchington*, 127 F.3d 805 (9th Cir. 1997), *cert. den.*, *Wilson v. Marchington*, 118 S.Ct. 1516, 66 USLW 3682, 3687 (1998).

9. 25 U.S.C. §1911(d)

10. NMSA (1995) §32A-1-8, §32A-6-21.

11. *Jim v. CIT Financial Services Corp.*, 533 P.2d 751 (N.M. 1975); *Halwood v. Cowboy Auto Sales, Inc.* 124 N.M. 77 (1997); 1997-NMCA-098.

12. *E.g.*, Navajo Nation, Zuni Pueblo, Santa Clara Pueblo, Jicarilla Tribe.

13. AILC staff members have been told that the B.I.A. has reduced funding for human services based on the resources made available via agreements. We have not verified these anecdotal reports.

14. Gover, Stetson and Williams, P.C., note 1 above, at p. 298

15. Federal and tribal jurisdiction in this arena is concurrent. From our discussions with tribal officials over the years, apparently federal officials almost always accede to tribal jurisdiction over juvenile crime except for the most serious crimes.

**MUTUAL RECOGNITION OF COURT ORDERS:
AN ANALYSIS OF THE NEW MEXICO CHILDREN'S CODE
AND RECOMMENDATIONS FOR AMENDMENTS**

Prepared by the American Indian Law Center, Inc.

In 1992, a task force was organized under the aegis of the New Mexico Council on Crime and Delinquency to review the New Mexico Children's Code and propose revisions to meet the needs of the children of New Mexico. Judge Ann Kass of the state's Second Judicial District headed the task force, which had a diverse membership reflecting the state's population as well as different interests, such as those of the judiciary, legal profession, consumers and clients, and citizens. The last major revision had taken place more than 10 years before and major changes in federal law, state practice, and needs of children had made the code outmoded and inadequate to deal with the issues facing children's court.

The task force members recognized that the state had obligations to Indian citizens living on reservations and that the children's code should acknowledge and meet the needs of Indian children residing in Indian country in New Mexico. The Indian Child Welfare Act, 25 U.S.C. §§1901 *et seq.*, enacted by the U.S. Congress in 1978, established requirements and procedures to protect Indian children that states had to implement, but the New Mexico children's code did not contain provisions to do so. Even without the impetus provided by the act, the members felt that state human service agencies had not provided the services that Indian children needed and were entitled to and the task force wanted to encourage the agencies to deliver services to Indian children living on reservations.

A subcommittee of the task force, the Indian interface subcommittee, was organized and chaired by Christine Zuni-Cruz, an attorney. Its task was to focus on determining how the state could deliver services to reservation residents and to suggest language for the children's code to accomplish this. One of the early and, probably, the most significant decision the subcommittee members made was that its mission was to ensure that the cultural heritages of all New Mexico children were honored and protected. The second significant decision they made was that language regarding Indian children as well as cultural protection be incorporated broadly into as many sections as possible, so that the intent of the code, to protect and serve Indian children and other children's cultures, would be too clear to ignore. The subcommittee also decided to propose language protecting children's cultural heritage be included in the code's delinquency provisions, particularly in the dispositional sections.

All of the revisions proposed by the task force, and there were hundreds including those of the subcommittee, were adopted by the legislature in 1993, with a number of other recommendations made in 1994 being adopted in 1995. As a result, of the now 260 sections of the children's code, 42 sections specifically refer to the Indian Child Welfare Act (ICWA) or to Indian children, or to tribes or to tribal officials. In addition, article 18 of the code is devoted to training for cultural recognition, and a total of eight sections throughout the code specifically refer to the cultural needs of children. There is no more comprehensive state code in the United States for protecting the cultural heritage of children in general and of Indian children in particular.

Providing access to state institutions by tribal governments absorbed the attention of the subcommittee. It recognized that tribes and pueblos had and still have severely limited resources to assist children and their families whether for child protection or for delinquency, and terribly limited access to institutions whether they were for foster care, mental health, or delinquency. Several sections attempting to allow such access were enacted by the legislature.

Article 1 of the code sets out general provisions applicable to the entire children's code. Section 32A-1-8 details the jurisdiction of the state court and paragraphs D and E specifically deal with Indian issues.

32A-1-8 Jurisdiction of the Court

- D. Nothing in this section shall be construed to in any way abridge the rights of any Indian tribe to exercise jurisdiction over child custody matters as defined by and in accordance with the federal Indian Child Welfare Act of 1978.
- E. A tribal court order pertaining to an Indian child in an action under the Children's Code shall be recognized and enforced by the district court for the judicial district in which the tribal court is located. A tribal court order pertaining to an Indian child that is not subject to the provisions of the Children's Mental Health and Developmental Disabilities Act and that accesses state resources shall be recognized and enforced pursuant to the provisions of intergovernmental agreements entered into by the Indian child's tribe and the department or another state agency.

The language in subparagraph E that tribal court orders are to be enforced by N.M. state courts "in an action under the Children's Code" apparently means that a petition must be filed in state district court for a tribal court order to be recognized and enforced by state court and other state agencies, an action similar to the requirement under New Mexico's Recognition of Foreign

Judgments Act. Arguably, the use of “shall” in paragraph E doesn’t leave much room for state courts to not recognize tribal orders. Once a tribal order is recognized and the state court issues its order, the tribal order essentially is made a state order or “domesticated.”. Again, arguably, once a tribal order is domesticated, state resources could be utilized without any requirement for tribes to pay for services delivered to the Indian child who is a state citizen since the order is now that of the state. The next sentence makes it clear, however, that if the tribal order attempts to access state resources such as an institution or a program, the tribe must first negotiate an agreement with the state. The terms of such an agreement are not set in the statute; however, the most likely major issue would be determining who would pay for the use of the resources. The possibilities range from the state paying everything to the tribe and state sharing the costs at some predetermined percentage to the tribe paying everything. While representatives of state agencies usually take the position that the state does owe services to reservation-resident Indian children, they also argue that tribes, as sovereign governments, are obligated to pay for the services if a tribal court has jurisdiction over a child and has issued an order requiring services be provided to the child or the child’s family. This is not logical in the face of the often articulated obligation of the state to all of its children, including Indian children living on reservations within the state.

The general reference to the Mental Health and Developmental Disabilities Act (DDA) in subparagraph E is to §32A-6-21 which sets up a procedure to recognize tribal court involuntary placement orders without the necessity of an intergovernmental agreement.

Does §32A-1-8 (E) clearly show legislative intent to allow tribes and tribal programs access to state programs for juveniles (alleged or adjudicated delinquents or youthful offenders) as well as for abused or neglected children? The answer is yes. Subsection A specifically states that a delinquent child is subject to the children’s code. But who pays the costs of access? Nowhere in the code is this issue clarified. Thus, while a tribal order requiring access to a state institution will be honored under the children’s code, the legislature did not clarify the problem of who pays for the tribal child’s detention.

Article 2, which rules the delinquency process, contains no language regarding tribal access to state resources, so either we must look to §32A-1-8 or other provisions of New Mexico law outside of the children’s code. The remaining pertinent statutes in the children’s code do not directly impact delinquency except as noted.

Article 5 of the code sets out the law and process for adoptions and includes language covering

recognition of foreign decrees and eligibility for subsidized adoption.

32A-5-3 Recognition of foreign decrees.

Every judgment terminating the parent-child relationship or establishing the relationship of parent and child by adoption issued pursuant to due process of law by the tribunals of any other jurisdiction within or without the United States shall be recognized in this state, so that the rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined as though the judgment were issued by the courts of this state.

The reference to "tribunals of any other jurisdiction within or without the United States" clearly allows for recognition of tribal adoption decrees, and tribal decrees are ordinarily honored by the New Mexico Bureau of Vital Statistics, which issues birth certificates. There are no real payment issues here, however, the next section does bring funding into the picture.

32A-5-44. Eligibility for subsidized adoptions.

- A. The social services division of the department may make payments to adoptive parents or to medical vendors on behalf of a child placed for adoption by the division or by a child placement agency licensed by the division when the division determines that:
- (1) the child is difficult to place; and
 - (2) the adoptive family is capable of providing the permanent family relationship needed by the child in all respects, except that the needs of the child are beyond the economic resources and ability of the family.
- B. As used in Sections 32-5-43 [32A-5-43] through 32-5-45 [32A-5-45] NMSA 1978, a "difficult to place child" means a child who is physically or mentally handicapped or emotionally disturbed or who is in special circumstances by virtue of age, sibling relationship or **racial** background. (emphasis added)

Federal law recognizes that Indian children are eligible for subsidized adoptions and, arguably, the person adopting such children should be eligible for payments. However, it is not clear that the department (CYFD), taking §§32A-5-39 and 44 together, will recognize a tribal adoption and provide the subsidy allowed by state and federal law.

The only other section in the children's code is in article 6 which deals with children's mental health and developmental disabilities.

32A-6-21. Recognition of tribal court involuntary placement orders.

- A. Notwithstanding the provisions of any other law to the contrary, an involuntary placement order for a child issued by a tribal court shall be recognized and enforced by the district court for the judicial district in which the tribal court is located. The involuntary placement order shall be filed with the clerk of the district court. The tribal court, as the court of original jurisdiction, shall retain jurisdiction and authority of the child.
- B. A child placed in an evaluation facility pursuant to the provisions of Subsection A of this section shall be subject to the continuing jurisdiction of the tribal court; provided that any decisions regarding discharge or release of the child from the evaluation facility shall be made by the administrator of that facility. Prior to discharging or releasing a child, the facility shall:
 - (a) make custody arrangements with the child's parent, guardian or legal custodian; and
 - (b) establish a plan for the child's aftercare.
- C. When an Indian child is placed in an evaluation facility pursuant to the provisions of Subsection A of this section, any out-patient treatment of the Indian child shall be provided in the same manner as treatment would be provided for any other child.
- D. When an Indian child requires emergency mental health treatment or habilitation, that treatment or habilitation shall be provided pursuant to the provisions of Children's Mental Health and Disabilities Act [32A-6-1 to 32A-6-22].
- E. An Indian child residing on or off a reservation, as a citizen of this state, shall have the same right to services available to other children of the state.

The anecdotal information available is that this particular section has not been implemented to any extent because of the issue of who will pay. Paragraph E was added in 1995 after it became clear that the section was not working as the subcommittee had intended. The intent of the additional language was to ensure that tribes didn't have to pay for services that are available to all New Mexico children. Also see paragraph C which has the same language. However, the additional language apparently has not worked.

Experience shows that plain language is necessary declaring that tribes are not obligated to pay for state services provided to their children who are citizens of the state as well as members of the tribe even when adjudications are handled by tribal rather than by state courts. This actually saves that state money since state courts do not have to deal with larger case loads.

For the reasons detailed above, we believe that the state children's code should be amended to clarify that Indian children living in Indian country and adjudicated by a tribal court should have state services at no cost to the tribes. In addition, clarification is necessary to ensure that certain services be available to Indian children. We, therefore, make the following recommendations.

Proposed Amendments:

- 32A-1-8 We need to decide whether to amend this section, any other section, or draft a new section either requiring services to be delivered while the issue of payment is negotiated or to declare simply that the cost will be borne by the state. One concern voiced by the N.M. Department of Children, Youth, and Families is that the state should not pay for services greater or more expensive than those provided to children within state jurisdiction nor use providers that are not state approved. Since the CYFD works with state judges on a regular basis, the state judges understand these restrictions and, ordinarily, judges do not order services or institutionalization unless it falls within CYFD constraints. While this is a reasonable concern, the individual needs of a child, especially when mixed with a particular cultural identity, should be the guiding principle; however this may have to be waived in the face of political reality. In addition, the issue of whether a tribe can afford to pay will be the subject of much debate.
- Article 2 Language similar to §32A-6-21 should be added to this article. Again, the issue of payment should be clarified; in addition, it might be the politic thing to include language about compliance with the Indian Civil Rights Act (25 U.S.C. §1302). See our first paper about mutual recognition.
- 32A-9-1 Add to B.(2) to divert children “, including Indian children living in Indian country” out of the juvenile justice system “,including tribal juvenile justice systems” and
- 32A-9-5 Add a second sentence: “Such facilities and programs may be tribally administered or located in Indian country.”

- Article 9 Here too might be added language similar to DDA provision.
- 32A-12-1 Add at the end of the first sentence and the second sentence “including Indian youths”.
- 32A-12-2 Add “ G. procedures to work with and assist tribal social services programs to review potential clients for residential treatment or therapeutic group home care”.
- 32A-13-2 A. Add at the end of the last sentence “and tribal courts, tribal law enforcement and tribal probation officers”.
- 32A-14-2 Add at the end of the A “ or tribal law enforcement”.
Add at the end of B “including an Indian child who is missing, notwithstanding that the child resides in Indian country.”.
- 32A-17-4 Add A(5) “ assist tribal social service programs when requested to do so and, in conjunction with tribal social service programs, provide services set out in paragraph B of this section to Indian families in Indian country in New Mexico .

Other recommendations.

The following sections are not in the children’s code but have direct impact on the issue of tribal access to state resources and should be amended to allow access. It should be noted that the state, historically, has expected to be reimbursed from other governments. See §§33-3-16 to 17, and, more to the point, §33-3-23 which allows local sheriffs to house tribal government prisoners subject to payment by the tribal government. Of course, the argument against this in the case of tribal governments is that reservation residents are also citizens, but they are subject to a government that is not part of the state system.

- 33-6-1 to 10 Juvenile detention homes. Each New Mexico county is authorized to set up and fund its own home. The law provides that if a county doesn’t have a home, juveniles may be sent to another county’s home provided it agrees, but the sending county is expected to pay costs to the receiving county.

33-9A-1 to 6

Juvenile community corrections. A fund is set up under CYFD to be used to fund grants to counties, municipalities, or private organizations to provide community corrections programs or CYFD can contract directly for such programs.

33-12-1 to 7

Regional juvenile services. This establishes a regional system of juvenile services, including secure detention facilities, nonsecure alternatives to detention, continuum of probation/parole services and it encourages state, counties and municipalities to act cooperatively.

33-12-5

Criteria for grants. This section allows tribal governments to apply for grants, but the language is confusing about court jurisdiction.



The Legislature
of the
State of New Mexico

44th Legislature, 1st Session

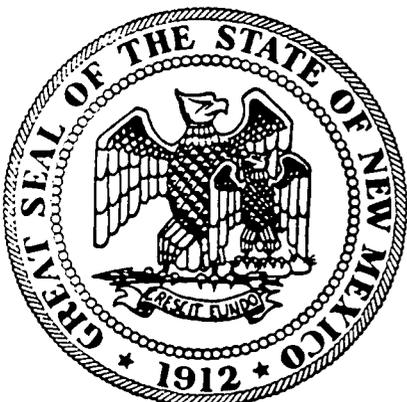
LAWS 1999

CHAPTER 78

SENATE BILL 429, as amended

Introduced by

SENATOR LEONARD TSOSIE
SENATOR DEDE FELDMAN
SENATOR PHIL GRIEGO
SENATOR LINDA M. LOPEZ
SENATOR JOHN PINTO



FOR THE COURTS, CORRECTIONS AND CRIMINAL
JUSTICE COMMITTEE
AND
THE INDIAN AFFAIRS COMMITTEE

Chapter 78

AN ACT

RELATING TO CHILDREN; CLARIFYING THAT INDIAN CHILDREN HAVE
THE SAME RIGHT TO SERVICES THAT ARE AVAILABLE TO OTHER
CHILDREN IN THE STATE; AMENDING A SECTION OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 32A-1-8 NMSA 1978 (being Laws 1993,
Chapter 77, Section 17, as amended) is amended to read:

"32A-1-8. JURISDICTION OF THE COURT--TRIBAL COURT
JURISDICTION.--

A. The court has exclusive original jurisdiction
of all proceedings under the Children's Code in which a
person is eighteen years of age or older and was a child at
the time the alleged act in question was committed or is a
child alleged to be:

- (1) a delinquent child;
- (2) a child of a family in need of services;
- (3) a neglected child;
- (4) an abused child;
- (5) a child subject to adoption; or
- (6) a child subject to placement for a
developmental disability or a mental disorder.

B. The court has exclusive original jurisdiction
to emancipate a minor.

C. During abuse or neglect proceedings in which

1 New Mexico is the home state, pursuant to the provisions of
2 the Child Custody Jurisdiction Act, the court shall have
3 jurisdiction over both parents to determine the best interest
4 of the child and to decide all matters incident to the court
5 proceedings.

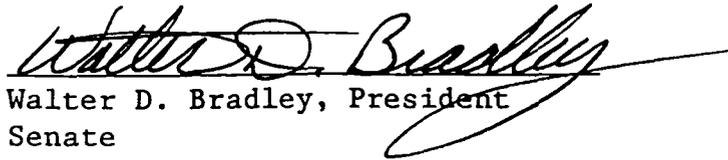
6 D. Nothing in this section shall be construed to
7 in any way abridge the rights of any Indian tribe to exercise
8 jurisdiction over child custody matters as defined by and in
9 accordance with the federal Indian Child Welfare Act of 1978.

10 E. A tribal court order pertaining to an Indian
11 child in an action under the Children's Code shall be
12 recognized and enforced by the district court for the
13 judicial district in which the tribal court is located. A
14 tribal court order pertaining to an Indian child that
15 accesses state resources shall be recognized and enforced
16 pursuant to the provisions of intergovernmental agreements
17 entered into by the Indian child's tribe and the department
18 or another state agency. An Indian child residing on or off
19 a reservation, as a citizen of this state, shall have the
20 same right to services that are available to other children
21 of the state, pursuant to intergovernmental agreements. The
22 cost of the services provided to an Indian child shall be
23 determined and provided for in the same manner as services
24 are made available to other children of the state, utilizing
25 tribal, state and federal funds and pursuant to

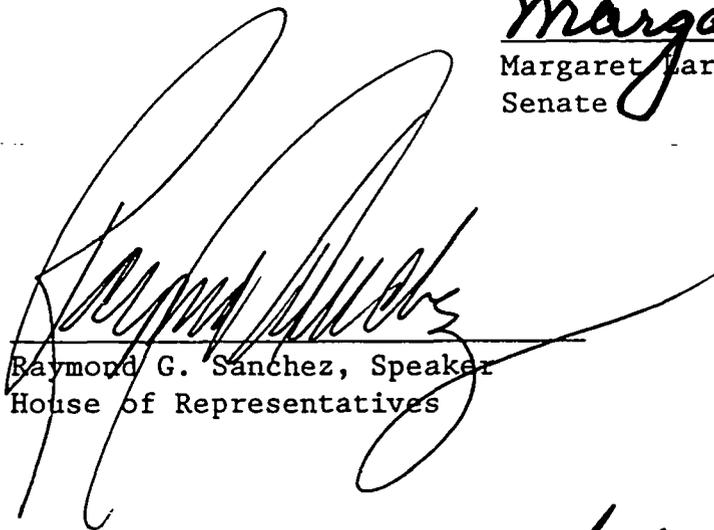
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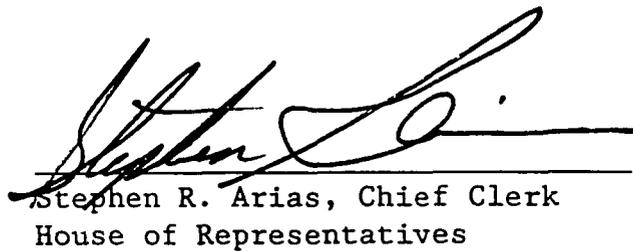
intergovernmental agreements. The tribal court, as the court of original jurisdiction, shall retain jurisdiction and authority over the Indian child."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999. _____


Walter D. Bradley, President
Senate


Margaret Larragoite, Chief Clerk
Senate


Raymond G. Sanchez, Speaker
House of Representatives


Stephen R. Arias, Chief Clerk
House of Representatives

Approved by me this 19 day of MARCH, 1999


Governor Gary E. Johnson
State of New Mexico

DRAFT

**MODEL TRIBAL - STATE AGREEMENT
ON THE SHARING OF RESOURCES FOR
DELINQUENTS AND YOUTHFUL OFFENDERS**

**PREPARED FOR
NEW MEXICO COUNCIL ON CRIME AND DELINQUENCY
AND
THE STATE OF NEW MEXICO OFFICE OF INDIAN AFFAIRS,**

By

TOBY GROSSMAN

**AMERICAN INDIAN LAW CENTER, INC.
P.O. BOX 4456 STATION A
ALBUQUERQUE, N.M. 87196**

DRAFT 5/7/99

INTRODUCTION

An Indian child residing on or off a reservation, as a citizen of this state, shall have the same right to services that are available to other children of the state, pursuant to intergovernmental agreements. The cost of the services provided to an Indian child shall be determined and provided for in the same manner as services are made available to other children of the state, utilizing tribal, state and federal funds and pursuant to intergovernmental agreements. The tribal court as the court of original jurisdiction, shall retain jurisdiction and authority over the Indian child.

The 1999 session of the New Mexico Legislature enacted the above language to ensure that Indian children on federally recognized Indian reservations have access to state resources ordinarily available to non-Indian children or Indian children not living on a reservation. This language amended section 32A-1-8 E of the New Mexico Children's Code and it was signed into law by Governor Gary Johnson on March 19, 1999.

An Indian child living on a reservation in New Mexico is subject to tribal jurisdiction, not state jurisdiction, yet New Mexico has recognized, not only with this amendment, but with other preexisting language in the children's code, that it has an obligation to help the children and to work with tribes to provide services to tribal children. Unfortunately, confusion about the extent of the obligation has hindered implementing the preexisting language. The new language more clearly indicates the State's intention to provide services and resources regardless of the Tribe's ability to pay for them. Using intergovernmental agreements should facilitate access since they can clarify issues not covered in the statutory language. We propose that the agreement that follows is useful as: prototype or a starting point for discussion and negotiation between each tribe and the state.

Proposed protocols, not yet adopted by the N.M. Department of Children, Youth, and Families, should be consulted when they are adopted to ensure that the agreement and the protocols work together.

A word of caution, however, is necessary. The following agreement is a model. By its nature, a model is general; it cannot cover every issue that a tribe or state may wish to include in an intergovernmental agreement. Further, the language or terminology used may not be acceptable to one or more of the negotiating parties. The model can only act as a guide and should never be adopted without thorough analysis and discussion by the parties. Too often models are adopted without the investigation and negotiation necessary to ensure that the document meets parties' specific needs. However, we do hope that the model agreement will help the tribes and the state to meet their mutual obligation to children, wherever they live.

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DRAFTING NOTES

1. This is not an all-inclusive document. The negotiating parties should fill in additional terms that are unique to the specific document being negotiated.
2. Wherever a word is in parentheses, the parties should choose between the alternatives provided or substitute another term.
3. Blank underlined spaces should be filled in with appropriate words or phrases.
- 4.. Every section is optional in the sense that the parties must determine which sections, paragraphs, sentences, or words should be included in their specific agreement, although alternatives for certain sections are provided.

**MODEL
AGREEMENT
BETWEEN THE STATE OF NEW MEXICO AND (TRIBE)**

This agreement, dated _____, is between the (Tribe), hereinafter referred to as the "Tribe" and the state of New Mexico, hereinafter referred to as the "State."

I. PURPOSE AND POLICY

A. PURPOSE

The purpose of this agreement is to make available state resources and institutions which are ordinarily provided to state delinquent and youthful offenders, both before and after adjudication, to Indian youth subject to tribal court jurisdiction living on federally-recognized reservations within the state of New Mexico, as well as to provide tribal services to member youth who are in the custody of the State. It is our express intent to cooperate, to share resources and expertise in addressing the needs of Indian youth, to facilitate providing services to Indian youth, and to promote cooperation among agencies dedicated to the welfare of children and youth.

B. POLICY

The State and Tribe recognize that:

1. Children who are members of the Tribe or are eligible for membership are the most vital resource to the continued existence and integrity of the Tribe and its members.
2. The Tribe has a compelling interest in protecting its members, both adults and children, and in promoting and maintaining the Tribe's culture (and religion) as well as its integrity as a (community) (society). Under the laws of the Tribe, the United States, and the State, the Tribe has the power and the right to adjudicate children who are alleged to be delinquent or youthful offenders. In furtherance of these interests and power, the Tribe has the authority to determine and arrange for the treatment and disposition of children who are members of the Tribe or eligible for tribal membership.
3. The Tribe, not only as a sovereign government, but as an historical culture, has a compelling interest to ensure that its cultural integrity and that of its members to the youngest child are protected and preserved, both to prevent inappropriate cultural separation of children from their families and their Tribe and to insure the placement of all children in a manner which preserves the unique values of the tribal culture.

4. The Tribe, like the State, believes that its youth should be held accountable for their actions in committing delinquent acts and should be provided appropriate supervision and access to other programs and resources. See purposes of New Mexico Delinquency Act.

5. Both the Tribe and the State, as sovereign governments, have mutual interests and concerns in protecting the peace and welfare of their communities by ensuring the proper disposition of delinquent and youthful offenders.

6. The State has legal obligations to assist its citizens, both Indian and non-Indian, who live on reservations.

7. The State has a direct interest in protecting the cultural diversity of its citizens.

8. The State recognizes that the Tribe does not have access to a full range of resources to deal with preadjudicated or adjudicated delinquents and youthful offenders without the cooperation of the State in providing additional resources.

9. This agreement does not enlarge or diminish the Tribe's or the State's jurisdiction, but provides an orderly procedure to serve the best interest of the Tribe's children.

II. POWER TO ENTER INTO THIS AGREEMENT

A. This agreement is entered into by the State under (citation to statute or resolution by legislature) and is based on a government to government relationship in a spirit of cooperation, coordination, communication, and good will.

B. This agreement is entered into by the Tribe pursuant to the (decision) (vote) (resolution) of the (council, business committee, etc.) on (date) and its sovereign authority as a recognized tribal government and is based on a government to government relationship in a spirit of cooperation, coordination, communication, and good will.

III. GENERAL PROVISIONS

A. DEFINITIONS (Definitions not relevant to a specific agreement should be deleted.)
The following definitions apply to this agreement:

1. "Child" is a person under the age of eighteen years. See also "youth".
2. "Commitment" as used by the New Mexico Children's Code refers to the placing of an adjudicated delinquent or youthful offender in a short-term or long-term facility for the care and rehabilitation of adjudicated delinquent or youthful offender
3. "Detention facility" means a place where a youth may be detained under the State's children's code or under the Tribe's children's code pending a court hearing and does not include a facility for the care and rehabilitation of an adjudicated delinquent child.

4. "Domicile" means the permanent residence of an individual. The domicile of a child is presumed to be that of _____ until proved otherwise.

5. "Extended family" means a (person) (tribal member) who has reached the age of eighteen and who is the minor's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, stepparent, godparent or traditionally appointed individual.

6. "Intervention" means that if the Tribe intervenes in a State proceeding or if the State intervenes in a Tribe's proceeding, the intervenor intends to appear as a party in that jurisdiction's court's proceeding and intends for that court to retain jurisdiction and render the final decision.

7. "Jurisdiction" means the authority, capacity, power or right of a sovereign to act with respect to a youth as provided in federal, tribal or state law and this agreement.

8. "Juvenile reception facility" is a state facility operated by the Department of Children, Youth, and Families designed to evaluate an adjudicated delinquent or youthful offender and determine the appropriate placement, supervision, and rehabilitation program for the youth.

9. "Member of Tribe" - means an adult or child who is either a member of a Tribe or eligible for membership.

10. "Parent" includes a natural or adoptive parent but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.

11. "Youth" is a child that may be legally adjudicated as a delinquent or youthful offender.

B. MEMBERSHIP DETERMINATION

1. Responsibility of Tribe

Determination of membership or eligibility for membership in Tribe is the sole responsibility of Tribe. The Tribe will assist the State in determining a child's membership for purposes of this agreement.

2. Procedure

Membership inquiries shall be referred by the State to the tribal authorized representative designated in this agreement for processing, and a determination of membership or eligibility for membership by the Tribe is conclusive. The Tribe shall make a determination of membership or eligibility for membership of a referred youth within __ days from the time sufficient background information is provided by State. If the Tribe receives insufficient information to verify membership or eligibility for membership, the Tribe shall request additional information from the State in writing within __ days after receiving the inquiry concerning the youth's membership

and the State shall provide the requested information within __ days.

C. CONFIDENTIALITY

1. Proceedings and Documents are Confidential

Information concerning proceedings and documents is confidential and may be issued only in compliance with this agreement.

2. Applicable Law

The State, at a minimum, shall comply with the statutory confidentiality restrictions of (state law) in performance of its responsibilities under this agreement, but in addition, shall not issue information provided by the Tribe (except with the consent of the Tribe) (under the following circumstances: __.) The Tribe shall comply with the confidentiality restrictions of (the Federal Privacy Act, 5 U.S.C. 552(a)), and (tribal law) and policies in performance of its responsibilities under this agreement, and, when providing services to member youth in the custody of the State, to comply with the state confidentiality restrictions.

3. Share Information

While both parties shall comply with the other party's confidentiality requirements, they shall not prevent the sharing of information regarding a specific youth and the parties agree to share information in matters subject to this agreement.

4. Authorized Representatives

a. Tribe

The person(s) who will act as (an) authorized representative as required by this agreement and who may receive or issue confidential information regarding a youth in compliance with confidentiality requirements, (is) (are) as follows: _____

b. State

The person(s) who will act as (an) authorized representative as required by this agreement and who may receive or issue confidential information regarding a youth in compliance with confidentiality requirements, (is) (are) as follows: _____

D. TESTIMONY IN OTHER PARTY'S COURTS FOR PURPOSES OF THIS AGREEMENT ONLY

Probation, parole, and social services staff of the State shall testify regarding a youth placed according to this agreement when necessary in tribal court upon issuance of a subpoena by the tribal court. Probation, parole, and social services staff of the Tribe shall testify regarding a youth placed according to this agreement when necessary in state court upon issuance of subpoena by the state court.

(NOTE: This agreement cannot cover federal employees such as employees of the Bureau of Indian Affairs or the Indian Health Service. Federal law establishes the procedure to secure testimony from federal employees.)

E. QUALIFIED EXPERTS

For purposes of assessing a member youth, assessments and evaluations will be performed by persons with the following qualifications: _____

F. ASSESSMENTS, EVALUATIONS, and INVESTIGATIONS

1. State

Whenever the State prepares an assessment, evaluation, or other investigatory report about a youth, the State shall request the Tribe (and a qualified expert) to participate in the preparation of such study and assist in the preparation of the report. The study shall fully state the Tribe's recommendations and any other information provided by the Tribe. Upon filing with the court, the State shall send the Tribe a copy of the report or, if necessary, shall request the court's permission to provide the Tribe with a copy. The Tribe shall provide additional information to assist the State in preparing reports.

2. Tribe

Whenever the Tribe prepares an assessment, evaluation, or other investigatory report about a youth, the Tribe shall request the State (and a qualified expert) to participate in the preparation of such study and assist in the preparation of the report.. The study shall fully state the State's recommendations and any other information provided by the State. Upon filing with the court, the Tribe shall send the State a copy of the report or, if necessary, shall request the court's permission to provide the State with a copy. The State shall provide additional information to assist the Tribe in preparing reports.

IV. JURISDICTION

A. DESCRIPTION OF TRIBE'S RESERVATION

The " _ Reservation" consists of and is defined as all land within the limits of the Reservation, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; all dependent communities within the borders of the State of _; all _ allotments, the Indian titles to which have not been extinguished; including rights-of-way running through same; and any other lands, title to which is either held by the United States for the benefit of the Tribe or individuals, or held by the Tribe subject to a restriction by the United States against alienation. (map or legal description may be attached).

B. EXCLUSIVE JURISDICTION RETAINED

The Tribe has exclusive jurisdiction over any Indian youth and any proceeding involving an Indian youth who is alleged to have committed a tribally-defined delinquent act or status offense on the Reservation and who resides or is domiciled within the Reservation. The Tribe retains such jurisdiction whenever an Indian youth is placed in a state facility or uses any other state resource pursuant to this agreement.

V. DELINQUENT AND YOUTHFUL OFFENDER IDENTIFIED AS INDIAN

The State shall ensure that a youth subject to state delinquency or youthful offender proceedings is properly identified as an Indian youth and that the youth's Tribe is notified prior to disposition in order to make certain the cultural needs of the youth are considered, and that appropriate and effective contact between the Tribe and the State is made to provide for adequate information sharing and a meaningful opportunity for tribal involvement

VI. REQUESTS FOR ACCESS TO INSTITUTION OR RESOURCES

A. TRIBAL REQUEST - PROCEDURE

1. Whenever the Tribe determines that a preadjudicated or adjudicated member youth needs to be placed in a state institution or needs access to a state resource usually available to preadjudicated or adjudicated delinquent or youthful offenders, the tribal authorized representative shall contact the state authorized representative to determine the institution or resource(s) to be accessed.
2. The tribal representative shall provide to the state representative a copy of the petition filed in tribal court, copies of temporary orders, and when available, a copy of the final determination.
3. The Tribe and State may arrange a conference to discuss which, if any institution or resource, should be available and include in that conference those persons the authorized representatives determine would be helpful.
4. Once a solution is determined, the state authorized representative shall make the necessary arrangements to provide the youth access to state institution or resources.
5. The parties shall notify each other at least bi-annually in writing of the names of the authorized representatives and other principal staff members. The parties also agree to notify each other in writing immediately of changes in the authorized representative and of changes in staff members.

B. STATE REQUEST - PROCEDURE

1. Whenever the State determines that a preadjudicated or adjudicated member youth in state custody needs access to a tribal resource usually available to preadjudicated or adjudicated youth, the state authorized representative shall contact the tribal authorized representative to determine the resource(s) to be accessed.

2. The state representative shall provide to the tribal representative a copy of the petition filed in state court, copies of temporary orders, and when available, a copy of the final determination.

3. The State and Tribe may arrange a conference to discuss which, if any resource, should be available and include in that conference those persons the authorized representatives determine would be helpful.

4. Once a solution is determined, the tribal authorized representative shall make the necessary arrangements to provide the youth access to a tribal institution or resources.

5. When a tribal resource is federally funded, federal law, regulation, or contractual requirements may prohibit the use of such resource by a youth not living on the reservation. In such cases, the Tribe may not be able to offer the resource to the State.

6. The parties shall notify each other at least bi-annually in writing of the names of the authorized representatives and other principal staff members. The parties also agree to notify each other in writing immediately of changes in the authorized representative and of changes in staff members.

VII. INTERSTATE COMPACT ON JUVENILES

A. POLICY

While the Interstate Compact on Juveniles is initiated on a state by state basis, the resources made available pursuant to such a compact are important for member youth who live on the Tribe's reservation who are also citizens of the State. Therefore, the State agrees to assist the Tribe by providing access via the interstate compact adopted in Article 10, or Chapter 32A of the New Mexico Statutes Annotated.

B. PROCEDURE

(To be determined)

VIII. CULTURAL SENSITIVITY

A. DISPOSITIONS

When determining the disposition of a member youth who is within the State's jurisdiction, the State shall integrate relevant cultural elements into its recommended disposition by identifying non-tribal and tribal resources that will be used to meet the youth's cultural needs in accordance with the best interests of the youth and the public. But see paragraph VI.B.5 above.

B. TRAINING

Pursuant to Article 18 of the New Mexico Children's Code, every person engaged in providing services or resources to an Indian youth shall receive regular periodic cultural awareness training and the parties shall consult with each other to ensure that such training provides information that the Tribe believes is essential.

C. TRIBAL ASSISTANCE TO STATE

The Tribe believes that cultural training, especially when it relates to member youth and other Indian youth, is critically important to providing services to such youth. The Tribe agrees, therefore, to assist the State in developing cultural training by: (list specific activities).

IX. RELEASE OR PAROLE

A. STATE

The State shall not release a youth from a state institution or resource who was adjudicated by the tribal court, but shall return the youth to the Tribe. An eligible member or a member youth adjudicated by the state court shall not be released without consultation with the Tribe via the Tribe's authorized representative. The juvenile parole board shall not hold a parole hearing on a youth admitted to a state institution pursuant to this agreement without consultation with the Tribe via the Tribe's authorize representative.

B. TRIBE

The Tribe may not release a youth from a tribal resource without consultation with the State via the State's authorized representative.

X. PAYMENT

A. POLICY

Section 32A-1-8, NMSA, was amended in 1999 and the following language added to

subparagraph E:

An Indian youth residing on or off a reservation, as a citizen of this state, shall have the same right to services that are available to other youth of the state, pursuant to intergovernmental agreements. The cost of the services provided to an Indian youth shall be determined and provided for in the same manner as services are made available to other youth of the state, utilizing tribal, state and federal funds and pursuant to intergovernmental agreements. The tribal court, as the court of original jurisdiction, shall retain jurisdiction and authority over the Indian youth.

Therefore, the parties agree and understand that the State's resources are to be available to member Indian youth even if the Tribe is not able to pay the cost of the resources or even a portion of the cost. It is further understood that the Tribe cannot obligate federal funds without the consent of that government. The Tribe will assist the State in securing available federal funds to pay for services pursuant to this agreement.

B. ACCESS TO RESOURCES WILL NOT BE DELAYED

The parties agree that a youth's access to state resources will not be delayed because of payment issues.

XI. MODIFICATION AND CANCELLATION

A. MODIFICATION

The parties may amend this agreement at any time by mutual agreement in writing to be signed by the persons required to do so by the law of each party.

B. CANCELLATION

Either party may cancel this agreement without cause at any time by written notice of such cancellation delivered to _____ and signed by the person authorized to do so by the law of the canceling party

AGREED THIS _____ (DATE)

BY _____
For the State

BY _____
For the Tribe

**SECOND NATIVE AMERICAN
JUVENILE JUSTICE SUMMIT
TECHNICAL ASSISTANCE REPORT**



Report prepared and submitted by

American Indian Development Associates

Ada Pecos Melton, President

Elizabeth Bird, Program Manager

Justin Boos and Ken Poocha, Program Specialists

October 23, 1999

INTRODUCTION

On March 19, 1999 a Bill amending §32A-1-8 E of the New Mexico Children's Code (NMCC) was signed into law, which became effective on July 1, 1999. The Amendment states the following:

An Indian child residing on or off a reservation, as a citizen of this State, shall have the same right to services that are available to other children of the State, pursuant to intergovernmental agreements. The cost of the services provided to an Indian child shall be determined and provided for in the same manner as services are made available to other children of the State, utilizing Tribal, State and federal funds and pursuant to intergovernmental agreements. The Tribal court as the court of original jurisdiction, shall retain jurisdiction and authority over the Indian child.

With this Amendment, the State of New Mexico, (NM) has acknowledged it's legal obligation to provide resources and services to Indian youth who commit crimes on Indian lands and who's cases are handled by Tribal court judges. This obligation exists even when Tribal courts retain original jurisdiction over Indian youth. The statute enables Indian nations to access resources, facilities and services for Indian youth through intergovernmental agreements with the State. Additionally, the law requires State courts and agencies to recognize and enforce Tribal court orders.

The NM Office of Indian Affairs through the New Mexico Council on Crime and Delinquency (MNCCD) contracted the American Indian Development Associates (AIDA) to facilitate the Second Native American Juvenile Justice Summit for the State of New Mexico. The AIDA quickly responded to the request, prepared Summit details and materials and provided onsite facilitation for the two-day event. This Summit was conducted with combined funding from the U. S. Department of Justice, Bureau of Justice Assistance (BJA) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the U.S. Department of Health and Human Services, Indian Health Service (IHS) and the Santa Fe Indian School. This second summit was conducted to primarily to bring representatives from the State and NM Tribes to discuss ways to begin negotiation of intergovernmental agreements that would enable Tribal court judges to access the resources enabled by §32A-1-8 E.

The following is the Final Report outlining the goals, objectives, tasks and activities conducted during the project period. Included in this report are observations and recommendations and attachments of project materials and supporting documentation.

PROBLEM STATEMENT

The recent Amendment was an important step in the overall process to obtain effective legislative change in the NMCC that supports the best interest of Indian youth. Initially, revisions to the entire NMCC, including those sections relating to the treatment of Indian youth, were passed into law on July 1, 1994. Passage of the NMCC provisions affecting Native American children, youth and families into State law was considered a major accomplishment that would improve the treatment of these groups within the juvenile justice system.

Efforts to implement the NMCC Native American provisions have been hindered by a lack of effective Tribal-State service delivery, process for referral, communication and information

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sharing systems. Since Indian nations maintain sovereign status, intergovernmental agreements between the NM Tribes and the State must be utilized to promote cooperation and coordination in accessing services for Indian children, youth and families. Intergovernmental agreements allow them to share resources and expertise in addressing the needs of Indian children, youth and families. Moreover, intergovernmental agreements facilitate Tribal access to State resources by clarifying issues not covered in the statutory language. The 22 NM Tribes are now supported by legislation to access State resources through the use of intergovernmental agreements. However, in order for the law to take effect, Indian nations must first become aware of the law and its implications and then develop intergovernmental agreements congruent to their specific needs.

PROJECT DESCRIPTION

The AIDA provided technical assistance (TA) for the Summit held on October 12-13, 1999. The AIDA was selected due the unique qualifications of the organization's and their extensive experience, knowledge, skills and abilities in working with Indian nations and the Federal and State governments.

The Summit fulfilled three purposes. First, the Summit provided a forum for Tribal, State and Federal practitioners and policy makers to develop effective working relationships to better address the needs of Indian youth that are troubled or are in trouble. Second, it provided an opportunity for discussion of strategies to implement the most recent amendments to the NMCC. Third, it served to launch efforts for Tribal-State negotiations regarding development of intergovernmental agreements. An indirect purpose was to educate Tribal, State and Federal criminal justice practitioners an opportunity to learn about each other's juvenile justice systems and to share perspectives on Indian youth crime, violence and victimization issues.

The technical assistance consisted of conference planning, design and coordination. Meetings and conference calls were held. A Summit announcement and a fact sheet were designed. Speakers received invitations and confirmation letters and informational packets. Mailings, registration and database entry occurred. Summit materials were compiled and assembled in a Summit manual. Details were finalized for the location site. The AIDA team of Ada Pecos Melton, Elizabeth Bird, Ken Poocha, Justin Boos, Dana Melton and Rita Melton provided onsite coordination and facilitation for the Summit. A total of 176 pre-registered for the Summit and 163 individuals attended the event. Eighty-one participants were Tribal representatives, 41 were State, 18 were Federal and 18 were from private or non-profit organizations.

METHODOLOGY

The AIDA provided technical assistance, which included telephone consultations, project preparation, onsite moderation and facilitation and preparation of a report.

Telephone Consultations

The AIDA conducted various telephone and facsimile communications among the planning committee composed of AIDA staff; Regis Pecos and Angela Pacheco of the OIA; Dave Schmidt of the NMCCD and Toby Grossman of the American Indian Law Center. These communications were used to provide input on topics, content and speakers for the Summit; to provide updates on any changes or additional information; and to finalize logistics and details for the Summit.

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Project Preparation

The BJA, OJJDP, and IHS Headquarters West provided financial support for the Summit and the Santa Fe Indian School committed additional funding. Throughout the preparation process, the AIDA served as the primary contact for Summit attendees and answered all inquiries. Registrations were accepted and entered into a database.

The AIDA prepared a manual containing information on the NMCC including draft policies and procedures, a sample work plan and an overall evaluation for the Summit. The manual was designed featuring five sections of information:

- I. General Summit Information
- II. Policies that Support Intergovernmental Relations
- III. Efforts for Improvement
- IV. Tribal and State Policies and Procedures
- V. Mutual Recognition Concepts and Models

A blank worksheet for a work plan was designed for use during the final breakout session. An overall evaluation was designed for feedback on the Summit activities and accomplishments. Additional information, such as announcements for upcoming related seminars and conferences, were included in the notebook. Both AIDA and OIA provided copying and AIDA staff and volunteers assembled the manual.

With consideration for the amount of information to be covered and with input from the planning committee, the AIDA developed a two-day Summit agenda. The event featured general sessions composed of individual and panel speakers and working group sessions. Speakers were identified, contacted and confirmed as the agenda and Summit information was compiled.

Onsite Facilitation

The AIDA team provided onsite conference coordination for the Summit held at the Crowne Plaza Pyramid in Albuquerque, NM. As Summit participants registered, they were issued a manual. Participants also received a copy of the Bureau of Justice Statistics report entitled, *American Indians and Crime* and a packet of information provided by the BJA.

The AIDA staff coordinated the event with Ada Pecos Melton and Elizabeth Bird moderating the Summit. OIA provided support staff for the event. Planning Committee members, Regis Pecos, Dave Schmidt and Toby Grossman presented in their areas of expertise during general sessions. Panel sessions featured Indian nation governors and judges, New Mexico State elected and appointed representatives, BJA and OJJDP personnel and Santa Fe Indian School youth. Breakout sessions were divided into four groups: Judicial, Legal Counsel, Youth Services and Child Welfare and were held twice during the Summit. These sessions were facilitated by AIDA Staff: Elizabeth Bird, Ken Poocha and Justin Boos; OIA staff: Regis Pecos, Brian Lee, Carnell Chosa and Dorothy Abeyta-Rock; and Dave Schmidt, NMCCD.

REPORT OF INFORMATION

Focus Group Discussions

The four focus group discussions yielded qualitative data for a preliminary analysis of issues and concerns regarding implementation of the NMCC and negotiation process for intergovernmental agreements. An open question approach was used to facilitate discussions with participants. Issue areas were discussed in terms of problems, strengths, barriers and solutions. The information was obtained through a process which allowed each individual participant the opportunity to provide input based on his or her experiences, knowledge of community issues, living and working in the community and interaction between Tribal and State governments. The information was compiled into the following categories. (See Tables 1-4).

Problems

- *Education & Awareness*

Implementation of the NMCC Native American provisions and the development of the negotiation process of intergovernmental agreements are hindered by a general lack of understanding of intergovernmental relations and awareness of the actual provisions, particularly by Tribal leadership and service providers. Without a good understanding of the intergovernmental process, Indian nations find it difficult to determine their responsibility within the overall process. Moreover, the existing Tribal, State and Federal systems need to be more fully understood to address the varying levels of need within each system. The lack of education and awareness within Indian nations can partly be attributed to limited dialogue internally and with other Indian nations and miscommunication with the State. Due to the lack of education and miscommunication, Indian nations feel their children are not or will not benefit from the recent amendments to the NMCC. State service providers encounter problems due to a lack of understanding of the Tribal decision making process which can be lengthy at times.

TABLE 1: NAJJS PROBLEMS MATRIX

Education & Awareness	Attitudes & Behaviors	Inter-Governmental Relations	Intra-Governmental Factors	Cultural Aspects	Resources	Systemic Factors
Miscommunication between tribe and State	Lack of trust	Court/ law enforcement jurisdiction	Intra-tribal issues	Diversity of 22 NM Tribes	Who should bear the costs of resources?	Language of the NMCC
Tribes are not benefiting from legislation	Good guy-bad guy mentality	Tribes have been forced to justify themselves	Too many punitive dispositions	State is culturally unaware	States are conduit for federal funds	Process of implementation
Lack of understanding of intergovernmental relations/ agreements	Lack of commitment by both parties to the process	States provide/ demand agreements without negotiation	No involvement of Tribal leaders in child protection teams (CPT's)	Lack of cultural elements within treatments	Tribes are forced to negotiate for funds that include Indian children	How to get nonreservation children back & strengthen tribal influence
Existing system needs to be understood to address varying levels of need	Frustration with no outcomes after years of effort	Tribes enter negotiations as unequal partners	Constant change in Tribal leadership	Lack of culturally appropriate model for services	Tribes do not have access to funds/ infrastructure that States have	Need to establish Tribal contact person

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Lack of understanding of Tribal decision making process	Code/ agreements/ govt. to govt. is redundant	Lack of active communication between tribe and State	Difficult to bring everyone to the table to sign agreements	Misinterpretation of codes due to cultural differences	Not enough Native American foster families or support for them	No Tribally written children's code
Lack of awareness of NMCC	Reluctance to enter into agreements	Weak intergovernmental relationships	Tribal politics		Lack of up to date information	Security vs. treatment
Lack of understanding by Tribal council	Lack of a commitment to follow thru	Lack of intergovernmental agreements	Dialogue not developed at community level		State resources unavailable for Tribes to tap into	
Limited dialogue among Tribes	Sense of hopelessness by people	Indian authority not recognized by State judges	Lack of infrastructure at tribal level		Indirect funding to Tribes	
Defining tribe's responsibility in the IGA process?	Denial of problems by tribe	Need to include Tribes' decision makers	Ineffective case management of child welfare		"Front line" people don't have resources	
Tribal service providers aren't informed on all information & resources	Assumption by Tribes that State has unlimited resources	Federal law sets boundaries to areas/ issues to be negotiated			Lack of financial resources for Tribal administration	
	Not willing to share data	Subjecting children to State process			Lack of technology	
	Reluctance to change	Absence of State representation				
		Tribes are penalized for having jurisdiction				

• *Attitudes & Behaviors*

Due to a lack of trust of outside governments and agencies, generated by years of exploitation, Tribal governments are reluctant to enter into agreements with the State. This lack of trust results in the unwillingness to communicate, share information and crime statistics and coordinate services. A number of factors contribute to the lack of tribal commitment to produce effective change: denial of problems by tribal communities, a sense of hopelessness by tribal members and frustration with no outcomes after years of effort. There are perceptions that intergovernmental agreements are redundant because they do not seem to have any impact on improved relationships or services. Tribal-State relations are often weakened due to the misconception by Indian nations that the State possesses an unlimited supply of resources. When States are unable to provide requested services Indian nations develop a sense of resentment towards the State, which only hinders the provision of services to Indian youth.

• *Inter-Governmental Relations*

Weak intergovernmental relationships exist between the 22 Tribes and the State due in part to the State's resistance to honor the sovereign status of the Indian nations. This is evidenced by the

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lack of acknowledgement of Tribal court orders by State courts. If Indian nations were to enter into intergovernmental agreements with the State, they feel they would enter as unequal partners with little say in the negotiation process. To compound the problem, the most important Tribal players within the negotiation process, Tribal leaders and decision-makers, are the least informed as evidenced by their lack of attendance at the Summit. Indian nations also feel they are penalized for exercising their jurisdictional rights by being forced to justify their need for State services and resources and at times, being refused those services and resources altogether based on jurisdictional arguments. With the State now obligated to provide resources and services to reservation youth, Indian nations are suspicious of subjecting children to the State process even though legislative language supports the provision of services to be provided in a culturally relevant manner. Indian nations feel their youth may not receive the type of cultural-sensitive training they might receive within the community. In addition they fear that exposing their youth to State processes will have adverse affect on their youth.

- *Intra-Governmental Relations*

Efforts to produce effective change by improving the lives of Indian youth within Tribal communities with the State is difficult due to constant shifts and turnover within Tribal leadership and administration. An incoming administration may not place as much emphasis on issues related to youth within the juvenile justice system. Consequently, any efforts made by previous administrations may not be followed through and implemented by an incoming administration. Lack of involvement and coordination between Tribal leadership, youth service providers and members within the tribal community makes it difficult to “bring everyone to the table” to discuss, develop and formally enter into intergovernmental agreements with the State. Furthermore, limited support and attention from Tribal leaders is given to tribal youth service providers such as child protection teams (CPT's) who wish to develop more effective case management systems for child welfare cases or to Tribal court staff who would like to develop alternatives to incarceration.

- *Cultural Aspects*

Within the implementation and agreement process, attendees pointed out several key issues involved. The 22 New Mexico Indian nations bring distinct political, traditional and cultural differences and State agency officials and personnel are often culturally ignorant of the Indian nations' sovereignty and cultural distinctions. Although many current treatment facilities lack cultural elements in their programs, the awareness and knowledge of culturally appropriate models for services and their locations is insufficient for reference. Misinterpretation of the NMCC filtered through cultural perspective was reported as an apprehension for attendees.

- *Resources*

Several problems with regard to resources that may be addressed by the NMCC amendment and intergovernmental agreements were mentioned. On a Tribal level, line staff often have limited access to and do not receive current information on financial resources, technology and program resources. Insufficient numbers and inefficient support for American Indian foster families exist.

A breakdown in access to funding for Indian nations occurs when the State receives federal funds based on population statistics, which includes Indian populations. Another factor in services is an insufficient amount of State resources that are made available for Indian nations to apply. Too often when Indian nations apply for State or Federal funding, they are required to waive indirect costs. In addition, Indian nations may not possess infrastructures to support

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programs and resources. The lack of financial resources for Tribal administration creates problems with effective management of programs, which leads to inadequate alternatives in children's cases. Sometimes that lack of tribal resources is seen as the Tribal administration's low prioritization and lack of support for children and youth issues. An overall question for the implementation of the NMCC is responsibility of who absorbs the cost for use of State resources.

- *Systemic Factors*

Problems in the implementation and negotiation process were noted for existing juvenile justice systems. Apprehension existed in whether or not the Indian nations and State would fulfill the NMCC implementation and responsibilities with the best interest of the child as the foremost goal. Implementation may be slowed by individuals in the process who are uninformed about the NMCC or if the State and/or Tribes' do not put in place the policies and procedures for people to use. Some Indian nations do not have written codes and may choose to establish them before accepting the responsibilities implicated by the NMCC. Questions of how the Indian nations can exercise and strengthen their influence on cases involving non-reservation children, of determining a Tribal contact person and of changing the focus from secure confinement to treatment were also discussed. Detailing the process is essential for implementation of the NMCC and the attending policies and procedures.

Strengths

- *Tribal-State Relations*

As a result of the recent amendments to the NMCC, Tribal-State relations will be strengthened in a number of areas. Tribal participants expressed that strong relationships exist with some agencies such as the State Attorney General's Office. Through the development of intergovernmental agreements between the Indian nations and the State, specific differences will be resolved with less conflict through creation of dialogue and greater collaboration and communication. The amended NMCC will effectively serve as a model for other states that wish to bridge the communication gap between State and Tribal youth service providers and treat Indian youth in a culturally sensitive manner. Under the new law, Indian sovereignty is strengthened because Tribal court orders that access State resources and services for reservation youth must be honored by the State even while the Tribal court retains jurisdiction over those youth. This law expands the resource capability of Tribal courts. It strengthens the capacity of Tribal juvenile justice systems to effectively address youth crime, violence and victimization issues.

TABLE 2: NAJJS STRENGTHS MATRIX

Tribal-State Relations	Youth	Procedural	Education & Awareness	Attitudes & Behaviors
Good working relation between AG & tribe	Sports & life skills	We have a NMCC	Recognition of difference	Committed people for the cause
Agreements could iron out specific differences, create a dialogue	Diversity in State assures that all children will receive same services	Allowing "domestication" of tribal law thru tribal recognition	Creates better understanding between State and Tribes in relation to resources	As tribal communities, we have a strong tradition to uphold
Tribal courts/ State brought together	Once in the state or tribal system, youth receive services	Agreements bring into place protocols	More people become educated	Creates a sense of empowerment

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Recognition of tribal sovereignty is strengthened	Brings focus on Native American child	Creates/ strengthens team representation	Inform community about available resources	Willingness to cooperate between parties- at all levels
Collaboration/ communication provides an effective model for other states	Mutual recognition works for needs of children and efforts of advocates	Brought about Native American Juvenile Justice Summit	Generates awareness, paving the way for cultural sensitivity and competence	Responsive to documentation of services
State honors tribal sovereignty as a result of NMCC	Strengthening the children & the future of Tribes	Directs the process- provides results		Networking leads to trust between parties
Open-minded two-way communication	Interest of child is raised to a higher level	There are written and unwritten children's code in each tribe		Persistence- "keeps it on the table"
Gives jurisdiction to Tribes over children	Accessibility of justice for children and youth	Provides framework & guidelines for Tribes		
		Something is codified		
		Vehicle for movement		

- *Youth*

The provisions within the NMCC related to the treatment of delinquent and dependent youth assure that all children within the State will receive equal access to services. The statutes increase focus and attention to the needs of Indian children, youth and families. These statutes ensure that the best interests of Indian youth are served in culturally relevant manner. The new laws provide assurances that Indian youth will receive or have access to services whether they are in the State or tribal juvenile justice system.

- *Procedural*

The revised NMCC provides both the State and Indian nations a vehicle for movement to better the lives of Indian youth. These laws provide legislative leadership and promote improved outcomes for Indian children, youth and families. Through development of policies and procedures, both the State and Indian nations have been provided a framework and guidelines to direct the implementation process of the Native American provisions within the NMCC. As a result, Indian youth will receive access to Sate resources and services that were previously unavailable. Passage of the new laws created the impetus for a second summit to occur. Benefits resulting from the Second Native American Juvenile Justice Summit include a strengthening of relations between State and Tribal service providers.

- *Education & Awareness*

As a result of the Summit, the Tribes and State have a better understanding of the difference of their respective juvenile justice systems. Better understanding was created between State and Tribal service providers regarding the availability and accessibility to services for Indian youth. Participants felt more educated and aware of issues related to the implementation of the NMCC affecting Indian children, youth and families. The amended NMCC reflects and is sensitive to the many cultural differences of New Mexico's youth. The increased awareness will pave the way for cultural sensitivity and competence to occur.

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- *Attitudes & Behaviors*

A number of factors associated with the attitude and behavior of State and Tribal participants were specified as contributing to the strengthening of relations needed to provide better services to Indian youth within the State. As a result of their willingness to cooperate and network, State and Tribal service providers felt a greater sense of trust had been established. Participants felt a sense of empowerment for working with each other due to supportive policies and procedures. Furthermore, through their strong commitment by State and Tribal participants advocate for the improved treatment of Indian children. By being persistent, the needs of Indian children and youth will be kept on the Tribal, State and Federal tables.

Barriers

- *Education and Awareness*

Factors that may impede implementation of the NMCC and hinder development of the negotiation process of intergovernmental agreements between the Indian nations and State include a lack of community education and awareness of the statutes. In particular, the individuals who are most affected are Indian children, youth and families, and are often the least informed. There is often no way to access the input of Tribal leaders or the most affected group, i.e. children, youth and families. Informing Tribal communities of legislative change affecting Indian children, youth and families is difficult because there are few meetings held on Indian lands. It is therefore the responsibility of Tribal leaders, administration and service providers to inform the public of amendments made to the NMCC that affect Indian children, youth and families. However, they are also not informed. An uninformed Tribal government results from a fragmentation of Tribal programs and a lack of communication and information sharing among departments. This can lead to duplication of services and programs. The lack of communication and information sharing inter-tribally prohibits the NM Tribes from using each other as resources to create unified and/or cooperative approaches to work with the State on issues of mutual concern.

TABLE 3: NAJJS BARRIERS MATRIX

Education & Awareness	Tribal-State Relations	Attitudes & Behaviors	Intra-Tribal
Lack of education to parents/ family that NMCC exists	Lack of a process for tribes to be involved with a child who gets in trouble off Tribal lands	Fear of losing elements of sovereignty	Youth not a priority until something happens
Fragmented programs	Tribes should challenge the State in working together	Denial by tribe on youth issues	Lack of procedures
No community awareness & education on child welfare issues	Tribe won't accept agreement until State accepts full faith and credit	People are scared to speak up for fear of repercussions	Not getting at root causes- why suicides?- "Columbine"
No meetings at Pueblos	Children fall through cracks	No doers, all talkers	Community & family support
Lack of intertribal dialogue concerning past agreements with State	Jurisdictional gray area- especially with tribes that don't have written child codes	"It's not in our community" -denial	By a tribe asking for one thing they limit opportunities for other Tribes
Lack of communication	Lack of intergovernmental	Lack of confidentiality	No women & children

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= lack of contacts	agreements		in Tribal councils
No direct input from children, women and Tribal leaders		Lack of enforcement	Lack of community within Tribes
Lack of information and public information			From traditional to non-traditional communities
Redundancy of programs			Same crime- different approach
No sharing of information			Separation of State & traditions
			Substance abuse/ crime
			Lack of infrastructure
			Political agendas
			Tribal leadership turnover
			Lack of resources & funding

- *Tribal-State Relations*

Historically, a number of barriers related to Tribal-State relations have obstructed the implementation of the NMCC Native American provisions. Provision of services to Indian youth have been hindered due to the failure of the State to accept the concept of full faith and credit and Tribal court orders that include the use of State resources and services for Indian children, youth and families. Moreover, unclear jurisdictional boundaries have enabled Indian children to “fall through the cracks.” This is further hampered by the lack of processes for tribes to be notified and consulted when an Indian child is in the State juvenile system. The most recent amendment mandating the State to honor Tribal court orders through intergovernmental agreements, the NM Tribes will need to take the initiative and challenge the State to develop more effective working relationships.

- *Attitudes & Behaviors*

Certain attitudes and behaviors within tribal communities act as barriers to the development of intergovernmental agreements with the State. Previous attacks on tribal sovereignty by State and County governments have instilled a sense of distrust and suspicion among Tribal governments. New Mexico Tribes are apprehensive towards entering into agreements with the State for the fear such actions may further limit or weaken fundamental elements of tribal sovereignty. Discussion of youth issues and concerns within tribal communities is frequently limited because of a denial by tribal families that crime, delinquency, and violence problems exist within their communities. Frustration occurs when the only thing that occurs is talk with little action or follow through by State and Tribal representatives. If problems are addressed, very few attempts to solve the problems are made. Tribal administrative issues that contribute to hindered provision of services to Indian youth include lack of confidentiality and enforcement within various departments. These issues are not adequately addressed due to a fear of repercussions for those who voice their concerns.

- *Intra-Tribal*

Within tribal governments issues related to youth substance abuse and crime do not take priority until an incident or “time of crisis” forces the problem to take precedence. Without much community and family support, however, it is difficult to reach the root causes of many of the

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problems. Traditional values, customs and practices can also impede effective approaches to dealing with youth crime and delinquency. For instance, because there is not a separation of "State" and traditions in most Indian communities, women and children for that matter, are not permitted to hold a seat on the Tribal council. As a result, those who are most affected by issues related to youth delinquency and dependency have little say in the decision-making process. Implementation of NMCC Native American provisions has been deterred due to a lack of Tribal policies and procedures to guide the implementation process and a lack of infrastructure including resources and funding within the Tribal administration. Additionally, high Tribal leadership turnover within most Tribal governments results in conflicting political agendas. An incoming administration may negate much of the work accomplished by the previous administration to better the lives of Indian children, youth and families within the community. Indian nations who begin the negotiation process will pave the way for other tribes to follow. However, problems may arise for those who will follow, when their requests do not follow the precedence set by the first Tribe. It will be essential for each intergovernmental agreement to be negotiated on an individual basis.

Solutions

- *Tribal Considerations*

Summit participants provided ideas for Indian Nation regarding effective juvenile justice systems regarding implementation of the NMCC and negotiation of intergovernmental agreements. Participants believed that this new law provides more opportunity for tribal involvement in cases and shared responsibility for children and youth. Ideally, within Indian nations, schools and communities, youth actively contribute ideas and comments, interaction among community for youth causes occurs, sobriety is a way of life and various services focus on the entire family rather than strictly the child. Responsibility and accountability on youth issues are upheld in Tribal government, communities and families. Indian nations should place high priority on the NMCC implementation and initiate the agreement process. Indian nations who lead the way can trigger others to follow suit and mentor the others throughout the process.

Table 4: NAJJS Solutions Matrix

Tribal Considerations	Education & Awareness	Procedural	Resources
More involvement	Create more awareness	Conduct ongoing meetings	Provide cross-training
Tribes take responsibility of their children	More input from direct service providers	Use simple language	Develop more intervention programs
Give youth a voice in communities/ schools	More effectively educate the community of the process	Create protocols with schools	Provide training for staff, Tribal council & community
Work with whole family not just child	Gain better understanding of the community in order to obtain a better understanding of solutions	Establish a working group from 22 Tribes, State agencies, etc.	Equal opportunity for youth involvement as a prevention/ education method
More interaction in communities	Share information/ case studies	Establish an evaluation process	Access additional funding
Trigger activism in other areas	Allow tribe to determine the scope of cultural education	Less government/ red tape	Good mentors/ role models i.e. more females in government
Advocate for sobriety in	Educate State agencies	Give time and follow up	Hire more/ better staff

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families			
More responsible parents/ community	Greater communication		More effective allocation of resources
Implementation of NMCC must be priority			Implement more drug courts
More integrity/ accountability in government			Provide more services to the family
Let tribe initiate their own agreement			More funding from all levels to use as tribe sees fit
			Develop treatment facilities on reservations
			Provide cross-training Develop more tribally-affiliated services & programs

- *Education and Awareness*

Participants provided solutions on education and creating awareness of the recently amended NMCC, State and Tribal responsibilities and this Summit. Implementing the NMCC allows opportunities for greater communication and information sharing on juvenile justice issues between the State and Tribal counterparts. Before this can occur and following this Summit, State agencies need awareness and explanation of responsibilities, while Indian nations must become aware and decide their responses and scope of cultural education in the process. When developing agreements, Indian nations should consider concerns and input from direct service providers and community members.

- *Procedural*

To ensure a smoother process of implementation and negotiation, Summit attendees suggested precise and clearly understood written and oral communications as well as adhering to time lines within ongoing meetings between the Indian nation and State officials. Reduction of bureaucratic processes and paperwork can provide a quicker agreement process. Developing policies and procedures of working with Tribal and State agencies, schools and other stakeholders is needed in collaboration. A working group composed of the Indian nations and State agencies would provide a forum for discussions, planning or negotiation. An evaluation process is needed in the next few years to review the agreement process and its effectiveness in fulfilling the statutory requirements.

- *Resources*

Summit participants recognized possibilities of a truly effective juvenile justice system. In such a system, Indian nations and the State would have access to additional funding for development of prevention and intervention programs, detention resources and for additional staff in both the State and Tribal juvenile justice systems. Ultimately, Indian nations and the State would allocate resources in areas which effectively address youth concerns and needs, especially to help youth before they are in trouble. Ideally, Indian nations would use funding from State and Federal sources according to community needs for treatment facilities on reservations or more culturally relevant services and programs. With respect to implementation, training on the NMCC and its requirements would occur for State and Indian nation staff and communities. In general, Summit

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attendees called for leaders, role models and mentors who are concerned for Indian people to be involved in youth matters.

PROJECTED WORK PLANS

The four discussion groups yielded preliminary work plans for the implementation of the NMCC and negotiation process of intergovernmental agreements. The objective of the work plan session was to establish, with participants, a task oriented list relating to the following three areas (goals):

- Developing intergovernmental agreements,
- Implementation of policies and procedures, and
- Collection of effective data collection methods and standards.

Each subject area reflected the overall objectives of the Second Native American Juvenile Justice Summit to develop and strengthen Tribal, Federal and State Government relationships and to implement recent public policy changes into tribal communities.

Overall each group generated a prioritized list of objectives, tasks, person(s) responsible and timeframe. The participants began the process by considering what the overall objectives were to meeting the above goals and thereby establishing tasks that should be accomplished if these objectives to be met. Next, the tasks were synthesized and prioritized with considerations on who would be responsible for completion. A relative time frame was also established to keep Tribal and State agencies on track. Since each tribal community is unique in structure, the procedures, responsibilities and time frames were meant to serve as a guide.

EVALUATION SUMMARY

The AIDA developed a one-page evaluation which provided two types of responses. The evaluation included questions answered with a rating scale from 1 to 5, with 5 considered excellent, as well as open-ended questions requesting written responses. A total of 30 evaluations were collected.

The following table summarizes the responses from the rating scale:

TABLE 5: NAJJS EVALUATION - RATING SCALE

	1	2	3	4	5
Organization	0	0	10	15	5
Format	1	2	13	10	4
Speakers	0	0	7	17	6
Topics and presentations relevant	0	0	10	13	7
Amount of information provided	0	0	7	12	11
Usefulness of information provided	0	0	5	18	7
Expectations of summit were met	0	2	10	16	2
Commitment was developed between key stakeholders	2	6	9	9	4
Overall quality of summit	0	0	10	16	4
TOTAL	3	8	79	126	50

As demonstrated by this information, for 9 questions, participants indicated 50 (18.7%) responses for excellent (5), 126 (47%) responses for above average (4), 79 (29.6%) responses for

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average (3), 8 (6.3%) responses for below average (2) and 3 (1.1%) responses for poor for all categories. Overall, the majority of participants who responded to the evaluation rated the Summit above average with 66 % indicating a score of 4 or 5 when asked to rate the overall quality of the summit.

When participants were asked to comment on the clarification of roles between the Indian nations and the State, comments were generally divided between whether or not their roles were clarified. If it was perceived that these roles were not thoroughly explained, comments commonly referred to the lack of information and State perspective on their roles as being a hindrance to fully understanding what they should be. Otherwise, participants felt that enough information was provided to satisfy an awareness of those roles.

When asked to identify topics or information that was not provided at the Summit, participants suggested ideas. More information was needed on how and if the NMCC affects urban Indians, what the specific Federal role is and more detailed information and background on the NMCC.

Overall the comments and responses in the evaluation were positive. Suggestions for future summits included a more organized approach to the breakout sessions, an increase in Tribal leadership presence, more time devoted to working groups and team building exercises. Suggestions and comments (both positive and negative) will be considered for any future programs.

RECOMMENDATIONS

The following tables are recommendations from Summit participants for next steps following the Summit.

Recommendations from Judicial Group

TABLE 6: NAJJS, JUDICIAL GROUP, INTER-GOVERNMENTAL AGREEMENT TASKS

Objective	Tasks	People Responsible	Time Frame
Organization and Support	1. Develop roles and responsibilities of Tribal community task team	Informal Committee	30 Days
	2. Obtain Executive support to identify who will be on task team	Informal Committee	30 Days
Improve government to government relations and gain internal support	Tribal Executive office to gain support from Tribal programs and State Attorney General's Office	Executive Office and Task Force	30 Days
Organization	1. Identify with whom Tribes enter agreements	Executive Office and Task Force	30 Days
	2. Establish Tribal State Contacts	Task Force	60 Days
	3. Formulate a plan for meeting with contacts	Task Force	90-120 Days
Ensure all relevant offices are equally informed	Tribal Executive Office, Tribal Programs and Attorney General's office to review NMCC	Executive Office, Tribal Agencies and Established State Contacts	60 Days
	Identify any Tribal resources and distribute any information gathered	Executive Office and Task Force	90-120 Days
Anticipate and	Develop a Tribal/State forum to discuss	Task Force	90-120 Days

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address any present or future issues	any issues that may arise (or have arisen)		
Community Education/ Public Awareness	Develop a plan for community education	Task Force	On-going after 90 Days
Ensure Tribe is on track	Develop and implement evaluation	Task Force or external agency	On-going

TABLE 7: NAJJS, JUDICIAL GROUP, IMPLEMENTATION OF POLICIES AND PROCEDURES AND DATA COLLECTION TASKS

Objective	Task	Persons Responsible	Time Frame
Organization and Assessment	Task Force will plan, implement and assign resources for infrastructure and develop methodology for data collection	Task Force	6-9 Months
Assessment	1. Data assessment; establishing what we have	MIS or other relevant dept.	6-9 Months
	2. Determine any physical or hardware needs for data collection	MIS or other relevant dept.	6-9 Months
Data Collection	Data collection process for what we don't have	Task Force	6-10 Months
Provide all participants with meaningful data	Format data into meaningful statistics	Task Force	6-9 Months
Development of Polices and Procedures	1. Begin to draft polices and procedures	Task Force	4-6 Months
	2. Tribal Council/ Attorney Review	Task Force	3-6 Months
	3. Revision of polices and procedures		30 Days
	4. Tribal Council Accepts...becomes Tribal Law		90 Days
Ensure polices and procedures are reflective of community	Obtain community feedback	Task Force	6-9 Months
Build community support through education	Provide community education on polices and procedures	Task Force, Tribal Programs and Tribal Legislation	6-9 Months

Recommendations from Legal Counsel Group

TABLE 8: NAJJS, LEGAL COUNSEL GROUP, IMPLEMENTATION OF POLICIES AND PROCEDURES AND DEVELOPING INTER-GOVERNMENTAL AGREEMENTS:

Priority	Task
1	Tribal Attorney's to draft standards within inter-governmental agreements
2	Establish a coalition of Tribes to agree on the language of the executive order
3	New Mexico Governor issues an executive order to State agencies
4	Tribal leaders to work with State Attorney General to further strengthen policy statement
5	Establish a forum for resolving disputes

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6	Address and resolve questions e.g. payment for incarcerating Indian people in county or State facilities
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Recommendations from Child Welfare Group

TABLE 9: NAJJS, CHILD WELFARE, IMPLEMENTATION OF POLICIES AND PROCEDURES AND DEVELOPING INTER-GOVERNMENTAL AGREEMENTS TASKS

Objective	Task	Persons Responsible	Time Frame
Improve participation of Tribal leadership in the NMCC and with services providers	Visit every tribe for awareness	Everyone	ASAP/ Ongoing
Bridge Administration gap and provide information directly to governors	Visit AIPC	Everyone	ASAP/ Ongoing
Develop services system model for each tribe	<ul style="list-style-type: none"> • Develop improved communication and awareness for NMCC between ICWA/BIA/CPT/Social Services etc. • Obtain an understanding of new laws and changes 	Everyone "Toby" and "James"	Ongoing
Develop more integration between Tribe, State and Federal Bodies (Administration)	<ul style="list-style-type: none"> • Get CYFD directly involved in CPT's • Invite CYFD panelists • Determine the responsibility of involved parties 	Government Heads Government Heads	ASAP ASAP/Ongoing ASAP
Update Information	<ul style="list-style-type: none"> • Get info from last JJ Summit • Provide Information on 2nd JJ Summit 	AIDA AIDA	1 week 10 Days
Addressing Urban Indians	<ul style="list-style-type: none"> • Identify policies and procedures for service providers on urban Indians • Provide Information to those that don't know 	AIPC AIHS BIA Navajo and CYFD	ASAP ASAP

Recommendations from Youth Services Group

TABLE 10: NAJJS, YOUTH SERVICES, OBTAINING INTER-GOVERNMENTAL AGREEMENTS TASKS

Objective	Task	Persons Responsible	Time Frame
Development of agreements	Negotiate	Tribes/Federal/State Agencies	Jan 2000
Information sharing	<ul style="list-style-type: none"> • Take back information to the community service providers • Facilitate collaboration between Tribes and schools 	Everyone BIA/Public/Tribal Councils	Immediately 3 Months
Accountability	<ul style="list-style-type: none"> • Ensure accountability at every level 	Everyone	Immediately

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	<ul style="list-style-type: none"> Establish a board to provide continuity of intergovernmental negotiations 	Tribal Administration (appoints a workgroup)	Nov 30, 1999
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TABLE 11: NAJJS, YOUTH SERVICES, IMPLEMENTATION OF POLICIES AND PROCEDURES TASKS

Objective	Task	Persons Responsible	Time Frame
Awareness and Education	<ul style="list-style-type: none"> Educate Tribal leaders on NMCC 	Social service s, Tribal programs, Training team, Tribal Council	Within 2 weeks
	<ul style="list-style-type: none"> Educate self, parents, community members, youth and children on NMCC 	Training team, Social service agencies	Within 2 weeks
	<ul style="list-style-type: none"> Establish a mutual understanding of code through classes, workshops and conferences 	Training Team/ AIDA	2 Months : January 2000
Accountability	Establish a system of accountability	Tribal Administration/ State and Federal Agencies/ Service Agencies	Ongoing
Continuance	Maintaining services, upholding the NMCC with probation office	Tribal Social Services Agencies	Immediately
Negotiation	Emphasize the need to negotiate benefits of negotiation as applied to code	Tribal Administration/ Tribal Council/ State (CYFD) Courts (Tribal/Federal/State)	Immediately

APPENDIX A:

**Second Native American Juvenile Justice Summit
for the State of New Mexico**

Technical Assistance Report

Agenda

**SECOND NATIVE AMERICAN JUVENILE JUSTICE SUMMIT
FOR THE STATE OF NEW MEXICO**

WEDNESDAY, OCTOBER 13, 1999

- 8:00 - 8:30 a.m.** **COFFEE [Pre-convention Hallway]**
- 8:30 - 9:00 a.m.** **WELCOME BACK AND INVOCATION [Yucatan]**
Elizabeth Bird, Program Manager, American Indian Development Associates
- INVOCATION**
Raymond Gachupin, Governor, Pueblo of Jemez
- 9:00 - 9:30 a.m.** **GENERAL SESSION: FINDING SUPPORT FOR PARTNERSHIPS [Yucatan]**
Robert H. Brown, Senior Advisor to the Director, Program Development Division
U.S. Department of Justice, Bureau of Justice Assistance
- 9:30 - 10:15 a.m.** **PANEL SESSION: WORKING EFFECTIVELY WITH YOUTH [Yucatan]**
Santa Fe Indian School Students
- 10:15 - 10:30 a.m.** **BREAK**
- 10:30 - 11:00 a.m.** **MODEL TRIBAL POLICIES AND PROCEDURES FOR RESPONDING EFFECTIVELY
TO THE NEW MEXICO CHILDREN'S CODE [Yucatan]**
Carolyn Abeita, Attorney, Chestnut Law Offices
- 11:00 - 12:00 p.m.** **ADDRESSING THE RESOURCE NEEDS OF INDIAN YOUTH [Yucatan]**
Raymond Gachupin, Governor, Pueblo of Jemez
Kenneth G. Poocha, Program Specialist, American Indian Development Associates
- 12:00 - 1:15 p.m.** **LUNCHEON SPEAKER: *Coordination of Efforts to Improve the Treatment of Indian
Children [Atrium]***
Leonard Tsosie, Senator, State of New Mexico Legislature
- 1:15 - 3:00 p.m.** **TEAM SESSIONS: INTERGOVERNMENTAL AGREEMENT PROCESS AND
DEVELOPING PARTNERSHIPS [Rio Grande, Santa Rosa, Marbella, Pyramid Club]**
Team Working Sessions
- 3:00-3:15 p.m.** **BREAK**
- 3:15 - 4:15 p.m.** **GENERAL SESSION: INTERGOVERNMENTAL AGREEMENT PROCESS AND
DEVELOPING PARTNERSHIPS [Yucatan]**
Teams Report Back For Next Steps
- 4:15 - 5:00 p.m.** **GENERAL SESSION: IMPLEMENTING THE COMMITMENT [Yucatan]**
David Pederson, Representative, State of New Mexico Legislature
Deborah Hartz, Secretary, Children, Youth and Families Department *Invited*
Regis Pecos, Executive Director, Office of Indian Affairs
- 5:00 p.m.** **Adjourn**

Have a Safe Trip Home! Thank you!

APPENDIX B:

**Second Native American Juvenile Justice Summit
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**Focus Group Discussions:
Problems, Strengths, Barriers & Solutions Sample**

Problems	Strengths	Barriers	Solutions
Process involved, two way communication between tribe and state	Good working relation between AG & tribe	Fear of losing elements of sovereignty	Let tribe initiate their own agreement
Up to date information	Sports and life skills	Tribe won't accept until accept full faith and credit	More funding from all levels to use as tribe sees fit
Subjecting children to state process (jurisdiction)	Responsive to documentation of services	Denial by tribe on youth issues	Must be priority
Active communication (two way)	Recognition of difference	Money-funding	Treatment facilities on reservation
Improving intergovernmental relationships	We have a Children's Code	Not a priority until something happens	Cross-training & communication
Diversity (22 separate tribes)	Generates awareness	Lack of information and public information	Allowing tribes to determine the scope of cultural education
State needs to be culturally aware		Lack of infrastructure	Educate state agencies
Language of the Children's Code		Substance abuse/ crime	Establish a working group from 22 tribes, state agencies, etc.
Process of implementation		Same crime- different approach	Incorporate Native American history into public schools
Not receiving benefit of legislation		Community and family support	
Understanding of tribal/ intergovernment relations		Lack of jurisdiction	
Cultural/ system awareness			
Court/ law enforcement jurisdiction			

Date 10-12-99

Group Judicial

Participants 20

Facilitator Ken Poocha, Dorothy Abeyta-Rock

tribe (service providers) aren't informed on all information & resources

administering dispositions

Cross commissioning agreements need for)

Need for stronger cultural elements-treatment

Understanding, clarification of inter-govt agreements

Non-reservation children-how do we get them back and strengthen tribal influence

Need for state to open resources for tribes to tap into

Need to establish tribal contact person

Problems	Strengths	Barriers	Solutions
lack of commitment by both parties to the process (continuity of negotiators)			
frustration with no outcomes after years of effort (skepticism)			
paternalism-feds-federal law sets boundaries to areas/issues to be negotiated			
intratribal issues			
Who should bear the costs of resources?			
states as conduit for federal funds			
Why should tribes be forced to negotiate for \$ that include/cover NDN children in base figures for funding			
tribes do not have access to roads/infrastructure that states have			
lack of trust			
tribes are penalized for having jurisdiction			
direct funding to tribes			
tribes have been forced to justify themselves			
states provide/demand agreements without negotiation			

Problems	Strengths	Barriers	Solutions
Not enough Native American foster families (national)	As tribal communities, we have a strong tradition to uphold	State of New Mexico ranks the lowest...why should we associate with them?	Need more tribally-affiliated services and programs
No support for Native American foster families	Something is codified	From traditional to non-traditional communities	Create protocols with schools
Lack of financial resources for administration e.g. no internet	Agreements bring into place protocols	Meetings at Pueblos	Work with whole family not just child
Case management could be better done	Agreements could iron out specific differences, create a dialogue	No women and children in tribal councils	Drug courts are great courts
Front line people don't have resources	Allowing "domestication" of tribal law-tribal recognition	Separation of state and traditions	Better allocation of resources
Only one player-State "Where are the tribes/ Decision makers?"		No doers & all talkers	More input from direct service providers
Name "foster"-bad connotation		No direct input from children and women and tribal leaders	Communicate process-"draw pictures"-educate community
What is the tribe's responsibility to this?		No community awareness & education on child welfare issues	Better understanding of community in order to get a better understanding of solutions
Tribal leaders involved in child protection team (CPT's)		People are scared to speak up for fear of repercussions	Share information/ case studies
Difficult to bring everyone to the table to sign agreements		"It's not in our community"-denial	
No tribal written child code		No sharing of info	
Changes in tribal administration		Not getting at root causes-why suicides?-"Columbine"	
Good guy/ bad guy mentality			

Problems	Strengths	Barriers	Solutions
tribal level: constant change of leadership	Inform community about what's available--awareness/ education	Lack of intergovernmental agreements	Simple language
reluctance for agreements-fear of losing sovereignty	Strengthening the children and the future of Indian Nations	Lack of community within tribes	More funding
communication-not giving it to the right people	Once in the system receives services	Lack of confidentiality	Ongoing meetings
committed follow through	Brings focus on Native American child	Political agendas	More staff/ better staff
Indian authority not recognized by judges (state)	Brought about Native American Juvenile Justice Summit	Lack of resources	Training of staff and tribal council/ community
dialogue not developed at community level	Tribal courts/ state brought together	Children fall through cracks	More awareness
pathy- a sense of hopelessness by people	Creates a sense of empowerment	Lack of enforcement	More involvement
lack of understanding at council/ tribal level	More people become educated	Fragmented programs	Tribes taking responsibility of their children
Understanding of tribal decision making process	Mutual recognition works for needs of children and efforts of advocates	Redundancy of programs	Intervention
Misinterpretation of codes through cultural differences	Open-minded two-way communication	Lack of procedures	Equal opportunity for youth involvement as a prevention/ education method
Security vs. treatment	Willingness to cooperate between parties-at all levels	More money=more staff	Give youth a voice in schools/ communities
Denial by tribe of problems	Diversity in state assures that all children will receive same services	Tribal leadership turnover	Good mentors/ role models
lack of awareness of NMCC	Directs the process-provides results	Tribes should challenge the state in working together (with states and with	Give time and follow up

		tribes)	
reluctance to change	Committed people for the cause	Lack of intertribal dialogue re: past agreements with state	Evaluation process needed
Existing system/ mechanism needs to be understood to address varying levels of need	There's a children's code in each tribe	"By asking for one thing you limit yourself from others" (tribes)	More interaction in communities
Lack of culturally appropriate model for services	Networking leads to trust between parties	Jurisdictional gray area re: on/ off reservation (some tribes have established child codes & some don't)	Trigger activism in other areas (i.e. violence against women)
Lack of infrastructure at tribal level	Provides framework & guidelines for tribes	Lack of education to parents/ family that NMCC exists	Sobriety in family
Not willing to share data stats	Creates/ strengthens team representation	Communication=contacts	Services to family also
Lack of technology	Persistence- "keeps it on the table"		More responsible parents/ community
Assumption by tribes that state has unlimited resources	Collaboration/ communication is a role model		Less govt/ red tape
	State honors tribal models as a result of NMCC		More females in government
	Interest of child is raised		More integrity/ accountability in government
	Recognition of tribal sovereignty is strengthened		
	Gives jurisdiction to tribes over children		
	Vehicle for movement		
	Creates better understanding		

Date 10-12-99

Group Youth Services

Participants 27

Facilitator Elizabeth Bird, Carnell Choza

between state and tribes in relation to
resources

Accessibility to justice for child

Group Youth Services

APPENDIX C:

**Second Native American Juvenile Justice Summit
for the State of New Mexico**

Technical Assistance Report

**"What's Next?" Questions
and
Sample Workplan**

The Second Native American Juvenile Justice Summit

What's Next?

*Improved provision of services to Indian
children in a culturally sensitive manner
through Tribal-State...*

- ❁ **Development and negotiation of intergovernmental agreements.**
- ❁ **Implementation of policies and procedures.**
- ❁ **Construction of effective data collection methods and standards.**

Workplan

OBJECTIVE	TASKS	PERSON(S) RESPONSIBLE	TIMELINE
1.	a.		
	b.		
2.	a.		
	b.		
3.	a.		
	b.		

APPENDIX D:

**Second Native American Juvenile Justice Summit
for the State of New Mexico**

Technical Assistance Report

Evaluation

SECOND NATIVE AMERICAN JUVENILE JUSTICE SUMMIT EVALUATION

1. Please rate the following aspects of the conference:

	Poor		Average		Excellent
Organization	1	2	3	4	5
Format	1	2	3	4	5
Speakers	1	2	3	4	5
Topics and presentations were relevant	1	2	3	4	5
Amount of information provided	1	2	3	4	5
Usefulness of info provided	1	2	3	4	5
Expectations of summit were met	1	2	3	4	5
Commitment was developed between key stakeholders (i.e.tribal/state/federal)	1	2	3	4	5
Overall quality of summit	1	2	3	4	5

2. Were the roles of the State and tribe clarified during this Summit? Please explain.

3. Were there any topics or information that were not provided? Please list.

4. Please provide any additional comments or suggestions:

APPENDIX E:

**Second Native American Juvenile Justice Summit
for the State of New Mexico**

Technical Assistance Report

Summit Manual

**[Manual was provided
during the Summit
to Participants.]**

Transmittal For Final Reports and Other Grants Products

**National Criminal Justice Reference Service
National Institute of Justice**

To: James Fort , ORIC , Room 3700

Date: 3/28/00

From: Jan Carey

BJA

Telephone: 202-305-2645

Grant #: 98-00-BX-0024

Accepted As Final Report

Other

Final Report Title: Serious + Violent Native American Youthful
Offender Program

Other Documents Produced From Grant:

Grantee Name: New Mexico Office of Indian Affairs

Telephone: (505) 242-2726

Address: 220 East Palace Avenue
Santa Fe, NM 87503

Attached please find the final report for the grant

DATE: _____