



U.S. Department of Justice

U.S. Department of Interior



Tribal Law and Order Act (TLOA) Long Term Plan to Build and Enhance Tribal Justice Systems



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Tribal Law and Order Act: Long Term Plan to Build and Enhance Tribal Justice Systems¹

**Submitted by the Department of Justice
and the Department of the Interior
in collaboration with the
Work Group on Corrections²**

¹ Sections 211 and 244 of the Tribal Law and Order Act (TLOA) direct the Department of Justice (DOJ) and the Department of the Interior (DOI) to create “a long-term plan to address incarceration in Indian country.” Pub. L. No. 111-211 (July 29, 2010) This title - the Long Term Plan to Build and Enhance Tribal Justice Systems (Tribal Justice Plan) - was selected in response to the request from Tribal Leaders and justice professionals that the title of the Plan reflect their vision for tribal communities.

² The Work Group on Corrections is an interagency committee created by the DOI and DOJ in Spring of 2010, to enhance collaboration in tribal corrections efforts. After the passage of TLOA, the Work Group was expanded to add new federal partners and guided the outreach and the development of the Tribal Justice Plan.

Tribal Law and Order Act: Long Term Plan to Build and Enhance Tribal Justice Systems

EXECUTIVE SUMMARY

TLOA Background and Overview

In recent decades, Tribal Nations have faced significant problems in addressing public safety issues. Violent crime rates in Indian country are more than 2.5 times the national rate; some reservations face more than 20 times the national rate of violence.³ Some tribes lack the funding and infrastructure to address these problems. Indian country correctional facilities are inadequate in number and funding may not be sufficient for operations, maintenance and programming. In some Tribal Nations, there are insufficient alternatives to incarceration. In 2010 Congress passed the Tribal Law and Order Act (TLOA) to address these problems. The goal of TLOA is to improve public safety and justice systems in Indian country.

TLOA mandates that the Departments of Justice (DOJ) and the Interior (DOI) develop, in consultation with Tribal Leaders and tribal justice professionals, a long term plan to address incarceration and the alternatives to it in Indian country. DOJ and DOI obtained substantial input from tribal justice officials, including law enforcement, courts, and corrections. DOJ and DOI conducted a series of consultations with Tribal Leaders across the country;⁴ conducted focus groups with tribal justice officials; hosted webinars; created a multi-agency Work Group on Corrections (“Work Group”) to provide recommendations on action steps; and drafted a Tribal Justice Plan (Plan) for public comment. Those comments were incorporated into the final Plan submitted to Congress.

Central Themes of the Tribal Justice Plan

The following major themes emerged from consultation and public comment:

- Establishing alternatives to incarceration should be the major focus.
- The Tribal Justice Plan should be implemented in consultation and collaboration with Tribal Leaders and should be flexible enough to allow tribes to develop strategies tailored to their specific public safety needs and tribal history and culture.
- The Tribal Justice Plan should coordinate federal, tribal, state and local government resources to support operations, programming in tribal justice systems, and critical

³ Steven W. Perry, *American Indians and Crime, A BJS Statistical Profile, 1992-2002*, U.S. Department of Justice, Bureau of Justice Statistics (2004), available at <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=386>.

⁴ Six of the consultations were held by DOI and two were in coordination with the Tribal Justice, Safety and Wellness Sessions, which are Intergovernmental Consultations held by DOJ and DOI with Health and Human Services, Housing and Community Development, Small Business Association and the Corporation for National Community Service.

infrastructure issues with tribal correctional facilities, fully mindful of the sovereign status of tribes in these coordination efforts.

- There should be greater coordination between DOJ and DOI with respect to awards for grants that may be used to construct tribal correctional facilities and multi-purpose justice centers (which may be provided by DOJ) and P.L. 93-638 contracts and self-governance compacts for funding operations (provided only by DOI). The Departments are committed to addressing the issue of coordination to address this and other issues related to detention in Indian country.

Tribal Leaders', Practitioners' and Experts' Recommendations for Key Considerations Underlying the Tribal Justice Plan

- Develop a system of alternatives to incarceration. Identify the points in the system where incarceration occurs, examine the reasons why, and explore alternative evidence-based practices to safely monitor the offender in the community.
- Make alternative interventions culturally specific to individual Nations.
- Include after school and summer programs for tribal youth as part of crime prevention strategy.
- Ensure that tribal jails comply with standards on such issues such as inmate classification, health services, sanitation, preventative maintenance, discipline, grievance procedures, offender services and activities, staffing and others.
- Include juvenile detention and treatment. Inventory existing funding and technical assistance resources for tribal youth across federal agencies; and develop training for community coalitions to support tribal juvenile detention facilities.
- Support regional partnerships with state and local entities to contract for bed space to improve capacity and sustainability.
- Develop data-driven, comprehensive programming. Use planning data and validated risk assessment tools to assess key trends in tribal jail population and define critical programming and partners. Support research to identify effective methods in Tribal Nations.
- Apply jail standards to facility funding, construction and maintenance.
- Develop and implement evidence-based reentry programs that include risk assessment tools and individual case management plans.
- Locate more federal halfway houses on tribal lands to keep members connected to community and family.

Action Steps and Recommendations

Six month goals:

- DOJ will use resources from the Tribal Courts Assistance Programs (TCAP), Indian Alcohol and Substance Abuse Assistance (IASAP), Drug Courts Programs, and Tribal Youth Program to support alternatives to incarceration programming.
- Share information with tribal courts about electronic alcohol monitoring bracelets (BIA).
- Offer funding and training and technical assistance for detention, alternatives to detention, and multi-purpose justice facility planning, renovation, and construction (DOJ).
- Explore potential resources to promote comprehensive programming (the Work Group).
- DOJ will support reentry activities through the Second Chance Act's Demonstration, Mentoring, Correctional Technology Jobs, Co-Occurring Substance Abuse, Family Treatment and Mental Health Disorders grant programs, and the Tribal Juvenile Detention and Reentry Green Demonstration Program.
- Explore strategies to facilitate and streamline tribal justice hiring, basic competency training, and securing clearance processes (DOI and Workgroup).
- Add other critical federal partners to support implementation of the Tribal Justice Plan, including agencies representing law enforcement, civil rights, victims, youth issues, family violence and defense (the Work Group).
- Continue to coordinate across federal agencies after the Tribal Justice Plan is completed and submitted to Congress.

Twelve month goals:

- Explore the feasibility of creating a work release program for tribal members returning from federal incarceration and the potential impact of such a program on crime victims.
- Fund Tribal Probation Academies and explore assistance such as training for probation supervisors and training on planning and managing a tribal probation agency (DOJ).
- Expand the Juvenile Detention Alternatives Initiative (JDAI) to Indian country (DOJ/OJJDP).

- Enhance coordination of current federal funding for tribal corrections facility and multi-purpose justice center planning, construction, transition, maintenance, operations, and programming.
- Coordinate funding of new construction to maximize success of these projects (DOI and DOJ).
- Create a peer advocate training program (DOJ/OJJDP, BIA, and IHS).
- Explore potential resources to assist high risk offenders or those needing specialized services (BOP, BIA and Federal Probation).
- Explore resources of BIE to address offender educational requirements.
- Coordinate federal reentry services in Indian country with the U.S. Probation and Pretrial Services Indian Country Steering Committee and with other federal, tribal and state agencies. Develop a collaborative strategy to enhance accessibility of federal funding and resources in the areas of alternatives, detention, and reentry for Tribal Nations.
- Create an online consolidated database on funding opportunities, resources, training and technical assistance (Work Group).
- Provide cross-agency training to emphasize the importance of multidisciplinary strategies to achieve best results from the Tribal Justice Plan.

The Work Group also made recommendations for enhancements in funding and creation of new resources in particular areas.

Conclusion

Tribal Nations face significant public safety challenges. TLOA provides a critical opportunity to acquire the tools needed to build effective alternatives to incarceration and to improve incarceration and reentry strategies. These strategies should be tribally led and based upon data and planning, with the help of federal agencies with the resources to support these goals. The Work Group is committed to implementing these Action Steps and Recommendations, and helping tribal justice systems to improve public safety.

Acknowledgements

The Tribal Law and Order Act (TLOA) has created a tremendous opportunity for Tribal Nations across the United States to enhance their tribal justice systems and improve safety in Indian country. Tribal vision and leadership set the priorities and informed the implementation of this Long Term Plan to Build and Enhance Tribal Justice Systems (Tribal Justice Plan). We are very grateful to all of the Tribal Leaders who provided input at the eight consultations on TLOA and the written comments. We are especially appreciative of the tribal justice officials who attended the three focus groups - their knowledge, expertise and commitment to safety in their Nations brought great insights. These Tribal Leaders and tribal justice officials will be critical partners in implementing the Tribal Justice Plan.

We also thank the federal agencies and staff that were a part of the Work Group on Corrections, who coordinated the outreach to Tribal Nations, provided content on webinars, meetings and the report and who identified ideas, resources and issues that informed the Tribal Justice Plan. They will continue to be critical partners in the implementation of the Tribal Justice Plan.

Finally, we want to acknowledge the support and leadership of other organizations who supported the development of the Tribal Justice Plan. Special thanks goes to the National Congress of American Indians and the National Criminal Justice Association for their support through the webinars, outreach and comments in developing the Tribal Justice Plan. We also thank EKMP, Crime and Justice Institute, American Indian Development Associates, Lamar and Associates, CSR Incorporated, and Education Development Center for their input and expertise in developing this Tribal Justice Plan.

Chapter 1: Background

TLOA: History and Overview

Tribal Nations have historically faced significant challenges in addressing public safety issues. Recognition of this problem led to the passage of the Tribal Law and Order Act (TLOA) of 2010, signed into law by President Obama on July 29, 2010. TLOA seeks to address many of the challenges faced in tribal justice systems, to establish greater accountability for federal agencies responsible for prosecuting crime on reservations, and to provide tribes with tools to combat extremely high rates of crime. In signing the bill, President Obama remarked that it is “unconscionable that crime rates in Indian country are more than twice the national average and up to 20 times the national average on some reservations.”⁵

A foundational principle in the development of tribal justice systems, and therefore in any consideration of changing those systems, is tribal sovereignty. Indian tribes exercise sovereign powers over their members and their territory. In legislation, case law and Executive Orders, the federal government has affirmed the political sovereignty of tribes and interacts with Tribal Leadership on a government-to-government basis. In current practice, including development of this Tribal Justice Plan, the government-to-government relationship is embodied by consultation and coordination between Tribal Leadership and federal agencies on issues that impact tribes.

Criminal jurisdiction in Indian country depends on a number of factors, including where the crime took place, the status of the alleged offender and victim (Indian or non-Indian), and the type of offense. The complexity of jurisdictional issues is a result of the Major Crimes Act, 18 U.S.C. § 1153, Public Law 83-280 as amended (P.L. 280), other federal statutes, and numerous federal court decisions. The Major Crimes Act provides for federal court jurisdiction for certain offenses committed by Indians in Indian country.⁶ Pursuant to P.L. 280, the United States has transferred criminal jurisdiction over some reservations to states and authorized other states to assume either full or partial jurisdiction over crimes committed by or against Indians in Indian country.⁷ Tribal sovereignty and jurisdictional authority are at the forefront of the recommendations in this Tribal Justice Plan.

⁵ Tribal Law and Policy Institute, 2010, “Obama Signs Tribal Law and Order Act,” Tribal Law Updates, retrieved June 27, 2011 from tloi.wordpress.com/2010/07/30/obama-signs-tribal-law-and-order-act/.

⁶ The crimes include murder, manslaughter, kidnapping, maiming, felony sexual assault, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and felony theft.

⁷ In both P.L. 280 and non-P.L. 280 jurisdictions, tribes retain concurrent jurisdiction over all crimes committed by Indians.

TLOA: Legislative Charge for the Long Term Plan to Build and Enhance Tribal Justice Systems

Three sections of TLOA direct the creation of the Long Term Plan to Build and Enhance Tribal Justice Systems. Each of these sections directs that a plan must be submitted to Congress one year following the date of enactment.

TLOA requires the Secretary of the Interior (section 211(b)(5))⁸ and the Attorney General (section 244(d)) to collaboratively develop the plan. In addition, it requires DOI and DOJ to consult with Tribal Leaders and tribal justice officials in the development of the plan. Specifically, the law states that the Departments of Justice (DOJ) and Interior (DOI) shall submit to Congress a long term plan to address incarceration in Indian country that addresses:

- (1) a description of proposed activities for the construction, operation, and maintenance of juvenile and adult detention facilities (including regional facilities) in Indian country;
- (2) a description of proposed activities for contracting with state and local detention centers, upon approval of affected tribal governments;
- (3) a description of proposed activities for alternatives to incarceration, developed in cooperation with tribal court systems;
- (4) an assessment and consideration of the construction of federal detention facilities in Indian country; and
- (5) any other alternatives as the Secretary of the Interior and the Attorney General, in consultation with Indian⁹ tribes, determines to be necessary.

Further, Section 241(g)(1) provides that the Secretary of the Interior and the Attorney General, in consultation with Tribal Leaders and tribal justice officials, shall develop a long term plan for the construction, renovation, and operation of tribal juvenile detention and treatment centers and alternatives to detention for juvenile offenders. This Section requires the Bureau of Indian Education (BIE) and the Indian Health Service (IHS) to coordinate with tribal and Bureau of Indian Affairs (BIA) juvenile detention centers to provide services to those centers.

Consultation and Outreach Strategy with Tribal Nations

The sections of TLOA that direct the creation of the Tribal Justice Plan require that DOJ and DOI consult with Tribal Leaders and seek the input of tribal justice officials, including tribal law

⁸ This section of TLOA modifies sections of the Indian Law Enforcement Reform Act.

⁹ The terms "Indian," "American Indian," "Alaska Native," and "Native American" refer to a person descended from ancestors indigenous to the lands that now constitute the United States. The term "Alaska Native" is by definition exclusive to peoples indigenous to Alaska. But as is the case for tribes located in the lower 48 states, the tribes in Alaska are culturally diverse, with unique circumstances, and rich traditions rooted in their regional homelands. Generally, the term "Native American" includes both American Indians of the lower 48 states and Alaska Natives. This document uses these terms interchangeably and may use the abbreviation of AI/AN.

enforcement, courts, and corrections. DOJ and DOI developed and implemented a multifaceted consultation plan to facilitate broad input from Tribal Leaders. In addition, DOJ and DOI sought broad input from tribal law enforcement, court and corrections officials.

- *Consultations with Tribal Leaders.* DOJ and DOI, in partnership with other federal agencies, hosted a series of consultations with Tribal Leaders between October 2010 and May 2011. The seven consultations held between October and December 2010 related to TLOA overall,¹⁰ while on May 10-11, 2011, DOJ and DOI co-hosted another consultation specific to the Tribal Justice Plan¹¹.
- *Webinar education and dialogue sessions.* DOJ and DOI collaborated with the National Congress of American Indians (NCAI) and the National Criminal Justice Association (NCJA) on a series of webinars about the TLOA Tribal Justice Plan. These webinars provided a 30-minute presentation by subject matter experts, followed by a 60-minute dialogue period in which input was sought from Tribal Leaders and members. Topics included an Overview; Alternatives to Detention; Detention Planning, Construction, and Operations; and Reentry. The webinars were recorded and posted on NCAI's TLOA resource page at tloa.ncai.org/webinars.cfm.
- *Focus groups with tribal justice officials.* DOJ, DOI and federal partners hosted three focus groups with Tribal Leaders and tribal justice officials—including those from law enforcement, courts, corrections, social services, and treatment—to seek more in-depth input on the challenges facing tribal justice systems, promising strategies, gaps, resources, and the best ways to address needs. These events highlighted the expertise of practitioners who face these challenges every day and are developing innovative solutions.¹²
- *Written comments solicited.* Tribal members and the public have been encouraged to send input about the Tribal Justice Plan to a special e-mail box, TellTLOA@usdoj.gov. The e-mail address has been advertised through the webinars, consultations, and focus groups. A draft Tribal Justice Plan was released from July 15 through July 21, 2011 for public comment. Over 40 comments were received, which were incorporated into the final draft of the Tribal Justice Plan.

¹⁰ In October 2010, DOI hosted a series of six regional tribal consultations in San Diego, CA (October 12); Billings, MT (October 14); Albuquerque, NM (October 20); Prior Lake, MN (October 12) Oklahoma City, OK (October 26); and Miami, FL (October 28) to seek input about TLOA generally, including the Tribal Justice Plan. On December 8-9, 2010, DOJ hosted another consultation with Tribal Leaders in Palm Springs, CA, covering new tools authorized under TLOA and feedback on the Tribal Justice Plan. This last consultation was held in coordination with the Tribal Justice, Safety and Wellness Sessions, which are Intergovernmental Consultations held by DOJ and DOI with the Department of Health and Human Services, the Department of Housing and Community Development, the Small Business Administration and the Corporation for National and Community Service.

¹¹ The May 2011 consultation was also held in coordination with the Tribal Justice, Safety and Wellness Sessions described in footnote 10 above.

¹² The Focus Groups were in Rapid City, SD (April 19-20); Scottsdale, AZ (May 10 & 12); and Billings, MT (May 16-17).

Feedback from Tribal Nations

The outreach efforts generated important feedback that informed the Tribal Justice Plan and the strategies and recommendations included in this Plan. Tribal justice officials provided information about challenges that reflected their extensive experience and a rich set of strategies to overcome barriers. The following major themes emerged:

- Alternatives to incarceration are of primary importance. Alternatives to incarceration (which could include treatment) should be the paramount objective in any plan to address the corrections aspect of public safety in tribal nations. Detention of tribal members should be a rare exception in the corrections context, where many of the offenders are suffering the effects of poverty, isolation and substance abuse.
- Tribal Leaders and federal agencies should work together. The Tribal Justice Plan should be developed and implemented in collaboration with Tribal Leaders and not driven exclusively by federal agencies. DOJ and DOI were encouraged to continue this dialogue through consultations and focus groups or similar meetings.
- A plan should be flexible enough to meet varying tribal needs. Tribal Leaders and justice system officials reiterated that recommendations and strategies should allow each tribe to address its safety and corrections needs according to its tribal history and cultural values. This is especially the case with tribal justice systems in Alaska (and other very remote locations) where the physical remoteness and extreme weather create additional complexities in operating tribal justice systems.
- Federal funding streams for alternatives, incarceration and reentry are limited and complex. Tribal Leaders and tribal justice officials reiterated the federal government's trust responsibility in operating tribal justice systems. They also noted that the current bifurcation of funding between the federal agencies makes planning and implementing strategies complex and noted that there are not enough resources to sustain the strategies of all federally recognized tribes.

Structure of Work Group on Corrections

TLOA requires that the Tribal Justice Plan be developed jointly by DOJ and DOI. Moreover, development of the Tribal Justice Plan required the joint involvement of the IHS, located in HHS, and DOI's BIE. To oversee the creation of the Plan, DOJ and DOI created a TLOA Work Group on Corrections (Work Group), which includes the following agencies:

- Office of Justice Programs, DOJ
- Office of Tribal Justice, DOJ
- Bureau of Prisons, DOJ
- Office of Civil Rights, DOJ
- Community Relations Service, DOJ
- Executive Office for U.S. Attorneys, DOJ

- National Institute of Corrections, DOJ
- Office of the Assistant Secretary - Indian Affairs, DOI
- Bureau of Indian Affairs, DOI
- Bureau of Indian Education, DOI
- Indian Health Service, HHS
- Substance Abuse and Mental Health Services Administration, HHS
- Department of Agriculture
- Federal Probation Service

The Work Group will continue to meet and coordinate implementation activities, and DOJ and DOI will seek to add new partners, consistent with the recommendations in this Tribal Justice Plan. Due to the impact of some of these recommendations, the implementation will also be coordinated with other workgroups and committees as appropriate.

Overview of the Tribal Justice Plan

The next three chapters of this Plan include:

- *Chapter 2: Alternatives to Incarceration in Indian Country.* TLOA requires that the Tribal Justice Plan include an examination of activities in Indian country that facilitate alternatives to incarceration. Generally, alternatives to incarceration are programs, services, or supervision that allow an individual to avoid incarceration and remain in the community with effective mechanisms in place to ensure public safety.
- *Chapter 3: Detention in Indian Country.* Tribal Leaders feel strongly that incarceration should be a last resort, but acknowledge that detention is appropriate for those offenders at high risk for recidivism¹³ and violence. This chapter explores Indian country needs for data, planning, and resources to address the critical needs for the construction, renovation, operations, and programming of detention facilities in Indian country.
- *Chapter 4: Reentry in Tribal Nations.* Tribal Leaders note the importance of including reentry as part of a holistic plan to reduce recidivism and improve community safety by preparing inmates for release. Reentry is a process of assisting offenders in acquiring the life skills needed to succeed in the community upon their release from prison or jail.

The Tribal Justice Plan includes Recommendations at the end of each Chapter. These Recommendations include short term (six month), mid-term (12 month) and long term goals. DOI, DOJ and the Workgroup have committed to complete the goals in the short and mid-term with existing resources for FY 2011 and FY2012. To accomplish the long term goals, many of the recommendations lay out further action to plan and develop strategies in collaboration with Tribal Leaders and tribal justice officials. This reflects the short timeline to develop this Tribal

¹³ *Recidivism* refers to the concept of criminal recidivism, which is the process of reoffending or engaging in repeated criminal behavior. It can be measured as self-reported offenses, arrests and/or convictions. National Institute of Justice, *Do Drug Courts Work? Findings From Drug Court Research*, retrieved on June 25, 2011 from www.nij.gov/nij/topics/courts/drug-courts/work.htm.

Justice Plan and the need for additional time to more fully develop long term goals and strategies. To support this planning and collaboration with Tribal Nations, DOI, DOJ and the Workgroup will host further consultations, focus groups and regional meetings with tribes, beginning in late calendar year 2011.

Chapter 2: Alternatives to Incarceration in Indian Country

I. Alternatives to Incarceration: An Overview

Alternatives to incarceration are an important part of the American Indian/Alaskan Native (AI/AN) justice system. During the consultation and focus group sessions, participants stated that incarceration should be used as a last resort: although some individuals pose a substantial enough threat to public safety that incarceration is appropriate, most are thought to be in need of community-based alternatives.

Alternatives to incarceration generally include programs, services or supervision that permit an individual to remain within the community, with effective mechanisms in place to ensure public safety. Those convicted of certain drug offenses, for example, may be better served by being ordered to participate in a community-based treatment program or to submit to random urinalysis tests. Without services and treatment options in place to meet offenders' needs in the community, however, judges may have no choice but to sentence an offender to prison or juvenile detention. Some of the benefits of developing and maintaining a meaningful set of incarceration alternatives include:

- Treating the root causes of criminal behavior, such as substance abuse, mental illness, and the impact of victimization, rather than treating only the symptoms of criminal activity.
- Focus on rehabilitation (education, vocational training, and behavioral change) rather than on retribution.
- Keep offenders connected to their families and communities, and support pro-social¹⁴ development.
- Judges may have greater latitude in sentencing decisions if there are viable alternatives to incarceration.
- Conserve resources, both economically and practically; for example, alternative programs can save limited bed space for violent offenders.

Of the over 40 comments received during the release of the draft Plan, over 15 of the comments expressed strong support for the continuation of funding, training and technical assistance to Tribal Nations to plan, implement and enhance Healing to Wellness courts as an alternative to incarceration.

¹⁴ Pro-social skills help adolescents get along with others and navigate difficult social situations in positive ways. Pro-social skills include: social interaction skills; self control/anger management skills; and problem solving/conflict resolution skills. http://www.ncjservehttp.org/NCJJWebsite/pdf/resourceguide/pro-social_chapter1.pdf.

II. Alternatives to Incarceration: Strategies

Developing a system of alternatives is no easy task. It involves identifying the needs of individual communities, securing adequate resources, and developing internal capacity to provide needed supervision and services. Below is a brief summary of strategies, all of which are based on empirical research, that support the use of alternative detention plans in Tribal Nations.

Using Alternatives When They Count the Most

A critical step in developing alternatives is to define the specific Tribal Nation's needs. The National Institute of Corrections (NIC), through the Native American and Alaskan Technical Assistance Project (NAATAP), developed a project guide, *Alternatives to Incarceration of Offenders*, which suggests, among other things, that policies, practices, and programs should be developed for each of the decision points within a criminal justice system.¹⁵ These decision points include the decision to arrest; the decision to refer to pre-trial detention; the decision to prosecute; the decision to release from pre-trial detention; the timeliness and efficiency of the trial process; the timeliness and efficiency of the pre-sentence investigation process; and the management and use of sentence modifications.¹⁶

By reviewing these decision points, jurisdictions may be able to identify specific interventions to reduce the need for incarceration. These decision points should be considered alongside a jurisdiction's empirical data on arrest numbers, sentencing placements, and violations of release conditions. They should also be considered in connection with community values and culturally-based interventions, as this information may be appropriate for and helpful to individual communities developing alternatives.

Evidence-Based Practice

Criminal justice research in the past few decades suggests that the some of the most effective methods to reduce recidivism are achieved by employing evidence-based practices.¹⁷ When implementing alternatives to incarceration, this means identifying the risk, needs, and responsibility of an individual offender. Evidence-based practices emphasize that certain developmental steps must precede others: for example, offenders must be first assessed for risk and then for need before they can be effectively managed.¹⁸ Areas of inquiry to determine risk and needs include criminal history, substance abuse, past decision-making and peer groups, relationship history, employment and financial history, and housing.

¹⁵ National Institute of Corrections, *Project Guide: Alternatives to Incarceration* (Washington, DC: Bureau of Prisons, National Institute of Corrections and the Native American and Alaskan Technical Assistance Project, 2005), 8.

¹⁶ *Ibid.*, 8-14

¹⁷ Crime and Justice Institute, *Implementing Evidence-Based Practice in Community Corrections: The Principles of Effective Intervention* (Boston, MA: Crime and Justice Institute and U.S. Department of Justice, 2004).

¹⁸ *Ibid.*

One framework for evidence-based practice is based on a set of interdependent principles, which include assessing the risks and needs of an offender; enhancing motivation for initiating and maintaining behavioral changes (for example, using motivational interview techniques as opposed to persuasion tactics); targeting interventions (for example, prioritizing supervision and treatment resources for higher-risk offenders); employing cognitive behavioral treatment; increasing positive reinforcement; engaging ongoing support in an offender's natural community; measuring the outcome of interventions as well as offender and staff performance; and providing measurable feedback.¹⁹ Given the breadth of these principles, coordination with behavioral health partners such as the Indian Health Service (IHS) and the Substance Abuse and Mental Health Services Administration (SAMHSA) may be critical to successful implementation.

Research is limited on the effectiveness of culturally based strategies to address the needs of tribal members. Tribal Nations should be given the flexibility to employ culturally based strategies to address the needs of each tribal justice system, especially where no evidence based practices exist. At the same time, additional research on the effectiveness of promising practices and tools being employed in Tribal Nations, including Healing to Wellness Courts, would address this gap in knowledge. Notably, a focus group participant from the Chippewa Cree Tribe reported that her community has experienced a significant reduction in recidivism in response to employing evidence-based principles.²⁰ Over the past two years, the tribe implemented risk and needs assessments for both adult and juvenile offenders, and began using assessment scores to target interventions toward higher-risk individuals. Law enforcement also used a short, eight-question screening tool to identify an offender's risk of recidivism. Most low-risk persons were generally not detained and few, if any, interventions were employed.

Supervision

In order to develop the most effective continuum of alternatives to incarceration, communities are encouraged to consider establishing supervision services in addition to treatment and programming. Supervision that occurs in the community is often done through the probation/parole or community corrections department²¹. Probation officers in most jurisdictions serve many different roles, and tribal probation officers are no exception. These probation officers are required to both sanction offenders for violating conditions of their probation and to reward those under supervision for positive behavioral change. Probation officers often have high caseloads, multiple responsibilities, and competing demands. In the area of juvenile justice, probation officers may need specialized training on issues such as child development and family engagement. Case management can also assist with these strategies.

In 2010, the American Probation and Parole Association (APPA) published *Tribal Probation: An Overview for Tribal Court Judges*,²² a guide intended to provide tribal probation personnel with

¹⁹ Ibid.

²⁰ Feedback from TLOA Focus Group in Billings, MT on May 16-17, 2011.

²¹ Because the majority of supervision cases are probation cases, the term "probation officer" will be used in lieu of "probation/parole officer."

²² Kimberly A. Cobb, *A Desktop Guide for Tribal Probation Personnel: The Screening and Assessment Process* (Washington, DC: American Probation and Parole Association and U.S. Department of Justice, Bureau of Justice Assistance, 2011).

information on administrative screening and assessment tools. These tools can facilitate the development of supervision plans that protect the community and hold the offender accountable, as well as identify more accurately any treatment needs that may be contributing to the offender's criminal behavior.²³ In addition, the development of tribally driven risk assessment tools, or norming of existing tools for a specific tribe should also be explored.

Planning, Funding and Partnerships

These approaches will benefit from planning, using data to define needs and engaging partners to address the range of needs of tribal members under criminal supervision. Another key element is having the foundation of basic court functions for addressing crime in a Tribal Nation, using either traditional methods or a tribal court. Some tribes may not have the resources to fully manage these functions, which are needed to then implement many of the alternatives to incarceration discussed in this chapter. At the same time, implementation and sustainment efforts can be complex due to the bifurcation of funding from the federal government. The BIA funds approximately 188 courts via Public Law (P.L.) 93-638 contracts and self-governance compacts, and provides direct services to Courts of Indian Offenses. The BIA also funds start-up costs for tribes implementing new tribal courts. Initial funding to plan, start up, or enhance tribal court and probation functions are also supported through grants, training and technical assistance from the Department of Justice (DOJ). In addition, funding from IHS, SAMHSA, or the Department of Housing and Urban Development (HUD) would need to be leveraged to provide critical services such as medical and behavioral health treatment and transitional housing.

As a result, alternative funding, such as grants, can be uncertain and requires significant planning and coordination. For example, in the 2010 survey of tribal courts, securing funding and sustaining funding were two out of the top three barriers that tribes faced in developing and managing a Healing to Wellness court. It is critical that alternatives be implemented with the key partners in the specific tribes' justice systems, such as law enforcement, courts (judiciary, prosecutors, and defense counsel), probation and pretrial agencies, advocates, victims and family services partners and other service and health providers.

III. Alternative to Incarceration Programs Used in Indian Country

Below are a few examples of programs discussed in focus groups and consultations that suggest promising results. These programs could be used in other jurisdictions, with appropriate modification according to community needs.

- *Tribal Healing to Wellness Courts.* These courts, often referred to as "Wellness Courts," provide Tribal Nations with the opportunity to address issues caused by substance abuse and to establish offender accountability through comprehensive supervision, drug testing,

²³ If communities are considering developing a probation department, Fox Valley Technical College offers a DOJ funded Tribal Probation Academy, a 4-week course with an emphasis on topic areas specific to tribes that are not offered in other programs. Information about Fox Valley Technical College's Tribal Probation Academy can be found at www.fvtc.edu/public/content.aspx?ID=1240&PID=3.

treatment services, immediate sanctions and incentives, and case management.²⁴ This court model has been used with both adult and juvenile offenders.

- *Juvenile Detention Alternatives Initiative (JDAI)*. An initiative of the Annie E. Casey Foundation, implemented with DOJ, JDAI focuses on the juvenile detention component of the juvenile justice system because youth are often unnecessarily or inappropriately detained at great expense, with long-lasting negative consequences for both public safety and youth development. JDAI promotes changes to policies, practices, and programs to reduce reliance on secure confinement; improve public safety; reduce racial disparities and bias; save taxpayers' dollars; and stimulate overall juvenile justice reforms. Since its inception in 1992, JDAI has repeatedly demonstrated that jurisdictions can safely reduce reliance on secure detention.
- *Circles of Care*.²⁵ The Circles of Care Program provides tribes and urban American Indian organizations with three-year grants to identify and analyze community needs systematically. The grants provide funding to develop culturally appropriate strategies that can be put into action to serve young people with serious behavioral health challenges. Families of these youth also participate in the program. With the help of the entire community, grantees develop models of care, create new partnerships, and position themselves to obtain additional resources to help realize plans for comprehensive and culturally appropriate behavioral health services for children, youth, and families. The grant program currently supports eight tribes and urban Indian organizations across the country: Crow Creek Sioux; Karuk Tribe; the Pueblo of San Felipe; Standing Rock Sioux Tribe; Mashantucket Pequot Tribal Nation; American Indian Center of Chicago, Illinois; and the Indian Center in Lincoln, Nebraska.
- *The Circle Project*.²⁶ The Circle Project was an initiative of DOJ that provided incentives to help tribes bring the individual components of their justice systems together to address crime and social problems. Three tribes –Pueblo of Zuni, Northern Cheyenne, and Oglala Sioux -participated in the project. One tribe reported a 40 percent drop in alcohol-related crime and simple assault from 2001-2004.
- *Peacemaker Courts*.²⁷ Navajo judges revived traditional peacemaking in 1982 by creating the Navajo Peacemaker Court, described as a “modern Navajo institution that is

²⁴ Tribal Law and Policy Institute, *Healing to Wellness Courts: A Preliminary Overview of Tribal Drug Courts* (West Hollywood, CA: Tribal Law and Policy Institute and U.S. Department of Justice, Office of Justice Programs, 1999). The National Institute of Justice (NIJ) has compiled feedback and evaluation data from the implementation of the first four Tribal Wellness Courts: Hualapai in Peach Springs, Arizona; Blackfeet in Browning, Montana; Fort Peck Reservation in Poplar, Montana; and Poarch Creek in Atmore, Alabama. Karen Gottlieb, *Lessons Learned in Implementing the First Four Tribal Wellness Courts* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, NCJ 231168, 2005).

²⁵ Program details can be found at: www.samhsa.gov/samhsanewsletter/Volume_18_Number_6/CirclesOfCare.aspx

²⁶ Stewart Wakeling and Miriam Jorgensen, *Strengthening and Rebuilding Tribal Justice Systems: A Participatory Outcomes Evaluation of the U.S. Department of Justice Comprehensive Indian Resources for Community and Law Enforcement (CIRCLE) Project* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, 2008).

²⁷ Peacemaker Courts are often associated with the Navajo but other tribal jurisdictions also use Peacemaker Courts. This discussion focuses on the Navajo Court because much has been written and published about that court.

based on the traditional forum for dispute resolution.”²⁸ The peacemaking process includes discussion and consensus decision-making. All participants are treated as equals with the purpose of preserving ongoing relationships and restoring disputants to a state of balance, harmony, and peace with each other as well as their families and communities.²⁹ Peacemaking courts may not be appropriate for many violent crimes, particularly domestic violence and sexual assault. Other tribes may want to explore models, like peacemaking, that build upon local traditions.

- *Anchorage Youth Courts.* The Anchorage Youth Court (AYC) began in 1989 to “stop illegal behavior while encouraging understanding and respect for the law through positive peer pressure in a formal court setting.”³⁰ The AYC provides formal legal training, a youth court bar association, and a juvenile diversion court operated completely by youth in grades seven to twelve, with adults serving as advisors. The State of Alaska Juvenile Justice Division refers cases of youth ages 12 to 18, arrested for committing a criminal offense, but not considered a threat to themselves or society to the AYC. Between 1989 and 2006, 4,237 juvenile criminal (delinquency) cases were sent to AYC for adjudication. In this same period, juveniles paid over \$79,000 in victim restitution and worked over 101,000 community service hours.³¹

IV. Recommendations: Actions and Strategies

Foundational Elements of a Tribal Justice Program:

- **Develop a system of alternatives to incarceration.** Building upon the strategies listed in this chapter, Tribal Nations can develop community supervision and service options to provide alternatives to institutional confinement. Tribes can also identify those points in the system where incarceration occurs, examine the reasons why, and explore alternative strategies to monitor safely the offender in the community.
- **Make interventions culturally specific to meet the needs of individual communities.** As described above, tribes should identify and prioritize their needs, develop political support, gather diverse stakeholders, use data to inform decision-making, and develop an action plan. Tribes should explore and expand the use of traditional approaches such as Peacemaking Courts and Healing to Wellness Courts, and community courts. Tribes should also engage tribal elders, leaders, and community residents in planning and executing alternative programs. Due to the lack of research on Indian country specific evidence based models, more research should be conducted of tribally driven practices such as Healing to Wellness Courts.

²⁸ Raymond D. Austin, *Navajo Courts and Navajo Common Law: A Tradition of Tribal Self-Governance*, (Minneapolis, MN: University of Minnesota Press, 2009), 201.

²⁹ Ibid, 201. The Navajo Nation has expanded this pilot and currently has 242 certified Peacemakers and a Peacemaker Liaison in each of its 10 district courts who match disputants to appropriate Peacemakers.

³⁰ Anchorage Youth Court, retrieved on June 28, 2011 from www.anchorageyouthcourt.org/anchorageyouthcourt_about.html.

³¹ Ibid.

- **Encourage intra-governmental cooperation.** Determination of criminal jurisdiction in Indian country depends on several factors, including the nature of the crime; whether the alleged offender, victim, or both are Indian or non-Indian; and whether a treaty or federal statute has conferred jurisdiction on a particular government. In certain areas of Indian country, states have acquired jurisdiction over specified crimes committed by or against Indians pursuant to Public Law 280. This jurisdictional complexity requires collaboration and cooperation across governments. For example, tribes in Public Law 280 jurisdictions could consider presenting to state officials alternatives to detention for one or more primary criminal offenses (e.g., drug possession or driving while under the influence).
- **Explore electronic monitoring as an alternative to incarceration.** Electronic monitoring options—including monitoring for location (home/school/confinement) or alcohol abuse—could be a valuable option for providing the least restrictive and appropriate environment for many offenders. This option could also keep offenders connected to their family, community, and culture, and could be used with both adults and juveniles. “Central check-in” options for alcohol monitoring bracelets that require the offender to check-in daily at a designated location instead of requiring specific equipment in the offender’s home can also facilitate the offender’s regular contact with support and treatment services.
- **Explore the feasibility of work release through tribal jails in place of federal halfway houses, including any potential impact of such a program on victims of crime.** Work release programs through tribal jails are an alternative to federal halfway houses. These programs can help to reduce recidivism and to improve individual offenders’ quality of life within their families and communities.
- **Explore enhanced resources for community corrections and supervision.** Tribes seek federal help to build and enhance tribal probation activities to allow for community-based supervision and programming, rather than detention, for mid-risk offenders. Through the Bureau of Justice Assistance’s (BJA’s) Correctional Systems and Correctional Alternatives on Tribal Lands (CSCATL), and BJA’s Tribal Courts Assistance Programs (TCAP), tribes can engage in strategic planning and obtain training to plan, build, and enhance community supervision strategies. Moreover, the Bureau of Indian Affairs (BIA) provides training on community corrections and supervision.
- **Explore the use of community service as part of alternatives.** Community service as part of the sentencing terms can offer opportunities for tribal members to assist their tribes as a consequence of the crime, build new skills and work experience, and to instill pride in contributing to their tribes. Tribal members should be engaged in identifying and implementing these service opportunities.
- **Increase access to after school and summer programs for youth.** Many tribes do not have options for after school or summer activities for their youth. Whether cultural, recreational, community-oriented, or academic, these activities have positive effects on academic success, social behavior, and intellectual development, and can serve as an

important prevention strategy. The Bureau of Indian Education (BIE) and the Substance Abuse and Mental Health Services Administration (SAMHSA) are working together to implement the portions of TLOA relating to summer programs for youth.

- **Increase access to other critical support services.** Assess and increase access to critical supports such as transportation for largely rural Tribal Nations to ensure transportation to critical prevention and community based programs for tribal members at risk for involvement in crime. In addition, increase options for transitional housing for juvenile and adult participants in alternatives to incarceration to ensure access to a sober and safe environment.

Short term resources that federal agencies will make available (within six months):

- DOJ's TCAP and Indian Alcohol and Substance Abuse Assistance (IASAP) and Tribal Youth Programs (TYP) will help Tribal Nations assess their needs and plan community-based alternatives to incarceration, including tribal courts, probation, after school programming and diversion programs.
- DOJ's TCAP, IASAP and Drug Courts programs will support the creation of Healing to Wellness Courts, Peacemaker Courts, and Community Courts.
- DOJ's TCAP and IASAP and Drug Courts programs will support the creation and enhancement of tribal probation agencies.
- DOI will continue to promote tribal self determination for tribal corrections via P.L. 93-638 contracts and self-governance compacts. BIA will share information about electronic monitoring bracelets with tribal courts.
- The Bureau of Indian Education (BIE) will make funding available to eligible tribes through Title IV of the Elementary and Secondary Education Act, Pub. L. 89-10, 20 U.S.C. § 70, Part A, 21st Century Schools, for summer youth programs and afterschool programs, and Part B, Safe and Drug Free Schools for anti-drug programs.
- The Work Group will add other critical federal partners to support implementation of the Tribal Justice Plan, including agencies representing civil rights, victims, youth issues, family violence and defense.

Mid-term resources that federal agencies will make available (within twelve months):

- Provide integrated tools and training to identify and educate tribes on multiple funding streams that can be leveraged to build a comprehensive approach to tribal justice. Examples of these funds and tools include TCAP, IASAP, TYP, DOJ's Tribal Juvenile Accountability Discretionary Grant Program, Indian Health Services, Circles of Care and other SAMSHA resources and P.L. 93-638 contracts and self-governance compacts.
- The Work Group will collaborate with the Bureau of Prisons (BOP), the U.S. Probation and Pretrial Service Systems, and the Executive Office for United States Attorneys

(EOUSA) to explore the feasibility of a work release program for tribal members who are returning from federal incarceration, which potentially includes funding to support these activities.

- DOJ will fund Tribal Probation Academies in FY 2011 and explore expanded assistance such as training for supervisors and training on planning and managing a tribal probation agency.
- DOJ and DOI, in coordination with other federal agencies, will expand the Juvenile Detention Alternatives Initiative (JDAI) to Indian country.
- DOJ will conduct an initial assessment of witness intimidation in tribal justice systems.

Over the Long Term, if additional resources become available, it is also recommended that:

- Grant funding and flexibility for training, technical assistance, and publications be increased to help tribes plan, build and enhance tribal probation agencies, risk assessment tools and processes, electronic monitoring, and work release programs. This training should include continuing education for staff as well as start up training.
- Grant funding and flexibility be increased for alternatives to incarceration in tribal justice systems.
- Federal training and technical assistance (TTA) specific to capacity-building around TLOA-enhanced sentencing authority and other provisions be created.
- Develop, in coordination with tribes, research knowledge and publications about effective practices in alternatives to incarceration in Indian country.
- DOJ, in coordination with other federal agencies, should develop strategies for juvenile supervision and specialized training for juvenile probation officers.
- Youth-based substance abuse treatment, community-based shelters and group homes, alternative education programs, job training, employment, and parenting classes, be increased, as they are unavailable in Tribal Nations due to a lack of funding and capacity to sustain such programs.

Chapter 3: Detention in Indian Country

As described earlier, many Tribal Leaders expressed a strong belief that incarceration should be a last resort and that tribes should build holistic, community-based alternatives to incarceration. At the same time, Tribal Leaders and tribal justice professionals acknowledge that detention is sometimes necessary. A focus of the Tribal Justice Plan, therefore, is development of a continuum of the best community-based interventions and institutional placement for individual offenders.

Many Tribal Nations do not have the resources to develop a robust and coordinated correctional infrastructure. Many jails in Indian country have not been upgraded since they were built in the 1960s and 1970s.³² A 2011 evaluation by the Office of the Inspector General (OIG) of the Department of the Interior (DOI) found that many tribal jails remain in “egregious physical condition,”³³ plagued by overcrowding and serious disrepair. Many lack sufficient staffing, training and funding to function safely and effectively.³⁴ Given these limitations, some tribes would like to build multi-justice centers where law enforcement, courts, corrections and community services, including community supervision, treatment and programming can be coordinated and leveraged effectively.

The federal partners play a vital role in improving corrections systems, including facilities, in Indian country. Their ongoing collaboration and communication with tribes will help tribes better understand and access federal programs, processes and funding. In particular, tribes have expressed a strong desire for greater coordination between DOJ and DOI with respect to awards for grants that may be used to construct tribal detention facilities (which may be provided by DOJ) and P.L. 93-638 contracts and self-governance compacts for funding operations (provided by DOI). The Departments are committed to coordinating to address this and other issues related to detention in Indian country. This chapter addresses the construction, operation, and maintenance of juvenile and adult detention facilities (including regional facilities); contracting with state and local detention facilities; and the construction of federal detention facilities in Indian country.

II. Federal Funding for Tribal Detention

The earliest federally funded jails in Indian country were built in the late 1960s with funding from DOJ’s Law Enforcement Assistance Administration (LEAA).³⁵ In the mid-1970s DOI also funded tribal jails through the BIA. Since then, tribes have increasingly used incarceration as an option to address growing public safety issues. Currently, several federal funding streams support tribal detention facilities:

³² *Neither Safe Nor Secure: An Assessment of Indian Detention Facilities* (Washington, D.C.: US Department of the Interior, Office of Inspector General, No. 2004-I-0056,2004), 31.

³³ BIA Detention Facilities Report, 2010, No. WR-EV-BIA-0005-2010. Can be accessed at <http://www.doi.gov/images/stories/reports/pdf/01%20WR-EV-BIA-0005-2010Public.pdf>

³⁴ *Neither Safe Nor Secure*, 26.

³⁵ The Law Enforcement Assistance Administration (LEAA) was created by the 1968 Safe Streets Act and is the predecessor of the U.S. Department of Justice, Office of Justice Programs (OJP), Bureau of Justice Assistance (BJA).

- Correctional Systems and Correctional Alternatives on Tribal Lands (CSCATL) for Construction. Since 1999 the DOJ's Office of Justice Programs (OJP) and Bureau of Justice Assistance (BJA)³⁶ have been administering the CSCATL³⁷ program, which authorized funding only for the "bricks and mortar" construction costs of adult and juvenile correctional facilities, including planning, renovating and constructing, but not for operations or maintenance costs.
- Expansion of CSCATL under American Recovery and Reinvestment Act of 2009 (Recovery Act) and TLOA for Construction. Under the Recovery Act and more recently under TLOA, the scope of funding has been increased to authorize the planning, renovation and construction of multi-purpose justice centers and alternatives to incarceration. To date, DOJ has provided funding for the construction of 35 new correctional or correctional alternative facilities and awarded an additional 39 grants to tribes to renovate or complete existing facilities, including a number of awards to help tribes comply with provisions for "sight and sound"³⁸ separation of juveniles from adult inmates. DOJ also provides training and technical assistance to assist tribes with planning, construction and renovation.
- Funding for Operations and Management through BIA. The BIA is the federal agency with the main responsibility for overseeing and/or operating adult and juvenile facilities in Indian country. It manages or oversees detention facilities that are (1) operated by the BIA; (2) contracted with tribes under the provisions of Pub. L. 93-638;³⁹ (3) self-governance compacted between BIA and the tribes; or (4) operated by state and local entities under contract with the BIA. A small number of Indian country jails are operated strictly by tribes without BIA fiscal support. In FY 2011 the BIA funded 83 corrections programs providing support for 69 detention facilities in 54 Tribal Nations. These funds support operation and management costs such as utilities, staff, janitorial service and refuse collection. The BIA also funds contract bed space in state and local facilities when applicable to meet program needs where beds in tribal jails are not available.
- Funding for Construction and Repair of BIA Facilities. Facilities maintenance for detention facilities was previously included in the Public Safety and Justice Construction

³⁶ Initially, the CSCATL was authorized by Section 20109 of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 104-134, codified at 42 U.S.C. § 13709(b), as legislation: amended, 42 U.S.C. Section 13709(b) and administered by the DOJ Corrections Program Office. It was a part of the Violent Offender Incarceration and Truth in Sentencing Incentive Grants program. Grants were issued for tribal projects in FY 1999. The Corrections Program Office, and its programs, was merged into the DOJ Bureau of Justice Assistance in 2003.

³⁷ This was formerly the Correctional Facilities on Tribal Lands program.

³⁸ In the very limited circumstances in which juveniles under the jurisdiction of the juvenile court can be detained in adult facilities, the separation core requirement of the Juvenile Justice and Delinquency Prevention Act of 1974 requires that states provide that juveniles being detained must be separated by "sight and sound" from adult inmates. Compliance by tribal facilities is strongly encouraged.

³⁹ Indian tribes and tribal organizations may enter into agreements with the federal government to manage DOI and/or IHS programs that impact their members, resources and governments pursuant to agreements with the federal government in accordance with the Indian Self-Determination and Education Assistance Act of 1975 (P.L. 93-638) and the 1994 amendments to that law. These agreements are commonly referred to as either "638 contracts" or "self-governance compacts" and have very similar goals and objectives.

budget within Construction, as part of the Indian Affairs budget at DOI. Starting in FY 2012, facilities maintenance funding for detention facilities will be included in the Public Safety and Justice budget within the Operation of Indian Programs account.

- *Operations Funding for New CSCATL Facilities through BIA and Indian Affairs.* BIA issues certificates of occupancy for new CSCATL funded facilities but distributes funds based on availability. Indian Affairs funds operations at varying levels, but generally does not fund any program in full. Tribes that can afford to supplement BIA funding generally have superior facilities, which provide programming, education, treatment and other services for adult and juvenile offenders.
- *Programmatic Funding for Tribal Facilities.* Resources for programming are leveraged through partnerships with social service and behavioral health agencies such as the Indian Health Service (IHS), Bureau of Indian Education (BIE) and state and county agencies and non-profits.

Because of the bifurcated funding streams, DOJ provides a list of CSCATL applicants to BIA to get recommendations on how to prioritize the funding requests and coordinates project management through quarterly conference calls.

III. Assessing and Planning for Correctional Needs

DOJ helps tribes assess their correctional needs as a first step to exploring the construction of facilities, either through a planning grant or training and technical assistance. This process, initially called the PONI⁴⁰ (Planning of New Institutions) and now the PACIFIC (Planning Alternatives and Correctional Institutions For Indian Country) training, helps tribes conduct a communitywide assessment for the purpose of developing a comprehensive master plan for the design, use, capacity, and cost of adult and juvenile justice sanctions and services. Through this process, the tribe can then explore an array of options, including prototypical designs for local correctional facilities, multiservice centers, and regional facilities, as well as community-based alternatives to ease jail overcrowding.

IV. Facility Planning Challenges

Some tribes are renovating their facilities, others are expanding, and others are planning new facilities. Each stage entails many decisions related to identifying the purpose of the facility and community expectations, funding, staffing, training, facility usage and functions, maintenance, and operations and management. The following sections discuss the challenges present at each stage of the process.

Complexity of Detention Center Planning Projects

Facility planning projects in non-tribal communities can take between four and six years to complete; in Indian country, projects can take even longer due to the challenges of jurisdiction,

⁴⁰ The PONI training was developed by CPO and the National Institute of Corrections as the training and technical assistance partner.

geography and governance. If a project is to be successful, Tribal Leaders must support it, and the tribe must have accurate data about crime, arrests, bookings, and average daily jail population in order to plan for capacity needs. These data are often scattered among different agencies and may not be automated, nor have the proper protections in place for juvenile offender information. With the exception of data collected directly by tribal justice agencies, it is often impossible to determine the number of AI/AN within an aggregated number or crime statistic.

Significant Data Needs and Limited Automation

Three types of data are typically collected during the needs assessment and pre-design phases:

- *Historical Trend Analysis:* An analysis of types of crime, crimes reported, arrests, detention bookings, average daily population, case filings and dispositions.
- *Inmate Profile Analysis:* An analysis of inmate demographics, criminal offenses, rate of release, residence, and classification information to inform facility usage, target groups, needed programs and sentencing.
- *Population Projections:* A baseline forecast to show the implications of current use patterns on future capacity requirements, and scenarios which estimate the impact of potential alternatives that are created.

Although some of this information may be available to a tribe, obtaining it may be complicated by jurisdictional issues and a lack of automation. Manual systems can be vulnerable to missing and inaccurate data. Detention operational data such as average daily population, seasonal trends, behavior in the facility, classification interviews/scoring about security levels of the population and inmate needs, health contacts, visiting levels and cost and revenue elements are even less likely to exist. Tribes need help to build and enhance data collection and extraction capacity.

Collaboration with Many Agencies

In Indian country, many agencies may need to be involved in planning tribal correctional facilities and multi-purpose justice centers, including the state police, local law enforcement, federal law enforcement agencies,⁴¹ tribal prosecutor, tribal court, the county sheriff, county prosecutor, county and state court, the U.S. Attorney, the federal District Court, and the state department of corrections and community corrections. All of these agencies may have a role to play in tribal justice functions and having the support of these agencies can reduce barriers, increase resources and support and ensure that all aspects of jurisdiction and key incarceration functions are addressed in planning a facility. Federal agencies like BJA, BIA, BIE, IHS, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the Substance Abuse and Mental Health Services Administration (SAMHSA) should support the planning process when substance abuse, courts, corrections and juvenile justice issues arise. DOJ offers training and technical assistance to support intergovernmental collaboration in strategic planning, law enforcement, detention, and courts.

⁴¹ Such as the FBI, Bureau of Prisons (BOP), Border Patrol (CBP), and the DEA.

Developing a Coordinated Approach to Facility Usage

The relationship of substance abuse to crime in Indian country is well documented. Planning for facility space to support holistic approaches to address co-occurring substance abuse, mental health and health issues in jails will require the collaboration of behavioral health and justice systems in order to reduce recidivism and improve public safety.

New programs and services will be needed if jails are to implement the longer sentences authorized under TLOA's enhanced sentencing authority, yet some facilities in Indian country do not have classification systems to determine the security levels for prisoners. Indian country facilities often lack services or programming for longer-term adults and juveniles and are unequipped to treat the conditions which led to incarceration, increasing the likelihood that released offenders will reoffend.

Projecting and Managing Costs

For every dollar that is spent building the structure, between nine and 15 dollars are spent to operate it.⁴² Operations costs include staffing, supplies and maintenance, but 80 percent of operational costs are staffing.⁴³ Because staffing is dependent upon facility design, jurisdictions must identify staffing requirements during the planning stages rather than wait until the building is open.

Tribes also need to balance their options for size and quality of new facilities with available funding. Planning, design and construction grant funding levels do not always fully fund project costs. Some tribes with strong economies or enterprise revenues may be able fund a portion of the construction costs, but most must coordinate multiple funding streams to support a building project, a challenging prospect due to multiple reporting requirements and timelines. Funds must also be allocated for transition planning, before the facility opens. In addition to "academy" or pre-service training and orientation needed for new employees, transition planning requires training on the facility and its operations, policies and procedures; post training; simulation training; and inmate orientation. To accomplish these goals, some facilities have hired a transition coordinator to develop policies and procedures and hire and train staff while the facility is under construction.

A process should also be developed to fund activation and start-up costs for detention centers that will be operated by the BIA or tribes. This activation and start-up funding must cover the period prior to and during activation and must include a reasonable time-period for the BIA to develop and receive appropriations for the facility.

⁴² *2009 Means Index of Construction* (National Institute of Corrections, Planning of New Institutions Program).

⁴³ **Personnel services worksheet:** Staffing costs generally account for 70 to 80 percent of the jail budget. Because this is such a large portion of the budget request, estimating personnel expenses is a key step in budget development. A staffing plan is essential for establishing a budget plan that will provide for the personnel resources needed to run the jail. The staffing plan details the number and type of personnel needed to provide adequate 24 hour coverage and to conduct all essential jail functions. This information is used to complete a personal services worksheet. NIC, *Budget Guide for Jail Administrators*, Developing the Budget, 17.

Regionalization and Contracting with State and Local Partners

Regional detention facilities are those operated under a joint agreement between two or more tribal (or state or local) governments, with representatives of the participating jurisdictions having varying authority over policy, budget, operations, and personnel.⁴⁴ Regional facilities may offer a viable way to reduce costs and may make it easier to implement a wider range of consistent programming and to coordinate with services offered regionally by IHS. On the other hand, regional facilities may be located far from a prisoner's tribe or home, making it difficult for families to visit or to participate in rehabilitation services or to coordinate with tribal justice representatives on programming, rehabilitation support and reentry planning.

Another option is for tribes to contract for beds in state or local facilities, but this arrangement poses the same challenges for programming as regionalization when the prisoner is far from home, even if these types of facilities have more resources to provide programs and services than are available in Indian country facilities. The use of contracted facilities can also create logistical issues for court hearings, medical needs, and other programs and services, requiring extensive coordination for transportation.

Placing Federal Facilities in Indian Country

Federal resources for detention in Indian country should be focused in BIA and BJA to address the needs of Tribal Nations. As discussed in Chapter Four, it is also recommended that there be further exploration of another option: the use of tribal corrections agencies as contractors for halfway houses for transitioning federal inmates. Although the Federal Bureau of Prisons (BOP) is one of the leading agencies building correctional and detention facilities, the placement of BOP facilities in Indian country is not recommended. The size and scope of BOP operations, which are necessary to achieve cost efficiencies, exceeds that needed by any single tribe. In addition, the remote locations of some tribes would create three significant impediments for federal prisons: (1) challenges to construction that significantly drive up costs; (2) challenges to the recruitment and retention of professional staff such as physicians, nurses and psychologists; and (3) limited infrastructure -- water, sewage, utilities and roadways -- to support prison construction and operation. For these reasons, locating BOP facilities in Indian country is not recommended as a solution. However the BOP remains an excellent resource for tribal corrections efforts.

V. Facility Operations and Management Challenges

Funding Staff for Tribal Facility Operations

Detention operations include inmate assessment and classification, security, housing and supervision, maintenance and housekeeping, food and laundry services, as well as basic program services. This requires a mix of job classifications. The 2009 Jails in Indian country (JIC) survey concluded that about 69 percent of all tribal jail personnel were correctional officers and other staff who spent more than half their time supervising inmates. The remaining jail personnel included administrative employees, educational, technical or professional, clerical,

⁴⁴ T.R. Clear, G.F. Cole & M.D. Reisig, M. D., *American Corrections* (Belmont, CA: Thomas Wadsworth, 2006).

maintenance, or food service staff.⁴⁵ Because BIA is authorized to fund only detention officers, line supervisors and cooks, tribes may use detention officers to perform functions that could be done at lower costs with civilian staff.⁴⁶

BIA operational funding also does not cover health care expenses, including treatment for substance abuse and mental health issues, or for treatment of sex offenders. Some facilities use staff to escort inmates out of the facility or need courts to release inmates to obtain services. Both of these options present additional strain on budgets and increase security risks for community, staff and inmates. These treatment services should be provided by other partners such as IHS.

Need for Enhanced Operations Staff and Coordination on Programming

Administrators at tribal facilities need training and technical assistance to develop skilled detention managers, as well as dedicated positions and resources for facility maintenance and upkeep. As noted above, funding to staff operations should be secured before the facility is built. If BIA were to establish baseline standards for funding operations of facilities in Indian country, BIA would have the data it requires to budget and request adequate funding to address these needs, and DOJ would have more accurate data to consider when determining grant funding amounts for renovation and construction. The BIA should also determine a standard economic price adjustment amount so that tribes receive appropriate increases or decreases to keep pace with the economy. These operations costs do not include resources to address programming needs including behavioral health, public health, education, employment and life skills. For these services, tribal corrections agencies should develop collaborative relationships with service providers including IHS, BIE, tribal and state partners and volunteers to support institution based programming.

Juvenile Treatment Centers and Detention

Juvenile treatment centers (often also called residential treatment centers, or RTCs) are residential programs that house youth with significant psychiatric or substance abuse problems and who are either too ill or too difficult to supervise to be housed in foster care, day treatment programs, or other non-secure environments, but for whom a psychiatric hospital or secure correctional facility would not be appropriate. Juvenile treatment centers generally offer a combination of substance abuse and mental health treatment programs, such as psychotherapy, educational counseling, behavioral management, group counseling, family therapy, and medication management, along with 24-hour supervision in a highly structured (and often secure) environment.

In 2004 federal funding supported the placement of 200,000 youth in government or private residential facilities, which include youth not involved in the juvenile justice system.⁴⁷ OJJDP's

⁴⁵ Todd Minton, *Jails in Indian Country, 2009*, (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2011), 9.

⁴⁶ For example, a correctional officer is paid about \$75,000 annually while support positions would be paid about \$50,000 annually.

Survey of Youth in Residential Placement found that youth in residential treatment in 2003 made up 14 percent of the total population of youth in placement.⁴⁸ Several studies indicate that youth in RTCs display increased and severe behavioral and emotional problems, academic problems, and substance use problems, but there is very little research on the best target population for this type of facility and treatment.

While there is enormous diversity in the type and quality of services being offered, the literature regarding RTCs shows mixed results. Despite the mixed results, at least some privately run RTCs (especially those with intensive aftercare programs) appear to produce a positive impact on at-risk youth and juvenile offenders. This treatment option must be used where it will be most effective. Mental health and substance abuse professionals have also repeatedly called for clearer admission criteria for RTCs, to avoid incarcerating youths in inappropriate settings or with inappropriate and potentially dangerous peer groups.

Appropriate placement is especially crucial for tribal youth. AI/AN youth commit suicide at rates three times higher than white youth.⁴⁹ Despite these risks, juvenile detention facilities often lack staff qualified to individually assess their young detainees for the risk of suicide, substance abuse and mental illness. Youth in detention are often isolated from their families, and the facilities do not always have the resources to effectively engage parents and families in the youth's rehabilitation. For these reasons, development of juvenile treatment centers and programming with Tribal Nations can help address some of these challenges. The lack of trained youth advocates means that detained youth often have no one to speak for them. A training program for peer and adult advocates would give these youth a voice. In addition, community and tribal coalitions can advise facility personnel on how to infuse programming with cultural practices and customs.

Additionally, the policies and standards of the systems, agencies and programs that are in place to respond to the needs of AI/AN youth are often inconsistent and multi-jurisdictional. For example, if a juvenile detention facility is operated by the BIA, the BIA standards and policies can override any tribal standards in place. So if a detained youth and his family request a traditional ceremony, the tribal court approves the request and the tribe's juvenile code allows it, the request may require several levels of review before it is approved.

Programming in juvenile detention facilities should address the educational, cultural, emotional, physical and spiritual needs of juveniles, but the draft final report *Tribal Youth in the Federal Justice System*⁵⁰ concludes that programming and resources for tribal youth in both the federal and the tribal systems are clearly lacking. For example, providing a stable academic environment with a curriculum that meets state standards may equip juvenile inmates to

⁴⁷ James K. Whittaker, "The Reinvention of Residential Treatment: An Agenda for Research and Practice," *Child and Adolescent Psychiatric Clinics of North America* (2004), 13:267-78. These figures reflect placements of all children, not just American Indian children.

⁴⁸ Andrea J. Sedlak, and Karla S. McPherson, *Conditions of Confinement: Findings From the Survey of Youth in Residential Placement* (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, 2010).

⁴⁹ Trauma Exposure in American Indian/ Alaska Native Children (Big Foot: Willmon-Haque & Braden, 2008) 3.

⁵⁰ Tribal Youth in the Federal Justice System. Draft Final Report. Urban Institute Justice Policy Center, February, 2011. As document is forthcoming, no page number is available.

successfully transition back into their schools, but current funding levels in BIE for educational services in juvenile detention centers are critically inadequate.

VI. Facility Construction Challenges

Building Expertise

Modern detention facilities use complex building structures and a variety of sophisticated security and surveillance systems to provide a secure perimeter for the facility. The complexity and interdependence of the various control systems makes these buildings challenging to design, construct and maintain. For small projects, particularly in rural areas, finding qualified professional engineers and contractors may be difficult, especially if the tribe wants to use local contractors to put some of these project dollars into the local economy.

Building Costs and Locations

Detention facilities are more expensive to construct than many public buildings. According to the *2009 Means Index of Construction Costs*, a typical 40,000 square foot jail cost \$261.65 per square foot. A typical one-story, 7,000 square foot office building cost \$169.30 per square foot. The smaller the facility, the higher the cost per square foot.⁵¹ Because Indian country spans a broad spectrum of climates and geographies, there can be no basic blueprint for an Indian country jail: an exterior courtyard may work well in a desert, for example, but becomes an unmanageable snowfield in the north. Tribes also value environmentally friendly facilities that are compatible with tribal traditions regarding use of land, water, energy and other natural resources.

Obviously a site should be acquired before design can advance beyond conceptual stages, but land ownership in Tribal Nations is complex. The tribe may own the land directly, or the land may be held in trust, or it may be allotted to individual tribal citizens. It may also be difficult to find sites with good access to utilities and water, especially in rural communities.⁵² Furthermore, many detention facilities are located in areas so remote that it is difficult to get skilled personnel to provide necessary maintenance on the security systems.

Incorporating Cultural Aspects

Unlike the facilities constructed with LEAA funds nearly 50 years ago, many of the newer facilities include some effort to reflect tribal cultures, even though there is no single “culture” to integrate. Cultural elements in facility design may include geometric shapes, building orientation, symbols, colors, representations of land forms, water, plants or animals.

⁵¹ *2009 Means Index of Construction Costs* (National Institute of Corrections, Planning of New Institutions Program).

⁵² Some Indian communities are located in geographic areas that have expansive soils and similar site characteristics that make construction of large facilities difficult. Significant parts of reservations have expansive soils, particularly in North Dakota, South Dakota, New Mexico and Arizona. It is often difficult to calculate soil quality, and this can have a significant, negative impact on project budgets.

Cross Cutting Issues: Resources, Staffing and Training

Most tribes have limited federal and tribal resources to build facilities and to create, enhance and manage their tribal safety strategies. This challenge can be exacerbated by the lack of coordination between federal and state agencies about tribal resources such as funding, training and technical assistance. During the focus groups and consultations, tribal leadership spoke of the need for significant enhancement in training assistance and resources as well as strategies to recruit and retain qualified staff. Training should include basic and ongoing skills training for staff as well as leadership and management training for tribal justice officials overseeing agency level work. In addition, training should include mentoring by other tribal justice officials with experience in planning, building and operating tribal corrections agencies and facilities. Strategies include increased training and collaboration with state and federal training resources, a streamlined hiring process, and enhanced infrastructure for staff in tribal communities, such as housing.

VII. Detention Programs Being Used in Indian Country

Multipurpose Justice Center

The Shoshone-Bannock Tribes' multi-purpose center in Idaho houses an adult jail (80 beds), and a juvenile detention center (20 beds), which include: a medical examination room; a classroom; dayrooms; office space; a multi-purpose room; visitation area; and a dedicated outdoor recreation area. In addition to these detention functions, the center also houses a courtroom, court offices, the police station, dispatch and other law enforcement functions.

Regional Facilities and Contracting

The Ute Mountain Ute Tribe operates a direct service program which houses adult and juvenile offenders from a number of reservations.

The Hualapai Juvenile Detention and Rehabilitation Center in Arizona, a juvenile facility, accepts referrals from BIA for juveniles from other tribes.

In Nebraska, the Omaha, Winnebago, and Ponca Tribes and Santee Sioux Nation are working cooperatively to develop a regional Adult Multi-Justice Center and a Juvenile Multi-Justice Center.

In Nevada, the Reno-Sparks Indian Colony, Fallon Paiute Shoshone Tribe and other Nevada tribes have been discussing the formation of a Regional Tribal Justice Facility through the Inter-Tribal Council of Nevada.

The Sault Tribe of Chippewa (Sault Ste. Marie), Michigan juvenile facility is licensed by the State of Michigan, providing contract beds to neighboring communities.

Use of Cultural Elements in Building

The Salt River Pima-Maricopa Indian Community Adult and Juvenile Detention Center in Arizona constructed a 130 person correctional facility with a curved front wall, designed to reflect cultural and community values, and focuses on rehabilitation and successful reintegration of its members back into the community as part of the healing process.

The Northern Cheyenne Tribe in Montana integrated an array of services under one roof: cultural aspects are expressed in traditional two and three-dimensional forms and decorative elements using indigenous materials and colors.

The Sac and Fox Nation in Oklahoma constructed a regional juvenile detention facility and multi-justice center with tribal cultural healing practices in mind. The facility design incorporated movement from east to west, talking circles, and outdoor protected locations for traditional healing, and indoor sanctuaries for multi-dimensional practices.

VIII. Recommendations

Planning Recommendations

- *Assess Needs and Collect Data to Inform Planning.* Tribes may wish to engage in structured justice system planning efforts to determine justice system needs. A system-wide assessment will enable tribes to determine the source of justice systems needs, such as inmate populations, offenses, and other factors. Create long term strategies that enhance the capacity to define system requirements, share data and employ analytical tools to link federal, tribal and state information systems that support management and budget forecasting in tribal justice systems. Support research to identify effective methods in Tribal Nations.
- *Support Implementation of Jail Standards.* Use the range of existing jail standards to comply with applicable case law and construction techniques that will result in safe and secure confinement and operations. Standards can ensure effective implementation of inmate classification, security and safety of staff and prisoners, health services, sanitation, preventative maintenance, discipline, grievance procedures, exercise, education, offender services and activities, as well as qualifications and training requirements for staff.
- *Intergovernmental and Multidisciplinary Coordination.* Broad-based partnerships involving key federal, tribal, state and local partners can build stronger, more sustainable programs. These collaborations can address challenges related to jurisdiction over tribal members and increasing the use of tribally based correctional interventions in the areas of alternatives, incarceration and reentry planning. These efforts should also include multi-disciplinary teams that reflect the range of issues facing the criminogenic needs of detainees and those incarcerated. The teams should include corrections and pretrial, law enforcement, courts (judiciary, prosecution, defense and administrators), public and

behavioral health (including sexual assault nurse examiners), education, victim service providers and community and family supports.

- *Juvenile Detention and Treatment.* Assess needs for juvenile detention and conduct inventory of existing funding and technical assistance resources dedicated to tribal youth across federal agencies. Develop a training program for peer and adult advocates in juvenile detention facilities in Indian country. Establish community and tribal specific coalitions to advise and support the tribal juvenile detention facilities.
- *Regionalization and Contracting.* Support tribes seeking to explore the use of tribally driven regional approaches and partnerships with state and local partners for contracting of bed space to enhance efficiency and sustainability. Determine bed space needs, including populations, security level and length of stay, and develop short- and long-term capacity plans to optimize currently available beds.

Operations and Programming Recommendations

- *Operations.* Establish baseline standards for funding facility operations in Indian country. Develop strategies to adjust funding based upon the economy, including funding for 638 contracts, self-governance compacts and direct service funding.
- *Develop Data-driven, Comprehensive Programming.* Tribal corrections agencies should use planning data and validated, tribally normed risk assessment tools to assess key trends in their jail population. From this data, tribal justice agencies should define and create a comprehensive plan to provide critical programming, including treatment, in behavioral and public health, education, employment, life skills and family supports, to address criminogenic needs and reduce the risk of recidivism. In program implementation, data should be collected and used to enhance program management for corrections and reentry.
- *Collaborate with BOP and BIA Facilities for High-Risk Offenders.* Some prisoners from Tribal Nations require significant security or specialized programming that can be offered at larger BOP and BIA facilities. Tribal Nations may wish to collaborate with BOP and BIA to enhance the availability and use of these resources and better plan and coordinate reentry activities.
- *Special Populations:* Develop procedures and policies to address special populations such as females; juveniles; and geriatric prisoners.

Construction and Maintenance Recommendations

- *Facility Construction and Maintenance.* Despite the progress made with DOJ funding, some tribal detention facilities are in disrepair. All tribal detention facilities should meet the recently released BIA jail standards for building specifications and should plan for maintenance and infrastructure needs. Tribal corrections would benefit from project

management support during planning, design, construction and renovation to ensure access to technical expertise.

- Transition Support Strategies. To ensure the smooth opening of a newly constructed or renovated facility, significant planning is needed. Requests for operational funding should be made before construction is authorized to ensure staff are available when the facility is ready for occupancy. Resources, training and technical assistance are also needed prior to opening the facility.
- Develop Multilevel Funding Approaches. Coordinate and assist tribes with leveraging funding from multiple governmental and non-governmental sources to support tribal detention construction, maintenance and renovation. Enhance training, technical assistance and collaboration efforts at the intergovernmental and tribal levels.
- Peer-to-Peer Support. Continue to support networking and peer-to-peer support opportunities for tribes to exchange information on successes, challenges and pitfalls to avoid in detention facility construction projects and assistance for tribal justice officials in their leadership roles.

Short term resources that federal agencies will make available (within six months):

- DOJ's CSCATL program will offer training and technical assistance to interested tribes to support assessment of corrections needs; development of master plans to address tribal justice system needs; project management; strategies for corrections, alternatives to detention and multi-purpose justice facilities; and support for consortia of tribes to build regional facilities. DOJ's National Field-Generated program will offer training, technical assistance and grant funding to support strategies for the prevention, victim response and prosecution of sexual assaults against prisoners in tribal correctional facilities.
- DOJ's Tribal Juvenile Detention and Reentry Green Demonstration Program will offer training and technical assistance to support this work with Juvenile Detention. Funding from DOJ, BIA, USDA, HUD and IHS will support grants, training, technical assistance and project management to tribes building facilities. BIA can support funding, training, and technical assistance to tribes maintaining facilities.
- DOI will continue to promote tribal self-determination and self-governance for tribal corrections via 638 contracts and self-governance compacts.
- DOJ's Work Group on Intergovernmental Collaboration will continue to assess and implement strategies to support intergovernmental collaboration with federal, tribal, and state agencies. DOJ has several programs to support intergovernmental collaboration in tribal justice.
- DOI, DOJ and the Work Group will sponsor several regional meetings in 2011 to collaborate with Tribal Nations in implementing the recommendations in the Tribal Justice Plan.

- The Work Group will explore strategies to support hiring, basic competency training and obtaining security clearances, identifying ways to streamline these processes.

Mid-term resources that federal agencies will make available (within twelve months):

- The Work Group will develop and enhance collaborative strategies to increase the accessibility of federal funding and resources for Tribal Nations in the areas of alternatives, detention, and reentry.
- The Work Group will explore options and potential resources to promote comprehensive programming for detention facilities. Strong multi-disciplinary collaboration is necessary to leverage resources for good detention programming. Federal agencies can play a leadership role in supporting the collaboration at the tribal level, given the range of roles on the federal, tribal, state and local levels.
- The Work Group should identify existing funding, training and technical assistance that supports detention and reentry, and make it available in a central location online.
- DOI and DOJ will enhance their current coordination and planning efforts related to funding new construction, to maximize success of these projects.
- DOI will explore the mechanisms for funding the operations and maintenance of regional facilities which are operated by a non-profit organization on behalf of several tribes, including whether DOI can contract with the non-profit organization (as opposed to with a tribe or tribal organization).
- The Work Group, with BOP and FPS as critical partners, will explore options and potential resources to assist in enhancing identification and provision of services to high risk offenders or those needing specialized services, including sex offenders.
- Provide additional exposure and information regarding the creation of the BOP pilot program under TLOA to house offenders sentenced in tribal courts under the enhanced sentencing authority.

Over the Long Term, if additional resources become available, it is also recommended that:

- Develop, with DOI and DOJ as critical partners, tools to support objective assessment of overall needs and projected costs for planning, building and maintaining tribal corrections, alternatives to detention, and multi-purpose justice facilities and to connect current resources from the various agencies. This should include strategies to enhance information sharing between federal, tribal and state partners. These efforts should be coordinated with existing efforts and tools.
- Explore, with DOI and DOJ as critical partners, expanded strategies and resources to support the operations, programming, transition and maintenance of detention facilities,

such as funding flexibilities, model agreements, market analysis, and studies of feasibility.

- The Work Group review existing screening and assessment tools and develop culturally relevant tools that work for AI/AN populations in developing detention programming. Develop a strategy on long term sustainment of tribal justice systems, programs and regional approaches, including identification of demonstration and long term funding streams and gaps.
- DOI and DOJ should explore strategies to enhance compliance with jail standards.
- DOJ, BIA, and IHS should take the lead in developing a plan to create a peer advocate training program to allow these agencies to serve the most important aspects and greatest needs of juvenile detention facilities in Indian country.

Chapter 4: Reentry in Tribal Nations

INTRODUCTION

Reentry is a process of using “programs targeted at promoting the effective reintegration of offenders back to communities upon release from prison and jail,” which “is intended to assist offenders in acquiring the life skills needed to succeed in the community and become law abiding citizens.”⁵³ Tribes have always had mechanisms to maintain peace, law, and order; to resolve disputes and conflicts between community members; and to correct those who violate community laws and mores.⁵⁴ Tribes continue to build upon cultural strengths and indigenous approaches to create responsive systems to address crime, violence, and victimization problems. While acknowledging that reentry should begin in jails or prisons, successful strategies also depend on community-based supports that include family, community, and tribal government support systems. As noted by a tribal member during the TLOA focus group meetings, “We do not throw away our tribal members⁵⁵.”

I. Reentry Data

AI/AN adults and juvenile offenders serve short- and long-term sentences or commitments in jails and prisons that are located on and off Indian country and operated by federal, tribal, state, and local authorities. Where an AI/AN person is detained often depends on where the crime occurred, jurisdictional authority, the seriousness of the crime committed, whether the victim and perpetrators are tribal members, and the availability of confinement facilities. In 2009, of the 29,400 confined Indian offenders, most were held in off-reservation jails (9,400, 32 percent) or state prisons or facilities (14,646, 50 percent). Federal prisons held 3,154 Indian prisoners, representing 11 percent of the total Indian people confined in midyear 2009.⁵⁶

Since the majority of AI/AN offenders serve sentences and juvenile commitments in correctional facilities not in Indian country, it is even more critical for tribes to have reentry programs that can prepare these ex-offenders for their return to the community. Within correctional facilities where long-term stays are most likely to occur, the programming opportunities are usually greater than those found in county jails, tribal jails and BIA jails located in Indian country; however, it is even more unlikely that culturally developed programming for AI/AN is provided. As noted in a recent report by the Urban Institute, “a critical challenge in handling youth in the

⁵³ www.reentry.gov

⁵⁴ A.P. Melton, “Indigenous Justice Systems and Tribal Society,” *Judicature* (1995),79(3) 126–133; L. Bond-Maupin, C. Chicago Lujan, and M. Bortner, “Jailing of American Indian Adolescents,” *Crime, Law and Social Change*(1995) 23:1–16; C. Zuni, “Strengthening What Remains,” *Kansas Journal of Law and Public Policy* (1997), 7(18); J.Zion, , “The Dynamics of Navajo Peacemaking,” *Journal of Contemporary Criminal Justice* (1998)14(1):58–74; B.J. Jones, *Role of Indian Tribal Courts in the Justice System*, Native American Topic-Specific Monograph Series, March 2000.

⁵⁵ TLOA Focus Group, Billings, MT, May 16-17, 2011.

⁵⁶ Todd Minton, *Jails in Indian Country, 2009*, (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2011), 2.

federal system is the lack of residential facilities close to the communities of the offenders,” and “such distances likely hamper sustained contact with vital social supports necessary for successful transition back to the community once confinement ends.”⁵⁷

II. Challenges in Short-Term (Jail) Reentry

System Challenges

While some jails and detention centers are located in Indian country, most commitments are served in off-reservation jails. Of the 565 federally recognized Indian tribes, only 80 have jails or detention facilities in their communities, however, the implications of P.L. 280, as discussed in Chapter One and elsewhere in this document, must be considered in determining the potential universe of Indian country jails.⁵⁸ In midyear 2009 these tribal facilities held 2,176 Indian people representing seven percent of 29,400 Indian people confined in a correctional facility, both pre-trial and post conviction. Approximately 72 percent were adult males (n=1,571), 16 percent were adult females (n=348), eight percent were juvenile males (n=183), and three percent juvenile females (n=74)⁵⁹.

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

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

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

⁵⁷ William Adams and Julie Samuels, *Tribal Youth in the Federal Justice System*, (Washington DC: Urban Institute Report, 2011), 25.

⁵⁸ The number of jails noted here is intended to provide context for the data provided by these tribal jails in the BJS survey. In addition to these 80 tribes, other tribes contract with state or local facilities to house those tribal members detained or incarcerated through their tribal justice centers.

⁵⁹ Minton, *Jails in Indian Country*, 8.

Data, Infrastructure, and Program Challenges

Jail is often the first opportunity for offenders to be assessed to identify their criminogenic needs.⁶⁰ Unfortunately, jails in general have limited capacity to provide individualized assessments and programming. As a result, problems persist and some individuals may reoffend due to inadequate reentry support to address ongoing criminogenic needs such as substance abuse, mental illness and unemployment. Evidence-based services including assessing need and offering prerelease and community-based interventions can prevent reoffending. These evidence-based practices should be flexible enough to incorporate each tribe's cultural values and history, and more research should be conducted on the effectiveness of traditional approaches to reentry. These should be developed for adult, juvenile and specific gender populations. The alternatives to incarceration discussed in Chapter Two will be critical elements of the reentry response for those jail populations.

An important role for tribal justice systems is to support and develop community-based resources and programming for ex-offenders and their families. To ensure that reentry programming and planning is culturally responsive, Tribal Leaders may need to negotiate intergovernmental agreements with state, municipal or county jails.⁶¹ To assist in this effort, tribes may benefit from training and technical assistance to support information sharing, analysis, and collaboration.

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

Tribal Nations would benefit from an overall framework that aligns tribal youth policies across federal agencies in accordance with relevant provisions of TLOA. The Juvenile Justice and Delinquency Prevention Act as amended (JJDP), Pub. L. 103-227, Title II, Part B, stipulates that states in their three-year plans must include the juvenile justice needs of tribes. Federal partners can assist in the coordination of federal funding resources to tribal JDCs for education, behavioral health, and vocational training services to enhance academic success and pro-social behavior for detained and reentering AI/AN youth. These efforts should be coordinated between DOJ, BIA, Indian Health Service (IHS), the Bureau of Indian Education (BIE), and community

⁶⁰ Criminogenic factors are 1) anti-social personality, 2) anti-social attitudes and values, 3) anti-social associates, 4) family dysfunction, 5) poor self-control, 6) poor problem-solving skills, 7) substance abuse, and 8) lack of employment and/or employment skills.

⁶¹ There are some strong examples of collaboration to support these goals. See *Walking on Common Ground* at <http://walkingoncommonground.org/>; and the New York Federal, State Tribal Courts Forum at <http://www.nyfedstatetribalcourtsforum.org/history.shtml>

providers who offer essential educational and behavioral health services for youth, including detention.

Challenges in Engaging Community and Family

Offenders are often out of touch with the effects of their actions and incarceration on their families. Additionally, there are limited resources that focus on establishing culture-based conflict resolution or peacekeeping systems that can help offenders apologize to victims and families, make amends or reparation, and regain trust. Facility staff may be reluctant or not know how to work with tribal officials who can support victim-offender mediation where it is appropriate or agreeable with victims. Research has shown that children may benefit from maintaining healthy relationships with their incarcerated parents. Strong parent-child relationships may aid in children's adjustment to their parents' incarceration and help to mitigate many of the negative outcomes for children that are associated with parental incarceration. Maintaining contact also helps the incarcerated parent by improving the reentry process and reducing recidivism, which would likely benefit the child.

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

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

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

III. Challenges in Long-Term (Prison) Reentry

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

The challenges tribes encounter with reentry from prisons differ from those involving jail reentry. A major difference is that tribes have minimal influence in how adult prisons and juvenile correctional systems are managed and operated by federal and state agencies. Consequently, tribes must have effective intergovernmental relationships to influence how AI/AN offenders are treated during their incarceration and the preparation they receive to return home. Some significant missing elements in reentry from prisons are regular coordination and information sharing with tribal justice staff, such as probation and parole officers to assist with reentry planning. Intergovernmental agreements may be necessary for federal and state agencies to proactively involve tribal justice agencies or other allied tribal agencies in reentry planning.

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

System Challenges

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

Similar challenges face AI/AN persons convicted of offenses committed outside of Indian country, or if the state has jurisdiction to prosecute a crime committed in Indian country, especially with P.L. 280 states. In these cases, the state correctional staff may not be aware of offenders' AI/AN heritage or have the resources and staff time to develop strategies, given the

long distance of federal and state prisons from many tribes and the logistical challenges to engaging family and community in transition planning.

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

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

Data, Infrastructure, and Program Challenges

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

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

Challenges in Engaging Community and Family

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

Offenders may not know how, or may be reluctant, to contact their tribes or families after long-term confinement. The ex-offender may be confronted with negative family or peer influences and limited formal supports from the community. This can cause an adult offender to be released in urban areas where culturally relevant services and family support are difficult to obtain. Strategies to keep ex-offenders engaged in programs and services once they return home are essential to ensure ongoing attention to risks that could cause reoffending or relapse. The need for these strategies by AI/AN population enclaves outside of Indian country, such as nearby urban centers, should be considered. Coordination of these strategies may be most effective through collaboration with providers that specifically serve these unique and sometimes very large groups that maintain strong ties to their traditional homelands.

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

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

A critical new resource for Tribal Nations in the area of reentry is the Second Chance Act (SCA). Under the SCA, funding and training and technical assistance are available to address a range of reentry needs including pre-release assessments and programming, community supervision and support, treatment for families of offenders including mothers and children, treatment for co-occurring disorders, mentoring of returning tribal members and employment in technology careers.

IV. Reentry Strategies Being Used In Indian Country

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

- **Day School:** The Rosebud Sioux Tribe (Rosebud Sioux) and Todd County, S.D. created a day school in the JDC for detained and ex-offenders. Transportation is provided to ex-offenders to continue their education, and mental health services via video conference consultations allow for extended family participation.
- **Traditional Practices:** The Rosebud Sioux, Hualapai, and Mississippi Band of Choctaw Tribes provide traditional practices and healing ceremonies such as Sweat Lodge, Pipe Ceremony, and one-on-one sessions with an elder and a detained juvenile to address behavioral health issues. The San Carlos Apache Tribe in Arizona utilizes a traditional

form of counseling for youth; bead therapy using a talking circle format; use of elders to provide gender specific sweat lodges; and youth and family engagement.

- **Youth Green Reentry Program:** Hualapai JDC is in phase one of developing a “green building” class for detained youth, where they will develop skills and abilities to read and create “green blueprints” for sustainable green buildings in the community.
- **Family Group Decision Making Conferencing:** This restorative practices process, based in research, includes case management (pre- and post-release), strengthening families, achieving youth and family safety, and placing family at the center of the decision making process. The roots of FGDMC are from the Maori People in New Zealand.
- **Adult Community Support:** The Muscogee (Creek) Nation Reintegration Program in Oklahoma provides service to ex-offenders transitioning from a correctional facility back into the tribe. Services include parole and court advocacy; specialized reentry classes; clothing, food, and employment referrals; job advocacy; mental health and substance abuse referrals; educational opportunities; and temporary and long-term affordable housing.
- **Transitional Housing:** The Keweenaw Bay Indian Community Supportive Housing Program in Michigan provides safe and affordable housing and employment for tribal members and other Indians, recognizing the unique needs of individuals who are transitioning out of criminal justice facilities and treatment centers or who are coping with homelessness.
- **Federal Probation:** The Offender Orientation Program Serving Native American Offenders, developed by the District of New Mexico’s Federal Probation and Parole Services, explains the roles of probation officers in the supervision process to enable the family members to understand that the ultimate goal is the offender’s success. Post release, offenders and their families are required to attend an orientation meeting with federal probation and parole services, where supervision conditions and treatment requirements are reviewed.
- **Parent Strategies:** The Storybook Project by the Salt River Pima Maricopa Jail can help incarcerated parents provide positive interaction and modeling for their children during incarceration. The incarcerated parent is recorded reading a book, and the recording and book are sent to the child to listen and read along. In addition, under SCA, funding can support family based treatment programs for both the incarcerated tribal member and their family.

V. Recommendations and Strategies

Elements of a Tribal Reentry Program

- **Jail reentry needs assessments, data collection and planning:** An important first step is for tribes to assess their reentry programming and services needs for adults and youth through data collection and analysis of information, including surveys and talking circles, program reviews, assessments of resources on or near Tribal Nations and gaps. Planning sessions with federal, tribal, state, and local practitioners to design and implement tribal reentry plans that evaluate needs, target populations, program effectiveness, and resources should be conducted. These plans should inform reentry policies and protocols for offenders being released into Tribal Nations from tribal and other authorities, including federal, state and local.
- **Critical elements of evidence-based reentry program:** All reentry programs should have some basic, evidence-based elements:
 - use of a risk assessment tool;
 - creation and management of an individual reentry plan;
 - access to AI/AN data collected by the tribe or the external agencies;
 - services to address identified needs, including education, mental health treatment, substance abuse treatment, impact of victimization or exposure to violence, life skills, job training, and mentoring;
 - structured reentry and reintegration from long-term confinement, and continuity of care at the community level; and
 - for those in jail short term, focus on alternatives to incarceration.
- **Elements in a tribal or BIA correctional facility:** BIA and tribally operated correctional facilities with other partners such as BIE and IHS have important roles in supporting efforts to coordinate the access of partners, provide pre-release programming that builds pro-social skills and reduces criminogenic needs to reduce recidivism. While a short jail term may limit the intensity of services, reentry plans should include local community based resources.
- **Elements in a contracted state prison or jail:** Within state facilities that are contractually or jurisdictionally housing AI/AN offender populations, pre- and post release services should be the same: risk assessments, reentry plans, and services including education, mental health treatment, substance abuse treatment, life skills, job training, and mentoring, and sharing information about pre-release assessments and programming.
- **Elements in a federal prison:** Most federal prisons offer critical support services pre- and post-release, including facility-based services in BOP facilities, specialized programming, transitional housing, and services and supervision. To be most effective, federal agencies such as BOP, FPS, and the Executive Office for U.S. Attorneys, National Indian Country Coordinator (USAO) should coordinate with BIA and tribal

justice agencies on reentry planning and transition and information sharing about returning tribal members.

- **Transitional and halfway houses on tribal land:** Explore replication of promising practices such as the planning and construction of transitional living units in Indian country to address the demands and needs for adult and juvenile detention alternatives. Transitional living units allow for long-term residential settings for rehabilitation in a group living environment, and could be joined with other efforts in a Tribal Justice Center.
- **Supportive policy for federally incarcerated juveniles:** Explore the results of the recent Urban Institute report on juveniles under federal jurisdiction and explore impacts and recommended policy change for violent youth in federal custody. The plan should explore the roles of tribal and state juvenile justice and detention in supporting and housing these youth, as well as coordinate with tribal nations.
- **Tribal youth and adult engagement:** With support from DOJ's Tribal Youth Program and National Reentry Resource Center, develop a permanent forum for formerly detained AI/AN youth and adults to be at the table with federal, tribal, and state partners and be included in developing strategies to address the reentry issues they face and identify best practices that would yield better reentry results.

Short term resources that federal agencies will make available (within six months):

- DOJ's Second Chance Act's (SCA) Demonstration, Mentoring, Correctional Technology Jobs, Family Treatment and Co-Occurring Substance Abuse and Mental Health Disorders grant programs will support reentry activities, along with support from DOJ's National Reentry Resource Center.
- DOJ's Tribal Juvenile Detention and Reentry Green Demonstration Program funds vocational training programs to assist with job readiness (pre- and post-release). DOJ's Tribal Youth National Training and Technical Assistance and Tribal Juvenile Detention and Reentry Program Training and Technical Assistance can also assist.

Mid-term resources that federal agencies will make available (within twelve months):

- With DOI, DOJ and HHS, educate tribes on resources to support planning and funding such as SCA, Indian Alcohol and Substance Abuse Program (IASAP), Tribal Youth Program, IHS, Circles of Care, and the Tribal Action Plans.
- Provide forums for multidisciplinary teams to receive cross-agency training on issues related to the Tribal Justice Plan.
- Obtain results of the DOJ-funded LSI-R⁶² validation project⁶³ in reference to AI/AN populations to inform development of assessment tool(s).

⁶² Level of Service Inventory-Revised.

- Explore educational programming resources provided by DOI to address offender educational needs and incorporate the achievement of educational needs in reentry plans.
- Coordinate with the FPS and Pretrial Services Indian Country Steering Committee⁶⁴, to promote and encourage U.S. Probation/Pretrial Offices (USPO) to provide training in TLOA, coordinate with Steering Committee safety academies, share legal, evidence based practices and other related materials; support the partnership of the BOP and DOI with the tribes in arranging for halfway houses and other BOP contracts; and collaborate and partner across federal, state, tribal jurisdictions to ensure the optimal services delivery in relation to re-entry in Indian country.
- Coordinate with the USAO National Indian Country Coordinator, who will in turn coordinate with the Tribal Liaisons and Victim-Witness Specialists in USAOs having Indian country jurisdiction.
- The BOP and the Workgroup would assess the capacity and interest of tribes to undertake a halfway house program for tribal members who are returning from federal incarceration. Explore possible strategies to assist tribes in building the skills and infrastructure needed to support these activities for interested tribes.

Over the long term, if additional resources become available, it is also recommended that:

- DOJ, DOI, and the Workgroup assess and explore ways to build and enhance existing training, especially in juvenile justice and with state and local staff.
- The Workgroup review existing screening and assessment tools and develop culturally relevant tools that work for AI/AN populations in developing reentry plans.
- The Workgroup explore options to fund the construction of new transitional living or halfway houses or renovation of existing facilities to assist offenders returning to Tribal Nations.
- Support the collection of data and conducting more research on effective tribally driven reentry programming and the impact on recidivism of tribal members.
- DOJ and DOI would support transitional living facilities on tribal land by placing halfway houses within Multipurpose Justice Centers, but funding would be needed for planning, construction and operations.

⁶³ This project is being led by the Crime and Justice Institute.

⁶⁴ The Indian Country Steering Committee (ICSC) is a partnership between the chiefs of several districts with high AI/AN populations, and the Office of Probation and Pretrial Services to identify issues, trends, needs, and best practices.

- DOJ, in partnership with the Workgroup and in coordination with tribal partners, will lead strategies to build peer-to-peer learning and networking opportunities, including mentoring.
- Encourage federal, tribal, and state policy changes that promote the accessibility of tribal elders as resources, and to provide tribal best practices and traditional healing venues to detained and reentering tribal youth.