

# Summary: Tribal Youth in the Federal Justice System

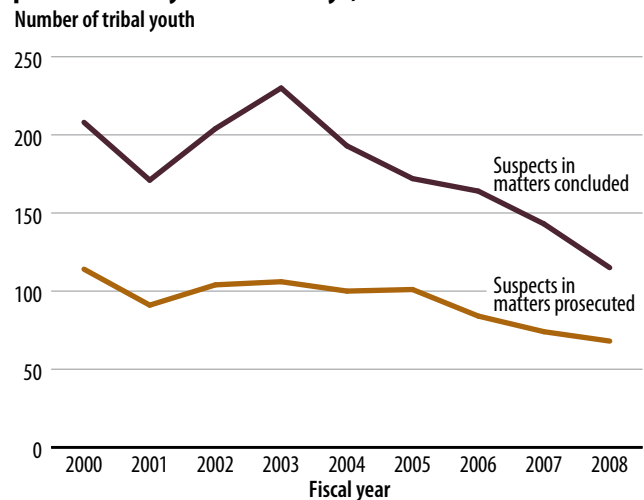
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The federal criminal justice response to tribal youth varies by the state in which the offense occurred, the nature of the offense, the availability of community- and confinement-based services, and discretionary decisions made by tribal, state, and federal justice agencies. Cases involving tribal youth in the federal system may result in 1) a delinquency adjudication and court-ordered supervision and out-of-home placement, or 2) the youth being transferred to adult status and prosecuted and sentenced as an adult.

This summary describes the federal response to tribal youth during the case-processing stages from investigation to corrections. In this report, a federal juvenile delinquent is a person who has committed an offense while under age 18, and the federal prosecutor has certified a federal basis for jurisdiction. Juvenile and youth are used interchangeably in this report.

The number of tribal youth in matters concluded by federal prosecutors and the total number of tribal youth prosecuted decreased from 2003 to 2008 (figure 5.1). Tribal youth in matters concluded by federal prosecutors dropped to 115 in 2008, down from 230 in 2003.

**FIGURE 5.1**  
Tribal youth in matters concluded and in matters prosecuted by U.S. attorneys, 2000–2008



Source: Urban Institute analysis. See *Methodology* for more information.

Findings presented in this report are mostly from a recent study conducted by The Urban Institute under a cooperative agreement with the Bureau of Justice Statistics (BJS). The study was also sponsored by the Office of Juvenile Justice and Delinquency Prevention (OJJDP). See page 43 for more information.

## Highlights

- In 2008, relatively few juveniles were referred to federal prosecutors (315 out of 178,570 suspects) or admitted to federal prison jurisdiction (156 out of 71,663 offenders).
- Tribal youth (70) comprised nearly half of juveniles (152) handled by the federal courts in 2008.
- Federal judicial districts of Arizona, Montana, South Dakota, New Mexico, and North Dakota accounted for 94% of tribal youth investigated, 92% of those prosecuted, and 88% of those admitted to federal prison jurisdiction in 2008.
- In 2008, about 72% of tribal youth were investigated for violent offenses, including sexual abuse (35%), assault (20%), and murder (17%).
- About 40% of matters involving tribal youth were declined by federal prosecutors in 2008.
- A greater share of cases involving tribal youth in U.S. district courts were terminated by conviction (91%) than by dismissal (9%).
- From 1994 to 2008, the lowest number of tribal (72) and non-tribal youth (84) admitted to the jurisdiction of federal prison authorities occurred in 2008.
- Admissions to federal prison jurisdiction among tribal youth declined 10% per year from 1999 to 2008, while non-tribal youth admissions declined 12% per year.
- In 2008, tribal youth served an average of 26 months under federal jurisdiction, which was more than double the tribal justice system maximum sentence of 12 months.

## Tracking tribal youth through the stages of the federal criminal case process

The federal criminal justice system is not currently well-equipped to monitor how tribal juvenile offenders are processed across stages. There is a lack of unified, system-wide data standards in reporting how youth—especially tribal youth—are handled in the federal system. Juveniles or offenses committed in Indian country are not systematically tracked across the federal justice agencies. Researchers have to devise analytic methods to identify tribal youth using administrative data from each criminal justice stage (arrest, sentencing, and corrections).

### How is federal jurisdiction over tribal juvenile delinquents determined?

The determination of jurisdiction over offenses occurring in Indian country is first subject to whether state courts have jurisdiction based on Public Law 280 (P.L. 280).<sup>1</sup> If a state has P. L. 280 status, jurisdiction over offenses occurring in Indian country lies with the state or tribal courts, not the federal courts. The determination of whether federal jurisdiction applies next depends on the offender and victim in the crime:

- If the offender is a juvenile tribal member and the victim is also a tribal member, and the offense is 1 of 15 crimes covered by the Major Crimes Act then jurisdiction is with both the tribal and federal courts.<sup>2</sup>
- If the offender is a juvenile tribal member and the victim is a non-tribal member, and the crime is covered by the Major Crimes Act or federal enclave status, then federal and tribal courts have shared jurisdiction. The Assimilative Crimes Act permits state law to be applied in federal court where the Major Crimes Act does not apply but federal interest exists.
- If the crime involves a non-tribal offender and a tribal member victim, then federal courts have exclusive jurisdiction.

Once federal jurisdiction has been established, the Federal Juvenile Delinquency Act (FJDA) provides the procedures to bring the tribal youth to federal court. A federal juvenile delinquent is defined as a person who has committed an offense while less than 18 years old, but has not reached age 21 at sentencing. Juvenile and youth are used interchangeably in this report.

<sup>1</sup>Congress passed Public Law 280 in 1953, which relinquishes the federal government of criminal and civil jurisdiction in certain states and places jurisdiction with those states.

<sup>2</sup>The Major Crimes Act provides federal jurisdiction over certain offenses committed by tribal members. (See Title 18 U.S.C. §§ 1152, 1153.)

### How are juveniles handled in the federal justice system?

Most juveniles, or persons under age 18, in the United States are handled in state or local courts, which have a separate juvenile justice system, rather than in the federal courts. Federal law permits handling of juveniles in the federal system only in limited circumstances. Apart from those committing crimes in Indian country or on military bases, juveniles that commit offenses as members of drug trafficking gangs, violent criminal gangs, or other federal offenses may be subject to federal jurisdiction. In these cases, the U.S. attorney for each district must certify to the district court that (1) the juvenile court or court of a state does not have jurisdiction or refuses to assume jurisdiction; 2) the state does not have available programs or services adequate for the needs of juveniles; or 3) the offense charged is a felony crime of violence or specified drug offenses, and there is substantial federal interest in the case.

### In what circumstances are tribal and non-tribal juveniles transferred to adult status (for prosecution and sentencing as an adult rather than a juvenile delinquent)?

Once federal jurisdiction has been determined and certification of delinquency established, a transfer hearing establishes the status of juveniles as to whether they will be transferred for prosecution as an adult. Felony crimes of violence or drug or firearm offenses trigger eligibility for adult transfer with certain age restrictions. Age thirteen is the minimum age for transfer to adult status for murder and assault, and for robbery, bank robbery, or aggravated sexual abuse with a firearm. An exception is crimes committed in Indian country where the tribe has opted not to permit prosecution of juveniles age 13 as adults. Age fifteen is the minimum age for transfer to adult status for committing any crime of violence (including physical force against a person or property).

A juvenile can be housed in a Federal Bureau of Prisons (BOP) institution at age 18 if sentenced as an adult. BOP does not operate its own facilities for juveniles; rather, they contract with private entities and state and local governments for both secure and non-secure (community-based) juvenile facilities to house tribal and non-tribal youth under their jurisdiction.

## Investigation and Prosecution

Tribal police are often the first to respond to a crime in Indian country. Offenses committed by tribal youth may be investigated by a combination of tribal police and federal law enforcement agencies. The federal Bureau of Investigation (FBI) and the Bureau of Indian Affairs (BIA) are the primary federal law enforcement agencies investigating tribal youth matters.

Tribal youth commonly enter the federal justice system with an arrest for a warrant issued on either a complaint or juvenile information (written accusation made by the prosecutor). For serious offenses that may indicate a federal crime, the U.S. attorney's office in the district is notified as is the juvenile's parent/guardian. The juvenile must be taken before a U.S. magistrate as soon as possible, where charges are read and the juvenile is informed of rights. Federal prosecutors next determine if the matter should be adjudicated in federal courts, disposed by U.S. magistrate, or declined for prosecution.

### In 2008, 4 in 10 matters involving a tribal youth were declined by federal prosecutors

During 2008, 40% of tribal youth in matters concluded were declined for further prosecution, which was lower than the 46% declination rate for non-tribal youth in 2008. However, the average declination rate for tribal youth (45%) was higher than for non-tribal youth (37%) from 2004 to 2008.

The most common reason for declination of tribal youth matters in 2008 was case related (50%) (table 5.1). Case-related reasons included weak evidence, stale case, witness problems, and jurisdiction or venue problems (figure 5.2). Some declined matters involved tribal youth that

were subsequently referred to other authorities for prosecution, such as to the tribe or the state where the tribe is located.

The share of declinations for tribal youth that were referred to other authorities or received an alternative resolution increased from 13% of all declinations in 2005 to 20% in 2008. Among non-tribal youth, the most common reason for declination (71%) was that the suspect was a juvenile (not shown in table).

### Most tribal youth in matters referred to U.S. attorneys were prosecuted by federal prosecutors

In 2008, 59% of tribal youth who were referred to federal prosecutors were prosecuted, which was higher than the 54% prosecution rate for non-tribal youth in 2008 (including matters disposed by U.S.

magistrates). From 2004 to 2008, the average prosecution rate for tribal youth (55%) was comparable to that of non-tribal youth (53%).

Various factors go into the decision to prosecute a matter, including seriousness of the crime, strength of the evidence, youth's criminal history and drug/alcohol use, tribal capacity to prosecute, and tribal preference. Tribes having concurrent jurisdiction with federal jurisdiction may have limitations on available secure placement options and treatment resources. The potential penalty that could be received if a matter was handled in tribal or state venues may also be considered.<sup>3</sup>

<sup>3</sup>The Indian Civil Rights Act (Title 25 U.S.C. § 1302(7)), for example, limited tribes in sentencing persons convicted of serious crimes to a maximum of 1 year in jail and a \$5,000 fine. Recently, the Tribal Law and Order Act extended the maximum sentence that a tribe can impose to three years.

**TABLE 5.1**  
Reason for matters declined for prosecution with tribal youth suspects, 2005–2008

Fiscal year	Matters concluded	Number of declinations	Total	Reasons for declinations					
				Case-related <sup>a</sup>	Suspect-related <sup>b</sup>	No crime	Referred to other authorities <sup>c</sup>	Other	
2005	172	69	100%	58%	10%	9%	13%	10%	
2006	164	80	100%	61	10	10	13	6	
2007	143	68	100%	47	15	10	18	10	
2008	115	46	100%	50	7	15	20	8	

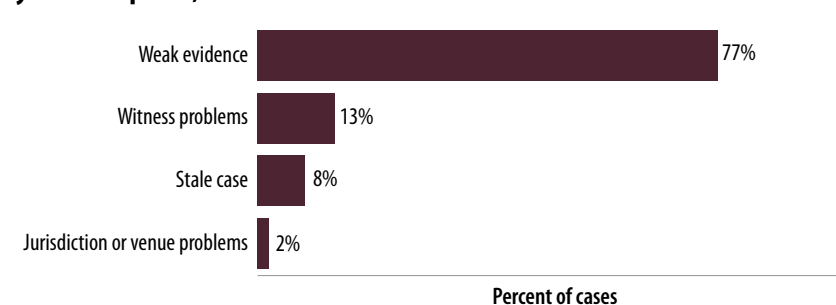
<sup>a</sup>Includes weak evidence, stale case, witness problems, or jurisdiction or venue problems.

<sup>b</sup>Includes age of offender and offender's criminal history and drug/alcohol use.

<sup>c</sup>Includes pretrial alternative resolutions, such as pretrial diversion.

Source: Urban Institute analysis of Executive Office for U.S. Attorneys, National LIONS data base, fiscal years 2005–2008.

**FIGURE 5.2**  
Case-related reasons for matters declined for prosecution with tribal youth suspects, 2005–2008



Source: Urban Institute analysis of Executive Office for U.S. Attorneys, National LIONS data base, fiscal years 2005–2008.

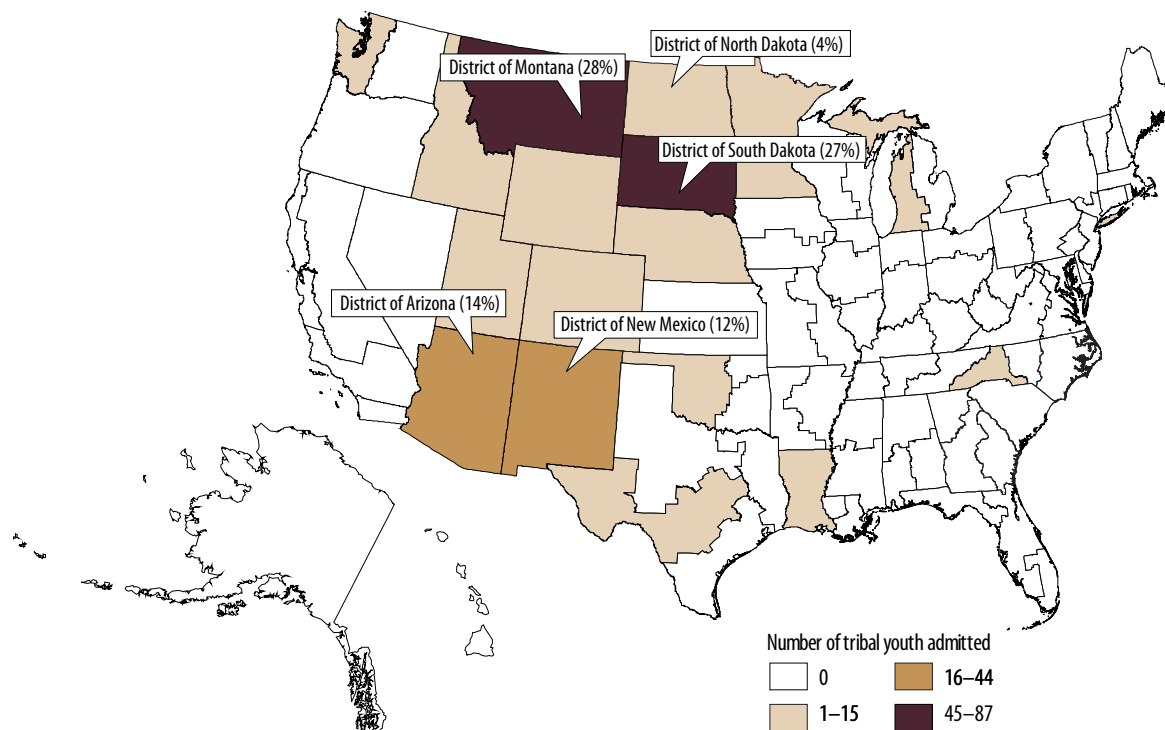
## Nearly 9 of 10 tribal youth admitted to Federal Bureau of Prisons jurisdiction from 2006 to 2008 came from five federal judicial districts

From 2006 to 2008, 85% of tribal youth admitted to the jurisdiction of the Federal Bureau of Prisons (BOP) were from these five federal judicial districts: Arizona, Montana, New Mexico, North Dakota, and South Dakota (figure 5.3).

The most recent tribal population data from the Bureau of Indian Affairs (2005) showed that these five districts

contained 12% of the 590 federally recognized tribal entities and 35% of the more than 1.9 million total tribal enrollment population (table 5.2). Thirty-four percent of the enrolled tribal population under age 16 resided on or near reservations in these five federal judicial districts.

**FIGURE 5.3**  
Tribal youth admitted to the jurisdiction of the Federal Bureau of Prisons, and five federal judicial districts that committed the majority of tribal youth, 2006–2008



Source: Bureau of Justice Statistics analysis of data from the Federal Bureau of Prisons, SENTRY database, fiscal years 2006–2008.

**TABLE 5.2**  
Federally recognized tribes and enrolled members, 2005

Federal judicial district	Tribal entities		Tribal enrollment			Tribal population under age 16		
	Number	Percent	Number	Percent	District rank	Number	Percent of total enrollment	District rank
Total	590	100%	1,978,099	100%	~	503,958	100%	~
Arizona	22	3.7%	269,778	13.6%	2	70,854	14.1%	2
New Mexico	25	4.2	174,199	8.8	3	43,234	8.6	4
South Dakota	8	1.4	115,513	5.8	5	27,534	5.5	6
Montana	8	1.4	66,962	3.4	6	14,957	3	9
North Dakota	6	1	58,220	2.9	8	13,851	2.7	10
All other districts	521	88.3	1,293,427	65.4	~	333,528	66.2	~

~Not available.

Source: U.S. Department of the Interior, Bureau of Indian Affairs. *American Indian Population and Labor Force Report, 2005*, available at: <http://www.bia.gov/WhatWeDo/Knowledge/Reports/index.htm>, calendar year 2005.

## Adjudication and Sentencing

Federal statutes provide for a youth's release pending trial to a parent/guardian, unless it is determined that detention is necessary to ensure a timely appearance or to ensure safety of juveniles or others (Title 18 U.S.C. § 5034). The federal pretrial services agency oversees supervision of the youth on pretrial release. For juveniles detained, a foster home or community-based facility near the youth's home community is sought. Pretrial juveniles are not to be detained in facilities permitting regular contact with adult offenders nor with other juveniles who have been adjudicated.

### In 2008, 91% of cases terminated in U.S. district court involving tribal youth resulted in conviction

Most (91%) tribal youth cases terminated ended in conviction in 2008. Most of the convictions were the result of a guilty plea (88%) than a determination of guilt at trial (3%). In comparison, 95% of non-tribal youth were convicted in 2008, with 91% resulting from guilty pleas and 5% following trial. From 2004 to 2008, the average conviction rate for tribal youth (92%) was higher than for non-tribal youth (87%).

In juvenile adjudication proceedings, the judge has the discretion to impose an out-of-home placement, probation and conditions of probation, or

restitution. The youth may also be transferred to adult status and prosecuted and sentenced as an adult.

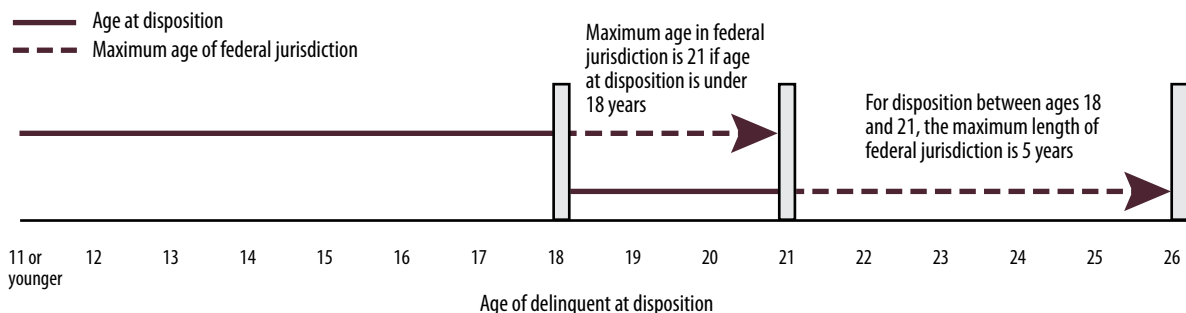
An adjudicated juvenile can receive up to 3 years of probation. The duration of a sentence for youth adjudicated delinquent to the jurisdiction of federal prison authorities depends on the age of the juvenile at disposition (see text box below). Juveniles under the age of 18 are not allowed to be placed in an institution in which the youth has regular contact with incarcerated adults. A juvenile can be housed in a Federal Bureau of Prisons (BOP) institution at the age of 21 if sentenced as a juvenile.

## The maximum time under federal jurisdiction of juveniles adjudicated delinquent depends on the age at disposition

- If a juvenile was under 18 years of age at time of disposition, detention may not extend beyond the juvenile reaching age 21 (figure 5.4).
- If a juvenile was between the ages of 18 and 21 at time of disposition, the maximum federal jurisdiction is 5 years.
- Juveniles adjudicated delinquent and under the age of 21 are not to be detained in facilities permitting regular contact with adult convicts. At age 21, however, an adjudicated delinquent can be placed in an adult facility.
- The term that an adjudicated delinquent receives may not exceed the maximum period of imprisonment authorized had the juvenile been an adult. Federal sentencing guidelines do not apply to adjudications of delinquency.

**FIGURE 5.4**

### Maximum time under federal jurisdiction of juveniles adjudicated delinquent, by age at disposition



## Corrections

The number of tribal youth admitted to BOP jurisdiction increased from 107 in 1994 to a peak of 252 in 2000—a 136% increase due exclusively to the growth in tribal youth handled as adjudicated delinquents (figure 5.5). The number of tribal youth admitted to the BOP subsequently decreased from 252 in 2000 to 72 in 2008.

In 2008, the number of tribal (72) and non-tribal youth (84) admitted to the jurisdiction of federal prison authorities was the lowest in the period from 1994 to 2008. From 1999 to 2008, the number of tribal youth admissions declined an annual average of 10%, and non-tribal admissions declined at an annual average of 12%. Tribal youth peaked at 252 admissions in 2000, and non-tribal youth peaked at 272 admissions in 1999 (figure 5.6).

Most (88%) of the decline in tribal youth from 1999 to 2008 was due to a decrease in youth who had been adjudicated delinquent. Twelve percent of the decline was due to a decrease in tribal youth who had been transferred to adult status. In comparison, most of the decline for non-tribal youth admitted to the BOP over this period was comprised of juveniles who had been transferred to adult status.

In 2008, 72% of tribal youth were admitted to BOP jurisdiction for a violent offense, including sexual abuse (29%), assault (25%), and murder (15%) (table 5.3). Tribal youth admitted for property offenses (mostly burglary) peaked in 2000

(66) and began to decline in 2001, dropping to 14 admissions in 2008.

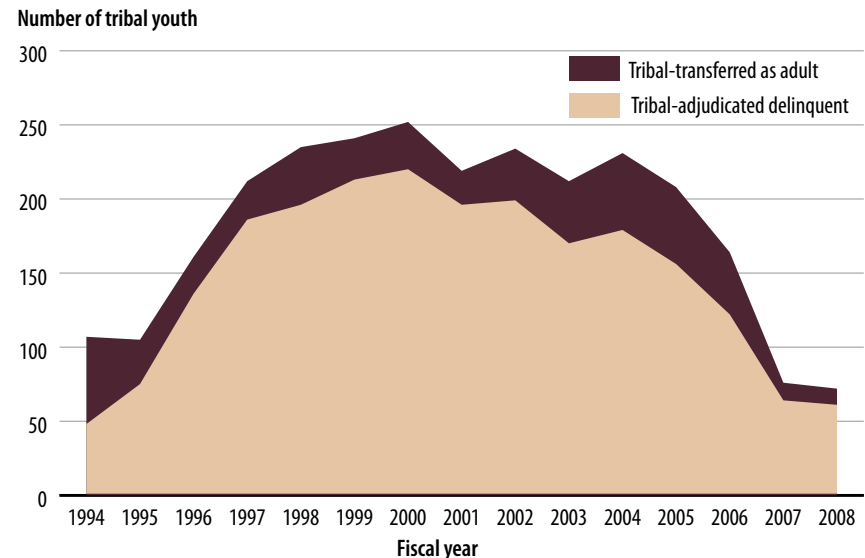
By 2008, tribal youth admitted to BOP jurisdiction for both property and violent offenses had declined to the lowest levels since 1999.

Among non-tribal youth admitted to BOP jurisdiction, violent and drug

offenses comprised the majority of offense types (not shown in table).

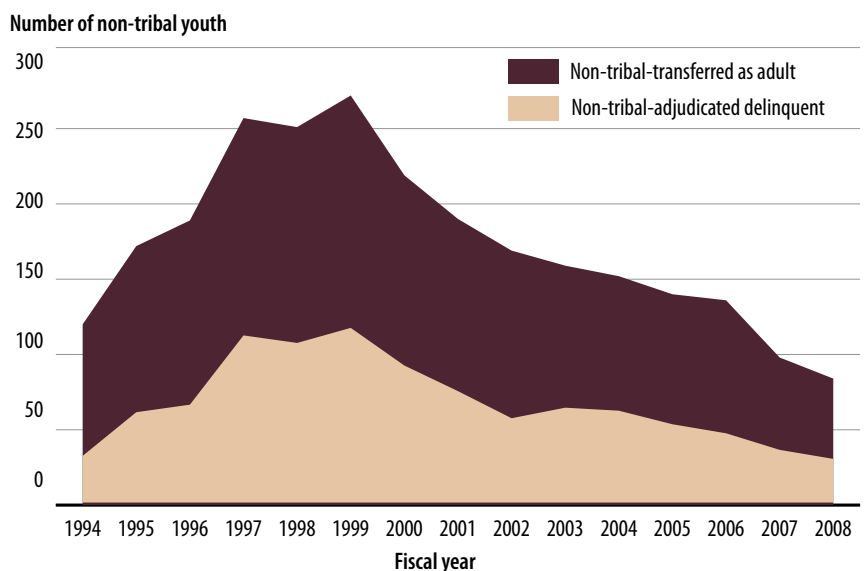
Most tribal youth admitted to BOP jurisdiction from 1999 to 2008 had been adjudicated delinquent (83%), while most non-tribal youth had been prosecuted as adults (65%).

**FIGURE 5.5**  
Tribal youth admitted to the jurisdiction of the Federal Bureau of Prisons, by status at admission, 1994–2008



Note: Data for fiscal years 1999–2008 based on Urban Institute analysis of Federal Bureau of Prisons, SENTRY database. Data for fiscal years 1994–1998 based on BJS analysis of SENTRY data.

**FIGURE 5.6**  
Non-tribal youth admitted to the jurisdiction of the Federal Bureau of Prisons, by status at admission, 1994–2008



Note: Data for fiscal years 1999–2008 based on Urban Institute analysis of Federal Bureau of Prisons, SENTRY database. Data for fiscal years 1994–1998 based on BJS analysis of SENTRY data.



**At yearend 2003, 298 tribal youth were in BOP facilities, including both juvenile contract and adult facilities**

In 2003, 74% of tribal youth were housed under BOP jurisdiction in Minnesota, Arizona, Utah, the Western District of Texas, and Colorado. BOP facilities (including contract facilities) were not located in the states that contained large tribal populations and had committed a large number of Indian country

juveniles (South Dakota, North Dakota, Montana, and New Mexico). For example, tribal youth whose legal residence was South Dakota comprised over half of the juveniles in BOP facilities in Minnesota.

Among tribal youth under BOP jurisdiction in 2003, most were committed for a violent felony offense, including homicide, manslaughter, serious sexual assault

or abuse, and serious physical assault. In comparison, 185 tribal juveniles were in custody in 10 juvenile tribal facilities in 2002. (See *American Indians and Crime*, BJS Web, December 2004.) These tribal youth were confined mostly for misdemeanor (62%) and status offenses (29%); 10% of the youth were confined in tribal juvenile facilities for felony offenses.

**TABLE 5.3**  
**Tribal youth admitted to the jurisdiction of the Federal Bureau of Prisons, 1999–2008**

Commitment offense	Total	Year of commitment to BOP jurisdiction									
		1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Total	1,909	241	252	219	234	212	231	208	164	76	72
Murder/Negligent manslaughter*	218	31	27	25	18	20	24	26	20	16	11
Assault	491	44	65	70	57	52	64	52	49	20	18
Robbery	51	7	5	9	4	7	9	4	3	1	2
Sexual abuse	441	55	52	33	65	46	55	57	40	17	21
Embezzlement	1	1	0	0	0	0	0	0	0	0	0
Burglary	442	62	66	59	61	53	43	42	30	12	14
Larceny	56	12	7	5	8	4	4	6	6	2	2
Motor vehicle theft	8	2	1	1	0	1	0	1	2	0	0
Arson and explosives	69	2	6	3	5	11	17	9	6	7	3
Other property offenses	38	13	6	6	4	1	3	3	1	1	0
Other drug felonies	3	0	1	0	0	1	0	1	0	0	0
Weapon offenses	9	1	2	0	2	1	2	1	0	0	0
Nonviolent sex offenses	36	4	4	1	4	7	7	3	5	0	1
Traffic offenses	13	2	5	1	1	3	1	0	0	0	0

Note: Total includes juveniles whose offenses were missing or unclassifiable.

\*Includes attempted murder.

Source: Urban Institute analysis of Federal Bureau of Prisons, SENTRY data base, fiscal years 1999-2008.

**Tribal youth served a sentence in federal facilities that was twice as long as the maximum sentence tribal facilities can impose**

From 1999 to 2008, the average time served by tribal youth tended to be longer (about 26 months, on average) than the tribal justice system maximum sentence of 12 months. The Tribal Law and Order Act of 2010 recently extended the maximum a tribal court can sentence to 3 years for those courts meeting conditions placed on the legal process. The average time served by non-tribal youth in BOP facilities more than doubled from 15 months in 1999 to over 38 months by 2008.

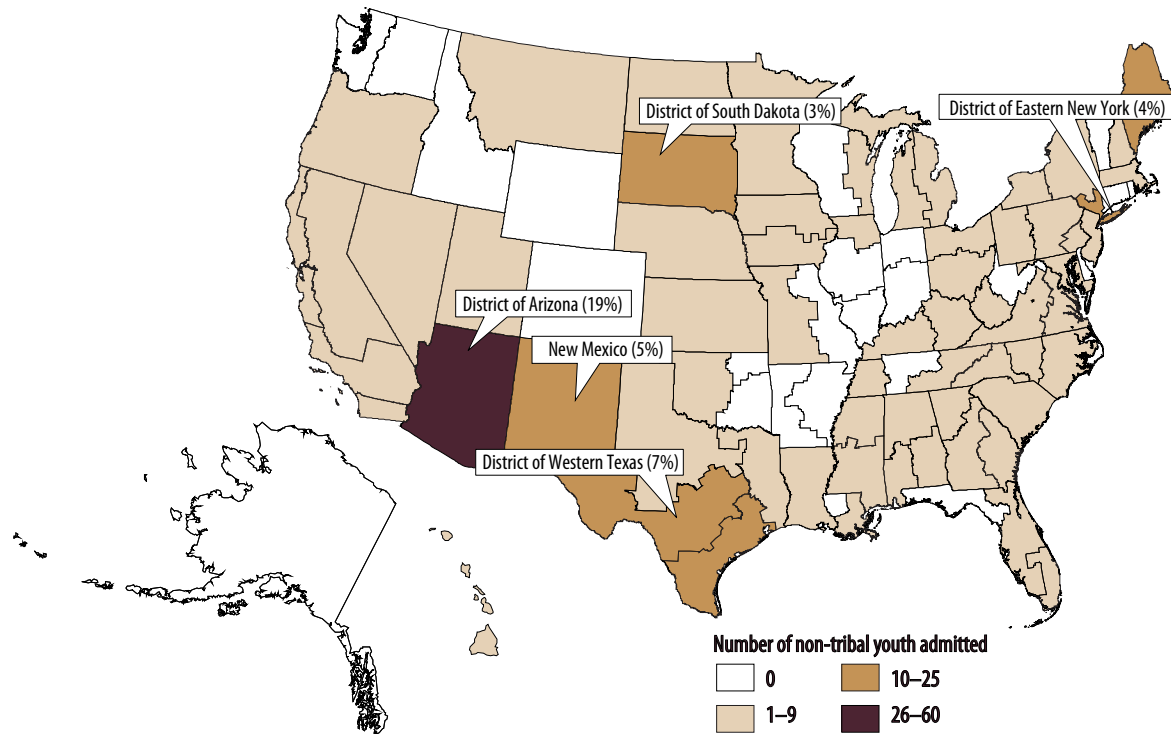
**Non-tribal youth admitted to the federal prison authorities were somewhat more dispersed than tribal youth with respect to district of commitment**

About 32% of non-tribal youth were committed from the five federal districts that committed the most tribal youth. Thirty-six percent of non-tribal youth were committed to the BOP from five federal judicial districts along the U.S.-Mexico border: California-Southern, Arizona, New Mexico, Texas-Western, and Texas-Southern. (figure 5.7).

**Among juveniles admitted to the jurisdiction of the BOP in 2008, non-tribal youth were slightly older at age of offense than tribal youth**

The average of age tribal youth at time of offense was about 15 years compared to 16 years for non-tribal youth. Most tribal youth were male (92%), American Indian (96%), non-Hispanic (99%), and United States citizens (100%). The majority of non-tribal youth were male (93%), white (60%), non-Hispanic (58%), and United States citizens (71%).

**FIGURE 5.7**  
**Non-tribal youth admitted to the jurisdiction of the Federal Bureau of Prisons, and five federal judicial districts that committed the majority of non-tribal youth, 2006–2008**



Source: Based on BJS analysis of data from the Federal Bureau of Prisons, SENTRY database, fiscal years 2006–2008.



## Methodology

The primary source of data presented in this report is from the Federal Justice Statistics Program (FJSP). The methodology to identify tribal youth was developed by the Urban Institute, and primary findings reported here are drawn from their 2011 study, *Tribal Youth in the Federal Justice System* (<http://ncjrs.gov>). This report supplemented findings from the Urban Institute's study with additional analyses based on BJS analysis of FJSP data. Data from the Federal Bureau of Prisons (BOP), SENTRY database, which contains information on all federally sentenced offenders admitted to BOP jurisdiction at fiscal yearend were analyzed for the years 1994 to 1998.

The source of the data in figure 5.1 is The Urban Institute analysis of Executive Office for U.S. Attorneys, National LIONS database, fiscal years 2000 to 2008. Suspects in matters concluded include all matters which were concluded in each respective year. Suspects in matters prosecuted

include matters for which the U.S. attorneys in that district made the decision to prosecute the matter in each fiscal year. The unit of count for figure 5.1 is the suspect matter.

A matter is a referral on which an attorney spends one hour or more investigating, and on which formal papers have not been filed with the Court. If a decision is made not to continue with the investigation, it is disposed of in the LIONS database by declination and closed.

## References

*American Indians and Crime*, NCJ 203097, BJS Web, December 2004.

*2005 American Indian Population and Labor Force Report*. U.S. Department of the Interior, Bureau of Indian Affairs, 2005.

The Urban Institute. *Tribal Youth in the Federal Justice System*, NCJ 234549, May 2011. Available at <http://ncjrs.gov>.

Researchers from The Urban Institute investigated how youth from Indian Country were processed by the federal criminal justice system. They used a combination of qualitative and quantitative information, including administrative data from the BJS-sponsored Federal Justice Statistics Program (FJSP) and information drawn from interviews with more than three dozen federal and tribal justice system personnel.

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Morgan Young and Jill Thomas edited the report, Barbara Quinn produced the report, and Jayne Robinson prepared the report for final printing under the supervision of Doris J. James.

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This report in PDF and in ASCII and its related statistical data and tables are available at the website: <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=1599>.