


**INDIAN COUNTRY LAW
ENFORCEMENT AND THE
CHALLENGES OF ENFORCING
UNDERAGE DRINKING LAWS**



Prepared by
American Indian Development Associates
Fall 2002



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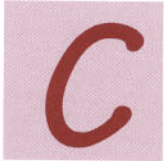
American Indian Development Associates

In support of the

OJJDP *Enforcing the*

Underage Drinking Laws Program

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Contents

Acknowledgments	iv
Foreword	v
Introduction	1
Varying Local Environments	2
The Service Delivery Environment	3
The Constituent Environment	3
The Political and Legal Environments	4
Indian Country Law Enforcement Environment	7
Direct Law Enforcement on Reservations	9
Specialty Patrols	9
Compliance Checks	10
Resources and Planning	10
Direct Enforcement off Reservation	11
Cross-Deputization	12
Law Enforcement Collaborations	13
Underage Drinking Is a Shared Responsibility	14
Collaborative Policy Development	14
Collaborative Service Delivery	15
Community Policing	15
Mentoring Programs	16
Cadet Programs	17
Community Education and Participation	17
Police Education	18
Culture	18
Conclusion	20
Endnotes	21



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- Steve Emery, Esq., a Harvard Law School graduate, currently the director of the Sicangu Policy Institute. For 11 years, he was attorney general for the Cheyenne River Sioux Tribe. Before becoming a lawyer, he was the chief of police at Santee, Nebraska, and a police officer for the Yankton Sioux Tribe and the City of Wagner, both in South Dakota.



Foreword

The U.S. Department of Justice (DOJ), Office of Juvenile Justice and Delinquency Prevention (OJJDP) is helping states and Indian tribes to address the problem of underage drinking through the Enforcing the Underage Drinking Laws Program. OJJDP has set aside \$25 million in block grants, discretionary programs, and training and technical assistance to develop comprehensive and coordinated initiatives to enforce state and tribal laws that prohibit the sale of alcoholic beverages to minors and to prevent the purchase or consumption of alcoholic beverages by minors. Through this initiative, eight Indian tribes received funds to address underage drinking in their communities. The Indian tribes included

Red Lake Chippewa, MN	Ponca Tribe, OK
Pueblo of Zuni, NM	Pawnee Tribe, OK
Southern Ute, CO	Tlingit and Haida Tribes, AK
Santee Sioux, NB	Ft. Peck Assiniboine and Sioux, MT

The Pacific Institute for Research and Evaluation (PIRE) is the national training and technical assistance provider supporting local and state government efforts. Through a subcontract with PIRE, the American Indian Development Associates (AIDA) provides training and technical assistance to the eight tribal grantees. AIDA also facilitates planning, design, and coordination of four regional conferences to address underage drinking issues in Indian communities. This is done with assistance from tribal leaders, practitioners, community members, and youth. Community partners are enlisted to assist with conference design by addressing the specific needs and concerns of each region regarding underage drinking. In addition, AIDA prepares and moderates audio conferences to discuss policy, law enforcement, youth involvement, and needs assessment with regard to underage drinking in Indian Country.

This document addresses issues related to enforcement of underage drinking laws in Indian Country. In particular, the document

- analyzes the nature of alcohol problems among Indian youth.
- describes some of the legal, structural, and cultural characteristics unique to Indian tribes.
- offers several strategies and recommendations for Indian tribes to consider in their efforts to develop, implement, and enforce laws and policies that address the problem of underage drinking in Indian communities.



Introduction

In October 1997, the executive committee for Indian Country Law Enforcement Improvement reported its findings to the U.S. Attorney General and the U.S. Secretary of the Interior indicating that there is a public safety crisis in Indian Country. The executive committee's summary of concerns expressed by the Indian nations included

- the need to address the limitations of tribal criminal jurisdiction.
- the lack of adequate funding for tribal [juvenile] justice systems.
- the lack of access to and provision of training and technical assistance to Indian nations.
- the need to enhance tribal courts and tribal law enforcement response systems.
- the lack of cultural sensitivity by policymakers and federal criminal and juvenile justice practitioners.
- the lack of community-based sentencing options, treatment, and services to respond to [youth] offender needs effectively.

In the midst of these realities, many Indian nations indicate that underage drinking ranks high among the crime, violence, and social problems plaguing American Indian and Alaska Native communities today. Reports by tribal judges, probation officers, teachers, counselors, and other service providers tell of Indian children starting to drink at the age of eight and drinking regularly by the age of ten.

Statistical data show the insidiousness of adult alcohol abuse and underage drinking and the potential it has for robbing young people of healthy futures. For example, the Indian Health Service (IHS) has identified automobile crashes as the leading cause of death for the age group of 10 to 24 years for 1995-97. The vast majority of those crashes were alcohol related. In addition, alcohol was a factor in at least 40 percent of suicides

involving youth 14 to 15 years of age in 1995. Suicide was the third leading cause of death that year. The IHS further reports that mothers younger than 18 years of age were the age group most likely to drink during their pregnancy.

A 1994 OJJDP report cited that 61 percent of youth confined by the U.S. Bureau of Prisons (BOP) were Indian with 81 percent adjudicated for violent offenses. Sex offenses accounted for 32 percent of offenses, assault for 28 percent, negligent manslaughter for 20 percent, and robbery for one percent. By 1997, Indian youth in BOP custody had increased to 70 percent.

In its 1999 report on *American Indians and Crime*, the U.S. Bureau of Justice Statistics (BJS) indicates that the alcohol-related arrest rate for American Indians younger than age 18 was twice the national average. Another BJS survey of Indian Country jails revealed that at midyear 1999, overall Federal, State, local, and tribal authorities were supervising 45,913 American Indians. Juveniles comprised 16 percent of the total custody population in Indian Country. Of these, 75 percent were male and 25 percent were female. At least 20 Indian juveniles were held as adults in June 1999, a decrease from 26 in June 1998. Although two-thirds of the jails offered drug or alcohol programs, little is known about their success in helping youth inmates.

In spite of these grim statistics, the truth is that the majority of Indian people do not engage in alcohol use or abuse. In most Indian communities, alcohol has no cultural roots; rather alcohol has been an imported contaminant of Indian cultures since its introduction. It is important to know and understand this because it allows Indian people to fall back on their cultural strengths to overcome the problem; in particular, this knowledge allows Indian nations and communities to reclaim and restore a healthy future for our Indian children and youth.

Varying Local Environments

Underage drinking is having a terrible impact in American Indian and Alaska Native communities and in American cities and towns across the country. Drinking behavior established early in life turns into habits, addictions, and medical conditions later in life. Medical expenses, lost opportunities, and the toll of human suffering are just a few of the costs that Indian people and communities face if alcohol problems are not dealt with firmly and with persistence and commitment. Without intervention, current levels of underage drinking indicate a potentially disastrous future for American Indian and Alaska Native youth.

Every jurisdiction, Indian and non-Indian, has laws regulating alcohol possession and consumption and establishing an age under which possession and consumption is illegal. The grim statistics and the impact of underage drinking are relatively uniform throughout American Indian and Alaska Native communities. However, as law enforcement and other agencies contemplate strategies to enforce laws prohibiting underage drinking, they must face the reality of the local environment that gives rise to underage drinking.

Some reservations are geographically large enough to be subdivided into districts. Some tribal districts may be *wet*, meaning that the tribe allows controlled sale, possession, and consumption of alcohol. Other districts are *dry*, meaning that the tribe prohibits the sale, consumption, or possession of alcohol.

Some reservations contain a large contiguous land base; others are checkerboard, meaning that the reservation has pockets of land owned by non-Indian citizens or the State or Federal governments. Checkerboard areas subject tribes to multiple jurisdictions.

Some tribes are isolated and rural; others are located in the midst of urban settings. Some reservations are larger than small states, whereas others are just a few acres. Local environments often dictate the development of strategies needed to address the underage drinking problem. Throughout the 564 federally recognized reservations, communities, and villages, there are many different environments in which strategies to combat underage drinking must be developed and implemented.

The Service Delivery Environment

Over the past decade, an environment conducive to interagency cooperation has been created. Federally mandated child protection teams and other multidisciplinary approaches are examples of such interagency cooperation. Communities are beginning to see that the responsibility to address alcohol issues, including underage drinking, cuts across many agencies. If a tribal community is serious about enforcing underage drinking laws, a number of agencies and service delivery organizations must be enlisted. This requires cooperation, which may be informal or may need to be formalized through memorandums of agreement or understanding, depending on the agencies involved and the shared responsibilities they will carry.

The Constituent Environment

“Like most political communities, Indians have responded to reservation problems only after they have become apparent. The customary ‘band-aid’ solution to political and legal problems inevitably takes precedence over planned action . . . While awareness of a necessity for long-range planning is always discussed, it seldom receives any real attention.”¹

Tribal communities are made up of people who hold a variety of views on the importance or lack of importance of underage drinking law enforcement. Viewpoints are frequently the result of personal or familial experience with underage drinking or alcohol use in general. They are also the result of the community culture based in traditional tribal elements and are impacted and changed by other cultural elements in the community, including the culture of alcoholism, the culture of poverty, and American pop culture.

In communities throughout the country, what law enforcement agencies do, how they do it, and the impact of their activities is under more public



scrutiny than ever before. As tribal communities begin to heal from the scourge of alcoholism, members of the public are demanding that tribal, State, and Federal agencies and programs do more, become more effective, and become more accountable to the community. Community members are also demanding that *they* be involved in the battle to overcome alcoholism and alcohol-related problems. Throughout the United States, American Indian and Alaska Natives share the negative impact of underage drinking in their communities;

however, each community is unique in terms of location, governmental structure, available services, and culture, which determines the appropriate enforcement strategies and approaches.

The Political and Legal Environments

As nations exercising their inherent sovereignty, each tribe has the authority to make laws and enforce those laws. The enforcement of tribal law includes the power of the police and the power of the courts. However, due to differing histories, traditions, and locations, American Indian tribes and Alaska Native villages have varying forms and degrees of self-government. Some tribes and villages have the authority to enact policy to develop response strategies and to provide resources for strategy implementation.

Other tribes do not possess all the authority or resources they need to respond adequately to the problem. The inherent sovereignty of tribes is intact in most places; however, there are laws in some States that allow the State's jurisdiction to exist concurrently with the tribe's jurisdiction.

It is important to understand the scope of tribal jurisdictional authority over persons and territory. The basic question that needs to be resolved in criminal and juvenile delinquency cases in Indian Country is which mix or level of government assumes jurisdiction. Depending on the identity of the victim(s) and suspect(s), the seriousness of the offense, and the State in which the offense was committed, it can be a combination of the Federal, State, or tribal governments. The determination of jurisdiction involves the interrelationship of three factors:

1. Personal jurisdiction—what persons are subject to the authority of tribes or tribal courts (Indian/non-Indian).
2. Territorial jurisdiction—over what land area may tribes or tribal courts exercise authority.
3. Subject matter jurisdiction—the particular statute violated and what conduct may be punished as a criminal or juvenile offense by tribes or tribal courts.

The three major federal laws governing jurisdiction over crimes committed in Indian country are

1. P.L. 83-280 Indians—Criminal Offenses and Civil Causes—State Jurisdiction, 18 U.S.C. §1162 (Supp. 1968), which grants six states jurisdiction over crimes committed in all or part of Indian Country within the State, except those normally included under federal jurisdiction (several other States exert some form of P.L. 280 on tribes in their states).
2. the Major Crimes Act, 18 U.S.C. §1153 (Supp. 1986), which applies to crimes committed in Indian Country, except for crimes committed in P.L. 280 states.
3. the General Crimes Act, 18 U.S.C. §1152, which applies to all crimes committed by non-Indians against Indians in Indian Country.

American Indian tribes have governmental authority based in the fact that tribes as governing institutions predate the creation of the United States hence

they are both pre-constitutional and extra-constitutional. For these reasons, the U.S. Constitution does not automatically apply to Indian nations.

Tribes have varied forms of government by which to exercise their inherent sovereignty. Some have tripartite governments with executive, legislative, and judicial branches of government. Some tribes have adopted constitutions (some resulting from the 1934 Indian Reorganization Act or from the Oklahoma Indian Welfare Act). Others, such as the Navajo Nation, do not have constitutions but have distinct government branches. Some tribes, such as the Alaska Natives, exist as corporations and are headed by a board of directors or business council. Others have a general council (the people assembled with authority to make decisions). General councils often co-exist with tribal councils and have substantial policy powers. Still others have a tribal council form of government headed by a chairperson, president, or chief who represents the executive arm of government but usually does not make decisions without the entire tribal council weighing in on decisions. Pueblos in the Southwest still base their government in traditional theocracy with no written documents.

The ability to develop underage drinking policies and to enforce them requires an understanding of the tribal political process. Most tribes enact laws and policies through the passage of ordinances and resolutions.

Ordinances are usually passed and incorporated into the tribal code for matters of long-term importance. Ordinances often require enforcement and, if non-compliance occurs, can involve imposition of sanctions by the tribal courts. A resolution is generally for matters of short-term importance or to show tribal intent.

Each tribe's legislative body, usually called the tribal council, passes the ordinances and resolutions. The size and structure of tribal councils vary from tribe to tribe. For example, the Navajo tribal council has 88 members; the Mescalero Apache tribal council

has eight tribal council members. Some tribal councils elect representatives with term limits and other councils mandate members to lifetime terms. For most Pueblos, council membership is an acquired status attainable only by those appointed to serve as governor, whereas others require all male members older than 18 to serve on the council. Some tribal councils are in session for long periods of time like state legislatures; others may only meet occasionally.



The role of the tribal executive (tribal chairperson, president, or governor) varies. As the person charged with enforcing tribal ordinances and implementing tribal resolutions, the executive sets the tone for the enforcement of underage drinking policies and laws. In some tribes, the executive is present at tribal council meetings and, in some places, the executive is not present. In some tribes, the executive controls the tribal council agenda, and the executive's right to vote is usually limited (usually only to break a tie) in tribal council meetings.

A major issue facing tribal courts is to be able to render a decision free from interference from other branches of government. A study carried out by the American Indian Law Center in 2000 indicates that few justice systems reported interference with the work of the courts by other government branches.² Tribal courts may be created by the tribal constitution or they may have been created by tribal council ordinance. If they have been created by ordinance, they are not considered independent but exist as any other program serving the tribe. If the court is created by constitution, it may be independent but can lose its independence if the tribal council is the appeals court. In the case of traditional Pueblos in New Mexico, the governor is also the judge, thus the court and executive are combined.

Regardless of the structure, many tribal governments have not embraced the separation-of-powers doctrine prevalent in American constitutional governments. Similarly, many tribal governments do not separate church and state, in that tribal leaders seek and depend on spiritual guidance and many must oversee or perform religious ceremonies as part of their leadership position and status.

Indian Country Law Enforcement Environment

The law enforcement environment varies from reservation to reservation and community to community. Some tribes have their own tribal police that they fund or operate with Federal funding. Other tribes have Federal police provided completely or partially by the U.S. Department of Interior, Bureau of Indian Affairs (BIA), the Federal Bureau of Investigation (FBI) for felony investigations, and occasionally, the U.S. Marshals. Some are under the criminal jurisdiction of the State or county authorities. Some tribes and villages have the authority to enact policy and provide resources for strategy implementation and development of response strategy options. Others do not.



BIA took over the delivery of law enforcement services during the early days of the reservations. Now it is recognized that BIA has the responsibility to provide law enforcement services to American Indian communities as part of the trust relationship between the Federal Government and Indian tribes. To that end, the BIA provides direct law enforcement services in approximately 65 agencies (many of which serve multiple tribes). In approximately 110 Indian communities, tribes contract with BIA through the mechanism of “638” to provide law enforcement services.³ There are only four or five tribal police departments funded entirely by the tribes themselves. In recent years, funding under the U.S. Department of Justice Community Oriented Policing Services has provided sorely needed financial support for tribal police departments to increase officers and to replace or add new equipment and vehicles.

Several New Mexico Pueblos function under a traditional tribal government structure. Under this structure, a tribal sheriff and deputies are appointed who exercise the Pueblos’ inherent authority to enforce Pueblo laws, which include surveillance and the power to arrest and detain alleged offenders. In most instances, the tribal sheriff and deputies serve as unpaid public servants that serve their communities for up to 1- or 2-year terms. For this type of law enforcement environment, BIA supplements the law enforcement needs of the Pueblos with support for patrol, investigations, and transporting offenders. For the most part, the traditional tribal sheriffs and deputies depend on indigenous community policing customs, traditions, and practices to carry out their peacekeeping, community protection, and law and order responsibilities.

In 1953, passage of P.L. 83-280 transferred substantial jurisdiction from the Federal Government to States. This law was enacted on the heels of the termination era when there was a strong move to assimilate Indian people into the dominant society. This policy was supposedly aimed at curing the problem of “lawlessness” on Indian reservations, but its actual impact has made it difficult for the affected States and tribes to provide effective and adequate law enforcement and justice to Indian citizens. As an expert on this law, Professor Carole Goldberg notes, “P.L. 280 has itself become the source of lawlessness on reservations. Two different and distinct varieties of lawlessness are discernible. First, jurisdictional vacuums or gaps have been created, often precipitating the use of self-help remedies that border on or erupt into violence. Sometimes these gaps exist because no government has authority. Sometimes they arise because the government(s) that may have authority in theory have no institutional support or incentive for the exercise of that authority. I will call this kind of lawlessness the *legal vacuum* type. Second, where state law enforcement does intervene, gross abuses of authority are not uncommon. In other words, power is uncabined by the law

that is supposed to constrain it. I will call this kind of lawlessness the *abuse of authority* type.” In at least six States where P.L. 280 exists, law enforcement services should be provided by the State, county, or municipal governments, but the reality is that law enforcement services range from adequate to inconsistent to non-existent.

Direct Law Enforcement on Reservations

The enforcement of underage drinking laws involves several direct enforcement strategies. Increasing police presence has a strong deterrent effect and is successful in interception and arrest. Saturation patrols (such as the intensive use of foot, bicycle, horse, or vehicle patrols) increase police presence—even if only for a relatively short time. Other high-visibility tactics include driving-while-intoxicated (DWI) checkpoints and “Cops in Shops” programs. Two important enforcement strategies will be discussed below: specialty patrols and compliance checks at local liquor establishments.

Specialty Patrols

The use of specialty patrols is effective when communities have events such as Pueblo feasts, community powwows or fairs, or if the tribe is involved in the hospitality industry. Specialty patrols can provide high visibility and deterrence, or they may operate undercover to infiltrate events having a high incidence of underage drinking. Specialty patrols that conduct raids of drinking parties or gatherings that have underage drinkers can be very useful but often require high levels of planning and have significant potential liabilities. Tactical plans for these patrols should include

- provisions for the security of attendees.
- an attendees’ dispersal strategy.
- breath tests.
- citations and arrests.
- a means of dealing with youth too intoxicated to take care of themselves.



Liability issues relating to specialty patrols range from the risk of motor vehicle accidents from intoxicated persons fleeing from the party scene to possible negligence in providing care to highly intoxicated youth or minors. A

thorough examination of possible risks helps law enforcement avoid dangerous or harmful situations for the public, the offenders, and the officers.

Compliance Checks

For Indian communities that have legalized the possession and sale of alcoholic beverages in their jurisdiction, compliance checks (sometimes known as “sting” operations) provide an effective method of regulating the distributors. Compliance checks involve volunteers who are under the legal drinking age attempting to purchase alcoholic beverages under the supervision of law enforcement. Outlets that sell to them are then penalized for illegal sales.

Compliance checks require involvement of the agency that regulates the alcohol industry in a given jurisdiction. Because of the interagency aspect of compliance check operations, they require planning, extensive collaboration, coordination, and communication that would not always be required of other direct enforcement activities. Some areas of planning include

- identifying, training, and supervising the buyers.
- processing violators.
- ensuring the administration of certain and immediate sanctions for violators.
- ensuring that a broad range of contacts are made before the sting operation becomes known among the distributors.
- follow-up by the regulatory agency.

Successful sting operations have a long-range deterrent effect in addition to the immediate citation of offenders.

Resources and Planning

Increased direct enforcement, although extremely effective, is expensive. Officer overtime hours, increased vehicle use, and administrative costs related to planning and coordination all require resources. The reality is that any enhancement of existing services often pushes expenses beyond departmental budgets; therefore, planning needs to be a major priority in any direct enforcement effort that a tribe pursues. The planning needs to take place at two levels. The first level is to plan the direct enforcement activity. The second level is to build that activity into the agency budget.

The first planning level is developing an approach, method, and strategy and formulating them into a plan for direct enforcement.

The **approach** is the thought, value, or philosophy that directs the method. An example of an approach is community policing.

The **method** is how the approach will be used to enhance direct enforcement, such as through foot patrols, mounted police, plain clothes officers in schools, and so on. One method would be law enforcement meeting with community members to involve them in identifying problems and together designing response strategies that include the community in appropriate and meaningful ways.

Strategies identify how to use methods and approaches. The plan should demonstrate *reflection* of problems, needs, or issues and *projection* of actions to take. The plan should answer the basic questions in the text box and explain how to attain and sustain the activity and funding.

Identified issues could receive priority, and the most critical issue could be selected and analyzed. For example, if youth leaving the reservation to buy alcohol is identified as the most critical issue, then analysis of that issue would identify the times they leave, where they go, how they get there, who they go with, what they do to get alcohol, when they return, and any other factors that would affect police action against that issue. From this, strategy, goals, objectives, and action plans would be developed to identify what law enforcement resources would be used, who would be involved, their actual activities, when and where the activity would be initiated, when it would terminate, and any other factors that need to be addressed before conducting the activity.

The second planning level is to build the plan into the agency budget. If the planning takes place early enough, it may be possible to request funds in the following year's budget to cover the increased costs. However, in most instances, enhanced direct enforcement does not occur until a few months before the event. In those situations, the development of the plan provides justification for additional funds in the following year or to justify budget modifications in an existing budget.⁴

Reflection and Projection

Why—Vision or mission

What—Goals and objectives

When—Strategies and evaluation

Attain and Sustain

Who—Partners and population

Where—Scope and accessibility

When—Intensity and duration



Direct Enforcement off Reservation

Multi-jurisdictional collaborations are a necessity for any kind of direct off-reservation enforcement, especially those aimed at off-reservation points of sale. Off-reservation direct enforcement requires collaboration with the law enforcement agency of the jurisdiction to which underage drinkers are traveling to buy alcohol. Such direct enforcement may include increased police

patrols, compliance checks, DWI checkpoints, or shared ride-along patrols. Increasing direct enforcement often results in increasing costs for both jurisdictions. The off-reservation jurisdiction (town, city, county, or State) must see the increased effort and cost to be an investment that will benefit *their* community, not just the tribal community. To that end, the tribal officers may find themselves having to educate the off-reservation officers and police leadership on the need for such collaboration.

Cross-Deputization

Cross-deputization is the process by which a tribal officer is deputized to enforce State laws off the reservation and the State officer is deputized to enforce tribal laws on the reservation. Such arrangements are relatively common and can be very useful in enhancing collaboration and coordination. Any arrangement that alters jurisdictional norms or creates potential liability must be formalized through agreement.

A formal intergovernmental agreement needs to contain several elements, such as

- an introduction identifying the parties participating in the agreement, purpose of the agreement, and duration of the agreement.
- statements describing the problems or issues that require the jurisdictions to work together.
- language that recognizes the authority of each jurisdiction participating in the agreement, and in particular
 - general responsibilities and the general purpose of each party in the agreement;

- a listing and definitions of all terms, phrases, and words, and their derivations as it pertains to the agreement; and
 - specific responsibilities and commitments made by the parties of the agreement (i.e., addressing areas of confidentiality, notice, and enforcement).
- identification of mutually agreed-upon goals and objectives for the agreement.
 - provisions for termination of the agreement, either by choice or default.
 - language that addresses specific issues, such as training requirements, liability, and limits (if deemed necessary) on arrest and investigations.
 - language identifying enforcement and specific explanation of guidelines for adherence to the agreement, which includes sanctions for noncompliance.
 - provision for necessary signatures by designated parties.

The relationship among local jurisdictions may give rise to other issues. If there are bad relations among jurisdictions, the level of trust among agencies will be low. In such cases, a cross-deputization agreement (if one is possible) would address such issues as officers checking in before conducting law enforcement activities in another jurisdiction, whether a local officer accompanies the visiting officer while in the local jurisdiction, and command and control issues for joint operations. If there are good relations among jurisdictions, most of these issues are informally worked out and just need to be spelled out in the agreement.

Because cross-deputization agreements are based in extending local law enforcement authority and liability to officers of another jurisdiction, the agreement needs to be ratified by the governmental body that established the local law enforcement authority. This would mean that the tribe's legislative body and its counterparts at the town, city, county, or State level acknowledge the agreements and are among the signatories. If BIA law enforcement provides the police for a tribal community, the agreement would have to include the appropriate BIA officials.

Law Enforcement Collaborations

Collaboration for direct enforcement does not happen automatically. Someone has to take on the leadership role and begin dialogues with the neighboring jurisdictions. It is unreasonable to expect that off-reservation law enforcement agencies will take the lead in enforcement. Off-reservation law enforcement agencies are just as busy in their communities as are the tribal or BIA police in theirs. And unless the underage drinkers coming from the reservation are causing a disproportionate amount of problems off reservation, the issue is not likely to be a high priority of off-reservation agencies. Therefore, tribal law enforcement leadership should be prepared to initiate a dialogue with the surrounding jurisdictions to develop a collaborative relationship.

Developing a collaborative relationship is based on the recognition that a mutual problem exists. As long as each jurisdiction sees the issue as the other jurisdiction's problem, there will be no collaboration. The terrible costs of underage alcohol-related traffic fatalities are good examples. If youth leave their reservations to buy alcohol and return to the reservation and have an accident on the reservation, the off-reservation authorities may not see the mutuality of the problem. However, if the accident occurs off reservation with the youth attempting to return to the reservation with alcohol, the mutuality of the problem is highlighted. Such an incident provides an opportunity for reservation law enforcement to initiate the dialogue necessary to develop the collaborative relationships with off-reservation law enforcement agencies. The understanding and recognition of mutual interests is essential to developing collaborative arrangements.⁵

Underage Drinking Is a Shared Responsibility

Collaboration at all levels is needed to address underage drinking. Clearly, the different law enforcement agencies must cooperate, but cooperation and partnering is also needed among the tribal political bodies, service delivery agencies, and the community if resources are to be used effectively to enforce underage drinking laws. This cooperation should occur at two levels: policy development and service delivery. Law enforcement, although on the front line of enforcing underage drinking laws, is not the only agency in the community involved with underage drinkers. Underage drinking impacts schools, hospitals, recreation programs, and social service agencies. These agencies need to be involved in any community effort to enforce underage drinking laws. They can participate in policy development and in service delivery, in partnership with law enforcement.

Collaborative Policy Development

Many tribes need to develop visible and viable community responses to underage drinking. Without a community underage drinking policy, there are fewer reasons and opportunities to coordinate service delivery and enforcement activities. Community policy development on substance abuse among youth can be spearheaded by tribal agencies but should also involve community elders and youth, as well as other interested community members. All of these parties should feel a part of the policy development. Each brings a unique and valuable perspective on the issue and what can be done about it.

Arrest and punishment are not the only responses that a community can have to underage drinking. The community needs to determine what resources and programs address prevention and treatment. Sharing information and cooperation is an important goal for underage drinking strategies to be successful.

Once the community knows where it stands on underage drinking, it can develop community-based responses. Ideally, the community responses should be guided by a plan that includes a role for courts, schools, youth programs, recreation programs, health agencies, social services agencies, elders, and young people. The development of programs such as teen courts, prevention education, counseling, and various youth recreation programs are often based on community policies and attitudes toward underage drinking.

Collaborative Service Delivery

Underage drinking is not an isolated phenomenon, separated from the rest of tribal society. It is part of a complex constellation of actions and reactions influenced by individual, family, and community values and problems. Addressing underage drinking is not simply the job of law enforcement in its arrest and detention mode. A juvenile may be drinking due to the lack of supervision by parents or perhaps a more serious dysfunction in the family. A youth's alcohol use affects school performance and participation in extracurricular activities. The drinking child may become emotionally isolated or unstable. The police may come across a child who is suffering from alcohol poisoning or delirium tremens. Each of these situations requires more than arrest and detention. Each requires the coordination of services from several agencies and programs. Each also requires protocols and procedures that access needed services, maintain confidentiality, and act in the best interests of the child. The underage drinking policy through inter-agency cooperation provides the basis for effective service delivery.

Community Policing

Community policing is based on the concept that effective and respected police officers need to be an integral part of the community in which they work. According to the Community Policing Consortium, community policing is a collaborative effort between the police and the community that identifies problems of crime and disorder and involves all elements of the community in the search for solutions. Prevention activities, investigations, and response to calls are made easier and more effective when the officer is seen to be invested in the community. Community policing works to integrate the officer into the community and enhance the relationship between the officer and the community. An additional benefit is the strengthening of the community.

Community policing is another step in the evolution of law enforcement in American Indian communities. Before contact with European nations and American Government, Indian tribes maintained peace and order based on indigenous philosophies, values, traditions, and practices. When reservations were established, the BIA organized police from the local community. Over the years, as BIA bureaucracy grew and the idea of the professional police officer developed, officers were assigned to police reservation communities other than their own and were encouraged to climb the bureaucratic ladder. This placed the police officer on the outside of the local community. There was no attempt to resolve this problem until the concept of community policing was embraced nationally. The concept of community policing brings law enforcement in Indian and Alaska Native communities back full circle to its traditional roots.

Integrating the officer into the community is the basis for underage drinking prevention strategies. That integration enhances the success of prevention activities. Various programs have been developed to integrate the officer into the community, such as participation in youth activities, coaching youth athletic activities, mentoring programs, and other activities that promote the law enforcement officer as a positive role model. Examples of such programs follow.



Mentoring Programs

Community policing provides a way for law enforcement to make an investment in the future of the community through its youth. A good example of such an investment is the development of police sponsored mentoring programs. In police mentoring programs, officers develop one-on-one relationships with

youth in the community in which they work. Officers spend time with youth in structured or unstructured activities. The youth receive needed attention and develop relationships with officers who serve their community. Mentor officers benefit by gaining knowledge about youth needs and learn about the tribal community from a youth perspective.

Cadet Programs

Police cadet programs engage community youth in public safety activities and encourage them to consider a career in law enforcement. Cadets receive training and law enforcement experience along with responsibilities appropriate for their level of training and abilities. Cadet programs provide structured and supervised work experience aimed at helping young people with life skills, in particular refusal skills, and other inoculations against underage drinking and other negative activities. As youth participate in these programs, respect for individual officers and law enforcement in general is enhanced.

Community Education and Participation

Educating young people about alcohol use is an important activity of community policing and is a key component of prevention. The most effective educational programs involve group participation and interaction, change perceptions of social norms, and teach refusal skills, positive decision-making, and other life skills. Perhaps the most well-known prevention education curriculum is the D.A.R.E. program. Although evaluations of the program have shown disappointing results, the program continues to be the most widespread prevention education program used by law enforcement in Indian communities. One reason for D.A.R.E.'s continued use in Indian communities is that the basic curriculum can be modified and enhanced for the local community. Applying tribal interpretations or substituting tribal language and examples or activities focuses the curriculum on that particular community. In addition, tribal representatives can participate in the D.A.R.E. presentation to ensure that tribal interpretation is included in the presentations.

In addition to education, community policing requires law enforcement officers to consult and work with various service delivery agencies and organizations. A common goal of community policing is to restore the visibility of the police officer and demonstrate compassion through participation in community teams. Such teams include child protection teams, multidisciplinary teams, and drug court teams. Most police agencies have experience

working in multi-agency operations. Multijurisdictional drug task forces are good examples of previous experience with such operations. The challenge is to translate multijurisdictional police agency experiences into collaborations with nonpolice agencies. This provides expanded opportunities for law enforcement to partner with other agencies to address the underage drinking problem in Indian communities.

Police Education

Training police officers to operate in a community-oriented policing environment is a multifaceted task. Training for officers includes ways to communicate with youth and communities to learn about their needs, concerns, and wants. Officers need to learn about community development and the way certain problems, such as underage drinking, impacts communities. Training on underage drinking issues is not only identifying strategies and tactics for direct enforcement but also understanding all the factors contributing to the problem. Officers need to understand how and why the problem occurs. Equally important is for officers to receive education about child and adolescent development, family dynamics, and the impact of alcohol on the young person, the family, and the community. Cultural education may also be a necessity in order to place the issues in the proper cultural context.

Culture

One of the stronger allies in the battle to enforce underage drinking laws is the traditional or indigenous culture of tribes. There are several ways in which that traditional culture is an asset. First, culture provides a positive support base for youth. Second, cultural activities can be integrated into community response strategies. Third, culture can be a part of community policing in which the officer is fully integrated into the community because he participates in traditional activities.



Traditional culture can provide a positive support base for youth. All people feel the need to belong, to be a part of something greater than oneself. This is particularly true during the teenage and young adult years. Often at the most crucial time when youth are searching for something to fulfill that need to belong, they are not being taught the traditional ways of the tribal community. For a variety of reasons, youth have been left out of the traditional education process. Traditional tribal culture provides a way for inoculating youth against negative behaviors because it

provides a source of pride and spirituality. Traditional activities, such as dancing, singing, drumming, arts and crafts, learning the language, and participating ceremonially, create a knowledge base that can protect youth and also protect the tribe for years to come.

In American Indian communities, enforcing underage drinking laws not only protects youth from themselves, but also protects the general population from out-of-control drinking behavior. Because drinking patterns are established early in life, the effort to stop underage drinking is also an attempt to reduce the number of people who will become alcoholics later in life. Alcoholism is not only a medical condition but also a spiritual affliction. Adult alcoholism threatens the traditional way of life within tribal communities. Participating in traditional or other religious activities is a way of ensuring that spirituality is a part of the youth's way of life and that the traditional spirituality will also be part of the tribe's future.



By involving community cultural and religious leaders in planning community response strategies, the community can provide a means for at-risk youth to become knowledgeable about their tribal culture. Whether the community uses graduated sanctions, teen court, drug court, or other mechanisms, participation in tribal cultural activities can be a part of the strategies used. Community service can include assisting in preparations for ceremonies or pow wows. Participation in drum groups or language classes can be used as an incentive in teen or drug courts. Being allowed to travel to another community to participate in powwows, ceremonies, or other religious activities can also be used as an incentive. Although traditional culture can be integrated into the community response strategies, it should never be seen as a punishment. In all instances, participation in the traditional tribal culture should be seen as an honor.

When a tribal law enforcement agency encourages its officers to participate in traditional cultural and religious activities, it is sending a powerful message to the community. By participating in traditional activities, the officer becomes fully integrated into the community. He becomes more than a police officer; he becomes a relative to all who participate or are affected by the traditional activity. Officers who participate in traditional activities are seen as being human and are respected as role models. By encouraging their officers to participate in traditional activities, the law enforcement agency is



acknowledging to the community that the cultural traditions of the community are of utmost importance. Such actions show that the agency is concerned for the community's cultural stability and for the future of the tribe.

Conclusion

For hundreds if not thousands of years, Indian nations have overcome famine, war, and at times, near extinction, yet Indian people survive today with a rich tradition, heritage, and history. Indian people must believe that they will overcome the issues they face today and those they will face tomorrow. Many Indian communities share the same problems; therefore, it is important for Indian tribes to unite to address the problems created by underage drinking. As Frank Pommersheim writes in *Braid of Feathers*:

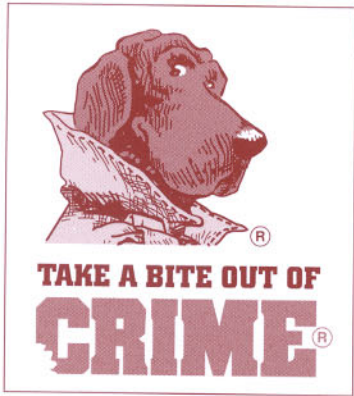
“The ultimate goal is therefore not to undo difference, but rather to create solidarity—a quality whose chief source is the imaginative ability to see strange people as fellow sufferers. Such efforts flow not from mere academic inquiry, but from work of the heart and mind.”





Endnotes

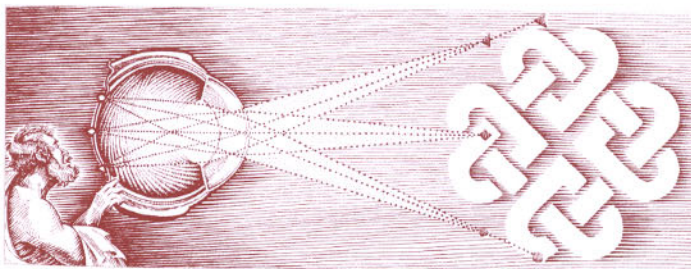
1. 1983, DeLoria, V., *American Indians, American Justice*, Austin: University of Texas Press at 138.
2. 2000, American Indian Law Center, *Survey of Tribal Justice Systems and Courts of Indian Offenses*.
3. P.L. 93-638, the Indian Self-Determination Act enacted by Congress in 1975, provided the first nationwide mechanism for Indian tribes to receive direct funding from the Federal Government to operate, control, and manage their own justice, law enforcement, and health programs. The Bureau of Indian Affairs in the U.S. Department of Interior and the Indian Health Service in the U. S. Department of Health and Human Services were the first two Federal agencies to implement this direct funding strategy.
4. For more information on planning, see the 1999 *Guide to Conducting Alcohol Purchase Surveys*, Pacific Institute for Research and Evaluation, Calverton, MD.
5. For more information about intergovernmental agreements, see *Tribal-State Relations and the Mutual Recognition of Judgments*, American Indian Law Center, 1998.



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