

9th Annual Tribal
Healing to Wellness
Court Enhancement
Training

IMPROVING OUTCOMES FOR TRIBAL YOUTH IN THE JUVENILE JUSTICE SYSTEM

Hon. Lawrence King



STATE OF AFFAIRS

- Currently, 573 sovereign tribal nations (variously called tribes, nations, bands, pueblos, communities, and Native villages) have a formal nation-to-nation relationship with the US government. These tribal governments are legally defined as “federally recognized tribes.”
- There are currently **109** federally recognized Indian tribes in California and **78** entities petitioning for recognition. Tribes in California currently have nearly **100** separate reservations or Rancherias. There are also a number of individual Indian trust allotments.

CHILDREN THE SUSTAINABLE RESOURCE

- American Indian and Alaska Native (AI/AN) children are the future of Indian Country.
- The next generation of AI/AN youth brings purpose and grounding to tribal communities.
- Tribal governments are responsible for protecting, teaching, and guiding their youth, providing services to families, and creating supportive environments where children can flourish.
- Both the federal and state justice systems are ill-equipped and ill-suited to support the unique needs of the AI/AN youth population whose encounters with the juvenile justice system are far too frequent.

WHAT LENS DO WE VIEW TRIBAL YOUTH



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TRADITIONAL GOALS AND PRINCIPLES

- The overarching goals of the juvenile justice system are to:
 - Ensure public safety;
 - Hold youth accountable to their actions; and
 - Produce positive outcomes for youth, families, and their communities.



OJJDP VISION FOR JUVENILE JUSTICE


The Office of Juvenile Justice and Delinquency Prevention (OJJDP) envisions a nation where our children are free from crime and violence. If they come into contact with the justice system, the contact should be *both just and beneficial to them*.

PARADIGM FOR JUVENILE JUSTICE REFORM

- Juvenile populations often times require services that differ from adults. Their needs vary based on certain circumstances such as drug or substance addiction, mental health issues and foster care placement.
- Launched in 2004, Models for Change is a multi-state initiative working to guide and accelerate advances to make juvenile justice systems more fair, effective, rational and developmentally appropriate.
- Models for Change efforts have been advanced in 35 states and supported areas of reform related to: aftercare, community-based alternatives, dual status youth, evidence based practices, juvenile indigent defense, mental health, racial and ethnic fairness, and status offense reform.

The logo for Models for Change is displayed on a red rectangular background. The text "ModelsforChange" is in a large, bold, sans-serif font, with "Models" in black and "forChange" in white. Below it, the phrase "Systems Reform in Juvenile Justice" is written in a smaller, white, sans-serif font.

ModelsforChange
Systems Reform in Juvenile Justice

A vertical graphic on the right side of the slide featuring a blurred background of a river or stream with purple and blue hues. The text "9th Annual Tribal Healing to Wellness Court Enhancement Training" is overlaid in a light blue, sans-serif font.

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THE BUREAUCRACY APPROACH

- 1. Embrace the strengths and inherent potential of every youth.
- 2. Recognize that youth are developmentally different from adults.
- 3. Capitalized on the positive connection between a young person and his or her family and community.
- 4. Reserve the use of institutional placement for youth who pose a significant risk to public safety.

THE BUREAUCRACY APPROACH

- 5. Establish a flexible continuum of services and programs for youth and their families.
- 6. Ensure that youth – both those in institutional placement and those in community-base programs – are treated with dignity and respect in nurturing settings that emphasize a positive youth development approach.
- 7. Help youth transformation their behaviors to become productive, law-abiding, successful citizens.
- 8. Evaluate program performances to increase transparency and enhance effectiveness.

JUVENILE JUSTICE REFORM ACT OF 2018

- The Juvenile Justice and Delinquency Prevention Act (JJDPA) was first authorized in 1974.
- It was established to ensure states and territories meet certain common standards for how youth across the country are treated in the justice system.
- It did this by establishing two core protections: a prohibition on the incarceration of youth charged with status offenses (conduct that is not criminal if engaged in by an adult, such as skipping school or breaking curfew), and a requirement that youth have sight and sound separation from adult inmates.
- Two additional protections were added in a subsequent reauthorization: a prohibition against housing young people in adult facilities while awaiting trial as juveniles, and requiring that states address disproportionate minority contact.
- States receive federal formula grant funding for complying with these protections.

JUVENILE JUSTICE REFORM ACT OF 2018

Racial and Ethnic Disparities

Changes the Disproportionate Minority Contact (DMC) requirement to focus on Racial and Ethnic Disparities (RED).

Requires that states collect and analyze data on racial and ethnic disparities.

Requires states to determine which points create RED, and establish a plan to address RED.

JUVENILE JUSTICE REFORM ACT OF 2018

Sight and Sound/Jail Removal

Not later than 3 years after the date of enactment, states are required to ensure sight and sound separation and jail removal for youth awaiting trial as adults.

This protection previously applied only to youth being held on juvenile court charges.

An exception continues to exist for cases where a court finds, after a hearing and in writing, that it is in the interest of justice.

JUVENILE JUSTICE REFORM ACT OF 2018

Deincarceration of Status Offenses

- Youth who are found in violation of a valid court order may be held in detention, for no longer than seven days, if the court finds that such detention is necessary and enters an order containing the following:
 - 1) identifies the valid court order that has been violated;
 - 2) specifies the factual basis for determining that there is reasonable cause to believe that the status offender has violated such order;
 - 3) includes findings of fact to support a determination that there is no appropriate less restrictive alternative available to placing the status offender in such a facility, with due consideration to the best interest of the juvenile;
 - 4) specifies the length of time, not to exceed seven days, that the status offender may remain in a secure detention facility or correctional facility, and includes a plan for the status offender's release from such facility. Such an order may not be renewed

JUVENILE JUSTICE REFORM ACT OF 2018

State Plans

- Requires that the state plan be supported by or take account of scientific knowledge regarding adolescent development and behavior and regarding the effects of delinquency prevention programs and juvenile justice interventions on adolescents.
- Phase out use of restraints on juveniles known to be pregnant or in post-partum recovery, unless “credible, reasonable grounds exist.”
- Establish plans for the re-entry of incarcerated youth.
- Coordinate with the state education body to ensure the transfer of school records and credits accumulated by detained or committed youths.
- Set up stakeholder groups to periodically review progress on addressing racial disparities, and also collect more data on disparities at particular points in the juvenile justice continuum.

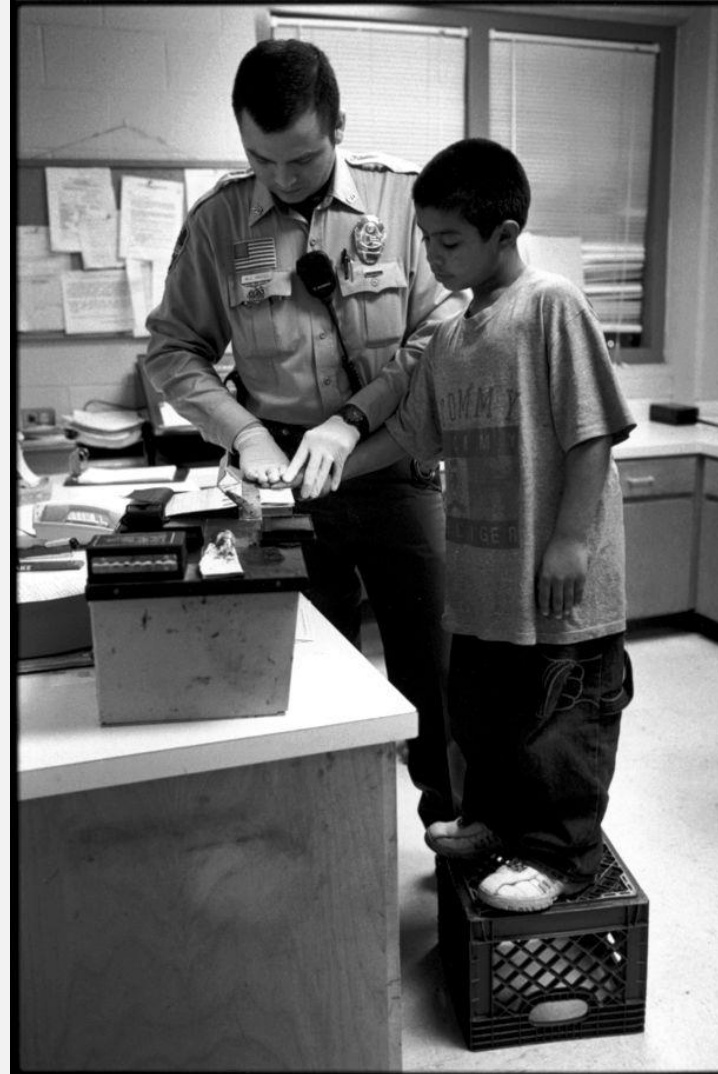
JUVENILE JUSTICE REFORM ACT OF 2018

Adds Protections For Tribal Youth

- Includes a requirement the OJJDP Administrator develop, in consultation with Indian Tribes, a policy for collaborating with representatives of Tribes on the implementation of the reauthorization not more than one year after the date of enactment; ensure Statewide Advisory Groups include Indian Tribal representation.
- That OJJDP provides Tribal Delinquency Prevention and Response Programs that promote Indian Tribes' ability to respond to and care for Tribal youth who come in contact with the law.

WHERE ARE WE IN 2019

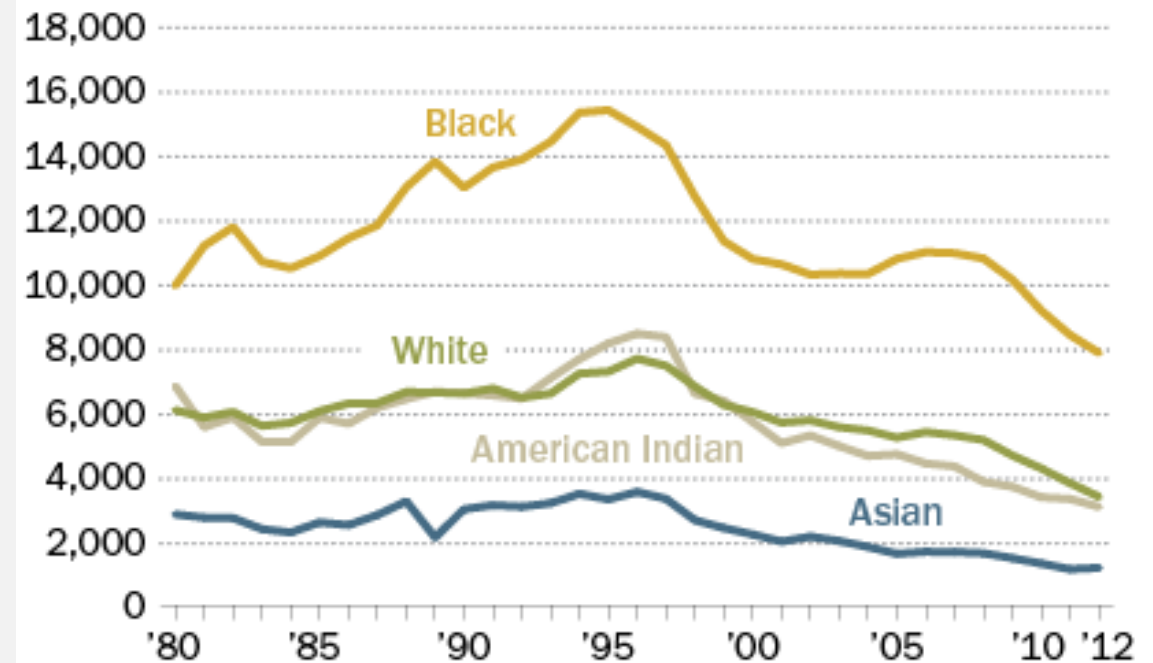
- Racial and Ethnic Disparities in the Juvenile Justice System
- Mass Incarceration
- JDAI
 - Two Tribal Sites
- Recognition of Mental Health Issues
- Prison to School Pipeline
- Implementation of Juvenile Justice Reform Act of 2018



1980S-90S – CRIMINALIZATION

Juvenile arrest rates down, but still highest among black youth

Arrests per 100,000 persons ages 10-17, for all crimes



Note: Arrests of Hispanics not reported separately.

Source: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention

PEW RESEARCH CENTER

Annual Tribal
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Inclement
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OVERREPRESENTATION OF TRIBAL YOUTH IN THE JUSTICE SYSTEM

- Research suggests that tribal youths are more likely than their white peers to be arrested, adjudicated, and incarcerated in juvenile justice systems across the United States.
 - For example, tribal youths are 50 percent more likely than white youths to receive the most punitive sanctions such as out-of-home placement after adjudication or a waiver to adult court. One of the clearest examples of overrepresentation of tribal youth in the justice system can be found in the federal system: 60 percent of the federal juvenile justice population comprises tribal youth (Hartney 2008).
- Only a small number of tribal youths are held in tribal facilities.
 - For example, in 2007, only 13 percent of all detained tribal youths were held in jails or facilities on tribal lands. Such statistics show that not only are tribal youths disproportionately represented in the juvenile justice system, but they are also mostly housed in detention and long-term state and federal facilities that are far from tribal lands. This can negatively impact their ability to successfully reintegrate back into society (Lindquist et al. 2014).

OVERREPRESENTATION OF TRIBAL YOUTH IN THE JUSTICE SYSTEM

- A review of research conducted between 2002 and 2010 on racial disparities in the juvenile justice system uncovered 11 studies that examined the effect of being AI/AN on juvenile justice processing (Cohen et al. 2009). Across the 11 studies, the negative impact of race was found in over half of the case outcomes.
 - For example, one of the 11 studies was an analysis of referrals to juvenile court in Arizona. In this study, Rodriguez (2008) found that AI/AN youths were more likely than white youths to be detained, even when controlling for factors such as prior record and offense type. In another study, of racial disparities in Alaska, it was found that AI/AN youths were less likely than white youths to be diverted from the juvenile justice system (Leiber, Johnson, and Fox 2006).
- Overall, the review by Cohen and colleagues (2013) found that even when controlling for important factors—such as prior record, offense type, gender, and age—tribal youths still experience disparate treatment in the juvenile justice system, when compared with white youths. In addition, the review also found that, compared with other minority youth, there is a lack of research on AI/AN youth. The review located 56 studies on black youth and 30 studies on Hispanic/Latino youth, but only 11 studies on AI/AN youth (Cohen et al. 2013).

HISTORICAL TRAUMA

Risk Factors

- Historical trauma in the lives of tribal youth is generally traced back to the erosion of tribal sovereignty in the late 19th and early 20th centuries (Litt and Singleton n.d.; Eid et al. 2013; Rountree 2015).
- During this time, youths were sent to boarding schools, which forbade native languages and customs, causing generations of AI/AN people to lose connection with their tribal culture.
- Research also suggests that tribal youth are also still negatively impacted by the historical trauma that was caused by forced relocations, cultural assimilation, and broken treaties with the U.S. government (Litt and Singleton n.d.; Eid et al. 2013; Rountree 2015).

SUICIDE

Risk Factors

- The Centers for Disease Control and Prevention found that between 1999 and 2009, tribal youths experienced suicide rates that were 50 percent higher than non-tribal youths(Litt and Singleton n.d.).
- More recent research shows that tribal youths are 2.5 times more likely to die by suicide than non-Native youths(Eid et al. 2013).
- Moreover, some tribal leaders have indicated that approximately 20 percent of their youths have attempted suicide (Eid et al. 2013).

SUBSTANCE USE

Risk Factors

- Alcohol use disorders are among the most severe health problems for AI/AN people (SAMHSA 2013). This chronic exposure to high substance use has negatively affected the younger generation and continued this vicious cycle.
- For instance, tribal youths use cigarettes, engage in binge drinking, and use illegal substances at greater rates than the general population (Litt and Singleton n.d.; Eid et al. 2013).
- Moreover, the Indian Law and Order Commission found that binge drinking is more common among tribal youths than any other racial or ethnic group, and that tribal youths up through the age of 24 are more than twice as likely to die as a result of binge drinking than non-tribal youths(Eid et al. 2013).

LACK OF CULTURAL INSTRUCTION

Risk Factors

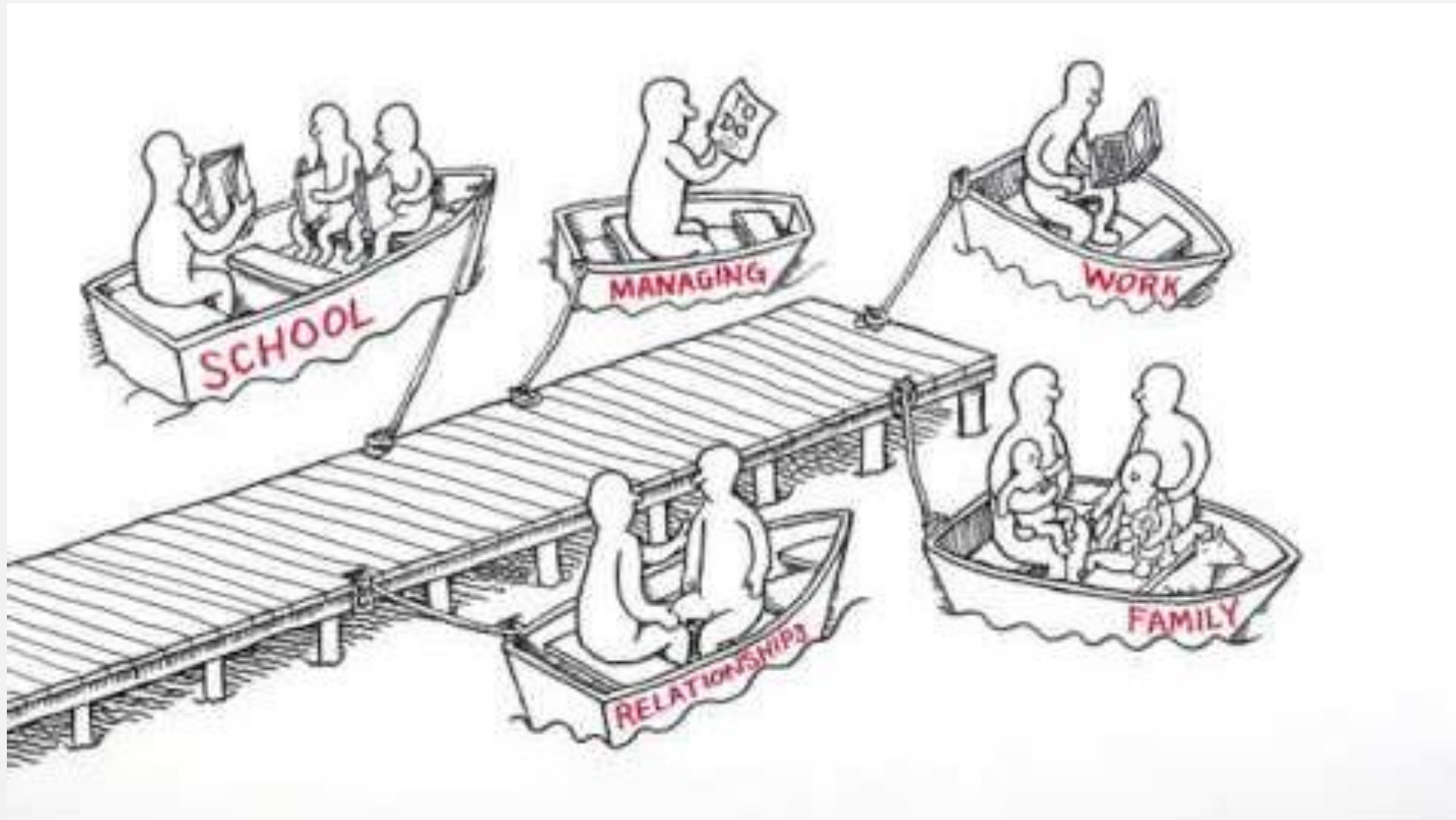
- Most tribal youths attend public schools operated by the town or city near their home, even if they live on reservations (Pavkov et al. 2010).
- However, Mmari and colleagues (2010) found that attending school outside of the reservation can be a risk factor.
- For example, Arizona passed English-only laws, which replaced previous bilingual laws in schools. As a result, cultural instruction has been limited—if not discontinued—and even AI/AN teachers can no longer teach the tribal language.
- Tribal youths who attend schools outside the reservations feel a loss of language and cultural identity, and ultimately experience family separation (Mmari et al. 2010).

Where Do We Go From Here

Investing in Futures

“Both Just and Beneficial”

BUILDING CAPACITY



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FOUR BIG IDEAS FOR JJ REFORM

Focus on protective factors

An approach, not a model

A changed relationship with
juveniles

Alignment with developmental
science

**Risk factors
are not
predictive factors
because of
protective factors**

Dr. Carl Bell, University of Illinois

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PROTECTIVE & PROMOTIVE FACTORS

Youth resilience

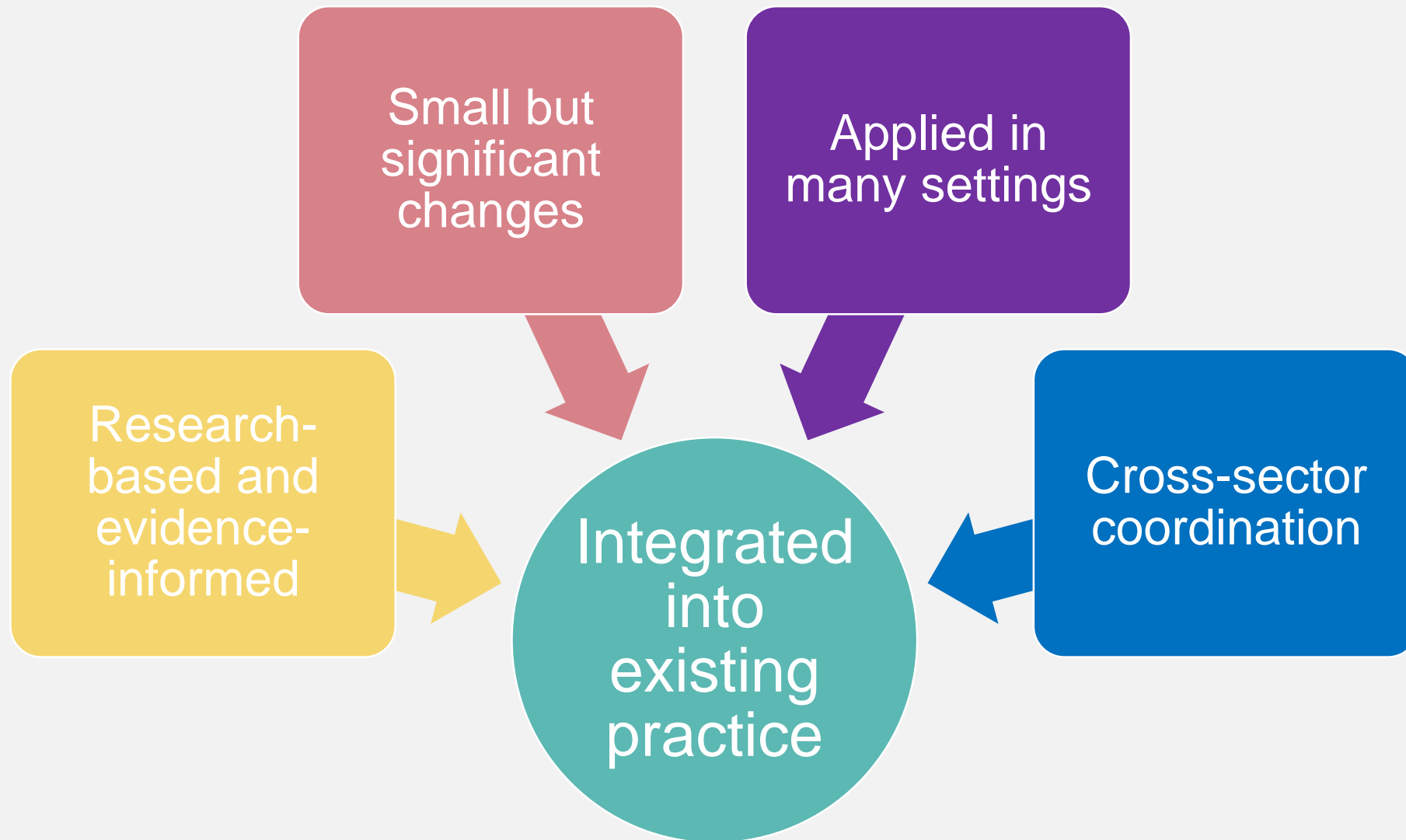
Social
connections

Knowledge of
adolescent
development

Concrete
support in times
of need

Cognitive, social
and emotional
competence of
youth

AN APPROACH, NOT A MODEL



REWRITING THE PLAYBOOK FOR REDUCING JUVENILE DELINQUENCY

- There is a growing body of evidence that identifies effective interventions that get young people back on track.
- These developmentally appropriate strategies support justice-involved youth while also reducing juvenile delinquency.
- **Strategies:**
 - **Offering Support — Not Surveillance.**
 - **Adopting A Less Is More Approach For Low-risk Youth.**
 - **Nurturing Maturity.**
 - **Incentivizing Positive Behavior — Not Punishing Misbehavior.**
 - **Understanding the impacts of trauma.**
 - **Collaborative or Problem Solving Courts**

INCENTIVIZING POSITIVE BEHAVIOR — NOT PUNISHING MISBEHAVIOR.

- Incentives are an important component of behavioral management systems because they help youths learn and implement new, desired behaviors.
- In contrast, although applying punishment often results in a reduction or suppression of certain conduct, this technique only inhibits undesired behaviors; it does not replace them with desired ones.
- This echoes research, reported by the [U.S. Department of Justice](#), suggesting that youth and adults on probation respond better to rewards and incentives for positive behavior than they do to punishments and sanctions for negative behavior.



A CHANGED RELATIONSHIP WITH JUVENILES



ADOPTING A LESS IS MORE APPROACH FOR LOW-RISK YOUTH.

- Formal processing and probation supervision are counterproductive for youth who are at low risk of rearrests. The better option?
- Issue a warning and stay out of the way, according to research.
- For example: [A 2013 meta-analysis](#) found that low-risk youth placed in diversion programs reoffend 45% less often than do youth with similar case histories who face formal court processing or more intensive sanctions, like incarceration.



ALIGNMENT WITH DEVELOPMENTAL SCIENCE

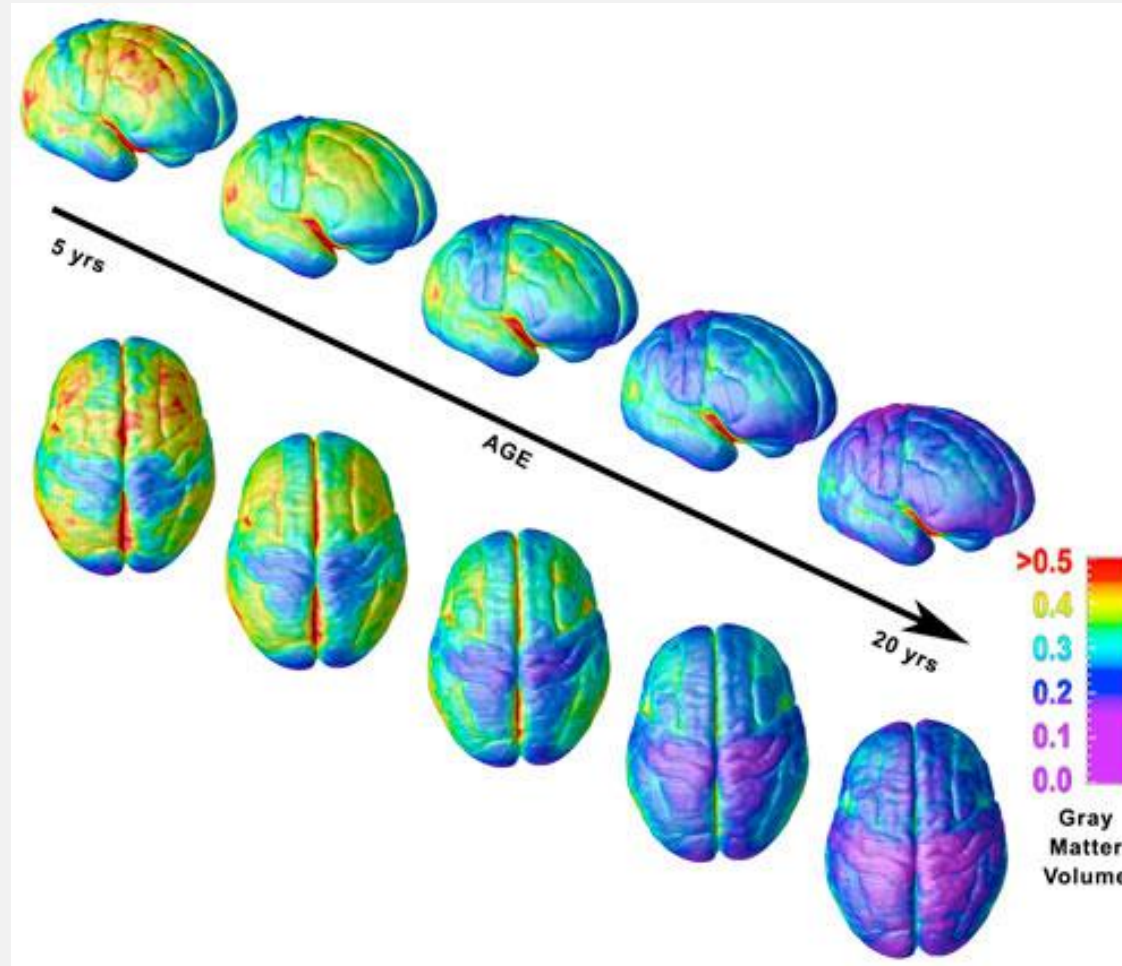
Importance of
early childhood
and adolescence

Role of nurturing
relationships in
brain
development

Effects of trauma
and adversity

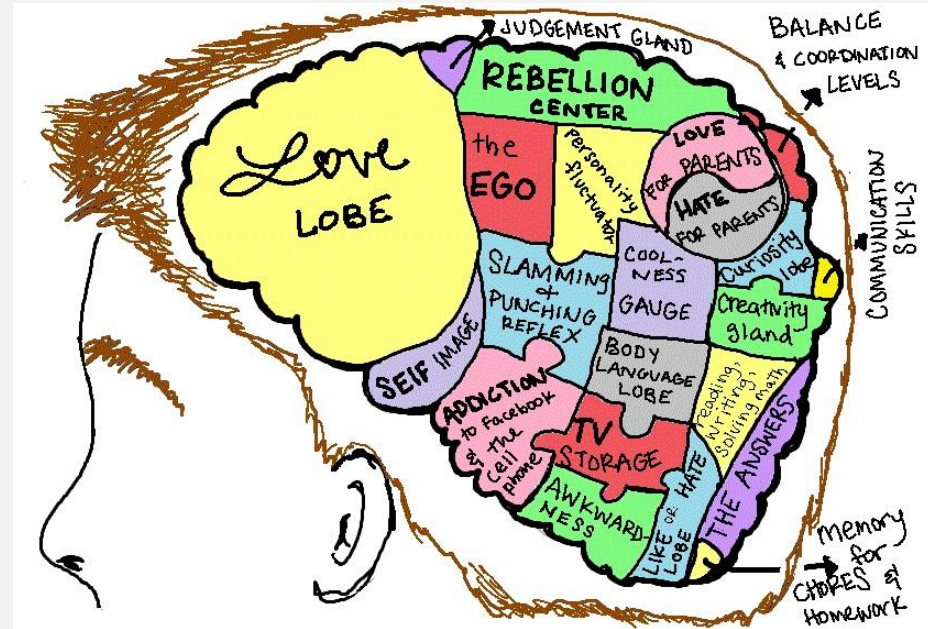
2005 ONWARD - ADOLESCENT DEVELOPMENT AND THE SUPREME COURT

Source: Paul Thompson,
Professor of Neurology, UCLA
School of Medicine



OFFERING SUPPORT — NOT SURVEILLANCE.

- Since the brain does not fully mature until age 25 or so, risky behaviors are commonplace during adolescence.
- Most youth grow out of delinquency without any intervention from the justice system.



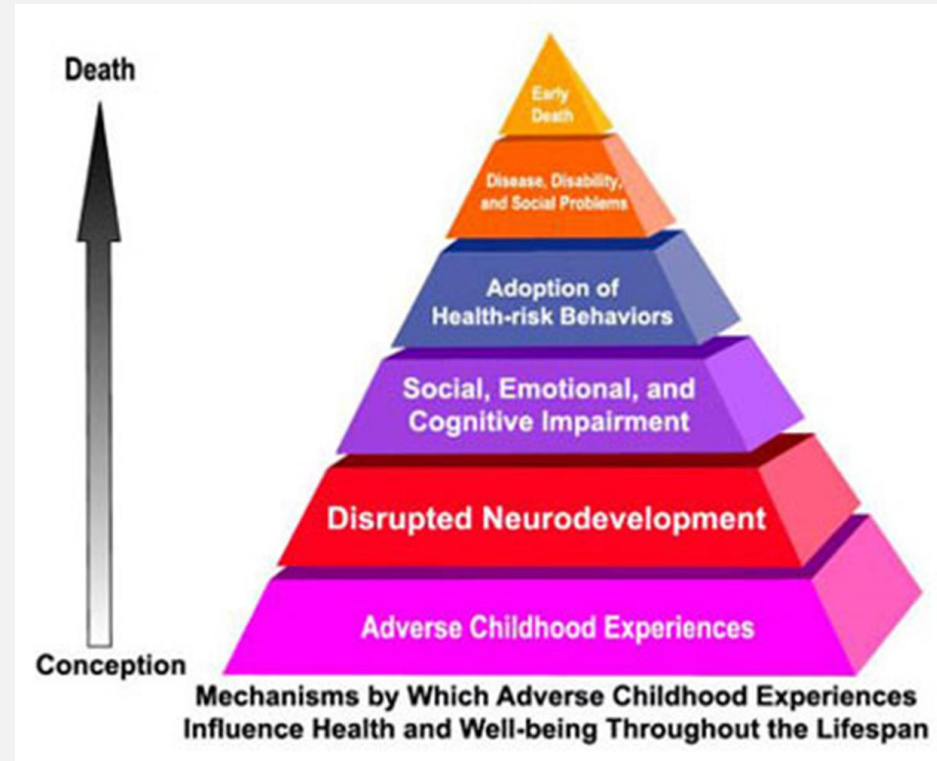
NURTURING MATURITY.

- Programs that boost psychosocial maturation through positive youth development opportunities and counseling — particularly cognitive behavioral approaches designed to improve problem solving and self-control — tend to reduce recidivism rates by a considerable margin.
- In contrast: Interventions that promote deterrence and discipline tend to actually increase recidivism while interventions that involve surveillance tend to have little or no effect on recidivism.



VULNERABILITY OF NATIVE YOUTH

- Tribal youth are **2 ½ times** more likely to experience trauma from exposure to violence than non-tribal peers.
- Tribal children and youth experience **PTSD at a rate of 22%** - the same rate as veterans returning from Iraq and Afghanistan and triple the rates of the general population.
- Disproportionate contact with child welfare.



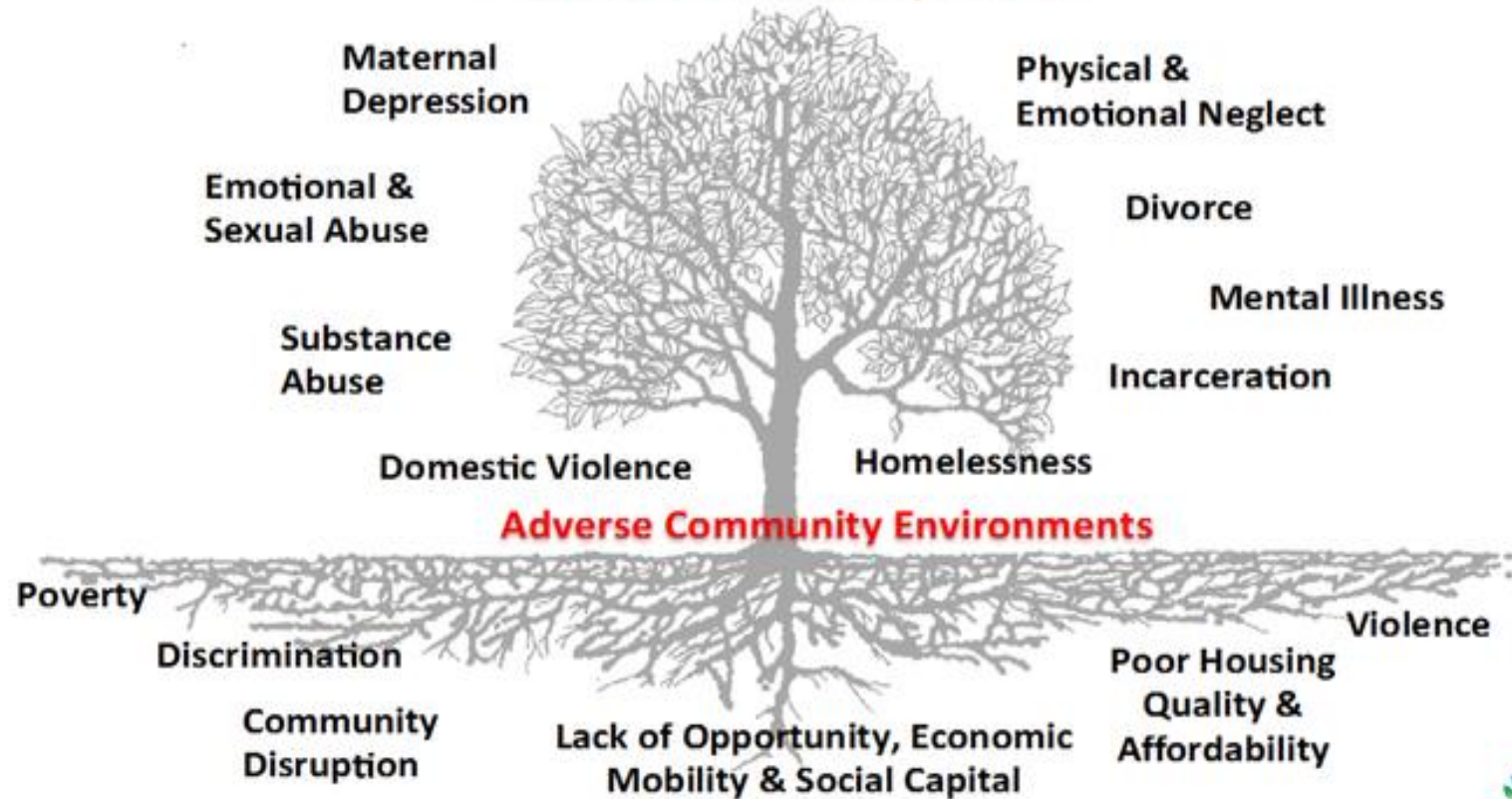
UNDERSTANDING THE IMPACTS OF TRAUMA

- Trauma impacts adolescent brain development which is fluid between and within youth.
- Trauma affects behaviors from decision making to communication to focus.
- Trauma impacts physical health, fosters psychological harms and addiction.
- Trauma bonds may result in dysfunctional attachment to exploiter in presence of danger, shame, seduction.
- Trauma affects sense of “safety”, self-determination and social connectedness.



The Pair of ACEs

Adverse Childhood Experiences



WAYS TO IMPROVE THE JUVENILE JUSTICE PROGRAMS

- Treating children as children, including raising the age of criminal responsibility.
- Matching remedy to risk by addressing children's social service needs outside of the justice system.
- Funding only what works, including increasing community-based programming, eliminating facilities and programs that harm children, and ensuring that performance data is available to both the public and policymakers.
- Ending racial and ethnic inequality through rigorous action at the federal, state, local and community levels.

WAYS TO IMPROVE THE JUVENILE JUSTICE PROGRAMS

- Equal justice and culturally competent treatment for LGBTQ youth, through the creation of non-discrimination policies, culturally competent programming, training, and on-going evaluation.
- Engaging impacted children, families and communities. Involving these groups in key youth justice decisions results in better outcomes for children, including decreased recidivism rates.
- Justice is not for sale outlines some of the harms that result when for-profit corporations administer justice.
- Always have strong outside eyes makes clear that no jurisdiction, regardless of the good intentions of its leaders and agencies, should monitor its own system.

FOSTERING TRIBAL PROTECTIVE FACTORS



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LEARNING FROM THE ELDERS AT PAIUTE TRIBAL YOUTH CAMP



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ALASKA NATIVE YOUTH FIND STRENGTH, RESILIENCE IN ANCIENT TRADITIONS



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SMUDGING



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POW WOW



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STORYTELLING



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INUPIAT WHALE HARVEST



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SALMON FESTIVAL



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Frederick Douglass once said, 'It is easier to build strong children than to repair broken men.'

Questions?

Comments

Please Complete
Your Evaluations

Reforming juvenile justice systems across the nation gives legislators from all backgrounds an incredible opportunity to achieve precisely that result, making a lasting, positive impact in communities nationwide. We believe these principles will guide policy work that will change the trajectory for youth for generations to come.



THANK YOU

Hon. Lawrence King ✉ *Tribal.court@crit-nsn.gov*