



Considerations for Working with Native Children and Families

Practitioners working with American Indian/Alaska Native (AI/AN) children and families who may be involved with state, tribal, and/or federal justice systems are tasked with an important responsibility. However, this work can be quite complicated, and it can be difficult to know where to begin or even what language to use. For example, in this document, we use American Indian/Alaska Native (AI/AN) to refer to the distinct legal classification these labels hold in the United States. An AI/AN person is an enrolled member (or eligible for membership) in a federally-recognized tribe or village, according to the criteria of that tribe. Other factors, such as a person's knowledge of their tribe's culture, history, language, religion, familial kinships, and how strongly a person identifies as AI/AN, are also important to identity. Here, we also use "Native" and "Native American" interchangeably with AI/AN, as we find these to be more commonly used terms.

With these considerations in mind, here are some important things to know about the historical and current context for this work:

- There are over 570 federally-recognized tribes in the United States, and scores more that

are state-recognized or have not yet been granted government recognition. Each tribe has its own unique culture, history, language and traditions. As such, although there are some common values and practices, there is no such thing as a homogeneous "Native American culture." The AI/AN Culture Card created by SAMSHA provides helpful foundational information for those who are unfamiliar with Native American histories and cultures (store.samhsa.gov/sites/default/files/d7/priv/sma08-4354.pdf).

- Federally-recognized tribes are sovereign nations with their own governments, laws and legal systems and the authority to make and enforce their own criminal and civil laws, and they are treated as such by the federal government. However, the U.S. government also has a "trust relationship" with the tribes, meaning that, in exchange for the millions of acres of ceded land that became the United States, the federal government is obligated to provide the tribes with certain protections and services, such as education and health care.
- Tribal justice systems are extremely diverse. Some adhere closely to Western-style

structures and processes, whereas others almost exclusively utilize traditional tribal justice practices, such as peacemaking, elder panels, and sentencing circles. There are about 400 tribal justice systems nationwide, and orders issued by tribal courts are entitled to the same full faith and credit as orders issued by state or federal courts. These are legitimate justice systems that are working hard to serve and protect their communities, sometimes with limited and inconsistent resources.

- Determining jurisdiction over tribal justice matters can be challenging and is a frequent source of confusion and frustration for community members and providers alike. For an explanation of these issues, please see the following link: tribal-institute.org/lists/jurisdiction.htm.
- The [Indian Child Welfare Act \(ICWA\)](#) of 1978 is a federal law designed to address the rampant practice of disproportionate unnecessary removal of AI/AN children from their families and tribes, which continues to this day. ICWA sets certain standards to protect the right of a child who is a member of a federally-recognized tribe or eligible for membership to live with a Native family and stay connected to their tribal community.

Many AI/AN people and communities have had profoundly negative experiences with federal and state governments and non-Native people, including persecution, genocide, disproportionate rates of incarceration, removal of children from their families and communities, gender-based violence by non-Natives, discrimination, condescension and broken promises. These experiences have resulted in understandable mistrust and skepticism, even today, of outsiders and U.S. government systems. This mistrust can be best understood as a strategy to protect the child, family and community from further harm. It can act as a barrier to rapport-building and service provision, but can be mitigated by respectfully acknowledging the mistrust, taking time to build rapport, and

approaching the relationship with humility, authenticity, consistency, openness, and a desire to learn from the child and family about their experiences, their strengths and needs, and what they think will be most helpful to them.

Additional barriers faced by AI/AN children and families may include:

- Not being identified as Native and/or as needing culturally-specific supports
- Lack of training and cultural responsiveness by non-Native practitioners
- Implicit and explicit bias and discrimination
- Jurisdictional concerns, including having to manage interactions with state, federal and/or tribal justice systems simultaneously or over time.

Practitioners can better serve AI/AN clients and communities by implementing the following practices:

1. **Identify and learn about the tribes in your area—there may be some local tribes of which you are unaware.** The following directory lists all recognized tribes by state: bia.gov/bia/ois/tribal-leaders-directory/. For each tribe, learn as much as you can about their unique history, culture, traditions, government, and legal and social service systems, both on your own and by visiting the community and observing and participating in government and cultural events, where appropriate. Most tribes maintain websites that provide much of this information.
2. **Participate in federal-state-tribal court forums and professional training and conferences on working with Native families,** such as the National Indian Child Welfare Association Conference, American Indian Justice Conference, and Indian Nations Justice for Victims of Crime Conference, and encourage your colleagues and staff to do the same. A list of state-tribal court forums can be found here: walkingoncommonground.org/state.cfm?topic=6.

3. **Whenever possible, utilize and collaborate with tribally-run, culturally-responsive programs and services**, such as tribal victim advocacy services, tribal child protection/child and family services, and tribal behavioral health systems, especially those that incorporate traditional healing practices. Such services should be the main source of support for Native families unless the family prefers to utilize non-tribal services. OVC's Tribal Resource Tool can help you identify tribal victim advocacy programs in your area: tribalresourcetool.org/.
4. **Practice relationship-building by including tribal representatives and service providers in stakeholder/advisory groups, task forces and community events.** Work together to design and implement the services and supports that Native children and families need, and to build the cultural responsiveness of existing services. Keep in mind that you may need to request permission from tribal elders and/or government leaders to provide services in the community.
5. **Implement a standardized process for asking every child/family if they are enrolled in a tribe or eligible for tribal membership.** This determination should not be made based on physical appearance or zip code alone, and it should not be assumed that families will volunteer this information. In addition, it is important not to assume what terminology to use regarding a person's identity. It is best practice to inquire as to what terminology is preferred—individuals may prefer being referred to as American Indian, Native American, Indigenous, or by specific tribal affiliation. Identifying children and families correctly is critical to understanding their legal rights, especially in child welfare matters, their cultural and community context, and what resources might be available and most helpful to them.

For More Information

For training and technical assistance on these topics, visit us at innovatingjustice.org/areas-of-focus/tribal-justice.

This project was supported by Grant # 2018-V3-GX-K069 awarded by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this publication are those of the contributors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

December 2022