



New Mexico Juvenile Justice Tribal Notification Policy Research Project:

Final Report

**National Indian Child Welfare Association
and
Association on American Indian Affairs**

Supported by the Public Welfare Foundation

March 2015

Executive Summary

The tribal notification provision for Native youth entering the state juvenile justice system, unique to the State of New Mexico, has been identified as a method to address the disproportionate number and disparate treatment of American Indian and Alaska Native (AI/AN or Native) youth in the juvenile justice system. Where the Indian Child Welfare Act is followed, which includes the notification of tribes in child welfare cases, experts have found that practice and outcomes for Native children improve. While tribal notification represents a potential solution to the problem, it has not been known to what extent this approach is working in New Mexico. This project considers the efficacy of tribal notification as it is currently implemented and how it can be adjusted to work more effectively and become a model to improve outcomes for Native youth in the juvenile justice system across Indian Country.

Three New Mexico-based tribal communities formally participated in the research project, and there were also three broad convenings of tribal, state, and non-profit leaders, judges and others who participate or have an interest in the juvenile justice system. Three rounds of interviews were conducted with 28 participants: The first round with State of New Mexico Children, Youth, and Families Department (CYFD) personnel; the second round of interviews with tribal personnel, including tribal leadership, tribal judges, behavioral health and social service program directors, and ICWA directors; and the third round of interviews were conducted with a variety of tribal and non-tribal participants, including direct service providers and health researchers. Utilizing a community based participatory research approach, New Mexico tribal and state juvenile justice stakeholders informed and validated all stages of the research project, including the focus areas and guiding questions for the research project and the identification of key informants, interpretations and findings, recommendations, and dissemination. The project was approved by the Southwest Tribal Institutional Review Board; the formal approval of tribal councils was obtained from tribal research partners.

The study found that tribal notification is not practiced consistently among CYFD juvenile probation officers (JPO), particularly in regard to identifying Native status and the timing of notification, as there are no clear procedures for the administration of tribal notification. Based on interviews with tribal participants, as well as public discussions with tribal personnel, tribal notifications are not consistently received. In addition, according to data from previous research involving Native youth who have been incarcerated for status offenses such as the possession of alcohol, ICWA protections for Native status offenders (including notice) are not consistently applied. It should also be noted that there is no formal process in place to identify whether a youth who comes into the system is AI/AN.

Because of the language of the notice provision which focuses on preparation of a predisposition report, the provision has been interpreted to provide for notice late in the process—generally (though not universally) after adjudication has occurred. Tribal and state participants have suggested that earlier notification (at petition, or even as early as the preliminary inquiry stage) is needed to increase tribal

advocacy for and access to tribal services for Native youth, particularly in cases where families are unable to advocate for their children.

Among tribal partners, there was a continuum of capacities to respond to notification as well as different ideas about the preferred level of involvement. It appears that in most cases, tribes do not currently get involved. It is unclear to what extent this is because of a lack of tribal capacity or if the cause is that notice was never received or was not received by the correct person. At least one of the tribal respondents indicated, however, that it has responded to notice by transferring the case to the jurisdiction of the tribal court, which allowed the tribe to connect youth to tribal services, and/or find placement within the community. Mental health is a pervasive issue for Native youth at risk for the juvenile justice system, and access to appropriate services is a significant challenge. While intergovernmental agreements have been recommended by CYFD as a means to make state services accessible to tribally adjudicated youth, it has not been successful for all tribes. According to respondents, where tribal and state personnel have established working relationships, including information sharing and collaborative case planning, cases have resulted in coordinated and community-based treatment placement and family engagement. Thus, there is evidence that notice, particularly where there are formal or informal agreements to clarify notification procedures and treatment collaboration, may improve case outcomes.

In general, it is clear that the efficacy of the tribal notification provision can be greatly improved and a number of participants in our group meetings have expressed a strong interest in working together to improve how the notification process is working. The disparate treatment of American Indian youth at the later stages of the process—including significantly greater rates of detention even though arrest rates of Native youth are similar to those of White youth—illustrates the importance of improving the implementation of the notice requirement. Recommendations include the creation of clear procedures and protocols regarding how, when, and to whom tribal notification should be administered and how Native youth should be identified; increased collaboration and information sharing through formal or informal agreements between tribal and state juvenile justice personnel; compliance with the Indian Child Welfare Act's benefits and protections for Native status offenders; the use of tribal notification to improve tribal and state capacities to identify and address mental health issues among Native youth; and the use of tribal notification to decrease incarceration and route Native youth to alternative programs.

A preliminary report was shared at a convening of New Mexico tribal and state juvenile justice stakeholders in February 2015, where they had the opportunity to validate the findings and recommendations presented. This final report captures their additional comments, feedback, and recommendations.

Introduction

In October 2013, the National Indian Child Welfare Association (NICWA) and the Association on American Indian Affairs (AAIA) received funding from the Public Welfare Foundation to study the tribal notification law, a law intended to benefit Native youth entering the State of New Mexico's juvenile justice system. This was an outgrowth of a process whereby NICWA and AAIA, together with the Annie E. Casey Foundation, convened two key-informant meetings that included tribal leaders, judges, and juvenile justice experts, and advocates. These think-tank style meetings resulted in several recommendations, one of which was the development of a research project to collect data about Native youth in state/county and tribal juvenile justice systems. There was also a recommendation involving enforcement of the requirement in the Indian Child Welfare Act (ICWA) that tribes be notified of status offenses. Because New Mexico has the only state law requiring notice to tribes in all juvenile justice proceedings where a youth may be detained, New Mexico was identified as a possible locale for this research. NICWA and AAIA presented on juvenile justice issues for Native youth to tribal leaders and state representatives, including New Mexico Children, Youth, and Families Department Tribal Liaison Bernie Teba, who expressed support for the development of a NICWA- and AAIA-led research project to examine the impact of the tribal notification law in New Mexico.

NICWA, AAIA, and other stakeholders in juvenile justice have identified tribal notification and tribal-state collaboration as a possible solution to the disproportionate treatment of Native youth in the juvenile justice system. This project considers the unique legal and policy environment in New Mexico regarding tribal-state relationships and juvenile offenders. While tribal notification represents a potential solution to the problem, it has not been known to what extent this approach is working in New Mexico. This project considers the efficacy of tribal notification as it is currently implemented and how it can be adjusted to work more effectively and become a model to improve outcomes for Native youth in the juvenile justice system across Indian Country.

Background

Native youth are grossly over-represented in state and federal juvenile justice systems and secure confinement. For example, in four states (South Dakota, Alaska, North Dakota, and Montana), AI/AN youth account for between 29%–42% of youth in secure confinement—far above their percentage of the total population.¹ In a national sample based upon 2005 data, Native youth had twice the rate of status offenses compared to White juveniles, and were more likely to have status offense cases that resulted in adjudication.² In New Mexico, the focus of the project, Native youth are two times more likely than non-Hispanic White juveniles to receive a sanction of commitment versus the combined odds of

¹ Cross, T. L. (2008). Native Americans and juvenile justice: A hidden tragedy. *Poverty & Race* 17 (6), 19–22.

² Arya, N. & Rolnick, A. C. (2008). A tangled web of justice: American Indian and Alaska Native youth in federal, state, and tribal justice systems. *Policy Brief Race and Ethnicity Series*, Vol. 1. Retrieved from http://www.campaignforyouthjustice.org/documents/CFJPB_TangledJustice.pdf

dismissed, time waiver/consent decree, probation, and detention.³ Based on 2005–2010 Relative Rate Indexes, every county within New Mexico is experiencing disproportionate minority contact at multiple stages of the juvenile justice system.⁴

In a related context (child welfare proceedings), the Indian Child Welfare Act (ICWA) recognizes that tribes have unique rights that must be preserved regarding the placement of their children. Where ICWA is followed, experts have found that child welfare practice and outcomes for Native children improve.⁵ The immediate impact of ICWA was to reduce the number of Native children in foster care as well as the number being adopted out.⁶ A study performed by AAIA prior to the passage of ICWA found that 20–25% of all Native children were being removed from their homes at some point in their lifetime (H.R. Rep.NO. 95-1386). Current data suggests that since ICWA's passage this number has significantly decreased. For example, in 2011, only 1.2% of Native children were living in foster care.⁷ Furthermore, prior to ICWA's passage, 90% of Native children who were adopted were placed in non-Native homes (H.R. Rep. No. 95-1386). Data also suggests that ICWA has had a significant impact on this number as well; in 2008, only 56% of adopted Native children were placed in non-Native homes.⁸

ICWA defines "child custody proceedings" to include all out-of-home placement of Indian children unless the placement is part of a divorce proceeding or "based upon an act which, if committed by an adult, would be deemed a crime".⁹ Thus, proceedings based upon status offenses are covered by the act. The failure of state courts to apply ICWA's protections to Native juvenile status offenders who have been removed or are at risk of being removed from their homes undermines rights of tribes as sovereign nations and the rights of youth and families recognized in the act. The act provides safeguards for Native youth who may be placed outside of their home by mandating tribal notification in those proceedings, recognizing a tribal right to intervene and request transfer to tribal court. As noted, where the juvenile act constitutes a crime, however, these safeguards do not come into effect.

New Mexico has expanded the tribal notice requirement to cover all juvenile justice proceedings involving Native youth. The goal of this project is to determine if effectively implemented, tribal notification for all Native youth entering the state juvenile justice system can improve outcomes for Native youth, including keeping youth in their home communities, keeping them out of incarceration, and connecting them with needed services.

³ New Mexico Sentencing Commission. (2012). State of New Mexico disproportionate minority contact statewide assessment: Preliminary report. Albuquerque, NM: University of New Mexico.

⁴ Ibid.

⁵ Limb, G. E., Chance, T., & Brown, E. F. (2004). An empirical examination of the Indian Child Welfare Act and its impact on cultural and familial preservation for American Indian children. *Child Abuse & Neglect*, 28, 1279–1289.

⁶ MacEachron, A. E., Gustavsson, N. S., Cross, S., & Lewis, A. (1996). The effectiveness of the Indian Child Welfare Act of 1978. *The Social Science Review*, 70 (3), 451-463; Strong, P. T. (2005). What is an Indian family? The Indian Child Welfare Act and the renaissance of tribal sovereignty. *American Studies*, 36 (3/4), 205–223.

⁷ National Congress of American Indians Policy Research Center. (n.d.). Calculations based on 2011 AFCAR Data Report. Retrieved from <http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport19.pdf>

⁸ Kreider, R. M. (2011). Interracial adoptive families and their children. In *Adoption Factbook V*. Alexandria, VA: National Council for Adoption.

⁹ 25 U.S.C. § 1903(1).

The History of the New Mexico Tribal Notification Provision for Juvenile Justice

N.M. Stat. § 32A-2-5, as amended by New Mexico Laws 1993, Chapter 77, Section 34, includes the following requirements:

A. Juvenile probation and parole services shall be provided by the department.

B. To carry out the objectives and provisions of the Delinquency Act, but subject to its limitations, the department has the power and duty to: ...

(8) identify an Indian child for the purpose of contacting the Indian child's tribe in delinquency cases; and

(9) contact an Indian child's tribe to consult and exchange information for the purpose of preparing a predisposition report when commitment or placement of an Indian child is contemplated or has been ordered and indicate in the report the name of the person contacted in the Indian child's tribe and the results of the contact.

These amendments were part of a larger set of amendments to the New Mexico Children's Code that were developed by a Children's Code Task Force organized by the New Mexico Council on Crime and Delinquency, chaired by Family Court Judge Anne Kaas, Second Judicial District. Among the members of the Task Force was Professor Christine Zuni-Cruz from the University of New Mexico Law School, who served on the Task Force and headed the Indian Interface Subcommittee in her capacity as the then-President of the Indian Bar Association of New Mexico. Much of this information was obtained through an interview with Professor Zuni-Cruz.

At that time, there was nothing in the code on the Indian Child Welfare Act which was a primary focus of the tribal efforts. Access to culturally relevant services was another important issue. Finally, there were discussions about juvenile justice which resulted in the above provisions.

According to Professor Zuni-Cruz, the impetus for the provision was concern for tribal children who committed acts—often in border towns or because their families had moved away from the reservation or pueblo—leading to involvement in the state juvenile justice system. There was the hope that they could get better consideration by bringing them to the tribe's attention (especially important if they were placed in a facility as it could help provide the youth with reasonable access to cultural practices and traditional treatments) and that notice would help identify alternatives to incarceration. She did not remember exactly why the language of the provision focused on the "pre-disposition report," but thought it was probably recommended by some of the juvenile justice people who were involved with the Task Force. In terms of direct tribal involvement, she specifically recalled meeting with the Eight Northern Indian Pueblos Council, noted that all tribes were informed of the changes, and informed us that there were several tribal members on the subcommittee.

In addition to the above provision, some other provisions currently included in New Mexico's Children's Code are the following:

- N.M. Stat. §32A-1-4 includes definitions of "Indian child" (less than 18 years old, a member of a tribe or eligible for membership and the child of a member), "Indian child's tribe" (the tribe in which the child is a member or eligible for membership—if more than one, then the tribe with which the child has the most significant contacts) and "Indian tribe" (a federally recognized tribe).
- The Code also recognizes in N.M. Stat. §32A-1-8 (E) that tribal court orders "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 [CYFD] 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..."
- Finally, the Children's Code also requires that "When the child is an Indian child, the Indian child's cultural needs shall be considered in the dispositional judgment and reasonable access to cultural practices and traditional treatment shall be provided." N.M. Stat. §32A-2-19(C)

Interpretation and implementation of the tribal notice provision is the focus of this study. The language in the statute focuses upon contacting, consulting, and exchanging information "for the purpose of preparing a predisposition report" when placement of the Indian child "is contemplated or has been ordered." Although practice is not consistent across the agency, CYFD current practice seems to focus mostly on formal notice at predisposition after adjudication, which is late in the process. A number of correspondents have suggested that notice at the preliminary inquiry or petition stage would be more effective. One relevant question is whether the law would need to be changed for this to be mandated. If the law is to be interpreted to support a requirement of earlier notification, then a broad definition of placement being "contemplated" would probably be required. Of course, even if the law is interpreted to not require notice before the predisposition stage, the law does not prohibit earlier notice. Thus, at a minimum, it appears likely that CYFD would have the discretion to provide earlier notice.

The results of the interviews described in the remainder of the study should be understood within the framework of the applicable law described above.

Procedures

The present study is a qualitative case study comprised of confidential interviews with both state and tribal juvenile justice stakeholders. Using a community based participatory research approach, NICWA engaged community members at all stages of the research, including the design and interpretation of the final results.

Research Design

Participants. Three New Mexico-based tribal communities formally participated in the research project. Twenty-two interviews with 28 participants (two interviews were comprised of multiple participants) were completed. Interviews were organized into three rounds; the first round with State of New Mexico Children, Youth, and Families Department (CYFD) personnel, including four juvenile probation officers representing San Juan/McKinley, Rio Arriba, Valencia, and Cibola counties; CYFD Juvenile Justice Services staff; and one State of New Mexico Children’s Court judge. A second round of interviews was conducted with tribal personnel, including tribal leadership, tribal judges, behavioral health and social service program directors, and ICWA directors. A third round of interviews was conducted with a variety of tribal and non-tribal participants, including a behavioral health direct service provider (to Native youth in a juvenile secure facility), a director of a juvenile secure facility, a facility intake staff member, a nonprofit service provider, an Indian law expert, and a mental health researcher.

Guiding questions. Overarching questions—particularly for participants in the first and second rounds of interviews—sought to ascertain a description of the process and procedures of tribal notification from both tribal and state perspectives, including when tribal notification occurs, in what form of communication it takes, who gives notification and who receives notification, potential influences on the notification process, and outcomes of notification. Additional questions were tailored for participants according to their role or position.

Interview procedure. The interview procedure included this core set of questions and took a responsive interviewing approach, speaking with the informant/interviewee as a conversational partner and thereby created new interview questions for subsequent interview participants. Interviews took place in person and by phone, and were recorded. Consent to record interviews was discussed in the consent form obtained from interview participants and confirmed verbally at the time of the interview. Interview recordings were transcribed, and transcriptions were forwarded to participants for their review.

Interview coding and analysis. Pattern matching analysis was used to compare the procedures and practice of tribal notification by CYFD personnel and tribal personnel. Using a grounded theory approach, interview transcripts were coded for emergent themes that pertain to the impact of tribal notification, tribal-state collaboration, and improved outcomes for Native youth in the juvenile justice system.

Member checking. Interview recordings were transcribed, and transcriptions were forwarded to participants for their review. At the analysis and reporting phase, informants were also provided an opportunity to review our interpretations and edit their quotes to help ensure the accuracy of reporting.

Limitations. The original design was to compare individual juvenile cases across 4–6 counties in New Mexico identified as areas of interest by New Mexico juvenile justice stakeholders, including San Juan, McKinley, Rio Arriba, Bernalillo, Sandoval, and Cibola counties. The data obtained was not sufficient for cross-county analysis. Additionally, research staff was unable to secure interviews with Native youth and families. Despite these limitations, the results yield valuable points for discussion regarding procedures and practices around tribal notification, as well as additional themes that impact Native youth in the juvenile justice system.

Research staff was unable to obtain IRB approval by the Navajo Nation Human Research Review Board within the project timeline. For this reason, formal face-to-face meetings with Navajo Nation juvenile justice stakeholders were not conducted. However, two public meetings were convened which included key participants in the Navajo Nation juvenile justice system. Because these conversations occurred in the space of public meetings, confidentiality was not required. Navajo Nation constituent findings and recommendations are identified and presented separately.

Findings

Interviews with State and County Personnel

The first round of interviews focused on the tribal notification procedure as practiced by New Mexico Children, Youth, and Families Department Juvenile Justice System (CYFD JJS) personnel and state judicial personnel, including five CYFD juvenile probation officers (JPO) representing Sandoval, San Juan, McKinley, Cibola, and Rio Arriba counties. Based on the guiding questions described in the previous section, the following points were discussed with interview participants.

Identification of Native status. The first point of discussion involved the identification of American Indian/Alaska Native (Native) status. CYFD JJS leadership indicated that there is no formal procedure requiring JPOs to ask the child and/or family if the child is Native. Four participants (two current and two former CYFD JPOs) explained that AI/AN status may be self-disclosed or disclosed by families in the course of the preliminary inquiry, but is not a routine question. However, one former JPO noted that at one time the preliminary inquiry form contained a check box to indicate AI/AN status and if the tribe has been notified:

There's a form that you fill out for each preliminary inquiry—and on that form there is a check box that asks if the child is an Indian child, and the second one asks, if the tribe has been notified...So the preliminary inquiry form is generated for every referral to the department and

they're also, the form, sent to District Attorney's office... So that's the form that says if we're recommending whether or not an application [petition] be filed.

However, the current preliminary inquiry determination form (Appendix A), does not contain checkboxes for Native status or tribal notification. When research staff shared the current preliminary inquiry determination form with this participant, she responded that the form appears to have been updated (as the administration at the top of the form has changed), and now does not include check boxes for Native status or notification of the tribe. Another form used by CYFD JPOs, the Risk Assessment Inventory (RAI), which is the tool used to assess the youth's likelihood of reoffending, includes a space for "ethnicity" and an added space for "Hispanic: Y / N" (Appendix B), but has no specific reference to Native Americans.

Who notifies/How notification occurs. The CYFD tribal liaison and CYFD JJS leadership reported that CYFD JPOs and CYFD juvenile facilities are responsible for notifying the child's tribe by sending a notification form letter (see Appendices C and D) to the tribe, and by sending a copy of the letter to the tribal liaison. At the time of the interview, there was not a formal, written procedure that could be shared with the research team. Other participants were in agreement that notification is carried out in a formal notice letter by JPOs. Two CYFD JJS staff and former JPOs reported that emails and follow-up phone calls were also a regular part of notification during their practice as JPOs. One JPO noted that they would occasionally follow up notification letters with calls and/or emails, based on the needs of the child or family.

Two CYFD JPOs reported sending the notification letter only to the tribal liaison, with the understanding that the tribal liaison is responsible for forwarding the notification to tribal contacts. This interpretation of the notification procedure (that the notification form letter is sent to the CYFD tribal liaison only) was also reported by intake personnel at one CYFD commitment facility.

The tribally designated contacts to whom the notification form is sent vary per tribe. As described by these participants, tribal contacts may include tribal governors' offices, tribal courts, tribal probation offices, and/or social services offices. The CYFD tribal liaison noted that each tribe has identified their preferred contact, which is why they vary. CYFD JJS staff did not report on how frequently or regularly tribal contacts are updated. It was noted that tribal contacts do not include names of individuals, but only titles or official departments to account for the sometimes frequent turnover of tribal administration and personnel.

When notification occurs. As stated, CYFD JJS does not have a formal, written procedure that describes how and when the tribal notification should occur. There are time requirements for JPOs to contact a child's family if their child has been placed in detention (within 24 hours), as well as time requirements to complete the preliminary inquiry (within 24 hours if the child is detained and 30 days if the child is not detained). During the preliminary inquiry, the JPO will determine if the case can be handled

informally or formally, in which case the JPO will refer the case to the Children's Court attorney (CCA) for further action. If the case is handled formally, the CCA has 60 days to file a petition alleging a delinquent offense (48 hours if the child is detained); once the petition is filed, the court has 120 days to adjudicate the case, and 60 days from adjudication to dispose of the case.¹⁰ Based on their interpretation of the provision, CYFD JJS suggests that notification occur at predisposition, or after guilt or delinquency has been determined.

For juvenile corrections facilities, CYFD JJS leadership reported that the procedure is for intake personnel to email the tribal liaison within 24 hours and then send the notification form letter directly to the tribe, sending a copy to the tribal liaison. There is no time requirement specified for intake personnel to send the notification to the tribe. As stated, interviews with facility intake personnel indicated that in practice, the notice forms were being sent only to the tribal liaison.

Among JPOs, there was variance in regard to when notification occurs. Some reported that notification was given during the preliminary inquiry, regardless of informal or formal handling of the case (when a petition is filed). As noted, one former JPO explained that in addition to the check box indicating AI/AN status on the preliminary inquiry form, when she worked for CYFD there was also a check box to indicate if the child's tribe had been notified, which guided her personal practice to notify during the preliminary inquiry stage. This JPO noted that based on the direction of CYFD JJS directives, when notification should occur has changed over time. Based on these directives, she changed her personal practice of notifying during preliminary inquiry to notifying at the filing of a petition, and most recently, changed her practice to the time of the predisposition or pre-sentencing report based on CYFD directives.

Recommendations for when notification should occur. Whereas CYFD JJS leadership has suggested (they do not have formal written procedures regarding when tribal notification should occur) that tribal notification take place at predisposition of a youth's case, a state Children's Court judge indicated that if the purpose of tribal notification is to allow the tribe an opportunity to advocate for their tribal youth, this is "too late." The tribal notification law, as it is stated in the New Mexico Children's Code (Appendix E), does not provide specific requirements for when notification should occur. As this participant explained:

It says that the probation office is to "identify an Indian child for purpose of contacting the Indian child's tribe"...that doesn't say when it should happen. And it says "for the purposes of contacting" but it doesn't say it must contact at the beginning of the case, so that could be a place where actually providing notice might be indicated. But then, Section 9 says "contact an Indian child's tribe," that section could be modified because it says "to consult or exchange information for the purpose of preparing a predisposition report." Now that means, after a finding of guilt or delinquency...And it says, "a predisposition report when a commitment or placement of an Indian

¹⁰ New Mexico Children, Youth and Families Department. (2014). Juvenile Justice Services Annual Report 2013, p. 63.

child is contemplated or has been ordered.” So in other words, after trial. That’s after trial at disposition. After a disposition even, maybe, when the commitment’s been ordered. Now, to me, that’s pretty late—absolutely too late. To notify a tribe that their child’s in custody, after you’ve given them a commitment...because that could be a reason not to give them a commitment, and if the reason is there is no placement for them, and no alternatives, because the tribe has to come forward to provide one, then it may be because they haven’t been notified.

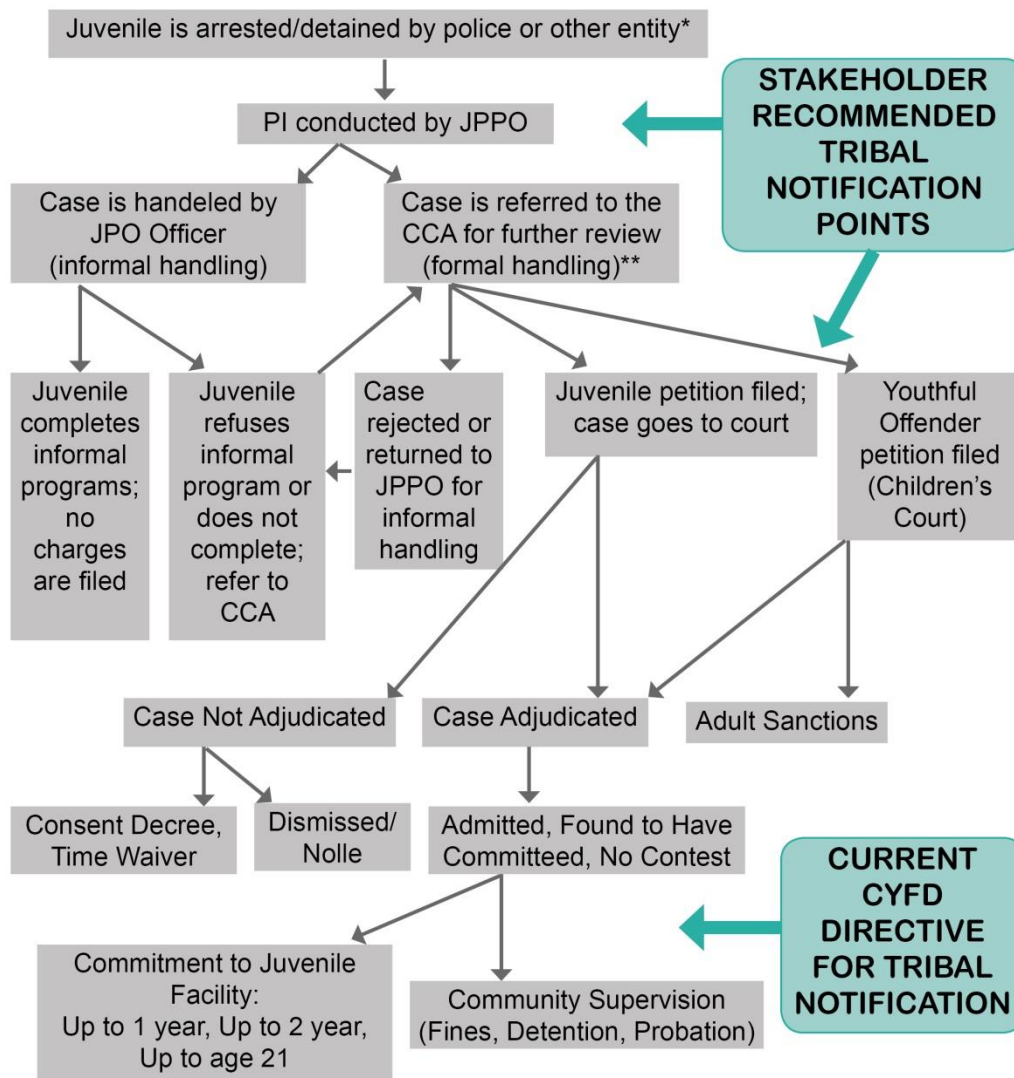
This participant, as well as one CYFD JPO, suggested notifying the tribe at petition, or the point at which the district attorney files a petition sending the case to court. This would allow tribal advocates to be informed of the case going to the juvenile court.

These ideas were confirmed at the final convening of tribal and state constituents in February 2015. Tribal-State Judicial Consortium Co-Chair Monica Zamora stated that the current timing of notification is occurring too late, and that notification should occur similarly to notification per ICWA requirements in child welfare—that tribal notification should occur as soon as possible. This is particularly true, added Judge Parnall, if there are no parents to advocate for the child. Associate Deputy Director of Juvenile Justice Services Jeanne Masterson pointed out that there are, however, ramifications for implementing an earlier notification process. In Bernalillo County alone, Masterson estimated that notifying at petition would amount to an additional 500 notifications per year, and notifying at preliminary inquiry would amount to an additional 1,000 notifications per year.

As a verification measure, state and tribal members of the Tribal-State Judicial Consortium (Consortium) have suggested that in the courtroom, Children’s Court judges ask the district attorney if the tribe has been notified in cases involving Native children. Consortium members have asked that a change be made to the Children’s Court rules to note that it is the court’s responsibility to ask if notice has been given, which has been taken up by New Mexico Supreme Court Liaison Barbara Vigil. Consortium members have also suggested that at detention hearings, the special master could also ask if the tribe has been notified. This may be especially helpful in cases when no parents are available to release the child to, and if the tribe is notified, extended family or other tribal members could potentially supervise the child. For this reason, they suggest, it is imperative that JPOs notify the tribe even in cases where the child or parent does not want the tribe to be notified.

Figure 1. CYFD client referral pathway and points of tribal notification.

CYFD Client Referral Pathway



* Other entities include county, state, municipality, university/college, public school police department, fire department, correctional/detention facility, border patrol, federal agency, parent/guardian, and citizens.

** The CCA is in the Office of the District Attorney specializing in juvenile Cases. Cases referred to the CCA will be evaluated, and if enough evidence is present, will be charged in juvenile court (petition will be filed).

Youthful Offender petition may be filed after a juvenile petition was filed.

Serious Youthful Offender is not within the juvenile system and excluded from this pathway.

Source: New Mexico Juvenile Justice Services Annual Report (FY13)

Outcomes of notification. The majority of participants indicated that notification very rarely elicits a response from tribal contacts. One JPO reported that out of 97 cases with Native youth that he had facilitated to date, he had not received one tribal response to notification. One state judge reported that he had never seen a tribal representative in the state Children’s Court. One CYFD JJS staff

suggested that in many cases, tribes do not respond to these notifications because there is no need to respond and no potential action to take—for example, when the case is informally handled by the JPO, and youth are not incarcerated. Only one participant, a CYFD JJS staff and former JPO, indicated that when he worked in the capacity of JPO, his office had regular communication with tribes and reported that tribes frequently represented youth in court proceedings. Another JPO explained that the “best case scenario” for notification is “collaboration...and to avoid overburdening the families or providing repetitive services.” This participant continued to explain what such an outcome could entail:

Following up with, for example, a truancy person who often files CHINs petitions within the tribe or delinquency petitions even, within the tribe...working with them, collaborating with them, to find out what the family did or did not already have in place and avoid repeating the same kind of service or forcing them to do something else that they're already doing, because families don't always give that information. They sometimes give very minimal information. And after digging around and finding or making some contacts, then I'll find out that they're in mental health services already, or have a case manager, and so then I don't have to repeat those services again. So that's one of the best case scenarios—working together to see what the family or child needs from there.

An additional point to highlight from the above comment is that families may not disclose all the information regarding the services or program responsibilities that the family or child has been involved with prior to the child's involvement with CYFD JJS. Determining the most effective program or service for that child may require more direct communication and collaboration between the JPO and tribal contacts and service providers.

Perceived influences on notification. There were several perceived influences on outcomes—both in terms of the notification itself, and overall outcome of the case. In regard to the notification requirement itself, CYFD JJS staff suggested that some counties and JPO offices (and, presumably, individual officers) are “better” or more effective than others in implementing notification, and that there is a wide variance in the effort that goes into notifying and working with tribes. CYFD JJS staff explained that existing relationships with tribes or personal tribal contacts could facilitate the notification process.

Three participants indicated that some tribal youth and/or families do not want the tribe to be notified. Among these, one JPO said he would honor the wishes of the youth and/or family not to send notification to the tribe. Two JPOs suggested that the level of family involvement plays an especially important role in the outcome of juvenile justice cases—and that tribal intervention and influence in a case depend on whether or not the youth is domiciled on reservation. One JPO stated her perception that tribes, if given notification from the state, may “close” the case because of the state's increased capacity for treatment and other juvenile justice services.

Data systems and data sharing. The tribal state liaison and CYFD JPOs do not record or report on responses or outcomes of tribal notification. There is no regular follow-up process to verify that notification has been achieved. The tribal liaison stated in regard to verification, if a child is being adjudicated in a state court, he will randomly select a notice (that he has been provided a copy of) and will call the tribe to ask if they are aware that the child is scheduled to go before a state judge. If they are not aware of the case, the tribal state liaison will contact the JPO identified on the form to inform them that no one has been contacted. At the bottom of the tribal notification form used to notify a tribe if a child has been committed to a facility, there is a blank space with the heading “Results of Tribal Contact/Notification” (Appendix A). As noted previously, participants described that a response to notification was very rarely received.

None of the participants indicated that they conducted their own personal tracking of notification, with the exception of one CYFD staff (a former JPO) who indicated that the results of tribal notification would be entered into the Family Automated Client Tracking System or FACTS system, the database used by JPOs to calculate the risk and needs score for each client. The risk and needs assessment is intended to guide disposition recommendations. Entering the outcome of a JPO’s contact with the tribe into the FACTS system was not presented by CYFD JJS leadership as a part of the procedure for tribal notification.

CYFD JJS tracks de-identified cases per fiscal year, including referrals, preliminary inquiries, and formal dispositions, by tribal affiliation (Appendix F); however, this data is not regularly or commonly shared with tribes.

There is no data sharing agreement with tribes regarding juvenile cases. One JPO reported that tribes are unwilling to share data.

Tribal contact information is contained in the form of a word document (created by the tribal liaison), which is electronically filed within the CYFD shared database. One participant described the document as “outdated.” The document is dated 2011, and thus does not appear to be regularly updated. As previously described, the document does not contain the names of individuals, only position titles, addresses, and phone and fax numbers. Presumably because individual names are not identified, email addresses are not included (Appendix G).

Services. Most participants emphasized the importance of connecting Native youth with culturally responsive services, including tribally based services. One JPO noted that some youth and families prefer local service providers (for example, a non-tribal, county program) to keep youth closer to their home communities versus cultural-specific programming that may be offered further away. One JPO noted that in regard to tribal services, there were more options for tribal substance abuse treatment available for youth than mental health services; however, there were more youth in need of mental health services than substance abuse treatment services.

Relationships and collaboration with tribes. Three participants indicated that existing relationships with tribal personnel facilitated notification. Two JPOs noted their efforts to build relationships with tribal JPOs. One JPO noted their desire to establish a working relationship with tribal social service personnel, but that their attempts to call one tribal social service office resulted in being “hung up” on.

The tribal liaison suggested that intergovernmental agreements (IGAs) between CYFD JJS and tribes facilitate tribal involvement in cases of Native youth adjudicated by tribal courts, as well as support collaboration for Native youth adjudicated through the state court. These specify the involvement of tribal representatives, including tribal probation officers and tribal behavioral health providers, in programmatic decisions in the course of multidisciplinary team meetings for the youth during their stay in CYFD facilities as well as their plans for supervision upon release.

While IGAs are created specifically for tribes to access state facilities for juvenile justice and mental health service programming, IGAs, more generally, facilitate working relationships with tribal representatives and family involvement. He explained how, “especially with our tribes that have an intergovernmental agreement, they’re very good at always sending a representative, either representing tribal court, or representing behavioral health, parents are always involved, and families are always involved in that process.”

Interviews with Tribal Personnel

Who receives notification. Per the tribal designation of tribal contacts for notification, not surprisingly, who receives CYFD JJS notification varied among tribal participants. In the case of Tribe A, all notifications (JJS and ICWA) are received by the Office of the Governor, and are then routed to the appropriate departments, such as behavioral health, tribal courts, and social services. Among participants from Tribe A, one participant was unaware of the tribal notification provision and only learned of it at the outset of the research project. It was presumed by multiple participants of Tribe A that CYFD JJS notifications (as well as child welfare notifications) were routed to the social services department; however, the participant from the social services department had not seen a juvenile justice notification in the six months’ time that she had been in the position.

For Tribe B, CYFD JJS notifications go to the tribal court; however, representatives from the tribal court at Tribe B declined to participate in an interview, and could not verify that notifications were received at the tribal court. Participants from Tribe C identified the tribal court as the primary recipient of CYFD JJS notifications, but also indicated they are sometimes received by the tribal ICWA department, and one other tribal employee (position undisclosed).

When/How notification occurs. While CYFD JJS notification forms used by JPOs in the field indicate “Alleged Offense” and the “Disposition of Case,” (Appendix C) tribal participants indicated that they were unable to determine at what point in the youth’s case the notification was sent. According to participants, there were instances when phone calls were received to notify, without formal notification; for example, one participant stated that she had received a phone call to notify her about a youth that had been incarcerated for more than two and a half years, for the purpose of placing the youth in tribal behavioral health treatment services. Another participant noted that for cases involving child welfare, phone calls have been received just hours before trial, with no previous written notification received regarding the case.

Based on these responses, it does not appear that many CYFD JJS notifications are received, and because receipt of notification is not verified, it is difficult to establish how consistently notifications are received. It was notable that in each tribal case example it was unclear that CYFD JJS notifications were consistently being sent to and received by any one department. It was observed that when researchers shared CYFD JJS data for tribal youth with tribal participants, each time participants were surprised by the number of their tribal youth in the system, and expressed that they were unaware of the number of cases involving their tribal youth.

Navajo Nation discussions of tribal notification. During a convening of Navajo Nation juvenile justice stakeholders in July 2014, Navajo Nation Chief Prosecutor Bernadine Martin indicated that she was unaware of the cases of Navajo youth represented in the CYFD data, and along with other Navajo judicial and social service personnel, indicated she had never received a CYFD JJS notification. Convening participants indicated that this may be because notifications are not being routed correctly through Navajo Nation’s Chief Probation Officer. However, this may also be due to the fact that CYFD JPOs serving McKinley and San Juan Counties were not sending notifications directly to Navajo Nation’s Chief Probation Officer per protocol, but were only sending the notification form to the tribal liaison.

Meeting participants discussed how earlier notification, even as early as the preliminary inquiry, could improve outcomes for youth, and that notification via email may be a more effective method of delivery. Meeting participants also discussed who should be notified, and whether notification should be extended to social service providers and/or distributed regionally within Navajo Nation. The involvement of informal support systems and cultural services and resources, including Peacemakers and Diné family conferencing, were also explored. Tribal representatives suggested that Navajo Nation discuss the internal processes and procedures pertaining to tribal notification.

At the final convening of Navajo Nation representatives in February 2015, Navajo Nation Chief Probation Officer Lucinda Yellowhair confirmed that she regularly receives two or three notices a week from the state. She explained that there is no language on the notice form to indicate that the purpose of

the notification is the preparation of a predisposition report. She also noted that she frequently receives notices a month late, or in other words, a month after the court date.

Tribal recommendations for improving the tribal notification process. Tribal participants also had recommendations for improving the notification process. Tribal judicial representatives indicated that CYFD's suggested timeframe for notification—at predisposition—is too late to be effective, if alternatives to incarceration and tribal advocacy are the intent of the notification. Tribal judges largely agree that for these reasons, more notifications at earlier stages in the case would be most beneficial. One tribal judge indicated that notification as early as the preliminary inquiry stage would be helpful. Another tribal participant stated that not enough information is conveyed in the notification form, and that what would be helpful to inform their advocacy or plan for potential services would be a report—for example, a police report—that provides the details of the incident that occurred.

Several tribal participants indicated that sending the notification to the Governor's Office slows down the process, and that tribes should reexamine their internal points of contact and procedures for routing notifications. Tribal participants also emphasized that CYFD JPOs cannot use their own discretion not to notify the tribe (e.g., in the case the youth should request that the tribe not be notified). Tribal participants also recommended that CYFD update their database of tribal contacts on a yearly basis.

At the final convening of tribal and state constituents in February 2015, in response to Masterson's estimation of the dramatic potential increase in the number of notifications at petition and particularly at preliminary inquiry, tribal participants confirmed that earlier notification would still be more effective. Acoma Social Services Director Donalyn Sarracino argued that in child welfare cases where she has received early notification, she and her staff have been much more effective in assisting families and preventing the removal of children. Navajo Nation Legal Analyst Thomas Cody stated that the earlier Navajo Nation is notified the better because being apprised of cases and involved in early intervention or alternatives to detention strategies will help children in the long run.

Navajo Nation recommendations. At a final convening of Navajo Nation representatives in February 2015, it was emphasized that collaboration—not simply notification, or even jurisdictional transfer—is the primary objective. At the most basic level, participants recommended that this could be in the form of a courtesy notice that would involve Navajo Nation probation officers. Participants reported that courtesy notice is currently given by the State of Arizona for adult offenders; State of Arizona probation officers personally contact tribal probation officers or come out to the reservation to review the case with tribal personnel. This very informal practice of information exchange, which has developed with the State of Arizona over the last few years, has improved practice and outcomes.

Judge Irene Toledo (Crownpoint) suggested that another form of collaboration could be cross training between the State of New Mexico and Navajo Nation probation officers, which would allow them to be aware of all processes and procedures around notification, share information about the case, the

home environment of the child and family, any current or previous involvement with probation, behavioral health or social services, among other things, and to work together to improve placement and case outcomes.

Based on her experience of frequently receiving late notices (after the youth's case has gone to court), Lucinda Yellowhair stated that earlier notification—even as early as “day one”—with more information about the child's case would be helpful. The recommendations were specifically to (1) notify earlier (even as early as “day one”), (2) include more information about the case, and (3) require a follow-up process to ensure the notification and information have been exchanged.

Navajo Nation participants also noted that border towns are of special concern, as these are where many Navajo youth become involved in the state juvenile justice system. Without early intervention, one participant explained, kids return to the system—and are likely to return to the reservation or other community—where problems may intensify.

Navajo Nation Chief Justice Herb Yazzie has recommended, that as legislation is changed or regulations or procedures are to be altered to better implement the requirement, that the implementation should be developed through a joint tribal-state process.

Special Cases and Outcomes for Native Youth

Status offenses. In the case of “status offenses,” or actions that are not a crime when committed by an adult, ICWA applies to Native youth who may be removed from their families through the state court system. The purpose of the Indian Child Welfare Act is to prevent the removal of Indian children from their homes and to promote the stability of tribes.¹¹ The act provides safeguards for AI/AN youth who may be placed outside of their home by mandating tribal notification in those proceedings and the possibility to transfer to tribal court. Gonzalez's (2012)¹² review of ICWA's application to Native status offenders reports that while the primary responsibility of interpreting the language of ICWA rests with the courts, the BIA Guidelines¹³ and commentary clearly state that certain proceedings and placements should be covered by ICWA; specifically that protections should be applied to status offenses, which are acts deemed unlawful if committed by a minor, such as truancy and incorrigibility.

The Indian Child Welfare Act which recognizes tribal notice, intervention, and jurisdictional rights, among other things, applies by its terms to all state child custody proceedings. “Child custody proceeding” is defined to include all proceedings which may result in out-of-home placement for a youth except proceedings based upon an action by the youth that would be a crime if committed by an adult. New

¹¹ 25 U.S.C. § 1902; Lorinda Mall, *supra* note 9; see also Ester C. Kim, Mississippi Band of Choctaw Indians v. Holyfield: *The Contemplation of All, the Best Interests of None*, 43 RUTGERS L. REV. 761, 770 (1991).

¹² Gonzalez, T. (2012). Reclaiming the promise of the Indian Child Welfare Act: A study of state incorporation and adoption of legal protections for Indian status offenders. *New Mexico Law Review*, 42,131–158.

¹³ Bureau of Indian Affairs Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed. Reg. 67,584, 67,586 (Nov. 26, 1979).

Mexico law recognizes tribal jurisdiction over all cases defined as child custody proceedings under ICWA. Thus, cases involving status offenses should be subject to ICWA, and if the youth is a resident or domiciled on the reservation, then the tribal court should have exclusive jurisdiction.

According to the CYFD JJS Annual Report for 2013, 2,161 juvenile status referrals were made, including 98 Native clients (4.5% of total status referral clients).¹⁴ Out of these 2,161 referrals, 55 were handled formally (a petition was filed). The report does not account for race/ethnicity for the youth in these formally handled cases.

Data from a 2006 study of Native juveniles incarcerated in State of New Mexico secure facilities, illustrated in the figure below, demonstrates that out of the 125 participants in the study, a significant portion were incarcerated under status offenses, specifically, minor in possession, which according to Dr. Parker included mostly alcohol offenses (which are status offenses) but also some drug possession offenses (which are *not* status offenses):

Figure 2. Top offenses among Native juveniles (n=125).

Legal – Top 5 Offenses by Gender (%)

MALE		FEMALE	
Probation violation	41.4	Probation violation	54.5
Assault, battery	31.3	Assault, battery	36.4
Burglary, shoplifting, robbery	27.3	Minor in possession	27.3
Not complying w/tx	23.2	Not complying w/tx	22.7
Minor in possession	22.2	Burglary, shoplifting, Robbery	09.1
		DWI, DUI	09.1

UNM/GRSC Institute for Indigenous Knowledge and Development

With permission of Dr. Tassy Parker, UNM Institute for Indigenous Knowledge and Development

CYFD JJS FY 13 data also cites that the top probation violation for juvenile referrals was for alcohol and drugs, accounting for 19.6% of total probation violation charges in FY 13,¹⁵ which suggests that the Native youth incarcerated per probation violation in the above data may also include youth with status offenses such as the possession of alcohol.

¹⁴ New Mexico Children, Youth and Families Department JJS. (2014). p. 25.

¹⁵ New Mexico Children, Youth and Families Department JJS. (2014). p. 27.

During the final convening of tribal and state constituents in February 2015, Judge John J. Romero stated that in New Mexico, minor in possession is the only status offense—there are no other status offenses in New Mexico. For example, New Mexico pursues truancy with parents, not youth, and it is not a status offense like in other state jurisdictions. When asked if any of the youth who are probation violators initially enter the system for status offenses, Jeanne Masterson shared that CYFD has discretion whether or not to detain until after the youth's fourth offense, unless it is a felony or DWI case. Participants noted that it is a legal question as to whether or not ICWA proceedings should apply to probation violations; the New Mexico Supreme Court would need to determine if it should be considered a status offense in cases where the youth originally came into the system because of criminal activity. In other words, if the probation violation itself is viewed as the sole reason for the proceeding, that would not be considered a crime and could be covered by ICWA. If the proceeding is simply viewed as a continuation of the original proceeding, which arose due to criminal activity, then ICWA would not be applicable.

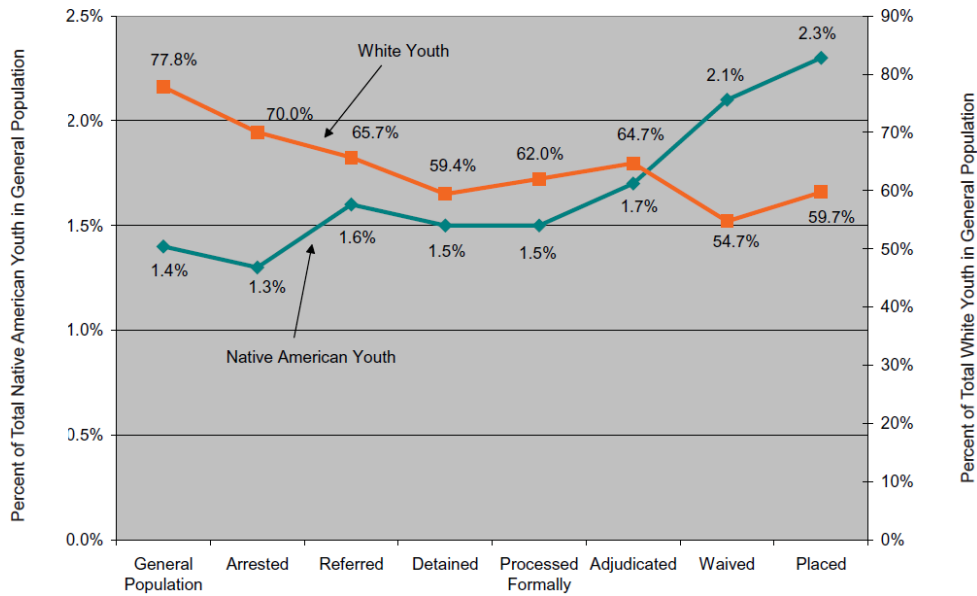
Probation violations. The presentation of Dr. Parker's data on the top offenses of the incarcerated Native youth at the focus of her study sparked the interest of tribal representatives, who requested that CYFD share a breakdown of probation violation data for Native youth. NICWA research staff requested this data from CYFD; it will be shared with our tribal research participants as soon as it is received.

Where case outcomes for Native youth diverge. Hartney (2008) compares the proportions of Native and White youth at key stages in the juvenile justice system:

If there were no disproportion of Native American youth in the juvenile justice system, their proportion aged 10–17 at each stage of the system would be about equal to what it is in the general U.S. population: 1.4%. In fact, except for arrests, the Native American youth proportion rises at each stage of the system. It is at its highest for the two most punitive sanctions—waiver to the adult system (2.1%) and out-of-home placement (2.3%) (p.2).

Figure 3. Proportions of Native and White youth at key stages in the juvenile justice system.

Tribal Notification in New Mexico



Source: Snyder, Puzanchera, and Adams (2007).

The New Mexico Sentencing Commission’s (2012) disproportionate minority contact (DMC) assessment for CYFD identifies the overrepresentation of minority youth at each stage of contact in the juvenile justice system. The following table represents the New Mexico Sentencing Commission (2012) DMC analysis at the first three stages of contact for Native youth.¹⁶

Table 2. DMC at three stages of contact for Native American youth.

Contact Point	Name of Contact Point	Finding
One	Referral to the Children’s Court Attorney	Not significant at this contact point.
Two	Petition: Delinquency Finding	Native Americans are 2 times more likely than non-Hispanic White juveniles to receive a sanction of commitment versus the combined odds of dismissed, time waiver/consent decree, probation, and detention given that all other variables are held constant.
Three	Petition: Sanction	

The above table demonstrates that while there is not a disproportionate number of Native youth (compared to Non-Hispanic White youth) that receive referral to the Children’s Court Attorney, Native

¹⁶ Note: NMSC report DMC data analysis is limited to the first three contact stages.

youth are twice as likely to receive a sanction of commitment compared to White youth. Currently, there is not sufficient advocacy for Native youth at adjudication. Judge Parnell explained that this is sometimes because the parents are hard to locate or may not have a “conventional” address if they live in one of the tribal communities. This demonstrates the need for stronger implementation of tribal notification prior to adjudication.

Additional themes that emerged from interviews with tribal personnel, as well as state/county personnel and other juvenile justice stakeholders, are described in the following section.

Establishing membership. Several participants commented on the determination of membership as a challenge to the notification process. As one participant explained:

One of the issues, and it's unfortunate, but when we do get notifications, if there's not any other identifying information for the individual—say in terms of family ties or potential relations—a lot of times I think those kids, unfortunately, get lost. If we can't track back enrollment, for them, in most instances, they're deemed not eligible for services here because we've got no other way to determine whether or not they can be enrolled members or eligible for enrollment. And, unfortunately, a lot of the kids don't know who their families are out here, or even their parents may have been separated from the reservation for so long that they haven't been able to provide that information. And that I think is the biggest piece for the notification law that is still an issue and it is unfortunate. Because if we don't have that information, a name on paper, if they haven't been enrolled, and we don't have a background on them, we don't know how else to find out.

A few participants explained that because notifications are based on self-identification, and many Native youth who have been living off the reservation or have never lived on the reservation before and are disconnected from their home communities, they may not be aware of their tribal affiliation; if they indicate they are from “a pueblo,” particularly in cases involving child welfare, CYFD must notify all the pueblos. One tribal social service personnel noted that in some cases, she would not receive written notification, only a phone call just before a court date, which would not provide enough information or time for the tribe's enrollment office to establish the child as eligible for tribal membership or identify a relative for placement. A tribal judge added in cases such as these, which occur more frequently than not, notification must be given as soon as possible to allow adequate time for membership eligibility to be established before services or placement can properly be discussed. This challenge adds to the argument for notification to occur at an earlier stage in the youth's progression through the juvenile justice system.

Emergent Themes

Access to mental health services. Participants referenced the need for mental health services for Native youth entering or at risk of entering the juvenile justice system. One CYFD JPO who works

primarily with Native youth explained that in her more than 10 years of experience, increasingly, the Native youth she works with are struggling with “serious mental health [issues].” She explained her practice of placing youth in tribal treatment programs whenever possible, often at the request of the youth’s family. However, with a lack of community-based mental health treatment programs—the tribal services available for the Native youth in the region primarily provide substance abuse treatment—“a big chunk of our kids are having to go to state facilities just to deal with that mental health component.” The participant also noted that youth in need of mental health treatment may be sent to treatment facilities outside of the state—“as far as it takes”—to find appropriate services.

This issue of an increased need for mental health services and lack of access to treatment was echoed by other participants. One tribal personnel, a specialist in the mental health field, described a scenario of shrinking mental health services options, especially for residential treatment. She described challenges due to staff turnover, and lack of capacity to provide mental health treatment:

In terms of treatment programming here, it varies—two months ago we were very well staffed and able to take on some of these folks [youth with serious mental health issues], and then I lost a mental health clinician...my psychologist is down to a day a week, so unfortunately, we just don’t have the capacity. And I think you find that often, unfortunately, with tribal facilities. There’s turnover, and a lot of tribal facilities still focus primarily on substance abuse treatment as opposed to co-occurring disorders, which we find in a lot of these kids [in the juvenile justice system] are present, but they just haven’t been addressed. But the need is definitely there.

This participant continued to explain challenges for Native youth to obtain mental health treatment after being in the juvenile justice system, including Indian Health Service wait times of three months. She continues:

For these kids coming out from the juvenile justice system, where they were receiving treatment, or even just treatment placement, many times they did have them on medication, and then when they release them, there’s no means of being able to get them back in and get them refilled in a timely manner. Pretty soon they’re off their meds.

The cost of mental health treatment, particularly residential treatment, is another obstacle, with services for adolescents running at a premium as treatment terms tend to be longer. For this reason, she explains, her program is looking into Medicaid eligibility. “If we could bill Medicaid for services both for adults and adolescents, there’s quite a few more things that we could support locally.”

As previously described, IGAs between tribes and CYFD JJS have been recommended by the CYFD tribal liaison as a vehicle to provide residential mental health treatment for tribal-adjudicated youth. However, as the above participant describes, her tribe’s JJS IGA has not resulted in treatment placement for her tribe’s youth, and thus far, has only provided evaluation services.

In an interview with Dr. Tassy Parker (Seneca), director of the University of New Mexico's Institute for Indigenous Knowledge and Development, Parker shared data from her 2006 study on the biopsychosocial characteristics of incarcerated Native youth in the State of New Mexico's juvenile justice facilities. In the study, Parker found that 40–50% of Native males and females were identified as suffering from depression or anxiety, 70% of Native males were diagnosed with conduct disorders, and 30% of Native females were diagnosed with post-traumatic stress disorder (PTSD).¹⁷

When asked about the study, Parker remarked that the findings regarding PTSD were enlightening, especially in the context of studies on historical trauma, and the findings released by the U.S. Attorney General in November 2014, demonstrating that Native youth experience the highest rates of violence and victimization compared to non-Native youth.¹⁸ For these reasons, strategic approaches to screening and effective treatment of depression and anxiety disorders (including PTSD) are needed. She explains:

Because there is such an unmet and overwhelming need that it's going to take a lot of entities to come together. Perhaps a task force or resource committee dedicated to Native American children's mental health in every state that has a Native population is called for. Given the evidence that we have about the risks to and conditions of Native children's health and well-being it is unjust to piecemeal approaches for healthy futures. We need strategic and culturally supportive approaches for improving of the mental health of our youth. Routine screening, early and often, is one of the things that can be done. Family support is essential.

When asked if notification should be considered from a prevention or health treatment standpoint, Parker commented that beyond the previously mentioned need for screening, Native children need broad psychosocial and legal advocacy:

...because where our children are most disadvantaged is at the early stages of life when hidden harms are occurring and that then manifest at a time when social or legal advocacy is most needed but absent. Being able to mobilize action on their behalf is needed in order to keep them in the community and out of legal institutions.

Beyond the incidence of mental health issues among incarcerated Native youth in New Mexico, another significant finding relates to the high rates of out-of-home placement for both males and females at discharge. Among the Native youth ($n=125$) in Parker's study, more than half (58.9% of males and 64.3% of females) were not returning home after discharge. Follow up on placement post-incarceration was beyond the design of the study, and therefore, the results did not indicate to what out-of-home

¹⁷ Parker, T. (2014). Tribal youth in the New Mexico State juvenile justice system: Taking steps to reclaim our youth at risk. [Presentation] *Presented to [tribe]*. University of New Mexico Health Sciences Center, Institute for Indigenous Knowledge and Development.

¹⁸ U. S. Department of Justice. (2014). Ending violence so children can thrive. Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence. Washington, DC: Department of Justice.

placement these youth were discharged. In another interview, a mental health provider who works with incarcerated Native youth observed that most of the youth she works with are not returning to their tribal communities, but are ending up in Albuquerque, Grants, Gallup, and other cities in New Mexico. She also noted that for the majority of her Native clients, there was a lack of tribal involvement and coordination in care and transition planning. Based on interviews with CYFD facilities staff, it appears that tribal coordination and involvement in case planning is limited to tribes with functional JJS IGAs with CYFD facilities. A longitudinal study to determine placement beyond incarceration and long-term case outcomes is recommended as an area for future research.

Variation in capacity to respond and level of involvement. Among tribal participants, there was a variation in the capacity to respond as well as the level of involvement in cases for Native youth in the state juvenile justice system. One tribal participant emphasized that in most cases, their tribal court would request a transfer of jurisdiction, and could only recall one case in 22 years in which the tribe hadn't sought to take over the child's case. In part a response to the view of some CYFD JPOs that tribes do not respond to tribal notification because they want the state to provide services that the tribe cannot provide, he explained:

We had one case out of Washington, where this kid had been seriously sexually abused, extensively, from like day one by the dad. I mean this kid was just drawing black pictures with eyes coming out of it. And the child was traumatized beyond our capabilities and in that case we did intervene but we did not transfer because we actually recognized that the State of Washington was going to, we made a judgment call and everyone was at the table because this was a very hard decision to make, that the child was going to be better receiving services in the state program. That's one case out of 22 years I've been doing this...I think mostly everybody wants to handle their own stuff. They think they can—we know we can—do a better job. We're committed, we're invested, I mean this is our kid...These aren't cases, these are our folks that we're talking about... We've pulled kids out of placements from Oklahoma to California—we'll find the resources, we're not just gonna give up a case though.

In contrast, a participant from another tribe described how even though they would like to take jurisdiction of their tribal youth in the state juvenile justice system, they had limited capacity to provide services for that youth and their family. When asked about state child welfare and juvenile justice cases being turned over from the state to the tribe she explained:

Well, they prefer that we always intervene in every instance for every case, but that's not always a possibility because some of the families that do go into CYFD custody reside outside our jurisdiction in town in Albuquerque, or wherever outside. But it's hard for us because if we do intervene, CYFD closes the case automatically and those services then aren't provided to the family or the children, and it's upon us to provide those services, but we can't because they live in

Albuquerque. You know, we can't mandate them from our end, from the [tribal] court, for the family and the children to come here and get the services. And if they have no transportation...

This participant continued to explain that the state, in some cases, has more extensive treatment options for youth and families.

This example also points to the variance among tribal considerations and capacities to provide services for tribal youth and families (even if they are members or eligible for membership) who are not domiciled on the reservation. This issue also came up during one meeting of the consortium, where one tribal judge indicated that he did not see the value of the tribal notification provision because it primarily pertains to youth living off the reservation. Other members of the consortium did not agree with this comment, although they respected the right of each tribe to make its own determinations about how involved that tribe might choose to be in cases involving their youth in state court.

In response to the question if youth and families not domiciled on the reservation are eligible for services, a tribal leader explained that if one moves away or becomes separated from the community, among more traditional communities, it is difficult to access services. He explained that based on tribal customs, addressing issues that involve the family may still be primarily the responsibility of the family system, "It's really the responsibility of the parents to address things as such, and not only in juvenile justice, but as families... Taking care of your young people and making sure they're in school, and everything else." He also noted that this family responsibility and care is traditionally expressed through the clan system.

Relative to the perspective of traditional approaches that view that correcting youth behavior and addressing their needs is the responsibility of parents or extended family, several participants reported that in many cases, parents are not able to support their youth for various reasons. A few participants pointed out that many juvenile justice cases are also child welfare cases. Cases such as these, commented one participant, point to the need for tribal advocacy, especially in the absence of parental advocacy.

During the final convening of tribal and state constituents in February 2015, tribal elder and former Governor and 2nd Lieutenant Governor Lloyd Tortalita spoke to the importance of traditional teachings—which are a community responsibility as much as a parental or family responsibility—explaining that in his home community of Acoma, "some practices are written and others are taught." Judges and other professionals working with youth may not understand these unwritten practices. He stated that "it is the Acoma belief that you are brought into this world for a reason, so kids need to be treated in a way that acknowledges this teaching." He emphasized that tribal courts should, in some way, address the traditional teachings, or "what Grandma and Grandpa teach children," and get back to the roots of cultural teachings, which are effective.

Notification and tribal-state collaboration is facilitated by personal relationships.

Participants indicated that personal relationships between tribal and state personnel facilitated the notification process and collaboration on cases. One tribal participant explained that she had established a relationship with CYFD personnel, and because of that relationship, the CYFD personnel went beyond the requirements of written notification, calling her or meeting with her personally to notify her of a given case. She described that her tribe had been successful in getting child welfare cases because of this relationship, and because the timely notification allowed them to take immediate action to obtain jurisdiction. As a result of being able to have a phone or in person conversation with the CYFD personnel, she was able to obtain more information and context about the case itself—which would not be captured in a written notification form. She explained:

...the reason we're able to fast track these cases is because of the relationship that we've had to develop personally with the local JPOs with the CYFD department, and even the judges or their attorneys, but the thing that I've kind of had issues with is them even turning over the information. You need to send the notice out and say, hey, this is your kid, but trying to get what had happened, the incident report, all of that which is crucial to the judge and I, so we know what case plan or services that we're able to provide in helping which is obviously is the incident that has occurred. I've told Bernie that even in our meeting, and of course he defends it, but I know better, because it's a pain in the butt, you know, to get that information and it's just basically word of mouth. Like judge says, if we get a case here we know that it's part of [tribal community], only because we have that relationship with their social services all the way around... I have to keep track of the overturn at CYFD and the JPO, they need to have the same relationship with the tribe. And there's not so much turnover here, but you know within the state level there is all the time. So you know, you build this relationship, they're gone and moving on to bigger and better things, or they're no longer there so it's reestablishing that.

One CYFD JPO described how establishing a relationship with tribal JPOs has improved collaboration on cases with Native youth. She explained:

...we collaborated with them [tribal probation office] very recently for a very young man that we currently have incarcerated. Juvenile Probation [tribe] also has an open case on him, and we've actually collaborated, which is rare... So I'm hoping that's going to become the norm now, as we are communicating. But the only reason that we knew he had an open case was because the grandparents that have custody of this youth actually notified the JPO, "Hey listen, he was just in court in [tribe]." So we were able to pick up the phone and say, "Hey, we've got this kiddo, could we collaborate?" And that's actually been a very smooth process.

Another CYFD JPO described that knowing people in the tribal community allowed her to obtain critical information about the needs of the child and family and the existing services already being offered

by the tribe. This allowed her to develop a plan for the youth that would supplement, and not duplicate, the services already being provided.

Benefits of keeping youth in the community. Several participants explained that it is beneficial to keep the youth in the community rather than place them in a program far from home. While some pointed out that at times separation or removal from dangerous family situations is necessary, keeping youth near extended family or other community resources is important to maintain not only ties to the community but to establish continuity of care. Some tribal and state participants explained that while cultural services are important and beneficial, they may be less important than keeping the youth close to home.

A tribal leader described how community-based programs are especially important for tribal youth because it helps connect that person to their culture—learning their language, spirituality, and traditional activities as a source of strength and guidance:

I would like to be able to conduct some of those programs here...to be able to help that young person, because of who they are. Because when you send them to the outside, they're learning in that process—which you want them to because at the same time you want them to be able to compete with dominant society on the outside—but we still have that need for that [tribe] person to stay [tribe]. You know, we're helping this young person in this language, in the dominant society language, which is English. A lot of the things that we do, have to do with spirituality, what we believe in. Basically, we don't know who god is—but we believe in somebody higher-up up there that will guide you every day and help you every day, no matter what type of person you are. We believe in that. It's what we teach here at [tribe]. And those are some of the things that are not taught over [at the local school], even though they're a part of this, but that's where a lot of our traditions and our languages get lost, because we're no longer practicing it here. And it is very true with the traditional activities here, because a lot of the young people are learning on the outside versus here in the community [tribe].

In this sense, programs based in the community have to do with helping at-risk and justice system-involved tribal youth by grounding them in cultural practices, their language, and traditional activities. This is related to the following finding, which concerns treatment as an opportunity for connection and healing.

Treatment as an opportunity for connection and healing. One participant described entering the juvenile justice system and treatment as an opportunity for healing and for reconnection to community and culture. This participant, a community-based service provider who works with juvenile justice-involved Native youth, described justice system involvement as a “first cultural intervention opportunity.” He explains:

Sometimes, believe it or not, as strange as it sounds, the criminal justice system is the first intervention—I'm talking about a cultural intervention opportunity that we have with some of these kids. It's almost the first time they've ever handled a pipe. The first time they've smudged—because they've seen it but they never really engaged in it. The first time they sat in a circle in front of each other and started to emulate their parents or grandparents. And, "Oh, I have to say something in prayer? I have to think about my clan, or what did my grandma say my grandpa's role was?" You know, it's the first intervention for them...So we have an opportunity...Out of something that's terribly wrong, but they're there, so let's use it as an opportunity.

He described how many Native youth who have not been, from his perspective, allowed back into the community or have not been embraced by the community, are seeking "cultural medicine" in the city, which is something his program provides. He emphasized that this is a critical time for these youth, who come into the city and are at an even higher risk for becoming involved in gang and/or drug activity.

A mental health services provider who works with Native youth shared that Native youth are seeking healing and community. She recounted that during one cultural program, a Native female client remarked that being in the group gave her a sense of belonging, saying, "there's nowhere else I'd rather be."

In their policy brief on juvenile justice systems and programs for Native youth, Arya and Rolnick (2008) advocate for programs and activities that provide youth with "increased opportunities to learn about their culture and to connect with their community, especially with tribal elders" (p. 19). They describe how many tribal youth are not connected with their Native culture or knowledgeable about their tribal traditions. "Tribal culture is key to identity, self-confidence, and membership."¹⁹

Policy and Practice Recommendations

Based on our conversations with both tribal and state juvenile justice stakeholders and the attendant literature, the following policy and practice recommendations were developed to strengthen the tribal notification process and to improve juvenile justice case outcomes for Native youth.

1. Create clear procedures and protocols regarding how, when, and to whom tribal notification should be administered and how Native youth should be identified by the system at intake. As demonstrated through the project's findings, there are not clear guidelines and written procedures for tribal notification regarding Native CYFD JJS-involved youth, nor procedures or materials to identify Native status. Notification procedures are not being consistently practiced among CYFD JJS personnel (JPOs and facilities intake staff), including identifying Native status and sending notification forms directly

¹⁹ Arya, N., and Rolnick, A. (2008). A Tangled Web of Justice: American Indian and Alaska Native Youth in Federal, State, and Tribal Justice Systems. Campaign for Youth Justice Policy Brief, Vol. 5.

to tribal contacts; notification takes place at various stages of the client referral pathway, including post-adjudication, which is indicated by CYFD directives; and, per the request of youth and/or their families, CYFD sometimes does not send notification. On the tribal side, in some instances, it was unclear if notification letters were being routed consistently through tribal administration. Tribal participants have recommended that tribes examine their internal processes for receiving and routing notifications to ensure the right departments and individuals are receiving notification in a timely manner. Based on the findings, overall, it is unclear if notifications are being received by tribal personnel.

The following sub-recommendations to improve procedures and protocols regarding how, when, and to whom tribal notification should be administered:

- Implement policies and procedures to identify Native status (determine if the child is a tribal member or is eligible for tribal membership) at intake.
- Provide annual updates to maintain tribal contact information, including names, titles, and email addresses to help ensure the accuracy of contact information and expediency of delivery.
- Administering notification at earlier stages—at petition, or even during preliminary inquiry— could improve outcomes for Native youth. As indicated by both tribal and state participants, the CYFD JJS directive to notify at the pre-disposition stage of a juvenile delinquency case is too late for tribal notification to be a useful vehicle for tribes to advocate for alternatives to detention, treatment services, or out-of-home placement, including placement in juvenile corrections facilities.
- Consider revisions to the language in the tribal notification provision to clarify procedures and requirements. As revised legislation or procedures are considered, tribal leaders have requested a joint tribal-state process to address how implementation can be strengthened.

New Mexico's Tribal-State Judicial Consortium has a special role to play in the development and implementation of improved tribal notification. As relationship-builders between the state and tribes, the consortium will continue to discuss issues pertaining to notification and help shepherd a two-track process to improve state and tribal policies and procedures while preparing for the longer-term goal of strengthening the language and requirements of the tribal notification provision in the State of New Mexico Children's Code.

2. Increase collaboration, including data and information sharing, between tribal and state juvenile justice personnel through formal or informal agreements. As stated by our Navajo Nation partners, collaboration between the state and tribes—not simply notification, or even jurisdictional transfer—is the primary objective. Case outcomes for Native youth entering the juvenile justice system are improved when communication and information sharing occur between state and tribal personnel. Confidentiality of

youth and family service information can be protected while working with state or tribal partners to develop treatment services that will address any gaps and enhance existing services. More information specific to the youth's case, for example, police reports, information regarding the youth's offenses and court proceedings, can improve and expedite tribal advocacy for youth. Regular data sharing between CYFD JJS and tribal courts regarding case outcomes for their tribal youth in the state system can inform discussions between the state and tribes to improve tribal notification practices and procedures. Cross training among state and tribal probation officers could serve to improve consistent implementation of policies and procedures around notification and sharing of case histories, police reports, and other relevant information.

Although not all tribes believe that inter-governmental agreements (IGAs) are helpful, it may be a potential tool to increase collaboration and improve tribal notification for tribes where there is a meeting of the minds between the state and a particular tribe. As evidenced in the report, some, but not all, tribal-state agreements have facilitated notification (for youth placed in CYFD facilities) and have improved tribal and family involvement in case planning for treatment during incarceration and for continuation of care after release. While IGAs are currently recommended for the purpose of providing state services for Native youth adjudicated in tribal courts, IGAs may also serve to clarify procedures between state and tribal personnel involving cases in state court, including placement preferences in cases involving out-of-home placement. As in other states where the state contracts tribes to provide care for their citizens, the State of New Mexico and New Mexico tribes may consider exploring if there are state resources that could support culturally sensitive tribal programs.

3. Ensure Native status offenders receive the full benefits and protections provided them under the Indian Child Welfare Act. The Indian Child Welfare Act which recognizes tribal notice, intervention, and jurisdictional rights, among other things, applies by its terms to all state child custody proceedings. Child custody proceeding is defined to include all proceedings which may result in out-of-home placement for a youth except proceeding based upon an action by the youth that would be a crime if committed by an adult. New Mexico law recognizes tribal jurisdiction over all cases defined as child custody proceedings under ICWA. Thus, cases involving status offenses should be subject to ICWA and if the youth is a resident or domiciled on the reservation, then the tribal court should have exclusive jurisdiction.

It appears from our research that the only "status offense" that New Mexico recognizes that may give rise to a youth's involvement with the juvenile justice system is possession of alcohol. As discussed, probation violations can also result in detention of youth, but ICWA's application to such proceedings is uncertain. Thus, the ICWA provision may have more limited effect in New Mexico than in other states which recognize a broader range of status offenses. Nonetheless, where a youth is system-involved because of a status offense, applying ICWA provisions may benefit that youth by allowing for more tribal involvement in those circumstances.

4. Utilize tribal notification to improve tribal and state capacities to identify and address mental health issues among Native youth. Based on the prevalence of mental health issues among youth in the juvenile justice system, early notification can serve a preventative purpose in the form of mental health screening and referral to mental health services. While there are limited mental health programs available, we want youth to take full advantage of what does exist, and by better tribal-state collaboration it may be that additional alternatives can be identified. Furthermore, 638 funds, System of Care grants through the Substance Abuse and Mental Health Services Administration, and Medicaid are potential resources that may support the development of additional tribally based services for youth and their families. Additionally, telehealth and other “virtual” resources may help connect youth with not only mental health services, but also with their families if they are incarcerated or in treatment far from home.

Positive cultural identity, knowledge of one’s tribal language, family involvement, and relationships with tribal elders have been well-established as a protective factors for delinquency and other challenges to the well-being of Native youth. While tribally based programs may be the best option, non-tribally affiliated programs also address the need for cultural programming among incarcerated Native youth, and Native youth who are unable to access services in their home communities.

5. Utilize tribal notification to decrease incarceration and route Native youth to alternative programs. The State of New Mexico has been moving to implement the Juvenile Detention Alternatives Initiative (JDAI) on a statewide basis and Bernalillo County is a model JDAI site. JDAI involves building collaborative and innovative procedures to ensure that decision-making is rational and deliberate and based upon a philosophy that youth should only be detained if they are a risk to society or may flee if they are released. While JDAI involves broader system reform, it requires a range of alternatives to incarceration if it is to be successful. Notice to tribes can be an important mechanism for increasing the range of alternatives available to make JDAI work.

Community-based service programs such as family group conferencing, teen courts, peacemakers, and other tribal resources and practices have been identified by tribal participants as potential alternatives to detention. As JDAI expands to San Juan County, the ability of the county to identify sufficient and additional alternatives for Native youth can benefit from tribal involvement. The Navajo Nation in particular, which sits adjacent to San Juan County, has developed various resources that may provide culturally specific options for Navajo youth, or inform new JDAI resources in the region. Moreover, it may be that the implementation of JDAI will give rise to funding opportunities that can be shared with the tribes so that additional culturally sensitive alternatives can be developed.

6. Conduct additional research regarding the impact of tribal notification and other issues affecting Native youth in the juvenile justice system. Future research should include a longitudinal study to determine placement beyond incarceration and long-term case outcomes. Additional recommendations for future research include quantitative analysis of status offenses for Native youth, and

additional analysis of disproportionate minority contact data at each contact point in the client referral pathway. Future comparative case studies focused on the implementation of tribal notification procedures can identify best practices for notification and demonstrate improved case outcomes.

7. Develop improved processes through a tribal-state collaborative process. Implementation of the tribal notification will be best achieved through a joint tribal-state process. Assistance from experts in the field may be useful in this effort, but it should be within the framework of the relationships between and mutual interests of the various sovereign governments.