Strategies for Administering Indian Country Criminal Justice

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Introduction to the Project

Research Team

- UCLA Native Nations Law & Policy Center
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  - Prof. Carole Goldberg (UCLA, Law)
  - Prof. Kevin Washburn (Arizona, Law, Chickasaw Nation)
  - Kristina Kalka (J.D., Project Director, Salt River)

- NCAI Policy Research Center
  - Dr. Sarah Hicks, Director (Alutiiq)
  - Virginia Hicks, J.D.

Introduction to the Project

Project Background

- DOI Inspector General Report on Indian detention facilities ("Neither Safe Nor Secure")

- Congressional appropriation to NIJ

- NIJ request for proposals
  - Sought more comprehensive assessment
  - Specified consultations and at least 12 case study site visits

Introduction to the Project

Broad Outline of the Research

- Overarching question: How to improve community safety and detainee treatment in accordance with tribal visions of justice and tribal sovereignty?

- Systematic examination of all components and stages of criminal justice process

- Consider crime prevention, jurisdictional arrangements, adjudication process, and alternatives to incarceration, not jails alone

Introduction to the Project

Broad Outline of the Research

- Start with understanding of complex criminal justice system(s) for Indian country

- Working hypothesis: effectiveness of systems will vary with types of administration/control, availability of resources, and extent of "match" with community conceptions of justice

Introduction to the Project

What We Already Know about Indian Country Criminal Justice

- Crime in Indian Country

  - Scarcity and weakness of Indian country crime data

  - Indications that alcohol-related offenses consume greatest police time; concern about crime is high; and police workloads are increasing

Introduction to the Project

What We Already Know about Indian Country Criminal Justice

- Administration of Justice in Indian Country

  - Complex "maze" of federal, tribal, and state jurisdiction

  - Critiques of system focus on:
    - incompatibility with self-determination policy
    - lack of accountability to tribal communities
    - inconsistency with general values regarding criminal proceedings

Introduction to the Project

What We Already Know about Indian Country Criminal Justice

- Effective Policing in Indian Country

  - Studies underscore importance of tribal community control

  - Tribal control leads to alignment of police/community priorities, values, methods, and resources

  - Community cooperation with police increases when community trusts police to serve their interests

Introduction to the Project

What We Already Know about Indian Country Criminal Justice

- Native American Detainees

  - BJS provides annual survey of inmates and facilities in Indian country -- BIA, tribal, contract

  - One scholarly study suggests tribal jails allow for more cultural, ceremonial, and spiritual practices, and reflect a philosophy of incarceration more focused on reintegration into the community

Introduction to the Project

Three-Part Consultation for the Research

- National Consultations with tribal leaders, tribal law enforcement and criminal justice personnel, national organizations, and subject matter experts -- 2006 & 2007

- Consultations with federal, state, and local officials involved in Indian country criminal justice -- 2007

- Establishment of Working Group

Introduction to the Project

Goals of Consultations

- Create full and accurate description of Indian country criminal justice systems

- Identify factors affecting administration of justice and conditions of detention, to guide research questions

- Establish criteria for selection of research sites, instruments, and protocols

- Evaluate research results and implications

Research Methods

- General data-gathering from 12 confidential sites
  - Confidential interviews at each site -- qualitative and quantitative -- with tribal officials, reservation residents, service providers
  - Site questionnaire for each site

- Quantitative data-gathering from 50 additional confidential sites

- Confidential interviews with relevant federal and state officials

- Case studies and data-gathering from published sources

Research Methods

- All interviews from 12 primary sites to be transcribed, coded, and analyzed

- All interviews from federal and state officials to be transcribed, coded, and analyzed

- All quantitative data to be analyzed for significance, using all 62 sites

Ultimate Aim of the Project

Results of the Project

- Recommendations arrived at after consultations

- Report to NIJ and Congress

- Sharing results with Indian country

Site Selection Criteria

- Derived from hypotheses

- Models of tribal criminal justice based on who controls police, courts, jails

- Created spread sheet of data for every tribe, including population and territory size

- Random selection *within* each model allows generalizations to others in that model (very small tribes excluded)
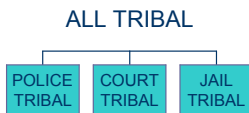
Types of Criminal Justice Models

- Non PL280
  - Jurisdiction
    - Tribe and feds share jurisdiction over major crimes by Indians and over Indian-against-non-Indian crimes
    - Tribes have exclusive jurisdiction over non-major crimes committed by Indians against Indians
    - States or feds have jurisdiction over non-Indians, depending on whether victim is Indian or non-Indian
  - Supplier of services
    - Reservation policing: BIA, tribally contracted from BIA, tribally funded, or a combination
    - Reservation courts: BIA (CFR court) or tribal (contracted from BIA, tribally funded, or a combination)
    - Detention for CFR or tribal convictions: BIA direct; tribally contracted from BIA; tribally funded; or state, local, or private contracted from BIA
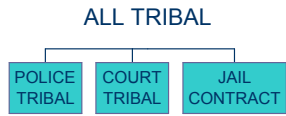
Types of Criminal Justice Models

- PL280 or like
  - Jurisdiction
    - Tribe shares jurisdiction over Indians with state, may not exercise
    - State has sole jurisdiction over non-Indians
    - Some places (e.g., NY), feds overlap with tribe and state
    - Special situation in Alaska, where state has more jurisdiction because of limited Indian country
  - Supplier of services
    - Reservation policing: State and (if tribe has department) tribally funded
    - Reservation courts: State and (if tribe has criminal code) tribally funded
    - Detention: State and (if tribe has criminal code) tribally funded or tribally contracted with state
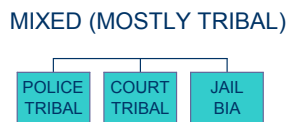
Model 1: NON PL280, ALL TRIBAL

ALL TRIBAL

POLICE TRIBAL	COURT TRIBAL	JAIL TRIBAL

Model 2: NON PL280, ALL TRIBAL BUT CONTRACTING OUT JAIL

ALL TRIBAL

- POLICE TRIBAL
- COURT TRIBAL
- JAIL CONTRACT

Model 3: NON-PL 280, ALL BIA

ALL BIA

- POLICE BIA
- COURT OF INDIAN OFFENSES BIA AND TRIBE
- JAIL BIA

Model 4: NON-PL280, MIXED (Mostly Tribal except jail)

MIXED (MOSTLY TRIBAL)

- POLICE TRIBAL
- COURT TRIBAL
- JAIL BIA

Model 5: NON-PL280, MIXED (Mostly BIA except court)

MIXED (MOSTLY BIA)

POLICE BIA	TRIBAL COURT	JAIL BIA
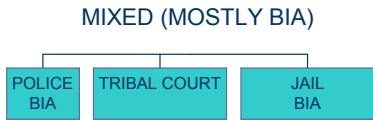
Model 6: NON-PL280, MIXED (Mostly tribal, except police)

MIXED (BIA Police, Mostly Tribal)

BIA POLICE	COURT TRIBAL	JAIL TRIBAL OR CONTRACT

Model 7: PL280 or Like, ALL STATE

ALL STATE (no tribal criminal code)

POLICE COUNTY (may be tribal police also)	COURT STATE	JAIL STATE/COUNTY
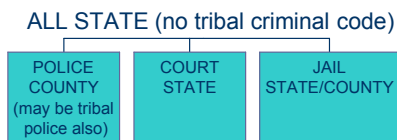
Model 8: PL280 or Like, CONCURRENT JURISDICTION

CONCURRENT JURISDICTION

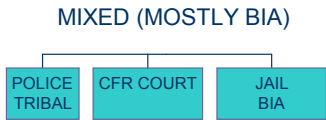| POLICE TRIBAL	COURT TRIBAL	JAIL TRIBAL (maybe contract)

Model 9: ALASKA

- Like Model 7 (ALL STATE), except
    - State authority no longer burdened by PL280 in most locations
    - No tribal criminal jurisdiction in most locations

Model 10: Partial PL280 (State & Tribal)

STATE & TRIBAL

STATE & TRIBAL POLICE	STATE & TRIBAL COURT	STATE & TRIBAL or CONTRACT JAIL

Model 11: NON-PL280, MIXED (Mostly BIA except police)

MIXED (MOSTLY BIA)

POLICE TRIBAL	CFR COURT	JAIL BIA

Current Status of Research

- Questionnaires developed to probe challenges and possibilities for improvement. Samples:

  - How can services for victims of crimes be improved in the reservation community?
  - What do you prefer to be the goals and underlying values of sentencing in the criminal justice system that serves the reservation community?
  - What are the greatest problems in the administration of criminal courts that serve the reservation community?

Current Status of Research

- Site questionnaires developed to collect data for each of the 12 primary sites

  - Written codes and policies

  - Budget and funding data

  - Program descriptions for policing, courts, detention, and related services

  - Crime and justice system data, where available

Confidentiality Issues

- University and tribal IRB review processes

- Permission to be sought from tribal government at each site

- Individual consent forms for each interviewee

- Sites and interviewees will not be identified

Research Completed to Date

- Ten of twelve primary sites visited
  - Over 300 interviews completed, transcribed, and coded
  - Site questionnaires completed for those sites

- Nearly 30 of 50 sites for quantitative surveys in progress with tribal permission

- Nearly half of federal interviews completed

- Case studies and literature analysis ongoing

Initial Impressions

- Inadequate resources and technology, regardless of model

- Resources/technology aside, biggest challenges:
  - Where tribes control, politicization

  - Where feds control, mismatch of priorities

  - Where states control, discrimination and bias