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Research Policy Update *American Indian and Alaska Native Youth in the Juvenile Justice System – Policies and Practices*

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Background – AI/AN Juvenile Justice and 2018 Report Findings

In 2018, the U.S. Government Accountability Office (GAO) released a report on American Indian/ Alaska Native (AI/AN) youth involvement in the justice system during arrest, prosecution, and confinement.¹ A key finding in the report (**Figure 1**) identified an overrepresentation in the percent of AI/AN youth in certain states in the arrest and confinement stages of the justice process compared to the percent of AI/AN youth population in the state, and an underrepresentation of the percent of AI/AN youth in in other states.

Figure 1: Difference in Representation of AI/AN Youth during Arrest and Confinement by State Compared to the AI/AN Youth Percent Population in the State

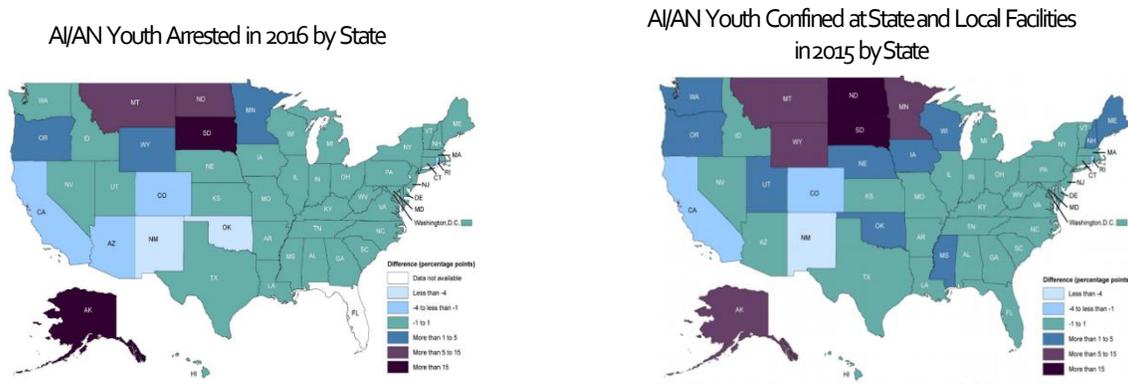


Image Adapted from: GAO Report (2018) Native American Youth: Involvement in Justice Systems and Information on Grants to Help Address Juvenile Delinquency
Data Source: GAO analysis of Department of Justice 2015 biennial Census of Juveniles in Residential Placement (CJRP) data, the Federal Bureau of Investigation (FBI) Uniform Crime Reporting Summary Reporting System (UCR SRS) data, and U.S. Census 2015 and 2016 estimates.

Data is limited on AI/AN youth in the justice system and difficult to compile and compare because AI/AN youth can be involved with federal, state/local, and/or tribal justice systems at

each stage of the justice process. The ability to measure data on AI/AN youth experience with the juvenile justice system process depends on where the incident occurred, what type of offense was committed, and the severity of the offense, all of which impact jurisdiction or which justice system has the power to address the offense.

The 2018 GAO report compiled available data on AI/AN juveniles involved in the justice system in each U.S. state. This compilation led to the identification of states with an over-, equal, and under-representation of AI/AN youth during the arrest stage and the confinement stage compared to their representation in the state population. There are multiple reasons why an over-, equal-, or under-representation of AI/AN youth may be present in each state. This landscape analysis reviewed a selection of states with AI/AN youth over-, equal-, and under-represented in the data on arrests and confinement to take a snapshot of existing state policies on AI/AN juvenile arrest and confinement. This snapshot aimed to gain further insight into AI/AN youth in the justice system.

Purpose and Methodology – AI/AN Representation in Juvenile Justice

Purpose and Methodology

The NCAI Policy Research Center conducted a landscape analysis of state policies that address AI/AN youth arrest and confinement in the justice system. State policies included statutes, regulations, internal protocols, or agreements with Tribal Nations. The analysis identified state policies during arrest and confinement from a selection of states included in the 2018 GAO report findings related to over-, equal-, and under- representation of AI/AN youth in arrests and confinement. Existing policies and practices in states with different levels of AI/AN youth represented in the justice system could provide insight on reasons for these differing levels. This landscape analysis focuses on the arrest and confinement stages since those were the stages in which differences were found for AI/AN youth (**Figure 2**).

Figure 2: Stages of the AI/AN Juvenile Justice Process

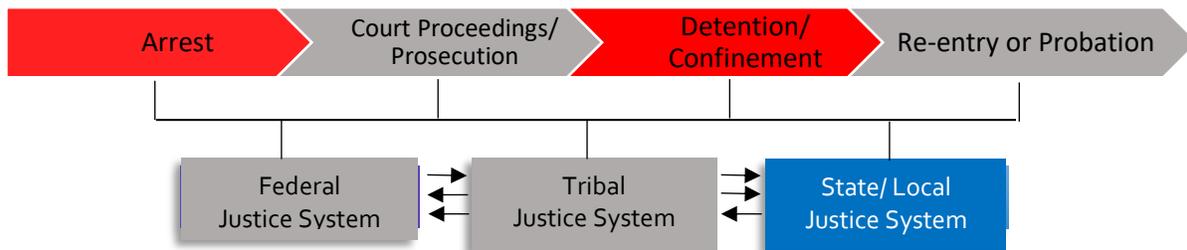
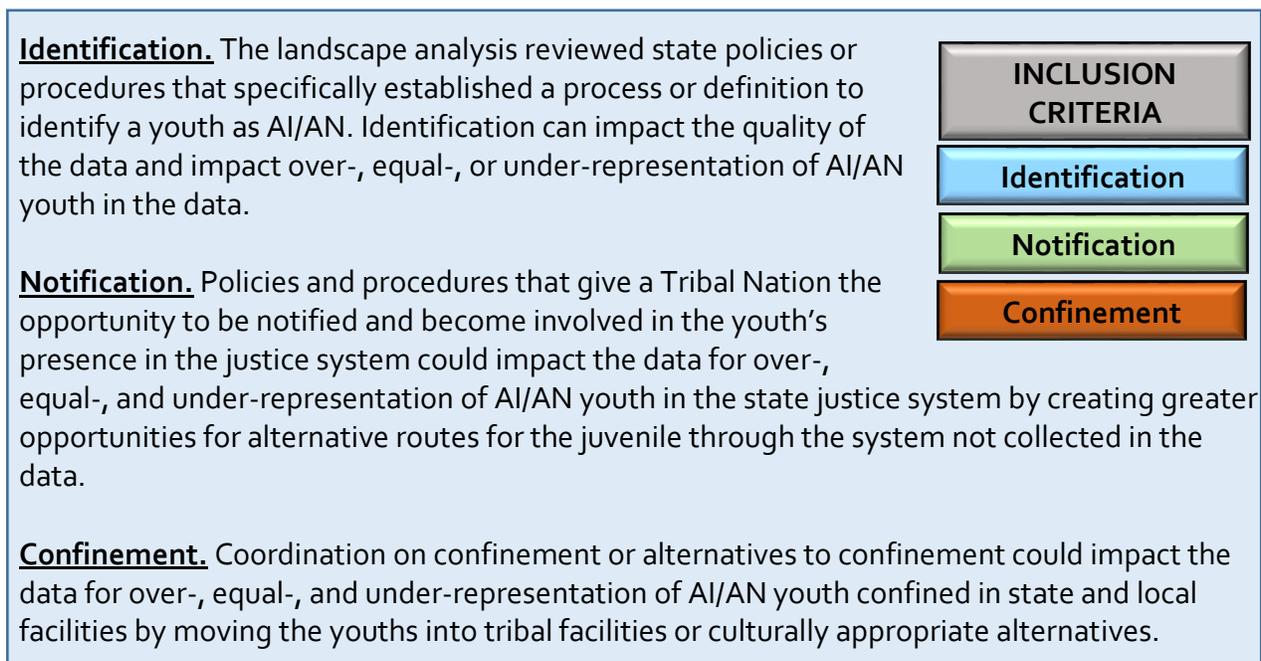


Figure 2 illustrates all the potential justice systems involved and where datasets may be available in the juvenile justice process. The states colored in RED are the two stages focused on for this landscape analysis. Only state policies and procedures were examined.

State Policy Inclusion Criteria

State policies were identified if they included at least one of three criteria: **identification**, **notification**, and/or **confinement coordination**. (Figure 3). **Identification** includes state policies or established processes for identifying a youth as AI/AN during the arrest or confinement stage. **Notification** focuses on state policies or agreements to notify the Tribal Nation that an AI/AN youth had been arrested or confined. **Confinement coordination** includes any policies or practices for coordinating confinement with Tribal Nations or cooperation for tribal alternatives to confinement. These criteria were chosen for the following reasons: the potential to limit or skew data collection; the opportunity for Tribal Nations to become involved; and the opportunity to reduce confinement through coordination or tribal alternatives.

Figure 3: Inclusion Criteria for State Policies Impacting AI/AN Youth Arrest and Confinement Data



The 2018 GAO data analysis was used to identify the states with over-, equal-, and under-representation of AI/AN youth during the arrest and confinement stages compared to the representation of AI/AN youth in the state population.² The states selected from the GAO report for this landscape analysis were the two states with the highest over-representation of AI/AN youth arrested or confined, two states with an equal-representation of AI/AN youth arrested or confined, and the two states with the lowest under-representation of AI/AN youth arrested or confined. This landscape analysis focused on six states for arrest and six states for confinement (Figure 4).

Figure 4: States Chosen for the Landscape Analysis with Over-, Equal-, and Under-representation of AI/AN Youth during the Arrest and Confinement Stages

| Juvenile Justice Stage (Arrest or Confinement) | States Chosen for the Landscape Analysis | Percent of AI/AN Youth in State Population* | Percent Difference of AI/AN Youth in Arrest or Confinement compared to their percent population in the State (percent)** |
|---|--|---|--|
| States with AI/AN Youth Over-Represented in the Juvenile Justice System | | | |
| Arrest | Alaska*** | 20% | +15 to +22% |
| | South Dakota | 15% | +15 to +22% |
| Confinement | North Dakota | 9% | >+15% |
| | South Dakota | 15% | >+15% |
| States with AI/AN Youth Equal-Represented in the Juvenile Justice System | | | |
| Arrest | Wisconsin*** | <2% | -1 to 1% |
| | Idaho | 2.2% | -1 to 1% |
| Confinement | Nevada | <2% | -1 to 1% |
| | Arizona | 7% | -1 to 1% |
| States with AI/AN Youth Under-Represented in the Juvenile Justice System | | | |
| Arrest | Oklahoma | 12% | -5.5 to -4% |
| | New Mexico | 14% | -5.5 to -4% |
| Confinement | California*** | <2% | -4 to -1% |
| | New Mexico | 14% | -11% |

*The percent of AI/AN Youth in State Population is from the percentages calculated by the Government Accountability Office (GAO) using 2015 Census population estimates.

**Ranges for percent difference in representation were calculated and available in the Native American Youth: Involvement in Justice Systems and Information on Grants to Help Address Juvenile Delinquency report (2018).

***These states are P.L.83-280 States for which Congress granted the state criminal jurisdiction over Indians in Indian country.

The GAO report found that Alaska and South Dakota had the highest over-representation of AI/AN youth during arrest with a difference of more than 15 percent. Oklahoma and New Mexico were the only two states identified with an under-representation of AI/AN youths in arrests of less than negative four percent. The two states with equal-representation in arrests were categorized with a percent difference between negative one percent and one percent. Multiple states fell into the equal-representation category for arrests, and states with tribal populations were selected. Different states with equal-representation were chosen for arrest and confinement to provide a greater range of state policies examined.

The arrest and confinement data from the GAO report contained some limitations and variability in the data. Both arrest and confinement data were gathered from voluntary participation by states, and states gather, report, and identify AI/AN youth differently. The arrest and confinement data analyses came from different years (2015 and 2016). Although the data used to identify the over-, equal-, and under-representation for AI/AN youth are from

2015 and 2016, this landscape analysis reviewed current state policies regarding AI/AN youth in the justice system in 2021.

State Policies Review

The search for state policies on AI/AN youth arrest and confinement began with online searches through each of the selected states' government websites for tribal juvenile justice policies, examination of Indian Child Welfare Act statutes with any reference to juvenile justice, and state reports on AI/AN juvenile justice. Child welfare and juvenile justice policies may overlap. The Indian Child Welfare Act includes a juvenile justice provision that requires a Tribal Nation to be notified if an AI/AN youth is removed from their home for a status offense.³ Some states have then codified the Indian Child Welfare Act into state statutes, which may then include the juvenile justice provision. The National Conference of State Legislatures⁴ interactive website was used to identify state statutes related to the Indian Child Welfare Act. These statutes were reviewed for reference to any of the three policy inclusion criteria mentioned above (identification, notification, or confinement). Google Scholar searches were conducted to review reports not produced by the states on state policies and practices surrounding AI/AN juvenile justice. If policies or initiatives were identified in a report, a search was conducted to find and verify the policies and initiatives. The last stage in the landscape analysis included communications with the tribal relations or juvenile justice offices in the state to identify any policies/ agreements/ initiatives not yet found in the research.

The policies and procedures identified for each state were evaluated and ranked in the following categories: the ability to find any relevant policies and procedures; the ability to find any policies specific to the chosen policy inclusion criteria (identification, notification, and confinement); and the ability of state offices to provide additional information or relevant policies.

Limitations

The policies and procedures identified in the landscape analysis were not evaluated for how well the policies and procedures were known to law enforcement, how the policies or procedures were implemented, or how effective the policies and procedures were in practice. This landscape analysis looked at the presence or absence of AI/AN juvenile justice policies that included identification, notification, or confinement provisions for AI/AN youth. State policies or statutes needed to specifically mention AI/AN youth and identification, notification, or confinement to fulfill the inclusion criteria for this analysis. States with AI/AN youth and identification and notification in non-juvenile justice circumstances were not identified as fulfilling criteria. More policies may exist for each state than were identified for this landscape analysis from the online searches and responses from state offices. Only state level policies were included for the landscape analysis. Local, county, and tribal level policies about AI/AN youth in the justice system may exist in these states but were not included in the findings of this report.

Findings – State AI/AN Juvenile Justice Policies and Practices

The landscape analysis findings cover a snapshot of state policies with AI/AN youth over-, equal-, or under-represented during arrest and confinement stages of the juvenile justice process. Policies for states ranged from vague to specific, and many policies included in the findings were designed and intended for custody of an AI/AN child but may be loosely interpreted for other purposes such as identification. Overall, there was no clear difference in state juvenile justice policies for the states in which AI/AN youth were over-, equal- or under-represented. **Figure 5** provides a summary of the policies and procedures related to the arrest stage of the juvenile justice process, and **Figure 6** provides a summary for the confinement stage. The confinement criteria was not applicable to the arrest stage information and is not included in Figure 5.

Figure 5. State Policies and Procedures for Arrest of AI/AN Youth.

| State | Representation Compared to Percent Population | Policies or Procedures Related to AI/AN Juvenile Justice | Polices Related to Identification of Youth as AI/AN | Policies Related to Tribal Notification | Specific Policies |
|--------------|---|--|---|---|---|
| Alaska* | Over | No | No | No | <ul style="list-style-type: none"> Alaska Statute § 47.14.100 |
| South Dakota | Over | Yes | Yes | Yes | <ul style="list-style-type: none"> South Dakota Codified Laws § 26-7A-14; 26-8D-5 South Dakota Public Safety Improvement Act (2015)⁵ Criminal Justice Initiative (2013)⁶ |
| Wisconsin | Equal | Yes | Yes | Yes | <ul style="list-style-type: none"> Wisconsin Statutes: §§ 822.04, 938.028, 938.255, 938.355 |
| Idaho | Equal | No | No | No | <ul style="list-style-type: none"> None |
| Oklahoma | Under | Yes | Yes | Yes | <ul style="list-style-type: none"> Oklahoma Statutes, Title 10A. Children and Juvenile Code Oklahoma Agreements and Compacts: 50566, 50531, 34290⁷ |
| New Mexico | Under | Yes | Yes | Yes | <ul style="list-style-type: none"> State Tribal Collaboration Act (2020)⁸: Tribal Notification Provision⁹ New Mexico Statutes Annotated: §§ 32A-11-1 to 32 |

*Some states may include juvenile justice within the Family codes or Indian Child Welfare codes. If it was not explicitly clear that the state included juvenile justice in the interpretation, the state was not marked as fulfilling the criteria.

Figure 6. State Policies and Procedures for Confinement of AI/AN Youth.

| State | Representation | Policies or Procedures Related to AI/AN Juvenile Justice | Polices Related to Identification of Youth as AI/AN | Policies Related to Tribal Notification | Policies Related to Confinement or Alternatives | Specific Policies |
|--------------|----------------|--|---|---|---|---|
| North Dakota | Over | No | No | No | No | <ul style="list-style-type: none"> • North Dakota Century Code § 14-14.1-03 |
| South Dakota | Over | Yes | Yes | Yes | Yes | <ul style="list-style-type: none"> • South Dakota Codified Laws §26-7A-14 and 26-8D-5 • South Dakota Public Safety Improvement Act (2015)¹⁰ • Criminal Justice Initiative (2013)¹¹ |
| Nevada* | Equal | No | No | No | No | <ul style="list-style-type: none"> • FPO 0504A – Assessing for Indian Heritage¹² • Child Welfare Policies and Procedures Manual¹³ • Nevada Revised Statutes: 62D.200 and 62A.030 |
| Arizona | Equal | Yes | Yes | Yes | Yes | <ul style="list-style-type: none"> • State of Arizona Systems Integration Initiative: Information Sharing Guide¹⁴ • Arizona Department of Juvenile Corrections Tribal Liaison Policy¹⁵ • Cooperative agreements with Tribal Nations¹⁶ |
| California* | Under | No | No | No | No | <ul style="list-style-type: none"> • California Family Code: §§ 170, 175, 180, 185 • California Welfare & Institution Code: §§ 224 to 224.3, 224.6, 305.5, 306, 317, 361, 366 |
| New Mexico | Under | Yes | Yes | Yes | Yes | <ul style="list-style-type: none"> • State Tribal Collaboration Act 2020¹⁷: Tribal Notification Provision¹⁸ • New Mexico Statutes Annotated §§ 32A-11-1 to 32 |

*Some states may include juvenile justice within the Family codes or Indian Child Welfare codes. If it was not explicitly clear that the state included juvenile justice in the interpretation, the state was not marked as fulfilling the criteria.

State policies related to identification of youth as AI/AN varied across states. Some states had definitions to identify an AI/AN youth or procedures for tribal notification but the focus was often on child custody by a parent or guardian rather than juvenile delinquency. Some states include AI/AN juvenile justice policies within the Indian Child Welfare Act policies or Family Codes, and if this wasn't clear, the tables did not include the information. Even though policies were included in the tables, the states were not marked to have fulfilled the criteria if juvenile delinquency was not specifically included in the policy. New Mexico, Arizona, and South Dakota were found to have policies and processes that included identification, notification, and confinement. Both New Mexico and South Dakota updated their state juvenile justice policies in the past five years and plan to update the state policies and procedures in their new legislatures. Many state initiatives and policies were newer than the 2018 GAO report data analysis, and the impacts of these new policies may not yet be known.

Conclusion – Over-, Equal-, and Under-Representation

This landscape analysis used the findings from the 2018 GAO report to determine if state policies and procedures varied among states with an over-, equal-, and under-representation of AI/AN youth arrested and confined. The identification of existing state policies and procedures sought to provide insight into the differences in data from the 2018 GAO report. The findings suggest that the existence of state policies and procedures for identification, notification, and confinement did not appear to be different in the over-, equal-, or under-representation of AI/AN youth in the justice system. However, because many policies and procedures were updated after the datasets analyzed, the relationship between policy existence and over-, equal-, and under-representation of AI/AN youth is not clearly related.

The landscape analysis did not evaluate the efficacy, thoroughness, or implementation of the state policies. The following factors could further impact the findings and categorizations:

- The landscape analysis only looked at whether a state had a policy or procedure specific to the criteria and if the policy or procedure could be found through the methodology identified;
- State offices may not have been as responsive due to the global COVID-19 pandemic at the time of the report and the challenges of remote work; and
- The report only focused on state policies and procedures; more policies or procedures may be available through local government and law enforcement.

The landscape analysis showed available policies and procedures regarding AI/AN youth in the justice system for six states during arrest and six states during confinement. The report was just a snapshot of existence of state policies related to AI/AN juvenile justice in selected states. The identification of existing state policies in this review was a necessary first step to establish the landscape but not sufficient to determining their impact on over-, equal-, and under-representation of AI/AN youth in the juvenile justice system.

Future Research

State policies and procedures could still be a factor in the over-, equal-, and under-representation of AI/AN youth in the justice system in other states but more analysis and review is needed. Other factors may impact the representation of AI/AN youth in the juvenile justice system, such as structural racism, poverty, education, support systems, and other individual and community factors. Identification, notification, and confinement alternatives also deserve further study.

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SUGGESTED CITATION

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ENDNOTES

¹ “Native American Youth Involvement in Justice Systems and Information on Grants to Help Address Juvenile Delinquency.GAO-18-591. U.S. Government Accountability Office, September 2018.

² “Native American Youth Involvement in Justice Systems and Information on Grants to Help Address Juvenile Delinquency.GAO-18-591. U.S. Government Accountability Office, September 2018.

³ See 25 U.S.C.A. § 1903, 1911 – 1923.

⁴ N. (2019, November 12). State statutes related to the Indian Child Welfare Act. Retrieved from <https://www.ncsl.org/research/human-services/state-statutes-related-to-indian-child-welfare.aspx>

⁵ South Dakota Public Safety Improvement Act State of South Dakota 2015. Ninetieth Session, Legislative Assembly, S.B. 73.

<https://jjri.sd.gov/docs/An%20Act%20to%20Improve%20Public%20Safety%20Regarding%20Juvenile%20Justice.pdf>

⁶ South Dakota Act to Improve Public Safety 2013. Legislative Assembly. S.B. 70.

<https://doc.sd.gov/documents/about/SB70CriminalJusticeInitiativeEnrolledVersion2013.pdf>

⁷ *Tribal Compacts and Agreements*. Oklahoma Secretary of State, www.sos.ok.gov/gov/tribal.aspx.

⁸ State and Tribal Collaboration Act 2020 Agency Report. State of New Mexico. New Mexico Children, Youth and Families Department. (2020). <https://www.iad.state.nm.us/wp-content/uploads/2020/11/2020-State-and-Tribal-Collaboration-Act-Report-Final-2-CYFD.pdf>

⁹ New Mexico Juvenile Delinquency Notice to Tribes. 2019. H.B. 149. <https://www.nmlegis.gov/Sessions/19%20Regular/final/HB0149.pdf>

¹⁰ South Dakota Public Safety Improvement Act State of South Dakota 2015. Ninetieth Session, Legislative Assembly, S.B. 73.

<https://jjri.sd.gov/docs/An%20Act%20to%20Improve%20Public%20Safety%20Regarding%20Juvenile%20Justice.pdf>

¹¹ South Dakota Act to Improve Public Safety 2013. Legislative Assembly. S.B. 70.

<https://doc.sd.gov/documents/about/SB70CriminalJusticeInitiativeEnrolledVersion2013.pdf>

¹² "FPO 0504A – Assessing for Indian Heritage." Indian Child Welfare Act (ICWA) Resources, Nevada Department of Health & Human Services, Division of Child & Family Services, dcfs.nv.gov/Programs/CWS/ICWA/ICWAResources/.

¹³ "Child Welfare Policies and Procedures Manual." Division of Child & Family Services, Nevada Department of Health & Human Services, dcfs.nv.gov/Policies/.

¹⁴ *State of Arizona Systems Integration Initiative: Information Sharing Guide*. Arizona Juvenile Justice Commission. The Governor's Office of Youth, Faith and Family, 2019.

¹⁵ Arizona Department of Juvenile Corrections (ADJC). Legislation and Communication. Policy 1301.12 Tribal Governments (2017).

¹⁶ Example: Intergovernmental Agreement Among Yuma County, Arizona, the Superior Court of the State of Arizona, In and for the County of Yuma, and the Cocopah Indian Tribe, for use of the Yuma County Juvenile Detention Center.

http://walkingoncommonground.org/files/Cocopah%20Indian%20Tribe_2015%2016%20agreement.pdf

¹⁷ State and Tribal Collaboration Act 2020 Agency Report. State of New Mexico. New Mexico Children, Youth and Families Department. (2020). <https://www.iad.state.nm.us/wp-content/uploads/2020/11/2020-State-and-Tribal-Collaboration-Act-Report-Final-2-CYFD.pdf>

¹⁸ New Mexico Juvenile Delinquency Notice to Tribes. 2019. H.B. 149.

<https://www.nmlegis.gov/Sessions/19%20Regular/final/HB0149.pdf>