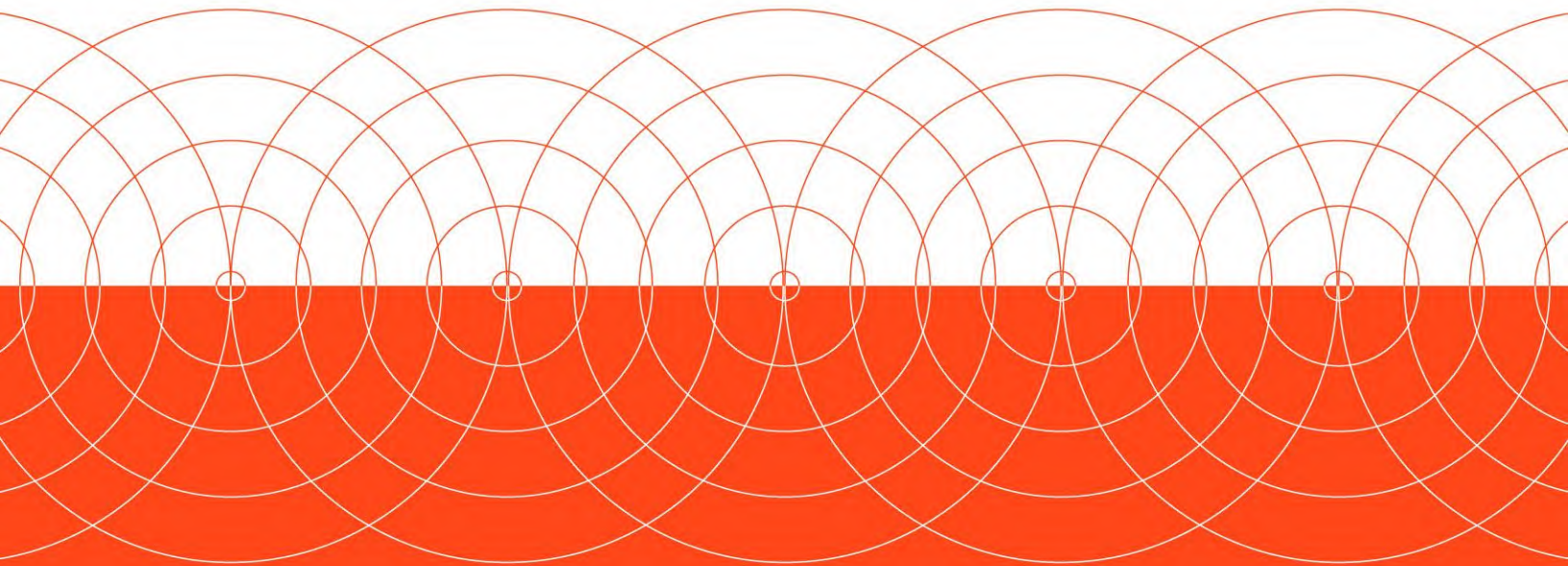




A Community Approach to Addressing Native Incarceration: Tribal Healing to Wellness Courts

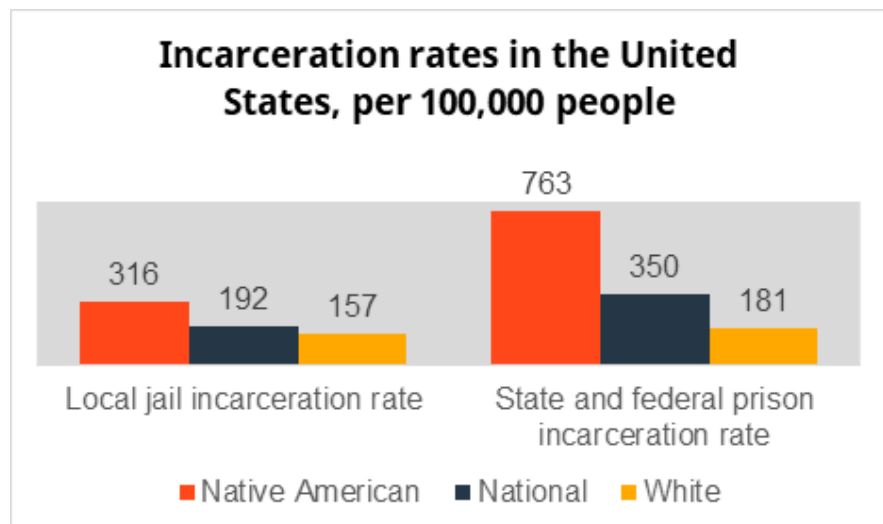


Introduction

Native Americans in the United States have endured a long history of hardships, persisting through disease, warfare, and involuntary removal. Native American values have conflicted with those of Euro-Americans and the United States government, subjecting Native Americans to forced assimilation, social oppression, and cultural genocide (Perez, 2010; Fox et al., 2023). This conflict of values has manifested itself in a wide range of damaging policies and, in part, has resulted in significant disparities in Native American populations in the United States justice system (Prison Policy Initiative, n.d. a). Tribal Healing to Wellness Courts have emerged as a promising community-based, culturally competent solution to disproportionate Native incarceration in the United States, drawing on the community to appropriately address the needs of justice-involved Native Americans (Tribal Law and Policy Institute, n.d. a). These courts emphasize the critical importance of looking to and involving the community in creating solutions that will achieve justice for system-involved Native Americans, fostering a path towards community healing and restoration.

Native Incarceration in the United States

The issue of mass incarceration in the United States cannot be understated – the United States incarcerates more of its population than any other nation, and 1 in 5 of the world’s incarcerated individuals are in an American detention facility (Prison Policy Initiative, 2021). Equally as pressing is the issue of the



disproportionate involvement of Native Americans in the United States justice system.

Native Americans are vastly overrepresented in carceral facilities in the United States. The local jail incarceration rate for Native Americans is 316 per 100,000 people, while the local jail incarceration rate nationally is 192 per 100,000 people and just 157 per 100,000 people for white people. The discrepancy in incarceration rates is even greater in state and federal prisons. The state and federal prison incarceration rate for Native Americans is 763 per 100,000, while the national state and federal prison incarceration rate is 350 per 100,000 and 181 per 100,000 for white people (Prison Policy Initiative, n.d. a).

Native Incarceration in State Systems

Native Americans are most overrepresented in the incarcerated populations of the following states: North Dakota, South Dakota, Montana, Wyoming, Utah, and Alaska. In Alaska in particular, Native Americans make up 40% of the incarcerated population and just 14% of the resident population. The Native incarceration rate of 1,777 per 100,000 people is more than double the state incarceration rate of 718 per 100,000 people (Prison Policy Initiative, n.d. b). Arrest rates for Native Americans far surpass the arrest rates for white people for violent offenses in Alaska, despite the white resident population more than quadrupling the Native population (Alaska Department of Public Safety, 2023).

In Montana, Native Americans are more than 1.5 times more likely to be incarcerated for felony criminal endangerment and 1.4 times more likely to be incarcerated for felony public order offenses than white people. Native Americans incarcerated in Montana remain incarcerated for an average of 27.4 days longer than white people in similar circumstances. These discrepancies continue upon release, with Native Americans on conditional release being 1.36 times more likely than white people to have supervision revoked during the first year of supervision. Further, Native Americans on probation are 1.44 times more likely than white people to have supervision revoked during this same period, and 1.34 times more likely to have parole revoked entirely (Justice Reinvestment Initiative – Montana, 2022).

In Alaska in particular, Native Americans make up 40% of the incarcerated population and just 14% of the resident population. The Native incarceration rate of 1,777 per 100,000 people is more than double the state incarceration rate of 718 per 100,000 people (Prison Policy Initiative, n.d. b).

"...[The] federal government has embraced conflicting policies regarding Native people, shifting from genocide to expulsion, exclusion and confinement, and later to supposed assimilation – the rhetoric was integration, the reality was confinement and domination." (Ross, 1998).

Addressing the Issue

Despite these intense discrepancies, only 34% of people living in the United States believe that Native Americans face discrimination. Negative and erroneous narratives about Native Americans are widely held by Euro-Americans and are rarely challenged due to the limited personal experiences they have with Native Americans (First Nations Development Institute, 2018).

Oftentimes, public and government perceptions of Native Americans have not aligned with reality. From the beginning of European settlement in North America, European

settlers viewed Native Americans as uncivilized savages who needed to assimilate to survive. Such sentiments evolved into policy and led to a long history of genocide and historical trauma that persists in Native communities today.

In 1975, the Indian Self-Determination and Education Assistance Act established Native Americans' right of self-governance (Perez, 2010). Many tribes have created governments that protect the interests of Native Americans and recognize the unique needs of their communities. Tribal Healing to Wellness Courts are one aspect of these governments that have served to competently address Native involvement in the justice system.

What are Tribal Healing to Wellness Courts?

Tribal Healing to Wellness Courts utilize a restorative justice approach that combines substance abuse treatment with the justice system to “enhance and strengthen tribal sovereignty and justice while honoring community values, protecting rights, and promoting well-being” (Tribal Law and Policy Institute, n.d. a). Central components of these courts include Individual and Community Healing Focus, Treatment and Rehabilitation, Incentives and Sanctions, and Monitoring and Evaluation (Tribal Law and Policy Institute, n.d. b).

Tribal Healing to Wellness Courts utilize a restorative justice approach that combines substance abuse treatment with the justice system to “enhance and strengthen tribal sovereignty and justice while honoring community values, protecting rights, and promoting well-being” (Tribal Law and Policy Institute, n.d. a).

Demonstrated Effectiveness of Tribal Healing to Wellness Courts

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) periodically publishes performance reports for Tribal Healing to Wellness programs serving youth. Currently, OJJDP funds 31 awards, amounting to over \$8.7 million. Highlights from the 2021 report include 49% of youth demonstrating a positive behavior change, 29% of youth offending, 32% of youth reoffending, and 52% of grantees implementing an evidence-based program. Participating youth experienced improvements in prosocial behavior, job skills, employment status, and various other positive outcomes (Office of Juvenile Justice and Delinquency Prevention, 2021).

In 2019, the National Drug Court Resource Center surveyed 109 operational Tribal Healing to Wellness Courts in the United States, receiving just 16 completed responses. The report explored common drugs of use among participants, common eligibility requirements, common incentives and sanctions, and general program information. Of the 118 participants, 56.9% were male, and 44.1% were female. The male participants' graduation rate was 53.1%, and the female graduation rate was 41.9%. The most common benefits available to participants who successfully completed the program were case dismissal and sentence suspension (National Drug Court Resource Center, 2023).

The Henu Community Wellness Court, a collaboration between the Kenaitze Indian Tribe and the State of Alaska Court System, has been particularly successful. Eligible participants who do not have recent violent criminal charges are referred to this program due to alcohol or drug dependence. Henu Community Wellness Court also accepts families with open child welfare cases. Most notably, the recidivism rate for graduates of this program is 0% (NPC Research, 2019).

Between 2016 and 2020, more than \$33.5 million was awarded to support Tribal nations in implementing and enhancing Tribal Healing to Wellness Courts. Federal agencies increased grant awards for these programs by 51.4% from 2019 to 2020 (National Drug Court Resource Center, 2023). The Bureau of Indian Affairs, the federal agency that, in part, “provides assistance to Tribes and Alaska Native entities to strengthen and sustain Tribal government systems and support Tribal self-governance,” allotted \$1.9 million of its 2024 budget to assist tribes looking to develop Tribal Healing to Wellness Courts (U.S. Department of the Interior, 2023). These substantial increases in funding indicate a push on the federal level to promote culturally appropriate solutions to disproportionate Native involvement in the United States justice system.

Conclusion

While numerous studies have confirmed that Tribal Healing to Wellness Courts are a valuable and culturally appropriate approach to addressing Native Americans’ involvement in the United States justice system (National Treatment Court Research Center, 2023; NPC Research, 2019; Office of Juvenile Justice and Delinquency Prevention, 2021), there is an overall lack of scholarly research regarding the effectiveness of these programs. Evaluations of four programs took place in 2005, but the studies were compromised by high staff turnover rates and poor communication (National Drug Court Resource Center, 2023). Researchers also found it difficult to draw conclusions due to a general lack of data maintained by individual courts (National Drug Court Resource Center, 2023). Subsequent studies involved small sample sizes which limit the ability to draw significant conclusions.

Tribal Healing to Wellness Courts have evolved since the last comprehensive evaluation of these programs and are a promising practice for reducing Native American incarceration in the United States (Fox et al, 2023). Further research is necessary to determine the effectiveness of Tribal Healing to Wellness Courts to potentially reduce disproportionate Native incarceration and system involvement while promoting the well-being of Native American communities. A current study would provide shared best practices across communities, recommendations for continued growth and effectiveness, and evidence to support additional funding for Tribal Healing to Wellness Courts.

References

- Alaska Department of Public Safety. (2023, October). *Crime in Alaska 2022*.
<https://dps.alaska.gov/getmedia/143c5db6-6206-4fd8-b45e-7a0cbb7f611e/Crime-in-Alaska-2022>
- First Nations Development Institute. (2018, June). *Reclaiming Native Truths: A Project to Dispel America's Myths and Misconceptions*. [Reclaiming Native Truth: A Project to Dispel America's Myths and Misconceptions | NNI Database \(arizona.edu\)](https://www.arizona.edu/nni/database/reclaiming-native-truths)
- Fox, D. L., Hansen, C. D., & Miller, A. M. (2023, March). *Over-incarceration of Native Americans: Roots, Inequities, and Solutions*. MacArthur Foundation.
<https://safetyandjusticechallenge.org/wp-content/uploads/2022/07/OverIncarcerationOfNativeAmericans.pdf>
- Justice Reinvestment Initiative - Montana. (2022, September). *Racial Equity in Montana's Criminal Justice System: An Analysis of Court, Corrections, and Community Supervision Systems*. <https://csgjusticecenter.org/wp-content/uploads/2022/06/JR-MT-Racial-Equity-in-Montana-Criminal-Justice-System-1-1.pdf>
- National Treatment Court Resource Center. (2023, March). *Tribal Healing to Wellness Courts: Inaugural Survey of the Field*.
https://issuu.com/ndcrc/docs/tribalhealingtowellnesscourts_nationalreport_cont
- NPC Research. (2019, December). *Henu Community Wellness Court: Program Data Report*.
https://npcresearch.com/wp-content/uploads/HENU-Final-Report_December-2019.pdf
- Office of Juvenile Justice and Delinquency Prevention. (2021, January-June). *Tribal Healing to Wellness Courts Performance Report: January – June 2021*.
<https://ojjdp.ojp.gov/funding/grant-performance-measurement/pr/Tribal-Healing-to-Wellness-Courts-Jan-June-2021-Performance-Report>
- Perez, A. (2010, May). *Policy analysis proposal regarding the Indian Child Welfare Act of 1978*. ProQuest Dissertations Publishing.
- Prison Policy Initiative. (2020, January). *"What percent of the U.S. is incarcerated?" (And other ways to measure mass incarceration)*.
<https://www.prisonpolicy.org/blog/2020/01/16/percent-incarcerated/>
- Prison Policy Initiative. (2021, September). *States of Incarceration: The Global Context 2021*.
<https://www.prisonpolicy.org/global/2021.html>

Prison Policy Initiative. (n.d. a). *Native incarceration in the U.S.*

<https://www.prisonpolicy.org/profiles/native.html#lf-fnref:3>

Prison Policy Initiative. (n.d. b) *Alaska profile.*

<https://www.prisonpolicy.org/profiles/AK.html>

Ross, Luana. (1998, April). *Inventing the Savage: The Social Construction of Native American Criminality.* University of Texas Press.

Tribal Law and Policy Institute. (n.d. a). *About Us.* <https://wellnesscourts.org/about-us/>

Tribal Law and Policy Institute. (n.d. b) *The Tribal Key Components.*

<https://wellnesscourts.org/tribal-key-components/>

U.S. Bureau of Labor Statistics. (2023, November). *Labor market characteristics by race and ethnicity, 2022.* <https://www.bls.gov/opub/reports/race-and-ethnicity/2022/home.htm#:~:text=The%20unemployment%20rate%20averaged%208.6,and%204.7%20percent%20for%20Whites>

U.S. Census Bureau. (2023, September). *Poverty in the United States: 2022.*

<https://www.census.gov/content/dam/Census/library/publications/2023/demo/p60-280.pdf>

U.S. Department of the Interior. (2023, March). *Fiscal Year 2024: The Interior Budget in Brief.*

<https://www.doi.gov/media/document/fy2024-bib-entire-book-508-pdf>