



**Written Testimony Submitted for the Record on behalf of the
National Indian Education Association**

to the

**United States House of Representatives
Committee on Education and the Workforce**

**Regarding the October 8, 2015 hearing entitled
"Reviewing the Juvenile Justice System and How it Serves At-Risk Youth"**

Introduction. Thank you Chairman Kline and Ranking Member Scott for this opportunity to submit testimony for the record on behalf of the National Indian Education Association (NIEA) regarding the hearing "Reviewing the Juvenile Justice System and How it Serves At-Risk Youth." Founded in 1969, NIEA represents Native students, educators, families, communities, and Tribes. NIEA's mission is to advance comprehensive educational opportunities for all American Indians, Alaska Natives, and Native Hawaiians throughout the United States. As the premiere organization advocating for Native students, NIEA works to achieve educational equity and excellence, as well as to ensure that all students are provided high-quality academic and cultural education.

Native youth have one of the highest rates of incarceration, compared with their non-Native peers. Because Native youth are disproportionately represented in both adult prisons and juvenile detention centers, decisions about juvenile justice and related appropriations have a significant impact on Indian Country and on the next generation of Native peoples. NIEA welcomes the Committee's attention to juvenile justice issues and discussions regarding the reauthorization of the Juvenile Justice and Delinquency Prevention Act (JJDP). We urge the Committee to increasing funding for Indian Country in any JJDP reauthorization and to support provisions to reduce incarceration for status offenses, reduce racial and ethnic disparities, and increase trauma-informed and community-based approaches to juvenile justice. NIEA also encourages the Committee to support related efforts, including increasing education funding for Native youth, and particularly for Native youth incarcerated in the 24 detention centers funded by the Bureau of Indian Affairs (BIA). Without access to educational resources, the Native youth in these BIA-funded detention centers sit idly and fall even further behind their peers. Education is critical to preventing Native youth from entering the criminal justice system as well

as to rehabilitating the disproportionate number of Native children that are incarcerated in Federal, State, and Tribal facilities.

Native Youth Are Incarcerated at Disproportionate Rates. Native youth are disproportionately represented in State juvenile justice systems. They are nearly twice as likely to be petitioned to State court for status offenses, such as truancy or underage drinking.¹ They are also less likely to be given probation and more likely to be incarcerated or detained,² with nearly three times the rate per capita of Native youth in State residential placements as White juveniles.³ Because of the Federal government's unique jurisdiction in Indian Country, Native youth are also disproportionately represented in Federal facilities despite the fact that the Federal system does not have a juvenile division and the Federal Bureau of Prisons lacks juvenile detention facilities.⁴ For instance, between 1999 and 2008, 43–60 percent of juveniles in Federal custody were Native.⁵ The Indian Law and Order Commission described the situation as follows:

Tribal youth in non-P.L. 83-280 jurisdictions become ensnared in a Federal system that was never designed for juveniles and literally has no place to put them. In P.L. 83-280 jurisdictions, Tribal youth may be thrust into dysfunctional State systems that pay no attention to the potential for accountability and healing available in the Tribal community. ... These and other shortcomings of the Indian country juvenile justice system compromise traumatized, vulnerable young lives, rupture Native families, and weaken Tribal communities that depend on their youth for their future.⁶

Meanwhile, many Tribes lack juvenile facilities. Those Tribes that do have such facilities or other programs to address juvenile justice issues rely on woefully inadequate Federal dollars to support comprehensive, culturally based programs.⁷

In addition to being incarcerated at disproportionate rates, detained and incarcerated Native youth also have distinct needs. Native children are exposed to violence at alarmingly high rates, suffering from levels of post-traumatic stress disorder (PTSD) equal to or higher than military personnel returning from the Middle East.⁸ Native youth also experience suicide rates twice as high as their non-native peers.⁹ Culturally based alternatives to detention and resources

¹ Coalition for Juvenile Justice and Tribal Law and Policy Institute, *American Indian/Alaska Native Youth & Status Offense Disparities: A Call for Tribal Initiatives, Coordination & Federal Funding* at 1 (2015), available at <http://www.cwla.org/joint-briefing-paper-highlights-tribal-disproportionality-in-juvenile-justice/>.

² *Id.*

³ Indian Law & Order Commission, "Juvenile Justice: Failing the Next Generation," *A Roadmap for Making Native America Safer* at 157 (Nov. 2013) ("In 2010 in the State systems, American Indians made up 367 of every 100,000 juveniles in residential placement, compared with 127 of 100,000 for White juveniles."), available at http://www.aisc.ucla.edu/iloc/report/files/Chapter_6_Juvenile_Justice.pdf.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 159.

⁷ See, e.g., Sari Horwitz, *From Broken Homes to A Broken System*, WASHINGTON POST (Nov. 28, 2014), <http://www.washingtonpost.com/sf/national/2014/11/28/from-broken-homes-to-a-broken-system/>.

⁸ Indian Law & Order Commission, *supra* at 151.

⁹ Coalition for Juvenile Justice and Tribal Law and Policy Institute, *supra* at 31.

to heal and rehabilitate children who are detained or incarcerated are critical to the survival of Tribal communities. Educational programs and resources both in and outside of the detention context play an essential role in this process.

Given the reality facing Native youth in State, Federal, and Tribal detention facilities, NIEA welcomes the discussion regarding reauthorization of the JJDPa and supports efforts to decrease incarceration for status offenses, reduce racial and ethnic disparities in juvenile detention, support community-based alternatives to detention, provide a trauma-informed continuum of programs to address the needs of at-risk youth, and provide grants to Tribal programs. However, NIEA urges the Committee to support increased funds for Indian Country. Under the current JJDPa, the funding for all of Indian Country is only equal to the amount apportioned for one state.¹⁰ This is simply inadequate to meet the enormous needs of Tribal juvenile justice programs. We fully support the Tribal Youth Program that has been proposed by the National Congress of American Indians as a way for the JJDPa to ensure stable funding for tribal programs.¹¹ Additionally, NIEA requests that the Committee pay particular attention to the role of education in rehabilitating Native youth and preventing Native youth from entering the criminal justice system.

Incarcerated Native Youth in Federally Funded Facilities Lack Education Resources. The Indian Law and Order Commission reported that the Bureau of Indian Affairs (BIA) Office of Justice Services (OJS) confirmed that "Congress has not appropriated any Federal funds [for secondary educational services] in recent years. This means that Native children behind bars are not receiving any classroom teaching or other educational instruction or services at all."¹²

Prior to 2012, approximately \$620,000 was provided in the Department of Interior budget for education services at BIA-funded juvenile detention facilities. Although this was an extremely small amount given then need for educational services, these funds helped fill a critical gap in the 24 BIA-funded juvenile detention facilities. Since 2012, however, this account has not been funded. In some facilities, this has meant that detained and incarcerated Native children lack all access to educational services. Classrooms literally sit empty because there is no funding to provide instruction.¹³ Detained and incarcerated children languish in these facilities, as they fall further and further behind their already struggling peers, placing them at an even greater disadvantage than other Native children when they return to school.

Meanwhile, we know that one of the best methods to rehabilitate individuals and reduce recidivism is through education. Education builds self-esteem for these struggling youth and provides something productive for them to focus their energies on during their detention. Tribes have repeatedly requested the restoration of funding for juvenile detention education. The House Interior Appropriations Report recently responded to these requests by providing that its budget recommendation "includes \$1,000,000 to restore juvenile detention education program grants."

¹⁰ See National Congress of American Indians, Testimony for Senate Committee on Indian Affairs: Juvenile Justice in Indian Country (July 14, 2015), <http://www.ncai.org/resources/testimony/ncai-testimony-for-senate-committee-on-indian-affairs-juvenile-justice-in-indian-country>.

¹¹ See *id.*

¹² Indian Law & Order Commission, *supra* note 3 at 155.

¹³ Horwitz, *supra* note 7.

H. Rep. 114-170. Although the budget process is currently stalled, we request that the Committee support future efforts to restore this vital funding and to provide other educational resources to Native children in BIA-funded juvenile detention centers and other Federal facilities.

The State of Emergency in Native Education and the Federal Trust Responsibility. The lack of educational resources in BIA-funded and Federal facilities is particularly worrisome given the Federal government's trust responsibility for Native education and the current state of emergency for Native students.

Established through treaties, federal law, and U.S. Supreme Court decisions, the Federal government's trust responsibility to Tribes includes the obligation to provide educational access to all American Indian and Alaska Native students. This obligation is a shared responsibility between the Executive and Congress. Despite the pressing need for funding parity and equal access, historical funding trends establish that the Federal government has been abdicating its trust responsibility by decreasing Federal funds to Native-serving programs by over half in the last 30 years. Funds for juvenile detention education have been one of the many casualties of this trend. Native students have been wholly abandoned in BIA-funded juvenile detention centers and in Federal facilities.

The disproportionate representation of Native youth in detention centers combined with the lack of educational resources compounds the current state of emergency that exists in Native education. Interior Secretary Sally Jewell has stated, "Indian education is an embarrassment to you and to us."¹⁴ Native students are not experiencing the improvement in graduation rates applauded in the rest of the country. Native graduation rates are the lowest of any racial/ethnic group, at around 67 percent. Bureau of Indian Education (BIE) rates are even worse, hovering around 50 percent. Native students also continue to lag behind their peers on other important indicators, such as reading and math skills.¹⁵

The current crisis in Native education exemplifies the United States' failure to fulfill its trust responsibilities to Native youth, and nowhere is this reality more stark than for Native children that are detained and incarcerated. Further, keeping Native children out of the criminal justice system will require sustained support for Native education more generally. NIEA requests that the Committee support initiatives to adequately fund K-12 educational programs for Native youth, including Local Education Agency Grants under Title I of the Elementary and Secondary Education Act (ESEA), the State-Tribal Education Partnership (STEP) Program, Impact Aid under ESEA Title VIII of the ESEA, Indian Education Formula Grants and Indian Education Language Immersion Grants under ESEA Title VII, Tribal Education Agencies, facilities operation and maintenance for BIE schools, and other initiatives focused on improving outcomes for Native youth. Addressing the current crisis in Native education is vital to keeping Native youth out of the criminal justice system and reducing recidivism.

¹⁴ Hearing before the Committee on Indian Affairs, S. Hrg. 113-92 (May 15, 2013).

¹⁵ See the Institute of Education Sciences, *National Indian Education Study*, <http://nces.ed.gov/nationsreportcard/nies/>.

Conclusion. NIEA thanks the Committee for its attention to juvenile justice issues and for addressing the reauthorization of the JJDP. As the Committee continues its deliberations, we urge it to keep in mind the enormous impact that juvenile justice policy and related funding decisions have on the Native children that are disproportionately represented in State, Federal, and Tribal facilities. We request that the Committee support increased funding for Tribal juvenile justice programs in any JJDP reauthorization as well as supporting provisions to reduce incarceration for status offenses and increase trauma-informed and community-based approaches to juvenile justice. Additionally, we urge the Committee to support initiatives to address the lack of educational resources for Native youth in Federally funded facilities and to support funding for Native education more generally to prevent our young people from entering or reentering the criminal justice system.

For additional information, please contact NIEA Federal Policy Associate Dimple Patel at dpatel@niea.org or 202-544-7290.