

Building Culturally Relevant Youth Courts in Tribal Communities

by Ada Pecos Melton

Introduction

Throughout the country, American Indian and Alaska Native (AI/AN)¹ tribes are responding to juvenile crime and delinquency among their youth by employing various philosophies, approaches, programs, and strategies. While AI/AN tribes have similar juvenile crime and delinquency problems as other American cities and towns do, tribal response to these issues can be very different from those applied by mainstream American justice systems. This is due in part to the different worldviews held by tribes that determine their response to crime in general, especially wrongdoing by their young people. American Indian policy created by Congress and the federal courts also influences the response to youth crime and delinquency in AI/AN communities.

The development process of a youth court program in tribal communities is very similar to that of youth courts being developed in the mainstream American justice system. However, there may be some issues that need to be addressed differently based on a tribal community's own culture, values, and philosophies. The purpose of this paper is to provide readers with a brief background of tribal justice systems and to provide an overview of some of the unique issues to consider when developing and implementing youth courts in AI/AN communities. The need for youth courts is discussed, and strategies to design culturally relevant youth courts in AI/AN communities are highlighted. Design and development of youth courts are discussed, reflecting on the history and evolution of tribal justice systems, along with the strengths and challenges for implementation and program sustainability in AI/AN communities.

Overview of Tribal Justice Systems

Indigenous justice systems existed before European contact, and many remain intact. Some tribes have replaced their indigenous systems with those based on American jurisprudence and structure. Still others have developed hybrid systems that blend indigenous and American laws and approaches to address youth crime and delinquency problems. As a result, contemporary tribal justice systems differ culturally, philosophically, and structurally from the American juvenile justice system and with each other. The structure of tribal governments generally determines the construct of problem solving forums among the Indian nations. Tribes have

unique governmental structures influenced by contact with the conquering nations that first encountered them, such as Spain, Mexico, and France, and later the United States. Through warfare and political might, these governments coerced societal, secular, and political changes within and among all the AI/AN tribes. Consequently, modern tribal courts are more westernized, applying American jurisprudence principles as opposed to those based in indigenous law and philosophy. However, many modern tribal courts, law enforcement, and corrections systems are still in their developmental stages.² In particular, juvenile justice systems based on American models lag behind the system used to handle adult offenders.

Jurisdiction

Tribal justice exists in a jurisdictional maze due to fluctuating and confusing federal Indian legislation and policies that have often strained relationships between states and Indian nations and with federal agencies. The establishment of the Court of Indian Offenses in 1883 and the unilateral imposition of law and order codes in 1884 significantly changed the structure of tribal justice systems from community controlled to government controlled systems. Federal policies such as the Major Crimes Act, the Indian Country Crimes Act, the Assimilative Crimes Act, and Public Law 83-280 increased government control by ending exclusive tribal jurisdiction and allowing the Federal government to have shared jurisdiction in certain crimes committed in Indian country.³ Adding to the structural and jurisdictional changes, the Indian Civil Rights Act placed limitations on the power and authority of tribal courts by limiting their sentencing powers. Tribal court sentences are limited to one year confinement and/or up to a \$5,000 fine. Since the late 1800s, these and other legislative acts and policies have contributed to the complexity of tribal jurisdiction and intergovernmental relationships. As a result, the federal government has an extensive role and responsibility in addressing crime, violence, and victimization in Indian communities.

Federal court decisions also had an effect and limited the enforcement of tribal laws on Indian lands. For example in *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, the Supreme Court ruled that Indian nations lacked criminal jurisdiction over non-Indians committing crimes in Indian country. A major problem created by the limitation on tribal criminal jurisdiction is that non-Indian misdemeanor crimes such as a non-Indian youth committing shoplifting, fighting, driving while impaired or underage drinking go without prosecution by any court. Often U.S. Attorneys are reluctant to prosecute these cases because they want to concentrate resources on crimes that are more serious. Nonetheless, these crimes pose great harm, especially in cases involving youth violence or child physical abuse by a non-Indian perpetrator. The lack of federal prosecution also contributes to the high number of Indian people victimized by non-Indian perpetrators.⁴ Generally, 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: the federal, state, or tribal governments? Four classifications of defendant/

victim and two classifications for defendant/victimless crimes are possible (see Table 1).⁵ It also involves the interrelationship of three factors:

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

Table 1: Summary Table of Criminal Jurisdiction in Indian Country

Persons Involved	Federal Jurisdiction	Tribal Jurisdiction	State Jurisdiction
Indian Offender -v.- Indian Victim	Major Crimes Act, the United States can prosecute 16 listed offenses. Among these, burglary, involuntary sodomy, and incest are defined and punished in accordance with Federal law.	Tribal courts may have concurrent jurisdiction over crimes under the Major Crimes Act. For all other offenses, tribal courts have <i>sole</i> jurisdiction (except where federal statute specifically provides otherwise).	None except under P.L. 280 as amended, or other Federal statute or by tribal vote pursuant to 25 U.S.C.§1321. The tribe <i>may</i> retain concurrent jurisdiction.
Indian Offender -v.- Non-Indian Victim	Major Crimes Act General Crimes Act Assimilative Crimes Act	Tribal courts may have concurrent jurisdiction over crimes under the Major Crimes Act. They do have concurrent jurisdiction over offenses which the U.S. can prosecute under the General Crimes Act. Except for major crimes, tribes may preempt federal prosecution. For any other offenses (defined by tribal codes), tribal courts have exclusive jurisdiction.	Same as above.
Indian Offender Victimless Crime	The United States probably can prosecute under the General Crimes Act as explained above or under the Assimilative Crimes Act.	Same as above.	Same as above.

Continued on page 68

Persons Involved	Federal Jurisdiction	Tribal Jurisdiction	State Jurisdiction
Non-Indian Offender -v- Indian Victim	General Crimes Act, plus a substantive offense defined by Federal statute or a substantive offense defined by state law incorporated by the Assimilative Crimes Act.	Tribal courts have no jurisdiction to prosecute non-Indians, unless Congress delegates such power to them.	Probably no state jurisdiction except under P.L. 280, as amended or with tribal consent pursuant to 25 U.S.C. §1321.
Non-Indian Offender -v- Non-Indian Victim	No Federal jurisdiction except for distinctly Federal offenses.	Same as above.	State courts have jurisdiction over all offense defined by state law and involving only non-Indians.
Non-Indian Offender Victimless Crime	General Crimes Act, plus a substantive offense defined by Federal statute or a substantive offense defined by state law incorporated by the Assimilative Crimes Act. The law is still questionable whether Federal jurisdiction is exclusive or concurrent with the state.	Same as above.	State courts probably have concurrent jurisdiction with the United States, although the law is unclear.

Tribal Justice Forums

Until the mid 1970s, confinement was not a traditional remedy among AI/AN people, as substantiated by the lack of archeological evidence of jails, prisons, or mental institutions in Indian communities nationwide. Therefore, it is important to understand the evolution of tribal justice systems for youth within the social and political legacies that have contributed to their current structure. Table 2 describes current types of tribal forums in operation throughout Indian country. Many tribes have multiple justice systems, which separate judicial responsibility for cultural, civil, criminal, and delinquency matters.

The current juvenile offender interventions used by the tribal courts include: community service, restitution, inpatient and outpatient treatment, counseling, referrals to traditional officials for individual and family counseling, probation, and other types of off-reservation confinement or other custodial placements.

Intergovernmental agreements with state and federal agencies help to increase the resources tribes have to address youth needs. As state and national citizens, Indian youth should have equal access to state resources and be able to receive all the benefits available. However, due to jurisdictional issues and other misconceptions, tribes often cannot access all the possible state resources or state managed federal

Table 2: Tribal Justice Forums

	Family & Community Forums	Traditional Courts	Tribal Courts	Courts of Indian Offenses
History	Established by unwritten customary law and traditions.	Established by the tribal council and tribal religious leaders according to unwritten laws.	Established by the tribal council, usually under the authority of the tribe's Constitution.	Established by the Secretary of Interior under Title 25, Code of Federal Regulations (CFR).
Authority	Subject only to authority of traditional clan systems and/or family elders, based on consensus of participants.	Subject only to authority of tribal council & religious leaders.	Subject to authority of tribal council or Law and Order Committees. Tribal Constitutions may require Interior Department approval of council ordinances or resolutions affecting the tribal court.	Subject to authority of tribal council and Interior Department. Council may adopt ordinances or resolutions affecting CFR Court, but Interior Department must approve them.
Rules of the Court	Procedures and offenses defined according to unwritten, customary laws, traditions, and practices.	Procedures and offenses defined according to unwritten, customary laws, traditions, and practices.	Procedures and offenses defined by tribal council in codes or ordinances. Tribal judges may develop rules of procedure for hearings and trials.	Procedures and offenses defined in Title 25, Code of Federal Regulations. Judges may develop Rules of Court for conduct of hearings and trials.
Judges	Presided by family elders, chosen elders or adults from the community, or traditional tribal officials.	Judges are governors or chief executive officers of the pueblo, who serve without pay. They are appointed by the Pueblo Council, which is composed of ex-governors and tribal religious leaders.	Judges may be elected by the tribal membership or appointed by the tribal council if paid by the tribe.	Judges are appointed by the Commissioner of Indian Affairs, subject to approval by the tribal council, and are paid with federal funds.
Appeals Procedures	Usually cannot be appealed, but matters may be pursued through formal tribal courts.	Appeals of decisions by the Pueblo Governor are heard usually by the Pueblo Council.	Appeals of tribal court decisions may be heard by a tribal appellate court, composed of judges, or by the tribal council.	Appeals of CFR Court decisions may be heard by an appellate court composed of judges appointed under the Code of Federal Regulations.

resources available to address local youth crime, delinquency and victimization problems.

As noted above, we must understand the evolution of Indian juvenile justice systems within the social and political legacies that have contributed to their current structure.⁶ Particular emphasis should focus on the philosophies and beliefs Indian people have regarding the treatment of troubled or troublesome Indian youth. The core philosophies and beliefs of Indian people must weigh against the theoretical perspectives of mainstream society. While there may be some overlap in philosophies and approaches, points of view Indian people have of their own children and youth should be reflected in the development of youth programs, including tribal youth courts.

Indigenous Justice Philosophy and Cultural Strengths

For many Indian nations, law is a way of life taught through oral traditional processes used to pass on the knowledge, skills, and abilities to maintain traditional life ways. Indian people consider youth to be their greatest resource who need nurturing and rearing in a loving fashion by all community members, and traditional law-ways support cultivating the strength and wisdom of young people. Table 3 describes some core philosophies and beliefs of tribes that weigh against the theoretical perspectives of mainstream American jurisprudence, which relies more on vertical and adversarial processes for handling problems.⁷

Throughout Indian country, tribes are using justice process and approaches found in their own culture or that of other indigenous groups. For example, most pueblos in the Southwest continue to rely on their traditional officials (currently identified by Spanish references: *fiscales* and *mayordomos*) to mediate cases involving children and youth. These traditional officials assist with discipline by providing support to the family and relatives of the youth. Often extended family members accompany youth and families to hearings and engage in the problem solving and resolution process. While youth are involved, much of the process is led by adults whose primary purposes are to guide discussions that inform decision-making and help the young person to take responsibility for his or her wrongdoing through apology and agreeing to implement the reparative measures identified. Depending on the level of tribal intervention, the reparative measures may become part of a court order.

The Navajo Nation's wide use of peacemaking in all types of cases provides tribes with an indigenous model to replicate in their communities to handle children, youth, and family cases. In particular, the Navajo Nation has a Peacemaking Program specifically to handle juvenile status offenses and delinquency matters. The Navajo peacemaking system allows for varying degree of involvement with its family court system. Peacemakers are generally Navajo elders or respected community members who mediate cases and help youth and other participants reach resolutions. Other tribes such as the Chippewa tribes in Michigan have developed peacemaking systems in their communities to handle truancy and other types of minor offenses including juvenile delinquency. The Michigan models include part-

Table 3: Indigenous Justice Systems

This is a **holistic system** with law and justice being a part of the whole society. Law is learned as a way of life. Communal rights are foremost in this system to maintain peace, harmony, and balance in the community.

Communication is fluid. Talk and discussion in the native language is essential to build trusting relationships that will promote resolution and healing for victims and their families, community members, and offenders and their families. Therefore, problems are viewed in their entirety, and all the contributing factors are examined.

The process is based on **distributive justice principles**. The process is inclusive and engages family and community members to participate in problem solving and serve as resources for the victim and/or offender and to the system. The spiritual realm is invoked through ceremony and prayer to provide guidance, open mindedness, and strength to all participants.

Reparative principles are used, which require corrective action to be taken by the offender. This makes the offender accountable and responsible for change and making amends.

Restorative principles are used, which require offenders to acknowledge the hurt they have caused and to apologize and ask for forgiveness from victims, affected family members, and the community.

The process is not limited by time. Long silences are accepted, and patience is valued. Focus is placed on the **right of offenders and victims to be heard, to heal, or to make things right again.**

nerships among youth, adults and elders to work together to address youth wrongdoing and to develop plans for the youth to follow.

There are many contemporary challenges to incorporating tribal culture philosophies, values, and approaches into programs for youth, including youth courts. However, there are many ways for tribes to infuse youth programs with culture based approaches and tribal philosophy. The next section provides an overview of the youth court concept and describes some challenges and strategies to build culturally relevant youth courts.

Designing Youth Courts

Youth courts are defined by the National Youth Court Center as programs in which youth are sentenced by their peers for minor delinquent and problem behavior. The youth court concept empowers young people by giving them ownership of the program and by facilitating their development of skills to enable them to become responsible leaders in their communities.⁸

Most youth courts require an admission of guilt and function as a sentencing hearing only; however, a small number will allow offenders to plead not guilty. Mainstream youth courts follow four basic youth court models—Adult Judge, Youth

Judge, Youth Tribunal, and Peer Jury. Some youth courts are hybrids or modifications of the four primary models.⁹ See Figure 1 for a brief description of the program models. Judges, police, probation officers, and schools generally refer cases to youth court. Cases heard can include theft, criminal mischief, vandalism, minor assault, possession of alcohol, minor drug offenses, truancy, and other status offenses and non-violent misdemeanor offenses. Youth courts are operated by schools, police departments, probation departments, juvenile and family courts, and community agencies. In many cases, they operate as a joint venture among several agencies within the community. Youth involved in the program learn about due process, balanced and restorative justice, and the benefits of volunteering to improve themselves and the community. Through the youth court process, offenders (i.e., respondents) do more than make up for their misdeeds; they have a chance to learn deeper lessons about their role in the community as they engage in constructive sentences imposed by their peers, such as community service, youth court jury duty, and educational workshops.¹⁰

Benefits of Implementing Youth Courts in American Indian and Alaska Native Communities

Several AI/AN communities have established youth courts or are in the process of establishing them in their jurisdictions. See Figure 2 on pages 74 and 75 for a brief description of a few youth courts in tribal communities.

Youth courts in AI/AN communities range from those that are tribal court annexed to those managed by other tribal programs or community organizations. The three main reasons for the emergence of youth courts in Indian communities include the need for:

- alternatives to handle status offenses such as truancy and school-based incidences,
- alternatives to handle minor offenses such as underage drinking, non-violent crimes, and traffic violations, and
- court options not otherwise available in some AI/AN communities to address minor youth crimes.

Youth courts provide the following benefits and/or advantages for AI/AN youth:

- Appropriate inclusion of youth in tribal government processes increases youth knowledge of AI/AN justice systems.
- Education and awareness help youth see that they can have positive roles within the court system, instead of just negative ones.
- Youth receive opportunities for leadership roles in the justice system and their tribal government or community.
- Youth discover what careers are available within the justice system.
- Youth courts provide meaningful ways to include youth in solving problems encountered by their peers.

Figure 1: Youth Court Program Models¹¹

Adult Judge Model

The Adult Judge Model has youth volunteers serving in the roles of defense attorneys, prosecuting attorneys, and jurors. Most programs that operate as an Adult Judge Model also use youth volunteers to serve as court clerks and bailiffs. However, in this model, an adult volunteer serves in the role of judge. The judge is typically the only adult involved directly in the proceedings, and the judge's role is to rule on courtroom procedure and clarify legal terminology. Often, the volunteer teen court judge is a local attorney; however, sometimes an actual juvenile or municipal court judge will serve in this capacity. According to the National Youth Court Center,¹² this appears to be the model most widely used.

Youth Judge Model

The Youth Judge Model differs from the Adult Judge Model in that youth volunteers also serve in the role of judge. Qualifications of youth judges typically include a minimum level of service as teen court attorneys and minimum age requirements.

Youth Tribunal Model

The primary difference in the Youth Tribunal Model when compared to all other teen court program models is that there are no youth jurors. The case is presented by the youth attorneys to youth judges, who determine the appropriate sentence for the teen court respondent. Most programs that use this model employ a panel of three youth volunteer judges. The youth volunteer judge with the most experience sits in the middle of the panel and can counsel the other two less experienced youth judges, if needed. For those teen court programs that adjudicate cases, this model typically is used for arraignment proceedings.

Peer Jury Model

The main distinction between programs operating under all other teen court program models versus the Peer Jury Model is that Peer Jury Model teen court programs do not use youth in defense and prosecuting attorney roles. Instead, the facts of the case are read by a case presenter, and a panel of youth jurors (usually a panel of six to eight jurors) questions the respondent directly about the offense and makes a sentencing recommendation. Most have an adult volunteer serve in the role of judge. Depending on the program, the case presenter could be the teen court coordinator, a probation or law enforcement officer, or a youth or adult volunteer. Some programs use the peer jury model exclusively, while other programs use this model for certain types of cases being heard or for cases involving younger teen court defendants.

- Positive partnerships occur among youth, adults, elders, and tribal leaders in addressing AI/AN youth crime and delinquency.
- Youth courts restore community faith in youth by providing a mechanism for youth to show that they can do positive things for themselves, elders, and the community as a whole.
- Youth are encouraged to learn from elders while they are helping them, and they feel more connected with them.
- Youth learn traditional skills through culture-based community service.
- Youth receive hope for the future, always knowing they are an integral part of a community that strives to keep them connected.

Figure 2: Tribal Youth Courts

Tanana Chiefs Conference Tribal Youth Court Program

The Tanana Chiefs Conference in Interior Alaska is assisting 14 tribes in establishing youth courts in their villages. Currently there are six youth courts in various stages of development in six villages. The primary purposes of the youth courts are:

- To encourage responsible behavior and choices.
- To empower youth with decision-making capabilities when problems arise among their peers.
- To promote healing of offenders and victims.
- To foster tribal values and cultural practices.

The structure and process of the youth courts may follow two forms: Circle Style or Panel Style. Youth courts are normal components of the tribal court. Therefore, youth court decisions are typically formalized in a tribal court order. The Circle Style approaches often include *justice circle* processes that allow participants to discuss the presenting problem and all other contributing factors not directly identified in a written petition or referral. This process encourages the youth, family, relatives, and/or other community members to participate in discussions and formulate plans with the referred youth. The Panel Style involves three to four youth plus one regular tribal court judge to sit as a panel to hear cases. The presiding judge for each case is picked from among the youth judges, but cannot be the regular tribal court judge. After everyone has had an opportunity to speak, they are excused so the youth judges can make decisions regarding the disposition. This is done through private deliberations among the youth judges until consensus is reached. The decision is written and entered as a tribal court order. The regular tribal court serves as the appeals court for both the Circle Style and Panel Style youth courts. Training is provided for new youth members in both the Circle Style and Panel Style courts.

Kake Tribal Youth Court

The Kake Tribal Youth Court in Alaska operates as a diversion program and follows the Circle Peacemaking process. The youth court handles misdemeanor violations, (e.g., tobacco and alcohol consumption, theft, vandalism, and trespassing) committed by youth in grades seven through 12 and under 18 years old. The goals of peacemaking include:

- Encourage responsible behavior and choices.
- Show respect for self, others, and community.
- Build self-esteem and self-confidence.
- Empower people with the ability for prudent decision making when problems arise.
- Promote healing among offenders, victims, and the community.
- Learn, teach, and encourage use of tribal values and cultural practices.
- Hold people accountable for their actions so they will accept responsibility for damages.

Youth members facilitate the circle sessions, although adults, such as the Community Justice Advocate, a counselor, or someone from the referring agency may participate. Other participants include parents of the offender, the victim (if applicable) and family, and at least one community elder. The Kake District Court, Department of Family and Youth Services, Division of Juvenile Justice, and family or schools may make referrals to the program. Participation in the youth court is voluntary; therefore, offenders and their families must enter an agreement to participate and follow the peacemaking guidelines and peacemaking decisions. The guidelines include the defendant bringing an elder to the peacemaking sessions. Elder participation demonstrates the value the offender and family place on peacemaking and the elder represents the offender and family's commitment to follow peacemaking resolutions. The decision is recorded as a contract that the youth and family must follow. The Youth Court Coordinator monitors the contract for compliance.

Taos Pueblo Teen Court

The Taos Pueblo Teen Court is a Peer Jury Model designed as an alternative sentencing program for first time offenders between 12 and 17 years old. The mission of the teen court is to provide an alternative sentencing program, which offers an opportunity for education and experience not only for the youth, but also by involvement of their families, peers, and community. An important goal is youth offender accountability, which is achieved by helping youth defendants learn about the justice system, its purposes, and how personal wrongdoing harms oneself, family, relatives, and the community. The program requires active participation by parents, who are routinely included in dispositions.

The Tribal Court Judge generally serves as the presiding judge although a retired judge can also serve. Youth fulfill roles as jurors, prosecuting and defense attorneys, court clerks, and bailiffs. Youth are recruited for positions; however, offenders may become jurors as a part of the disposition. The Peer Jury Model is based on the concept that most youth offenders will not repeat their actions when a jury of their peers deliberates and decides on an appropriate and constructive sentence. Another deterrent effect is involvement of youth who are not involved in the court system because it promotes learning about the Taos justice system by offending and non-offending youth and parents.

Referrals are received from the Taos Tribal Court, the Taos Juvenile Probation Office for the 8th Judicial District, and the Taos School District. The latter referral sources are possible through an intergovernmental agreement between the probation office and the school, which increases the ability of the Pueblo to address youth tribal members' problems when they occur off Pueblo lands.

Gila River Teen Court

The Gila River Indian Community Teen Court Program is a diversion program for first time, non-violent youth offenders, ages 12 to 17. It provides an alternative for the Children's Court to refer the youth to teen court instead of a lengthy adjudication process and incarceration. Through specially designed consequences, the program allows the youth offenders to repair the harm they have caused and to be held accountable for their actions. Many of the community youth are unaware of the history or cultural values of Gila River. As part of the teen court requirements, youth who participate with the program must attend or become part of a Gila River Cultural event. The premise is to make the youth aware of the sacred history of the community. The teen court is not just for youth offenders. The program has attracted numerous youth from the community to participate as volunteers. The youth volunteers are interested in learning about the court system and showing the youth offenders the behavior they are exhibiting is unacceptable. All youth offenders are given an invitation to stay with teen court as volunteers once they have completed all of the consequences that were assigned to them.

Gila River currently operates two models of teen court. The first is the Adult Judge Model. This model operates as a normal courtroom. The only adult who participates in the trial is one of two presiding Children's Court judges. The task of the judge in this model is to provide directions to the youth during the trial. The youth volunteers serve in the remaining roles. They serve as the bailiff, clerk, youth attorneys, and jury members. This model serves five districts in Gila River. The second model operating is the Peer Jury Model. This model is designed for a panel of five to 10 youth volunteers who address the youth offender in a relaxed environment. The youth offender is asked questions directly by the jury panel. The Peer Jury Model is usually less confrontational, but questions tend to be directed more to the youth's overall conduct with his or her family, school, and community. The Peer Jury Model serves two districts in the community.

The teen court receives referrals from two sources in the community. The first source is the detention hearing in Children's Court. When a youth is arrested and booked into the detention center, he or she must have a hearing within 24 hours. At the detention hearing, the judge may refer the youth to teen court if charges are not filed. The second source is the Law Office. The Law Office decides if formal charges are going to be filed or referred to teen court.

- Interest in school increases as a result of being involved with youth court.
- Youth learn how to deal with problems and conflicts in an appropriate way, especially in programs based on peacemaking principles.
- One of the reasons for bringing youth into peacemaking is to have adults act as role models to show youth appropriate ways to act and resolve issues and/or problems.
- Youth courts strengthen relationships among tribes and agencies such as social services, probation, and schools.
- Youth courts increase opportunities for partnerships among tribal systems and programs to address shared responsibilities aimed at helping youth succeed.
- Youth courts are early intervention programs that can identify and address the underlying issues that bring youth to court.

Major Tasks in Youth Court Development

Some of the major tasks that program organizers must undertake when developing a youth court include:

- researching and understanding the youth court concept and principles,
- forming community partnerships and developing advisory committees to assist with development tasks,
- conducting needs and resources assessments,
- examining legal issues,
- securing monetary and in-kind support,
- securing office and courtroom space,
- hiring staff,
- determining an appropriate youth court program function and model,
- developing a strategic plan for the program,
- determining the types of cases the program will accept,
- outlining a process for receiving and screening referrals,
- designing program services and dispositional options,
- developing effective case management and data collection procedures,
- developing an evaluation plan, and
- recruiting and training volunteers.

There are myriad resources available from the National Youth Court Center and its allied agencies to assist communities in developing youth courts and in helping youth courts enhance services that they provide (go to www.youthcourt.net for information on available resources). These resources, however, were developed based on the mainstream American justice systems. While they still can help tribal communities examine various issues related to program development and

management, AI/AN communities will need to consider their unique cultural issues, values, and philosophies when making programmatic decisions. The next section discusses some of the more notable issues that may need to be addressed to build a culturally relevant youth court in tribal communities.

Building Culturally Relevant Youth Courts in Tribal Communities

There is no single right way to operate a youth court; however, there are national guidelines to provide guidance for developing and operating effective programs and for maintaining the integrity of the youth court concept.¹³ There is flexibility within the guidelines so that communities can tailor their programs to meet their unique values, needs, and resources.

The most important aspect of a tribal youth court is making sure that it is a community-based and culturally relevant court. It is important to note that culture has a significant role in administering justice to AI/AN children on four levels:

1. *Professional and agency competency.* Agency or program professionals and paraprofessionals need to be culturally sensitive and competent. That is, staff should be knowledgeable about the tribe's history, language, beliefs, practices, and socioeconomic and other cultural nuances, and also be able to apply this knowledge in compassionate and competent ways;
2. *Sensitivity to youth cultural level.* The youth's level of cultural competence or proficiency needs to be assessed, and services provided accordingly;
3. *Promotion of cultural approaches and interventions.* Interventions and programs need to promote both cultural competency and sensitivity in order to adequately address the needs of the Indian youth and determine the most appropriate course of action; and
4. *Cultural relevance.* Programs need to incorporate interventions and remedies that reflect the culture of the tribe served. Indian nations are the most appropriate source for determining what is culturally appropriate for their youth, and the states and federal governments need to be supportive of these efforts. This includes recognition of decisions made by the indigenous justices systems (traditional courts) operated by some Indian nations.

The following section describes a few additional areas that AI/AN communities may need to consider when developing a culturally relevant youth court.

Defining the Youth Court's Purpose

Most mainstream youth courts focus on sentencing youth. Albeit there is an emphasis on community service and involvement, there is a difference in the type of connection to and understanding of communal responsibility and accountability that is important in AI/AN communities. Tribal communities tend to adhere to indigenous values aimed at restoring the balance and peace in the community rather than punishing someone who has done something wrong. This approach helps youth view themselves as important and valuable community members with a responsibility to

maintain community peace, safety, and harmony. Therefore, who is involved in and provides input into the hearing process and the way the types of consequences are assigned may reflect these differences in youth courts in AI/AN communities.

Selecting a Program Model

Some youth courts in AI/AN communities model themselves following the structure of the four primary mainstream youth court program models; however, youth courts in tribal communities often have difficulty structuring themselves according to mainstream models because these models are so different from the way tribal justice systems work.

There are stark philosophical and structural differences between the American justice system and that of indigenous and modern tribal courts that can present challenges when selecting a program model and when providing training for youth volunteers. For example, the separation of powers doctrine articulated in the U.S. Constitution would not tolerate a governor serving as the judge as occurs in traditional courts among the Southwest pueblos. Tribes with dual or multiple justice systems may have written criminal and juvenile codes presided by judges who may or may not have law degrees, but who do have extensive cultural knowledge. Similar to American courts, modern tribal courts allow attorneys to practice. However, attorneys are not allowed in the traditional systems due to the customary law that only those with a vested and continuing interest in the well-being of the individuals involved may attend and participate, not those who expect monetary compensation for representing interests. For many AI/AN tribes, the preferred process for handling youth misconduct is to settle the matter traditionally.

The mainstream youth court program models are based primarily on the way the American justice system is structured. It is relatively easy for youth involved with those programs to understand the various volunteer roles (e.g., attorneys, clerks, bailiffs) and for them to have adults in their communities who serve in these roles in the court system to train them and serve as mentors. In a tribal community, the roles of attorneys, clerks, and bailiffs may not be found in their regular processes for handling delinquent and criminal conduct, so youth courts in AI/AN communities may find it easier to develop new program models with different types of volunteer roles that more accurately reflect their systems of justice to meet their needs. See Figure 4 for some sample ways that tribal communities have created or modified program models to better replicate their systems of justice.

Defining Adult and Elder Roles

The adult or elder¹⁴ role in youth courts varies from tribe to tribe. As in mainstream youth courts, adults or elders may serve as judges, as coordinators, as court clerks, or to oversee service-learning activities. Other adult or elder roles may include responsibility for program sustainability, program evaluation, and overall management and administration.

In some youth courts in tribal communities, adults and elders are mentors who teach youth cultural skills. When youth spend time with an elder mentor,

Figure 4: Culture-Based Youth Courts

A panel of judges (typically three), rather than one person, hears cases in traditional courts. The panel determines sentences and employs traditional values for group decision-making and problem solving. Youth courts could also use a three-panel judge system to hear cases and determine consequences; thus allowing cultural values of working together to solve problems and sharing responsibility to occur.

Another aspect of traditional courts is the inclusion of extended family members to participate in proceedings and provide input on cases. This allows judges to hear from family, friends, and relatives, and enables informed decision-making regarding dispositions. Youth courts can replicate this process to achieve the same purposes related to informed decision-making. This supports cultural values that hold families responsible and accountable for helping young people make things right for those they may have harmed and for themselves. Impaneled peer judges can hear from everyone and determine the appropriate consequences.

traditional knowledge flows through history lessons, storytelling, and other learning activities and tasks. Some youth courts have a corps of volunteers and/or mentors to match with clients. Others allow the family, most often the family elder, to select someone related to them or a well-known community member to serve as a mentor. This selection process differs from mainstream youth courts that use formal screening processes to enlist and assign mentors and other volunteers. Community and/or elder mentors are natural human resources who tribal youth courts can use in their programs. While they may need training in some areas, most of what they use to help young people will come from their rich cultural knowledge and expertise, and what is in their heart. Respect for and involvement of elders contributes significantly to youth and families following youth court decisions or orders.

As stated previously, youth courts by definition are youth-driven programs. In mainstream youth courts, unnecessary intervention by and dominance of adults can have a negative effect on youths' feelings and sense of empowerment. Therefore, adults in mainstream youth courts are advised to serve as "guides" or "mentors" to youth, rather than to position themselves in a role of power or authority in the process.¹⁵ Some AI/AN communities struggle with the concept of adults taking a backseat in the youth court because this is in contrast to some tribal views that elders should be active participants in all processes.

In a few tribal youth courts, adults are active participants alongside youth in peacemaking or circle processes. In mainstream youth courts, adults do not assume active roles within the youth court proceedings. The one exception is those mainstream youth courts that use an adult judge. However, the adult judge's role is to preside over the hearing—not to intervene unnecessarily or make dispositional decisions.

To account for the cultural differences that stem from adult/elder/youth relationships within many tribal communities, it may be necessary to relax the rules of adult participation in the hearing process (e.g., have adults serve as circle participants or panelists to ask questions). However, the final distinction that makes a youth court a youth court by definition is that young people are the ones who are responsible for making the decisions about what the consequence should be for their

peers. This is where the line is sometimes blurred between what is an actual youth court and what is another type of program that involves youth. If adults or elders are active participants in the decision-making process, then it cannot be considered a youth court program. Mere inclusion of youth in a peacemaking circle or similar type process does not make a program a youth court by definition. That is not to say that involving adults or elders is wrong—it just means that the program cannot be classified as a youth court program as defined by the *National Youth Court Guidelines*. However, the fact that AI/AN communities are beginning to involve youth in their justice and peacemaking circles is a positive result that should be recognized and can often be attributed to the influences of the youth court concept. Over time, some of these communities may find themselves evolving into a youth court that fits within the established definition.

Establishing Tribal Youth Court Dispositions and Services

Youth courts in AI/AN communities have similar dispositions to mainstream programs. These include community service, restitution, essays, research papers, counseling, organizing events, beautification projects, and youth sharing what they learned with others. The Gila River Youth Court includes ways for defendants to give back to the youth court, by recruiting them to serve as prosecuting or defense attorneys, or jurors.

Youth courts in AI/AN communities who employ peacemaking principles make community service more meaningful in that it is specific to the wrongdoer (respondent) and village or community. Wrongdoers do not choose where to work from a list of service organizations; rather the group defines the community service. Community service is more specific in that it is not just a certain number of hours (e.g., you have to clean the cemetery or prepare for ceremonies, regardless of how long it takes). The point is not to “do your time,” but to perform a specific task for the community to make amends, restore a relationship, demonstrate remorse, and/or regain respect. It is purposeful community service and not just busy work.

Every tribal institution has a responsibility to teach young people cultural values that they will perpetuate. The tribal youth court process assists youth to open their eyes and gain greater understanding about what they are supposed to do to facilitate healthy choices. Knowledge and skill building activities promote opportunities to learn from elders. The educational component often is more hands on than with mainstream youth courts, especially when it involves cultural teachings (e.g., preparation of ceremonial offerings) or skill building (e.g., erecting a sweat lodge).

Involving Family and Community

Most youth courts in tribal communities promote a higher level of involvement of the parents, family, and community than is typically applied in mainstream youth court programs. Community involvement is vital for tribes. The very nature of being a tribe defines it as a cohesive community with each member having

shared responsibility for raising children and youth. Tribal youth courts can and do incorporate strong communal aspects that nurture vested interest in each youth participant's success. Therefore, the structure of tribal youth courts supports greater inclusion of parents, family, and community, especially to use distributive justice principles that hold each member equally responsible for accepting blame, problem solving, designing solutions, accountability for compliance, and enforcement of youth court decisions.

Youth courts following circle processes rely on elders, families, and the community to influence compliance. In some instances, the tribal council may call in parents to explain reasons for their child's or their own non-compliance with youth court decisions. Some conduct a series of circles over several weeks to keep a pulse on the process and to monitor progress. These programs are more family-focused than youth-focused, which allows for greater review of all family factors contributing to non-compliance. Everything is re-examined to see what is not working and why problems with non-compliance are occurring. This may lead to a modification of the original agreement, reinstatement of the previous agreement, or development of a new one. The greatest hindrances to ongoing circles are high caseloads and not enough staff or volunteers. Most youth courts provide mechanisms for elders and other mentors to report progress to the program, but a clear distinction is made between reporting and compliance monitoring.

Developing Partnerships

Partnerships with internal and external agencies vary from tribe to tribe and from state to state, but are essential to help tribal youth courts maximize access to resources. Frequently partnerships are informal and based on personal relationships across programs or across jurisdictions. Recently, the trend has been towards formalizing partnerships through interagency or intergovernmental agreements that identify areas of mutual interest and responsibility along with the roles and responsibilities of each partner. Youth court partnerships occur with the following types of governmental and non-governmental agencies and organizations:

- tribal, county, and state probation;
- on- and off-reservation schools;
- Indian Health Services;
- treatment programs;
- Boys and Girls Clubs; and
- Elderly centers.

Partnerships vary depending on the location of the tribe. Some tribes are near urban centers that increase their ability to access financial and other types of resource partners from mainstream groups such as churches, private businesses, non-profits, and schools. Rural and/or remote tribes have more challenges to recruit or establish similar partnerships. Recently, state and county agencies have become more amenable to working with tribal programs through development of formal

intergovernmental agreements supported by state statutes and policies. For example, the New Mexico Children's Code mandates state criminal and juvenile justice administrators and practitioners to consult with the New Mexico tribes when an Indian child is involved in the state system. The purpose for the consultation is to exchange information and provide an opportunity for the tribe to be involved in the fashioning of dispositions or placements or treatment of the court-involved Indian child. Tribal court orders are also recognized through intergovernmental agreements between the tribal courts and the state. These statutes support the agreements among the Pueblo of Taos and the Taos Probation Office and the Taos Public Schools.

Usually youth courts seek partnerships to expand services for diagnostic assessments, mental health and other types of counseling, treatment, tutoring and homework support, law-related education, sports, and recreational resources. Frequently the only partners available are internal tribal programs or federal agencies such as the Bureau of Indian Affairs and the U.S. Indian Health Service. Tribal programs provide enormous assistance to youth courts by providing in-kind services such as training and technical assistance and options for inclusion in dispositions. Several tribal programs provide counseling services, assessment and diagnostic support, community service support, parenting support and referral services. Community health aides often provide referral services and help look after youth and families in the community by providing ongoing non-coercive support.

Community partnerships help youth courts in AI/AN communities fulfill important cultural components such as accessing traditional healers or medicine men and women, spiritual healers, community mentors, storytellers, and traditional artists and craftsmen and women. There may be different mentors assigned to the same youth for different tasks and purposes. Communities have become tremendous resources for youth courts because they provide natural helpers who can teach youth cultural history, tribal philosophy and knowledge, and traditional skills. The highest and most revered are elders, traditional healers, traditional artisans, and tribal leaders. Tribal leaders and judges can teach about tribal government in law-related education courses. Elders can instruct on tribal philosophy and language. Artisans can teach youth how to make drums and moccasins, and design dance regalia. Spiritual leaders can teach youth important ceremonial protocols, and how to pray and give thanks. Use of natural helpers turns the community into a resource that is involved in addressing youth needs and issues.

Programmatic Challenges to Operating Tribal Youth Courts

Several factors present challenges to effective operation of tribal youth courts that may or may not apply to some mainstream youth courts. The following are most notable.

Environmental Factors

Environmental factors such as weather, geography, and remoteness may interrupt or interfere with sessions or even prohibit the establishment of a youth court in the community. Youth court participants may find it difficult to attend

sessions due to frequent bad weather in places such as Alaska and the Northern Plains.

Planning and Development Factors

Planning and development factors play a key role in the success of youth courts. Tribal staff have great ideas and know their community's needs, but may lack essential resources for putting ideas into action over the long term. Tribes are often reluctant to ask for training and technical assistance; therefore, planning and development support must be accessible, interactive, and include a strong outreach component so that tribes know about planning resources and how to access services.

Not giving enough thought to the goals and objectives of the program may cause programs to promise more than they can deliver and set the program up for failure. No program can meet all the needs of a community, so purposeful planning is necessary to define goals, objectives, and outcome measures. Such planning can begin with a thorough assessment to identify needs, pulse community readiness, and see what resources are available in the community. Another design aspect is inclusion of effective screening and intake to ensure the appropriateness of referrals and acceptance into the youth court program. The tribal youth court program must be clear about the criteria for youth and adult participation.

Capacity Building Factors

Capacity building factors include access to resources to develop tribal youth courts. Resource needs include funding and places where youth court sessions can occur. Some tribal courts have limited office space and may not be able to provide the necessary space to house the program. Other courts may not have the manpower to provide the necessary support to operate the program. The tribal court may need strengthening before establishing a youth court. Some programs are not getting enough initial training, which hinders staff and volunteer performance. Providing effective capacity building support to tribal programs requires expertise beyond knowledge of a particular topic and technical skills. Understanding the impact of issues such as culture and tradition, jurisdiction, socio-economics, access to resources, technology, the structure of tribal systems, and relationships between entities are prerequisites to providing effective and appropriate assistance.

Recruitment Factors

Recruitment factors are affected by the availability of adult and youth volunteers in communities. Reliance on volunteers may not be possible for some small tribes because they may already be overextended with other community activities. Other issues include the lack of anonymity for safety purposes and maintaining objectivity. Youth courts need to have meaningful incentives for youth and adult volunteer retention.

Community Factors

Community factors include awareness of community readiness issues that could hinder implementation of youth court programs and strategies. Community

readiness issues may include the lack of community knowledge or awareness about juvenile crime and delinquency issues. Not knowing what to do about it may contribute to less overt urgency to address youth crime problems. Communities may also be in denial that there are problems with youth or the current system, which hinders people from seeing youth crime, delinquency, and victimization as a local problem. There may also be the assertion that “nothing can be done,” which, if echoed by community decision makers, may inhibit the development of viable alternatives to address youth problems. These attitudes contribute to communities becoming reactive, rather than proactive in dealing with problems when they are small and easier to handle, and can hinder strategies to implement early intervention programs such as youth courts.

Resource Factors

Resource factors include time limitations for training and technical assistance to support program development and capacity, and staff and volunteer capabilities. Finding the right people who are culturally knowledgeable and competent to help tribes with local capacity building is critical. Support must be from a diverse team of skilled and experienced professionals who have technical skills, research skills, program development skills, teaching skills, and practitioner experience. Tribes must work collaboratively with other Indian and non-Indians, and governmental and nongovernmental agencies to increase the quantity of capacity building resources, improve the quality of resources, and make better use of resources and services available to tribes. It is important for tribes to build capability to maximize use of community resources.

The limited labor pool that tribes have to draw from to employ their own people hinders the ability of tribes to address juvenile justice problems effectively. Additionally, tribes must spend more time and financial resources to create a skilled and knowledgeable labor force. Challenges for acquiring knowledgeable and skilled workers often impacts tribal readiness and capability to address youth needs, problems, and issues.

Collaboration Factors

Collaboration factors involve several levels of interaction with youth, adults, elders, communities and government and non-governmental agencies to support youth court activities either as recipients of services, providers, or as financial or human resource partners. There needs to be a willingness by all groups to practice good communication, cooperation, and information and resource sharing, and to focus on youth court implementation issues rather than personal, territorial, or political issues. Since Indian youth are citizens of three sovereigns—tribe, state, and national—it is essential to build intra- and inter-tribal partnerships along with intergovernmental partnerships by finding a common ground and identifying mutual interest and responsibilities to address Indian youth needs. Tribal youth courts also need to collaborate with private and non-profit organizations such as the National Youth Court Center to access training and technical assistance resources. Finally,

collaboration builds trust horizontally across governments and programs, and vertically with program recipients, staff, volunteers, and communities.

Safety Factors

Safety factors address several areas related to personal emotional, physical, spiritual, and community safety. More often than not, many tribes are small, rural, and remote. As a result, tribal members know everyone in their community or are related to a majority of them. Retaliation by other youth or family members can be a problem if the structure and process of the tribal youth court do not include safety and protection measures. Retribution may not be violent; it could just be isolation and rejection from the group, which can be damaging to adolescents' self-concept and feelings of belonging to the community. Tribal youth courts must ensure everyone knows what to expect and is not blindsided by what occurs in youth court programs.

The infiltration of gangs in some AI/AN communities adds another dimension on safety from fear of gang-related retaliation. Indian gangs threaten the very fabric that constitutes family strengths, extended family relations, and cultural values that keep them together. Parents do not understand the gang's control of their children, how to regain their leadership and authority status over their children, how to prevent the children from joining gangs, or how to protect them from gang violence. Dominant society has contributed to the decline of Indian value systems within the family and tribal community because these value systems conflict. The pursuit of individual happiness and success are highly valued in dominant society, while Indian communities highly value and depend on communal harmony over individual rights. The lack of clear cultural values from the home contributes to low self-esteem, which influences negative Indian identities to develop, and increases youth vulnerability to join gangs and become engaged in acts of violence. These have all increased the incidence of family disruption and intra-family violence by youth, and weakened the extended family.

Another aspect of safety deals with the ability of youth and others to show respect and maintain confidentiality about youth court cases. Breaches of confidentially lower community trust with the youth court and of the staff and volunteers. Lack of trust and credibility can hinder the willingness of persons and agencies to share information that may be helpful in a hearing. Different jurisdictions may have different rules for the type of information that should be confidential. Therefore, youth courts must identify their own confidentiality parameters within the context of their own community expectations and needs.

Cultural Relevancy Factors

Cultural relevancy factors include finding, creating, or fine-tuning a model, structure, and process that works for the community. The youth court must find ways to incorporate cultural strengths into their program, while adhering to the core tenet of youth court being a youth-driven program in which youth make dispositional decisions. Additionally, the cultural component must be relevant to the

tribe's culture and not one based on generalities or pan-Indian practices. For example, smudging or sweat lodge ceremonies are not applicable to all tribes. It is important for youth courts to conduct assessments to obtain information about relevant and appropriate cultural values, practices, and activities to include in the program.

Diversity Factors

Diversity factors involve differences in population, language, and culture, proximity to resources available from urban areas, geographic location, and the unique relationship the Indian nations have with federal and state governments, which influences responses to youth crime and delinquency issues. The diversity of law and order systems challenges the development of programs and curriculum that can meet the needs of all tribal youth court programs. Some tribes have juvenile courts with codes, and others are traditional, with unwritten customary laws. Law enforcement services are also diverse, with some tribes relying on traditionally appointed officials (e.g., sheriffs, deputies, *fiscales*, and *mayordomos*), and others having a mixture of traditional officials supported by Bureau of Indian Affairs (BIA) police and tribally operated law enforcement. Specialized juvenile officers are lacking in most tribal and BIA law enforcement departments. All these are factors youth courts should consider in their design.

Sustaining Youth Courts in American Indian and Alaska Native Communities

Once a decision to implement a youth court is made, program organizers need to start planning for long-term sustainability and integrating the program into core activities of relevant organizations within the community. Development of programs often occurs without a commitment of continued funding or without sufficient planning toward long-term viability. Ultimately, program duration is a key factor in achieving sustained effects over time.¹⁶

A sustainability plan is key to insuring ongoing service delivery beginning at the conceptual stages and becoming part of the initial program design. The goal of a sustainability plan is fourfold.¹⁷

- First: The plan must address community integration strategies so that the program is not only accepted by the community, but also is well used by the community.
- Second: The plan should identify community involvement strategies to institutionalize the program into local systems so it becomes an indispensable part of a larger network of services and resources, thus creating a niche for the program and increasing its community value.
- Third: The plan ought to extend program relationships by developing new partnerships and enhancing existing relationships.
- Fourth: The plan should describe strategies for program evolution using evaluation methods that identify the appropriate points at which the program should diversify or specialize, grow or maintain its size, absorb or be absorbed.

Sustainability is not possible without support for the program. Gaining that support may be the most important task in any sustainability effort. Support for a program relies on relationships the program has with its clients, internally within the program, with tribal and project administration, with the community at large, and with funding agencies. The basis for that support is developing and maintaining sustainable relationships built on and thriving on trust, communication, reciprocity, and commitment. If any of these elements are missing, relationships become tenuous, and the result may be a loss of support. Each of these different relationships requires different approaches and priorities. For example¹⁸:

- Client support develops through provision of user-friendly services, good services, and empowering the client through meaningful involvement.
- Internal support occurs through staff development, team building, comprehensive planning and evaluation, and program flexibility.
- Support from policy makers and administrators is gained by sharing the program's vision, mission, goals, and outcomes with administrative staffs and tribal leadership.
- Documentation and data gain support by providing evidence of program success to everyone—the target population, tribal leadership, the community, funding agencies, and other appropriate audiences.
- Social marketing becomes important in conveying the image the program wants the community to have. This involves strategies to make known the important issues, problem-solving and other services the program provides to the target population and how program efforts benefit the community. For example, marketing the positive results of a youth court program to tribal court and law enforcement agencies would encourage their use as viable court alternatives. One could market the cost savings and benefits of employing early intervention strategies compared to the cost of confinement and preventing further penetration of young people into the juvenile justice and correctional system.
- There is more to developing community support than promoting an image. The program must meet the needs for which it was designed, and the community needs to feel that they are an integral part of the program's processes—not just consumers.
- For the funding agencies, support is easier to get if the program is stable and capable. Having established and effective policies and protocols that are followed helps to build program credibility and reliability. In addition, documentation and accountability are necessary components to gain support from funding agencies.
- Sustainable relationships need to be cultivated with other agencies that interact with the program. The same principles of trust, communication, reciprocity and commitment are also necessary to maintain relationships with other agencies.

Sustainability is best achieved through program development that includes a long-term focus and provides for ongoing structural review and program evaluation, has and follows consistent policies, produces reliable data, and has tribal leadership and community interest and support.

Developing an Evaluation Plan

A good evaluation begins with a thorough needs assessment at the front end of program development. Needs assessments provide direction for adapting or developing services specific to the needs of a community, based on the perceived goals, needs, wants, and characteristics of the tribal community. Community services and agencies need accurate, useable information that reflects local needs and characteristics. This information allows for rational decision-making, better use of limited resources, a way to determine priorities, and provides a basis for program review and revision. In order to eliminate gaps and redundancies in services, communities need reasonably reliable and valid information.¹⁹ Assessments, program planning, implementation, and evaluation are most credible when communities are involved in all four processes.

Evaluation begins with a clear understanding of program goals, objectives, activities, tasks, and assumptions. Program evaluation is important for:

- *Program Feedback*: Provides guidance for program operations.
- *Program Accountability*: Demonstrates success of program.
- *Program Development*: Guides positive program expansion.

Foremost, AI/AN tribes must build evaluable programs and define success based on measurable goals and objectives. This requires sound program design and development, effective implementation strategies, consistent program data collection that supports tracking program progress, and tracking participants during and after program completion. Tribal youth courts should evaluate:

- *Effort*: Activities, staffing, and services.
- *Efficiency*: Cost, time, and resources.
- *Effectiveness*: Achievement of program goals and objectives.
- *Appropriateness*: Relevancy to the needs of the community, right clients, cultural relevance, and right methods and approaches.

Tribal programs often lack the resources to develop, implement, and evaluate projects effectively. High levels of need and limited resources often demand that tribal programs focus solely on service delivery, often bypassing the need for developing a solid and evaluable framework. Tribal youth courts need to advance program technology and build on existing resources to develop alternative solutions and create multiple pathways to achieve goals that lend themselves to evaluation. It is noteworthy to highlight that evaluation fulfills important capacity and capability building roles; therefore, funding for evaluation is an essential aspect of tribal youth courts. Below are some outcomes that tribal youth courts may consider to measure success.

Youth Outcomes

It is important for tribal youth courts to increase self-esteem, which, while difficult to measure, may be done through pre- and post- program client satisfaction evaluations to see how youth perceptions, attitudes and feelings changed attributable

to the youth court intervention. One could measure youth empowerment by including questions in pre- and post-program evaluations and also by assessing the degree and variety of participation by program participants with youth and/or community issues during and after the program. A measure of civic consciousness and empowerment could be tracking whether youth court participants vote in tribal, state, and national elections.

Youth courts should strive to increase competence and academic achievement, but it is essential for youth courts to demonstrate that they are the reason for youth improvements in both of these areas as articulated in goals and objectives and demonstrated by program activities. Measures could include monitoring school attendance, grades, and school incidences. A long-term measure could include tracking youth court participants who go on to have careers in a justice field.

To measure reduction of community risk factors, youth courts need to have baseline information to measure direct program impact on such risk factors as high suicide rates, domestic violence, substance abuse, etc. Again, there should be direct program goals and objectives that link such outcomes to activities or interventions provided by the program. For example, youth courts that address underage drinking or driving while impaired may provide activities or interventions aimed specifically at reducing community tolerance for such violations by youth. Youth courts could include effective referrals and linkages to needed services for mental health services, family counseling, or shelters.

Community Outcomes

Communal values are important aspects of life carried out by many tribal institutions. A tribal youth court could make increased community involvement a goal through service learning and other activities. Measures of success could include how active youth are in their community by tracking the number of community service activities a youth performs during the program. Measures could also include the number of community events, traditional ceremonies, or community causes youth become involved in during and after the program. Again this could be measured with pre- and post-tests.

Adult Involvement

Effective adult involvement is important for all youth courts. One measure is to track adult and youth mentoring or volunteer relationships during the program. This can occur through personal interviews with adults and youth, or through client and provider satisfaction surveys. Another is to track mentoring relationships to see if they continue beyond the youth court obligation. Another way could be to conduct oral surveys of client and adult or elder mentors or volunteers at various intervals (three, six, to twelve months) after the program.

Reduce Recidivism

A common goal of youth courts is the prevention of further law-violating behavior by participants. This can be measured by analyzing youth arrests and/or court referrals within specified time periods and for certain types of offenses. There

is great variation in determining measures for recidivism across programs. Each program will need to define the determining variables that constitute recidivism or relapse into previous bad conduct or addictions.

Cultural Outcomes

Tribes have high expectations of tribal institutions and programs to develop programs that strengthen traditional ways of life, cultural beliefs, customs, and practices. Throughout Indian country, cultural renewal and revitalization are the mantra to reclaiming our youth and equipping them with knowledge, skills, and abilities found only in indigenous philosophy and practice. One can measure cultural knowledge by using culturally relevant intake instruments that include questions about culture. For example, questions could include levels of language usage; knowledge of tribal history, clanship, moiety, or societies; participation in cultural events, ceremonies, or dances. Other questions could include family mobility to determine consistent contact with the child's tribe and self-reported attachment to the tribal culture and AI/AN religious practices. The intake data can establish the baseline for measuring increases in a youth's knowledge, skill, and use of tribal culture, beliefs, and practices due to participation in the program. Tribal youth courts can contribute to the resurgence of culture by building programs that promote the use of native languages and indigenous law and principles, along with other culture-based activities. Many tribes overlook capturing cultural information due to the oral nature in which information and skills are passed from generation to generation. By using culturally relevant data collection instruments and processes, tribal youth courts can document their contribution to increasing youth cultural strengths.

Conclusion

Youth courts present a viable alternative for tribal courts—modern and traditional—to include in the options available to address the needs of court-involved youth. As noted above, tribes can determine the design and structure of their youth court to fit the cultural, spiritual, and/or philosophical values of their tribe. The most important aspect is to maintain the youth-driven control over the design of consequences that peers receive from youth court proceedings. Youth courts provide an opportunity to engage youth, elders, and communities in meaningful partnerships to work together to help troubled or troublesome Indian youth. Most importantly, these Indian youth are enabled to work on their issues and needs while in the community and with help from their own people.

Ada Pecos Melton is the President of American Indian Development Associates in Albuquerque, New Mexico.

Endnotes

¹ American Indian and Alaska Native (AI/AN) is used interchangeably with Indian nation, Indian, and Native American and is inclusive of terms used to describe AI/AN tribes, villages, pueblos, and rancherias.

- ² Most tribal courts, police, and jails were established after passage of P.L. 93-638, the 1975 Indian Self-determination Act. This law enabled Indian nations to receive funding directly from the Federal government (through the Bureau of Indian Affairs and Indian Health Service) to operate and manage programs and services for their communities. Another 1970's Federal program, the Law Enforcement Assistance Administration, funded jail construction.
- ³ The Major Crimes Act, 18 U.S.C. § 1153 (1885, Supp. 1986), the Indian Country Crimes Act, 18 U.S.C. § 1152 (1817), the Assimilative Crimes Act, 30 STAT. 717 (1898), Public Law 83-280, Indians—Criminal Offenses and Civil Causes-State Jurisdiction, 18 U.S.C. § 1162, 25 U.S.C. §§ 1321-1326, 28 U.S.C. § 1360 increased government control by ending exclusive tribal jurisdiction and allowing the Federal government to have shared jurisdiction in certain crimes committed in Indian country.
- ⁴ Smith, S. (1999). *American Indians and crime*. Washington, DC: U. S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.
- ⁵ Adapted from the National Indian Justice Center Legal Series, Petaluma, CA.
- ⁶ For further discussion of tribal court development see Vicenti, C.N. (1995). The Re-emergence of tribal and traditional justice systems. *Judicature*, Volume 79, Number 3, November/December.
- ⁷ Melton, A. P. (1995). Indigenous justice systems and tribal society. *Judicature*, Volume 79, Number 3, November/December.
- ⁸ Godwin, T.M., Heward, M.E., and Spina, T. (2000). *National youth court guidelines*. Lexington, KY: National Youth Court Center, American Probation and Parole Association.
- ⁹ Godwin, T.M., Fulton, B.A., and Steinhart, D. (1998). *Peer justice and youth empowerment: An implementation guide for teen court programs*. Washington, DC: National Highway Traffic Safety Administration, U.S. Department of Transportation; Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice.
- ¹⁰ Pearson, S. (2003). Youth court—A path to civic engagement. *National Youth Court Center Policy Brief*. Lexington, KY: National Youth Court Center, American Probation and Parole Association.
- ¹¹ Godwin, T.M., Fulton, B.A., and Steinhart, D. (1998). *Peer justice and youth empowerment: An implementation guide for teen court programs*. Washington, DC: National Highway Traffic Safety Administration, U.S. Department of Transportation and Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice.
- ¹² National Youth Court Center Database as of January 2004. Unpublished data.
- ¹³ The *National Youth Court Guidelines* were developed by the National Youth Court Center. You can obtain a free copy by contacting the National Youth Court Center at PO Box 11910; Lexington, KY 40578; Phone: 859-244-8193; Fax: 859-244-8001; Email: nycc@csg.org. It is also available online at www.youthcourt.net.
- ¹⁴ Variation exists with who is considered an elder. While age is one criterion, other life experience and involvement in other aspects of community life are factors that may determine when one is donned with elder status in a given AI/AN community. For example, elder status may occur sooner for individuals fulfilling community roles and responsibilities such as tribal leadership roles, medicine men and women, spiritual leaders, or those recognized by tribal members as having expert knowledge in the cultural ways of life and law in the tribe.
- ¹⁵ Godwin, T.M., Heward, M.E., and Spina, T. (2000). *National youth court guidelines*. Lexington, KY: National Youth Court Center, American Probation and Parole Association.
- ¹⁶ Health Canada. (2001). *Preventing substance use problems among young people – A compendium of best practices*. Available at www.hc-sc.gc.ca/hecs-sesc/cds/publications/substanceyoungpeople/chapter3.htm.
- ¹⁷ Kaufman, M. (2002). *Building sustainability in demonstration projects for children, youth, and families*. Washington, DC: , U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.
- ¹⁸ Chino, M. (2002) *Program sustainability: Developing strategies for maintaining programs over the long-term*, for the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention., Albuquerque, NM: American Indian Development Associates.
- ¹⁹ Chino, M. & Melton, A.P. (2000). *A guide to conducting needs assessments in American Indian and Alaska Native communities*. Albuquerque, NM: American Indian Development Associates.