

# FOCUS

Views from the National Council on Crime and Delinquency

## Native American Youth and the Juvenile Justice System

Christopher Hartney

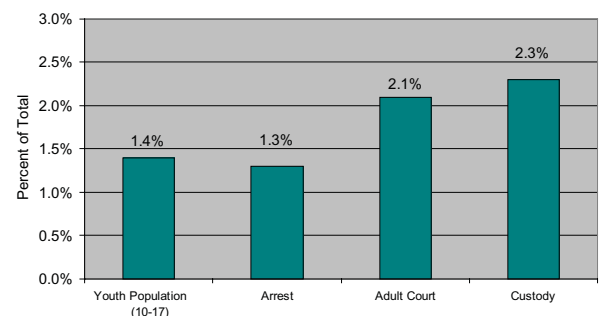
### Introduction

*Native American youth are overrepresented in the juvenile justice system.*

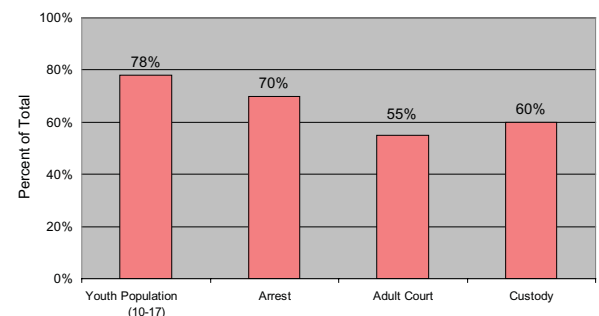
A growing number of studies and reports have made it clear that minority youth in general are more likely than White youth to be arrested, adjudicated, and incarcerated in juvenile justice systems across the US. Although not as large as those for African Americans, disparities between Native American youth and White youth are alarmingly high and in need of remediation.

*The term "Native American" refers to American Indians and Alaskan Natives unless otherwise specified. All racial statistics reported here are based on US government data with individuals self-reporting a single race. Hispanic ethnicity is usually not provided in this government data; unless noted, each racial category includes both Hispanic and non-Hispanic youth. There is also variation within the Native American population, including between tribes and geographical areas, but complete data by tribe is not available. This Focus reports only aggregate data at the national and state levels.*

Native American Youth



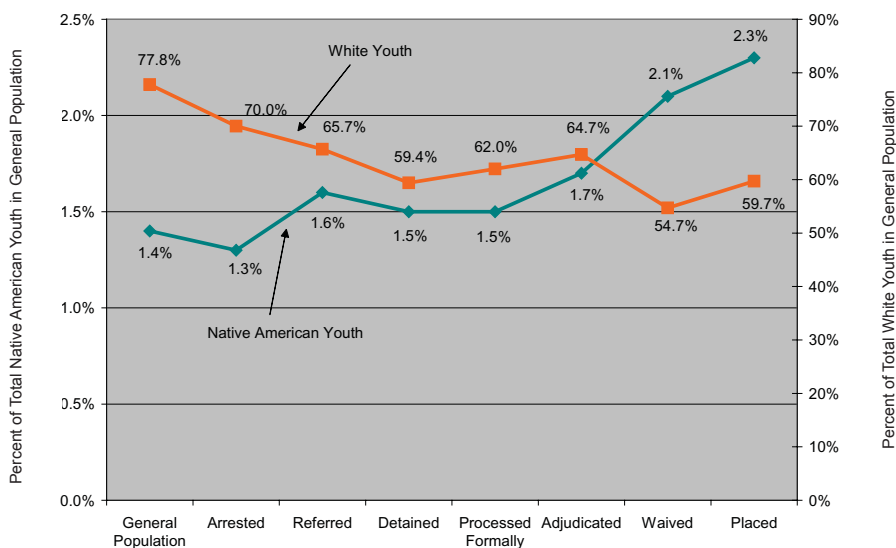
White Youth



Source: Snyder, Puzanchera, and Adams (2007).

Proportions of Native American and White Youth at Key Stages of the Juvenile Justice System

2004	Native American (N=482,000)	White (N=26,097,700)
Percent of total youth (10-17) population	1.4%	78%
Percent of total arrests	1.3%	70%
Percent of total referrals	1.6%	66%
Percent of total detained pending adjudication	1.5%	60%
Percent of total formally processed	1.5%	62%
Percent of total adjudicated	1.7%	65%
Percent of total waived to adult court	2.1%	55%
Percent of total sent to residential placement	2.3%	60%



Source: Snyder, Puzzanchera, and Adams (2007).

**Native American youth at key stages of the juvenile justice system**

If there were no disproportion of Native American youth in the juvenile justice system, their proportion aged 10 to 17 at each stage of the system would be about equal to what it is in the general US population: 1.4%. In fact, except for arrests, the Native American youth proportion rises at each stage of the system. It is at its highest for the two most punitive sanctions—

waiver to the adult system (2.1%) and out-of-home placement (2.3%). In contrast, the proportion of White youth at each stage of the system is lower than what it is in the general population and diminishes as they move through the system.

The proportion of Native American youth arrested for violent offenses was less than 1%, but their proportion of referrals for the same offenses was 1.4%.

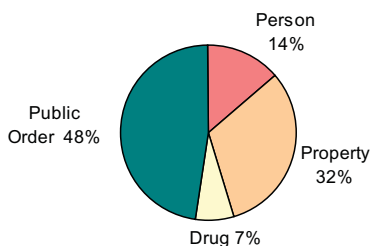
### Offense Type

Native American and White youth were arrested for similar types of crimes, with Native Americans arrested slightly more often for public order and property offenses and slightly less often for person and drug offenses.

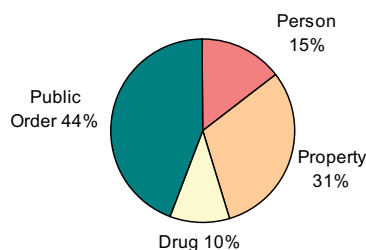
### Gender

US rates of Native American youth in custody were higher than all groups except African American youth. Rates for Native American girls were very similar to those for African American girls.

**Native American Arrests by Offense Type, 2004**  
(N=24,700 youth arrested)

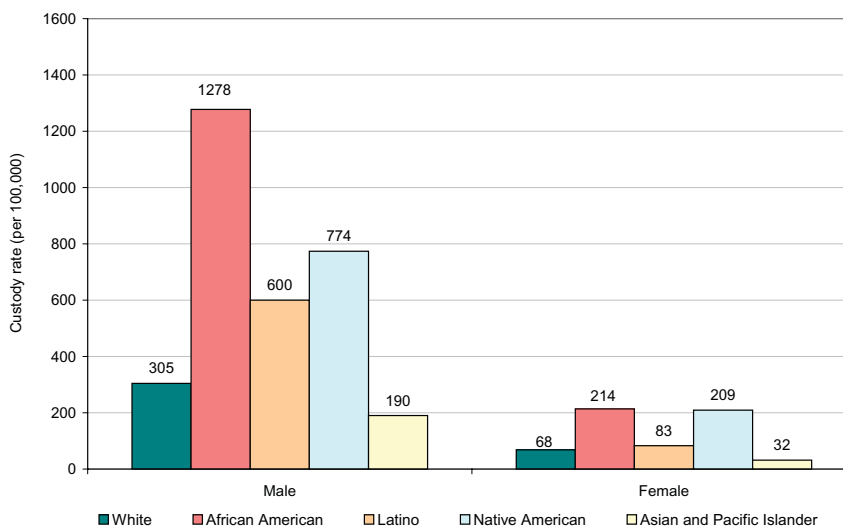


**White Arrests by Offense Type, 2004**  
(N=1,358,500 youth arrested)



Source: Snyder, Puzzanchera, and Adams (2007).

### US Residential Custody Rates by Sex and Race/Ethnicity, 2003



Source: Census of Juveniles in Residential Placement 1997, 1999, 2001, and 2003.

Note: The custody rate is the number of juvenile offenders in custody (including pre-adjudication detention, post-adjudication detention awaiting placement, and residential placement) on October 22, 2003, per 100,000 juveniles age 10 through the upper age of jurisdiction in the general population of each state. US totals include 1,398 youth in private facilities for whom the state of offense was not reported and 124 youth in tribal facilities. The White, African American, Native American, and Asian/Pacific Islander groups do not include persons of Latino origin.

## Cumulative Impact

Racial or ethnic disproportion tends to increase as youth are processed through the stages or decision points of the juvenile justice system. Those points are usually arrest, diversion or referral to court, detention, formal processing, disposition (which may include residential placement, probation, or release), and, in certain cases, waiver to adult court. Each of these steps involves a decision made by police, prosecutors, public defenders, judges, probation officers, and others as they apply laws and policies to the circumstances of the case.

Some decision points in the system introduce more disproportion, while others reduce or do not change the overall differences in representation. An assessment of the change in the Relative Rate Index from one stage of the system to the next (using the number of youth at the previous stage as the denominator in the calculation) reveals which stages of the system are more or less problematic.

The table below shows that the rate of representation of Native American youth relative to White youth is fairly equal at several stages of the system, but there is a consistent pattern of disparity and very serious differences at certain key stages. At the points of arrest and formal processing there is no disproportion, meaning Native Americans and Whites are equally likely to be arrested and, once referred, to be petitioned (similar to indictment for adults). These are very important findings.

### Relative Rate Index

*The Relative Rate Index is the method used by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) for assessing the degree of over or underrepresentation experienced by system-involved youth of color in comparison to White youth. In this two-step method, rates for each racial group are calculated as the number of youth at a particular point in the system per 100,000 (or some other standard population count) of youth of the same race in the general population. Then, the rates for other groups are divided by the rate for White youth. This produces a value that can easily be interpreted. Values over 1 indicate that group is overrepresented compared to Whites. Values less than 1 indicate that group is underrepresented.*

Relative Rate Index at Each Stage of the System, 2004

	White	Native American	African American	API
Arrests per youth in population	1.0	1	1.9	0.3
Referrals per arrest	1.0	1.3	1.2	1.2
Diversions per referral	1.0	0.9	0.7	0.8
Detentions per referral	1.0	1.1	1.3	1.2
Petitions (formal processing) per referral	1.0	1	1.2	1.1
Adjudications per petition	1.0	1.1	0.9	1
Probation per adjudication	1.0	0.9	0.9	1
Placement per adjudication	1.0	1.5	1.2	1
Waiver to adult court per petition	1.0	1.5	1.4	0.6

Source: Snyder, Puzzanchera, and Adams (2007). See also: Snyder, H. (2007).

However, Native American youth are about 30% more likely than White youth to be referred to court rather than having the charges dropped. Native Americans are 10% more likely to be detained awaiting trial. Native Americans are 10% less likely to receive the comparatively lenient measure of diversion or the second chance of probation. **Most importantly, Native Americans are 50% more likely than Whites to receive the most punitive measures, namely, out-of-home placement after adjudication or waiver to the adult criminal justice system.**

These disparities remain when one separately assesses each type of offense—violent, property, drug, or public disorder. Data were not available on certain other factors that may influence how individual youths move through the system such as offense severity and youth arrest history.

Stage-specific relative rates for the African American and Asian, Hawaiian, or Pacific Islander groups are also shown in the table opposite for comparison. The API group has the least overrepresentation at most stages of the system compared to Whites. African Americans have very serious overrepresentation at several stages (and, indeed, have the most overall overrepresentation of any group). **However, for the two most punitive stages listed, the differential is larger for Native Americans than for African Americans.** (For further discussion, see Snyder, 2007).

## Factors that Influence Native American System Involvement

### Poverty

Native Americans are among the most impoverished racial groups in the US and have the second highest percentage of families living below the federal poverty line. In 2004, an estimated 21% of Native Americans families lived under the poverty line compared to 8% of Whites and 23% of African Americans (US Census Bureau, 2004).

### Education

In the last US Census, Native Americans reported a lower level of educational attainment than the general US population, with 29.1% of Native Americans not graduating from high school versus 19.6% in the general population. Also, fewer Native Americans held bachelor's degrees than the general population—11.5% versus 24.4% (US Census Bureau, 2006).

### Victimization

Native American youth were victimized at greater rates than other youth. The 2002 annual average violent victimization against youth (aged 12-17 years) for Native Americans was 145, African Americans 97, Whites 95, and Asians 45. Also, Native American youth were the most likely to report that the offender against them was of a different race than their own (Perry, 2004).

### Disparities in detention subject more Native American youth to negative impacts of system involvement.

*Detention (typically in a “juvenile hall” setting) awaiting adjudication or placement is meant for the most serious or violent offenders, but in fact most youth in detention in the US are there for nonviolent, minor offenses such as property, public disorder, status offenses, or technical probation violations. Although some youth do need to be held in such settings, detaining youth unnecessarily costs taxpayers more without increasing community safety and harms the youth. Even after controlling for severity of offense and other factors, detained youth versus those held in community settings or returned home are more likely to have their physical and mental health, education, and employment adversely affected, more likely to be formally charged and receive harsher dispositions, and more likely to recidivate after release.*

*See Holman and Ziedenberg (2006).*

State*	Asian and Pacific Islander	Latino	African American	White	Native American
<b>US Total</b>	<b>113</b>	<b>348</b>	<b>754</b>	<b>190</b>	<b>496</b>
Minnesota	280	400	1,149	156	1,712
Nebraska	194	447	1,529	214	1,682
South Dakota	873	1,449	3,199	310	1,575
Wyoming	0	947	3,035	507	1,285
North Dakota	0	747	1,384	235	1,240
Iowa	117	520	1,337	242	1,025
Alaska	206	0	339	177	896
Oregon	181	314	1,075	291	870
West Virginia	0	567	953	229	775
Idaho	328	463	725	250	747
Rhode Island	409	188	1,425	192	735
Connecticut	36	316	669	105	672
Colorado	112	396	1,150	268	646
Washington	155	207	770	200	607
Montana	0	482	418	188	588
Wisconsin	282	226	1,389	143	580
Utah	324	564	951	258	558
Maine	0	188	182	149	492
Maryland	22	326	319	98	450
California	140	448	1,246	217	425
Indiana	0	381	1,188	316	417
Nevada	152	332	958	289	405
Oklahoma	48	239	673	196	343
Kansas	187	364	1,320	213	318
Michigan	27	231	602	169	287
Louisiana	90	151	663	202	269
Pennsylvania	329	639	1,207	139	246
New Mexico	0	105	823	153	212
New York	45	261	712	138	205
Arizona	72	363	579	223	199
Florida	81	186	973	355	195
North Carolina	45	77	332	106	195
South Carolina	143	453	567	201	193
Massachusetts	160	522	811	111	172
Mississippi	0	60	246	75	155
New Jersey	15	203	795	51	153
Texas	18	327	771	194	139
Georgia	59	237	500	142	127
Illinois	14	144	589	120	113
Missouri	87	287	690	159	93
Ohio	71	296	916	207	87

### Rates of Youth in Residential Custody, 2003

In 2003, nearly 500 Native American youth were committed to residential placement for every 100,000 Native American youth in the general US population. This is over two and a half times the rate for White youth and, among all race/ethnic groups, is second only to the rate for African American youth. Northern Midwestern states tended to have the highest rates of Native American youth in placement.

#### State by State

*Representing a variety of custody settings, "residential placement" is the most serious juvenile justice system disposition. It is most akin, in the adult system, to being sentenced to serve time in jail or prison.*

Note: The residential custody rate is the number of juvenile offenders in residential placement on October 22, 2003, per 100,000 juveniles age 10 through the upper age of jurisdiction in the general population of each state. US totals include 1,398 youth in private facilities for whom the state of offense was not reported and 124 youth in tribal facilities. Data may include youth held in a different state than their state of residence or the state where the offense took place.

\*States not listed had too few Native Americans to reliably estimate rates. Data is from 2002, the last year the Bureau of Justice Statistics released these data.

Sources: Census of Juveniles in Residential Placement 1997, 1999, 2001, and 2003.

## Youth in the Adult System

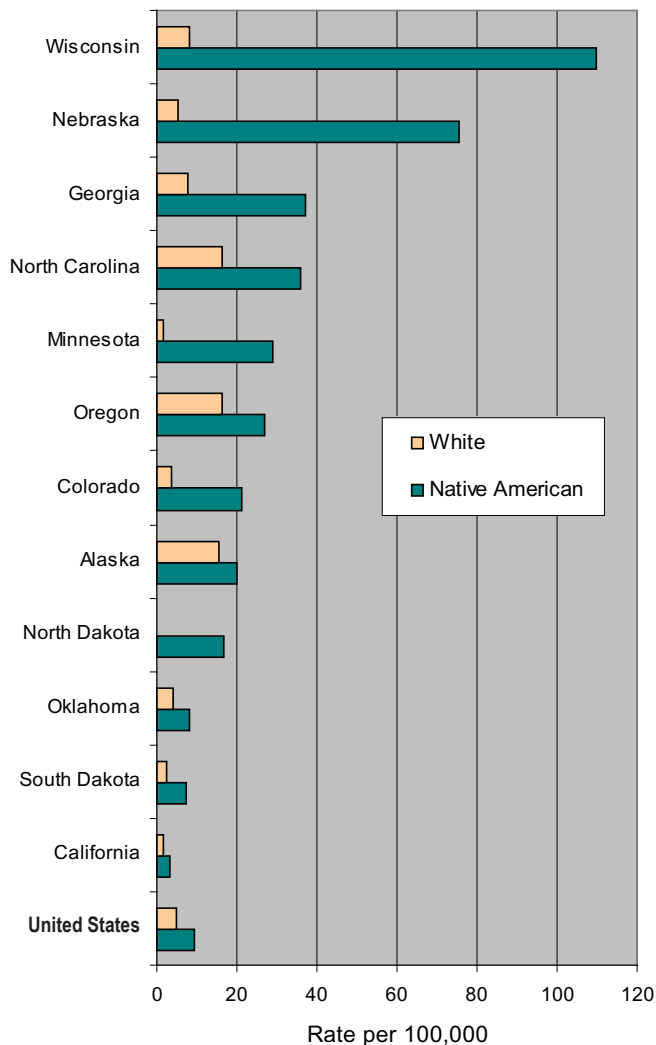
Nation wide, the average rate of new commitments to adult state prison for Native American youth is almost twice (1.84 times) that of White youth. In the states with enough Native Americans to facilitate comparisons, Native American youth were committed to adult prison from 1.3 to 18.1 times the rate of Whites.

## Prosecuting Crime on Indian Lands

One-third of Native Americans live on reservations or other designated tribal lands. (The data presented in this report is for Native American youth regardless of where they live.) An issue that runs parallel to that of Native American representation in the justice system is the means by which crime is addressed on reservations. Crimes are often met with an insufficient response from authorities.

Crime on Indian reservations may fall under the jurisdiction of a variety of judicial and law enforcement agencies including tribal, local (nontribal), state, and federal entities. Which agency is responsible for investigating and prosecuting crime varies depending on the seriousness of the offense, whether the offender was a Native American, and in which state and on which reservation the crime occurred.

Youth in Adult Prison: Rates of New Commitments by State\*, 2002



Sources: National Corrections Reporting Program, 2002; Easy Access to Juvenile Populations [Online analysis package] OJJDP (2006).

\*States not listed had too few Native Americans to reliably estimate rates. Data is from 2002, the last year the Bureau of Justice Statistics released these data. Rates are calculated per 100,000 youth age 10 to 17 years of age in the general population.



As a consequence, a large number of crimes committed against residents of reservations go uninvestigated by any law enforcement agency. State or federal agencies may not pursue crimes due to tribal leaders resisting outside involvement, inadequately trained local law enforcement (who may not properly protect crime scenes, interview witness, or prepare cases), understaffing or inadequate resources (or resources redirected towards immigration and the war on terrorism), physical distance between federal offices and crime scenes and witnesses on tribal lands, or lack of federal capacity for detaining juveniles. Some of these same issues, in turn, impact tribal authorities' ability to resolve a case. Further, on the majority of reservations, where the federal government has jurisdiction over

felonies, the tribes typically do not have their own system to address serious crimes. So, if the federal entity decides not to pursue a serious crime, the tribes may only be able to prosecute for lesser, misdemeanor offenses, resulting in the offender receiving a lighter penalty, if any, than were he or she prosecuted in the federal system.

Jurisdictional complexity also makes it difficult to collect accurate data, with numbers probably underestimated. With a lack of consistent data collection and potentially lowered arrest rates due to authorities not pursuing crime on reservations, it is likely arrest and referral rates are unreliable and probably underestimated.

## References

*Census of Juveniles in Residential Placement 1997, 1999, 2001, and 2003* [machine-readable data files]. OJJDP (2005).

*Easy Access to Juvenile Populations* [Online analysis package] OJJDP (2006).

Holman, B. and Ziedenberg, J. (2006). *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*. Washington, DC: Justice Policy Institute.

National Corrections Reporting Program, (2002). Bureau of Justice Statistics.

Perry, S.W. (2004). *A BJS Statistical Profile, 1992-2001: American Indians and Crime*. Accessed March 11, 2008 at <http://www.ojp.usdoj.gov/bjs/abstract/aic02.htm>

Snyder, H. (2007). *An interpretation of the National DMC Relative Rate Indices for Juvenile Justice System Programming in 2004*. *National Disproportionate Minority*

*Contact Databook*. Prepared by the National Center for Juvenile Justice for the Office of Juvenile Justice and Delinquency Prevention. Released August 2007. Accessed January 7, 2008 at <http://ojjdp.ncjrs.gov/ojstatbb/dmcd/index.html>.

Snyder, H., Puzzanchera, C., and Adams, B. (2007). *National Disproportionate Minority Contact Databook*. Developed by the National Center for Juvenile Justice for the Office of Juvenile Justice and Delinquency Prevention. Online. Available: <http://ojjdp.ncjrs.gov/ojstatbb/dmcd/>

US Census Bureau (2004). *American Community Survey*, Table S1701 Poverty Status in the Past 12 Months. Accessed January 7, 2008 at <http://factfinder.census.gov>.

US Census Bureau (2006). *We the People: American Indians and Alaska Natives in the United States*. Census 2000 Special Reports. Accessed March 11, 2008 at <http://www.census.gov/prod/2006pubs/censr-28.pdf>.