JUL 1 8 2017

Juvenile Justice Reinvestment Initiative

July 18, 2017

Mr. Jason Hancock
Director Legislative Research Council
500 East Capitol Avenue
Pierre, SD 57501

Dear Mr. Hancock:

In accordance with SDCL 26-8D-6, the South Dakota Juvenile Justice Reinvestment Initiative Native American Focus Group (NAFG) respectfully submits the enclosed report and recommendations to the Governor, Chief Justice and Legislature.

Sincerely,

Greg Sattizahn
GS/lg

cc: Governor Dennis Daugaard
Chief Justice David Gilbertson
Enc.

Progress Report and Final Recommendations

December 2016

South Dakota Juvenile Justice Reinvestment Initiative

Native American Focus Group

Introduction

In 2015, the Juvenile Justice Public Safety Improvement Act (JJPSIA) was passed by both the House and the Senate and signed into law by Governor Daugaard. During the signing ceremony on March 12, 2015, Governor Daugaard stated, "The passage of this bill will lead to less crime, lower costs for taxpayers, and better outcomes for South Dakota's youth and families." In whole, JJPSIA prevents juveniles from becoming further involved in the juvenile justice system, expands access to evidence-based community interventions, and focuses residential placements on youth who are a public safety risk.

JJPSIA also requires a critical evaluation of Native American children involved with the justice system. Specifically, in section eight of the act, "[t]he Department of Tribal Relations, in coordination with necessary state agencies, treatment providers, law enforcement, and stakeholders, shall evaluate and make recommendations to the oversight council to improve outcomes for Native American children in the juvenile justice system. Options for consideration may include sharing of treatment resources, information sharing about children under probation supervision, and joint supervision." Further, in section nine of the act, "[t]he Department of Tribal Relations shall report to the oversight council by December 31, 2016, the progress of the evaluation required by section 8 of this Act. The Department of Tribal Relations shall submit its final recommendations to the oversight council, the Governor, the Chief Justice, and the Legislature by July 1, 2017."

In accordance with those statutory requirements, the Department of Tribal Relations created a Native American focus group made up of members from the state government system and Native American Tribes across the state. The objective of the Native American focus group was to evaluate the current status of Native American children in the justice system and to suggest recommendations to the oversight council. The members of the Native American Focus Group are:

1) Richard Bird, Director of the Dakotah Pride Center in Sisseton, SD.
2) Pamela Hein, Attorney and Former State's Attorney for Charles-Mix County, SD.
3) Jennifer Gaytan-Bowman, Cheyenne River Schools Special Education Director, Eagle Butte, SD.
4) Charles Frieberg, Unified Judicial System Director of Trial Court Services.
5) Bob Wilcox, South Dakota Counties
6) Hon. Michael Swallow, Associate Tribal Judge, Standing Rock Sioux Tribe and Sisseton Wahpeton Oyate.
7) Hon. Merton B. Tice Jr., retired South Dakota 7th Circuit Judge.
8) Kristi Bunkers, Director of Juvenile Services, South Dakota Department of Corrections
9) A.J. Franken, General Counsel to Governor Daugaard.
10) Representative Jacqueline Sly, District 33.

11) Joe Guttierez, Commander of the Western South Dakota Juvenile Center, proxy for Sheriff Kevin Thom, Pennington County Sheriff's Office.
12) Stephan Horse Looking, Rosebud Sioux Tribe Department of Education and former Rosebud Sioux Tribe Juvenile Probation Officer.
13) Dr. Pat Iron Shell-Hill, Staff Psychologist for Rosebud Indian Health Service and former staff member of Rosebud Sioux Tribe Juvenile Detention Center.
14) Sadie Stevens, Governor's Office staff.
15) Tatewin Means, Oglala Sioux Tribe Attorney General.
16) Senator Troy Heinert, District 26.
17) Tiffany Wolfgang, Director of Behavioral Health, South Dakota Department of Social Services.

The Department of Tribal Relations carefully selected each member of the Native American focus group and aimed to create a group that represented a diverse range of professionals who work, or have worked, in tribal and non-tribal settings. Members of the group were selected based upon their professional work experience within the South Dakota state system and within Indian Country. Without specifically focusing on any one of the nine reservations in South Dakota, the Department diversified its options by seeking to include a Tribal Attorney General, a Judge, a Juvenile Services Officer, medical professionals that work with children in both inpatient and outpatient settings, and also professionals who are accustomed to working with children in cross jurisdictional locations.

At its inception, the Department of Tribal Relations created three distinct goals for the Native American Focus Group. The overall objective of the goals is to improve outcomes for Native American children in the juvenile justice system. Those goals are; 1) evaluate community-based programs which utilize evidence-based practices that serve Native American children involved in the state and tribal juvenile justice systems, 2) evaluate intergovernmental communications and information sharing for Native American children under probation supervision or in the custody of the Department of Corrections, and 3) evaluate joint supervision of youth and increased cooperation by the state and tribal juvenile justice systems. Throughout the course of the meetings and interim periods, the focus group members pooled together ideas and resources from their respective capacities to guide their discussions and progress to achieve the objective.

The following information in this report represents the group's progress on the evaluation of Native American Children in the justice system and sets forth draft recommendations to the Oversight Council.

South Dakota Native American Focus Group Progress to Date

The South Dakota Juvenile Justice Reinvestment Initiative Native American Focus Group has held six meetings, both in person and via teleconference, since it was established in May 2015.[1] Over the course of the past year, the Focus Group has gathered, reviewed, and discussed comprehensive information including local and national data and research. The following section provides a summary of the information obtained, thoughtfully reviewed, and discussed throughout this process. This information has served to inform the draft recommendations set forth in this report.

The Focus Group first met in September 2015 to review information on the Juvenile Justice Reinvestment Initiative (JJRI) Work Group, Senate Bill 73 – also known as the Juvenile Justice Public Safety Improvement Act (JJPSIA) – and to establish the purpose and scope of the Focus Group.

During the first meeting, there was consensus that additional information was needed to better inform the discussion and development of recommendations, including identifying the gaps that exist to effectively serve South Dakota's Native American populations within the state juvenile justice system. Specifically, more information was needed on available programming, intergovernmental communication practices, and joint supervision practices. Additionally, the group determined the need to examine data on Native American youth in the juvenile justice system being supervised by the South Dakota Unified Judicial System (SD UJS) and the South Dakota Department of Corrections (SD DOC).

Juvenile Justice Data

Focus Group members carefully reviewed information about South Dakota's juvenile justice efforts and practices throughout the five meetings following the initial overview meeting. Discussion topics included: baseline data from the SD DOC and SD UJS, results from a survey that collected information about communication practices, information sharing, and community-based programs for Native American youth involved with the state's juvenile justice system, information gathered from program site visits about South Dakota programs serving Native American youth, and nationally recognized principles for delivering effective interventions.[2] This information was used to develop recommendations to align with the established goals of the Focus Group. Some of the key findings from these sources are discussed below.

[1] Hereafter referred to as the Focus Group.
[2] The Appendix includes meeting minutes for each Focus Group meeting.

South Dakota's UJS and DOC baseline data:

On January 5, 2016, the focus group reviewed data about juveniles in the state system from July 2013 to June 2015, the time period just prior to the Juvenile Justice Public Safety Improvement Act.[3]

Key findings included:[4]

1. Over one quarter of juveniles on probation are Native American, nearly double the general population of Native Americans in South Dakota.
2. Nearly 40% of commitments to the Department of Corrections are Native American, almost three times the general population in South Dakota.
3. A majority of Native American youth probation starts and commitments are concentrated in 3 court circuits across the state.
4. Across all groups, the majority of commitments to the Department of Corrections are for misdemeanor offenses and non-person, non-sex offenses.

Survey Data:

On May 15, 2016 the Focus Group reviewed the major findings of a survey that was distributed to tribal and non-tribal agencies and community-based providers. The purpose of the survey was to gather information related to the Focus Group's goals, understand current programs and practices, identify what practices are working well and where they are being utilized, and identify gaps and additional information needed to further inform the discussion and future recommendations from the group. A number of community-based programs in Indian Country were also visited and information from those visits was shared with the Focus Group.

Key findings included:[5]

1. The most common reasons respondents listed for not making referrals to community based programming and diversion programs are a lack of available programs and not meeting youth needs.
2. Lack of response and contact information are the most common barriers to communication.
3. Respondents felt a joint supervision program would offer numerous benefits but limited collaboration between tribes and the state represented a significant barrier.
4. There are a range of services delivered in outpatient, inpatient, individual and group settings accessible to Native American youth in South Dakota.

[3] Note that this data does not reflect the policy changes required by the Act.
[4] See appendix "TK" for the January 2016 meeting notes that outline the data reviewed by the Focus Group.
[5] See appendix "TK" for the May 2016 meeting notes that outline the survey results reviewed by the Focus Group.

Consensus Recommendations

The Focus Group used the information reviewed and discussed at the meetings to develop several recommendations. The recommendations are discussed in reference to each of Focus Group's goals below.

Evaluate community-based programs which utilize evidence based practices that serve Native American children involved in the state and tribal juvenile justice systems

1. Develop a standardized cultural competency curriculum and training to be offered to all state juvenile justice system staff, stakeholders, and program providers.
    a. Convene representatives from all nine tribes and relevant tribal and non-tribal agencies to collaboratively develop the curriculum and training protocol. Careful thought should be given to who, what and how the training is presented.
    b. Review any existing materials/curriculum available in state and tribal agencies to build off of.
    c. Require the training for SD UJS, SD DOC, and SD DSS-Division of Child Protection staff working directly with Native youth and families.
    d. Department of Social Services Administrative Rules already include requirements for cultural sensitivity training and being responsive to client's needs including cultural orientation and spiritual belief[6]; providers should be encouraged to incorporate this standardized cultural competency curriculum to meet those requirements.

Evaluate intergovernmental communications and information sharing for Native American children under probation supervision or in the custody of the Department of Corrections

2. State juvenile courts host informational sessions/meetings for Native American youth and their families to increase awareness and understanding of the state juvenile justice system and procedures.
    a. Statewide information should be included with a focus on the characteristics of local courts.[7]
    b. Include information on services available locally both through state agencies/providers and tribal agencies/providers.
    c. State agencies should identify "points of contact" to liaise with tribal communities to help youth and families understand the process, encourage self-advocacy, and emphasize family involvement.

[6] See 67:42:07:04, 67:42:08:04 and 67:62:07:01

[7] The Focus Group noted that the Voices for Children "South Dakota Juvenile Justice System Guidebook" could potentially be updated and modified as a resource for youth and their families.

d. Work with tribal communities to identify "Tribal Advocates" (regional or circuit) to work with SD UJS to support and guide youth and families through the process.

3. Allow extended family members to have access to information about the youth's legal proceedings in the state juvenile justice system.
    a. The Court currently has the authority to grant permission to allow other individuals to be part of the court process; any additional information sharing would have to adhere to existing confidentiality law requirements for youth.

4. Educate and encourage juvenile justice system stakeholders to utilize South Dakota Codified Law 26-8A-13.1 which upon an order of the court, allows the Department of Social Services to provide certain child protection records to the court, court services, state's attorney, or agencies.

Evaluate joint supervision of youth and increased cooperation by the state and tribal juvenile justice systems

Focus Group members discussed joint supervision and whether there was a need for it and how it would benefit youth and families involved with the state juvenile justice system. Ultimately, the Focus Group did not feel a structured joint supervision program was needed, and instead determined more benefit would result from encouraging transfer of cases and building a wellness team model to be used as a diversion option or as part of community-based supervision.

5. More broadly encourage the practice of State's Attorneys transferring cases to tribal systems in the youth's home jurisdiction.
    a. The practice of transferring cases including agreements between State's Attorneys and tribal jurisdictions, occurs in some counties but is not standard practice.

6. Create wellness teams within the state juvenile justice system for Native American youth to be utilized as either a diversion option or as part of supervision under the jurisdiction of SD UJS or SD DOC supervision.
    a. The teams would be multi-disciplinary and include representatives from relevant state and tribal agencies involved in supporting the youth's success.
    b. Members of the youth's family and other loved ones from the community, including mentors and elders, would also be invited to be involved and participate in the wellness team process.

<u>Additional discussion</u>

The Focus Group discussed the statewide assessment tool used by the South Dakota Unified Judicial System and the Department of Corrections to identify risk levels and inform case plans, including referrals to community-based services – the tool is not used to inform disposition

decisions. The tool currently being used by SD UJS and SD DOC is called the Youth Level of Service Case Management Inventory (YLS/CMI).

There was discussion around the importance of utilizing an assessment tool that incorporates strengths, or also called protective factors, as a part of the assessment. Protective factors are attributes such as skills, strengths, resources, supports or coping strategies that an individual youth may have that help them deal more effectively with stressful events and mitigate or eliminate risk. Ultimately, the Focus Group is not putting forth a recommendation at this time around assessment tools being used in the state, but wanted to include the following documentation of the discussion that occurred on this topic:

- The YLS/CMI incorporates capturing some protective factors, however, there was discussion about other tools that more comprehensively include these factors, such as the Youth Assessment and Screening Instrument (YASI).
- A validation study of the YLS/CMI used by SD UJS is currently underway and will include examining its accuracy for predicting risk by race/ethnicity, including for Native American youth.
- Exploring supplemental tools that account for protective factors to be used alongside the YLS/CMI may be an option to obtain more comprehensive information on strengths and protective factors for all youth in the juvenile justice system.