

INCARCERATING OURSELVES: TRIBAL JAILS AND CORRECTIONS

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The issue of incarceration is one that transcends all populations in the United States but is of particular import in communities of color. This is especially true for American Indians, whose rates of violent crime and incarceration are significantly higher than those of other races. The challenge of creating and maintaining prisons and jails is a significant one for any community, but for American Indian communities, which are already stretched financially and in terms of trained personnel, the challenge can seem overwhelming. Many Indian nations are creating and running jails regardless of the costs, because they have determined that they can provide custodial services near home communities and with cultural and traditional components that are not met by mainstream facilities. They have also determined that the provision of essential law enforcement and custodial services are opportunities to expand tribal sovereignty in important ways.

Keywords: Native American crime rates; tribal jails

A recent study by Lawrence A. Greenfeld and Steven K. Smith (1999) for the Bureau of Justice Statistics (BJS) painted a bleak picture of the American Indian community. This study found that American Indians experience per capita rates of violence that are more than double those of the U.S. population in general, and Indian young adults between the ages of 18 and 24 were the victims of violence at the highest rate of any racial group considered by age, about one violent crime for every four persons of this age.

The violent crime rate among American Indian males aged 12 or older was 153 per 1,000, as compared with 60 per 1,000 for all races. These rates held steady for both urban and rural areas. For urban populations, the rate for all races was 65 per 1,000, whereas the rate for American Indians was 207 per 1,000. The rural rate of violent crime was 37 per 1,000 for all races, as compared to 89 per 1,000 for American Indian men.

The study found that American Indian women are the victims of crime at a rate that is nearly 50% higher than that reported by Black males. Yet another startling fact is that American Indians are usually criminally victimized by someone of another race. At least 70% of the crime experienced by American Indians is interracial, with the criminal perpetrator being White in 60% of the cases.

The incarceration rate for American Indians, reflected in the Greenfeld and Smith (1999) study, is similarly startling. American Indians were held in local jails at the highest rate of any racial group. A second study, *Jails in Indian Country, 1998 and 1999* was published by BJS in July 2000 (Ditton, 2000). This study found that the number of American Indians incarcerated throughout the United States was 19,679 on June 30, 1999. Furthermore, on a per capita basis, American Indians were incarcerated in prisons at a rate that was 38% higher than the national rate.

The predominant factor found in the 1999 BJS study was the effect of alcohol consumption. Almost half (46%) of all convicted American Indians in local jails had been under the influence of alcohol when they committed the offense for which they had been convicted. This percentage rises to 70% when only violent crimes are considered (Greenfeld & Smith, 1999). This is in stark contrast with all other racial groups, where only a third or less were reported to be under the influence of alcohol during the commission of nonviolent crimes and 41% for violent crimes. This high incidence of substance abuse is no longer generally addressed in non-Indian prisons and jails. Thus, Indian people held in non-Indian facilities often do not participate in programs that may assist them in avoiding substance abuse on the outside. This is not the case in jails in Indian Country, where 59 of 69 facilities offered substance abuse programs, and 57 of the 69 offered counseling and education programs (Ditton, 2000).

The crime rates in Indian country create a demand for incarceration and corrections systems that reduce crime. The incarceration of American Indians takes place in different types of facilities. Federal prisons are the place of incarceration for American Indians accused of enumerated felonies covered by the Major Crimes Act (1885), and facilities run by the Bureau of Indian Affairs (BIA) are also prevalent in Indian country. In other instances, particularly in those states covered under Public Law 280 (1953), American Indians are held in state jails and prison systems. In many other cases, tribal jails are the place of incarceration.

The effect of these statistics and the environment they create in Indian country are problems for both tribal governments and tribal law enforcement agencies. The costs attendant to the building and maintenance of jails are extensive. The development and implementation of corrections systems that

reduce recidivism and help to heal communities are even more difficult to put into place. However, the human costs of not doing so are even more expensive.

The sovereignty of Indian nations is a concept that can be advanced in legal and/or de facto manners. The establishment of tribal governmental structures and institutions, and the extension of tribal jurisdiction where appropriate, is an effort that expands tribal sovereignty while meeting the needs of tribal members. The establishment and implementation of tribal jails is one such effort. But it does not come without cost. The decisions that must be made, the policies and protocols that must be developed, and the staff that must be recruited and trained are problems that must be overcome if crime and criminality is to ease in Indian country. It is these challenges that are the focus of this article.

TRIBAL JAILS

The 2000 BJS study of Indian detention facilities found that there were 69 jails affiliated with 53 tribes operating in Indian country. These jails were located in 18 states, some of them Public Law 280 states. The jails are run by different agencies, with 48 run by Indian Nations, 20 by the BIA, and 1 run privately. Tribal consortiums jointly run 4 of the jails, whereas a number of the others receive inmates from other tribes on a contract basis. BIA data reported in the study indicate that tribal jails employed 659 persons and had an authorized inmate capacity of approximately 2,100 adults and juveniles. In 1999, the actual jail population in Indian country was almost 1,700 (Ditton, 2000).

REGULATORY RULES AND LAWS

American Indian nations are sovereign. They operate under their own laws and rules and have jurisdiction over their own members and Indians of other tribes. Absent Public Law 280, American Indian nations are not subject to the laws of the states in which they are located. Furthermore, American Indian nations retain sovereign immunity and may not be sued (*Santa Clara Pueblo v. Martinez*, 1978). However, the operation of tribal jails is subject to the Indian Civil Rights Act of 1968 (ICRA), which provides that no Indian nation exercising self-government shall deny any of its citizens certain rights, among them the right to be free from excessive bond or cruel and unusual punishment. Furthermore, where the wording of ICRA is similar or identical to the wording of the U.S. Constitution, the courts have found that the lan-

guage in ICRA may be given the interpretation given the Constitution (*United States v. Lester*, 1981).

Under this analysis, the jails of American Indian nations can be held to standards set by the Eighth Amendment to the U.S. Constitution. The Eighth Amendment prohibits confinement of convicted prisoners under substandard conditions that involve unnecessary and wanton infliction of pain (*Rhodes v. Chapman*, 1981). Prisoners must be provided with reasonably adequate food, clothing, shelter, sanitation, medical care, and personal safety (*Ramos v. Lamm*, 1980/1981); they must be confined in an environment that does not result in their degeneration or that threatens their mental and physical well-being (*Ramos v. Lamm*, 1980/1981) and that meets standards that are not "incompatible with the evolving standards of decency that mark the progress of a maturing society" (*Estelle v. Gamble*, 1976).

The issue of overcrowding is yet another instance where the Eighth Amendment may be violated. The courts have held that whether overcrowding of a jail violates the Eighth Amendment depends on the length of time prisoners are held in overcrowded conditions, the level of overcrowding, and whether overcrowding affects sanitation or medical care (*Ruiz v. Estelle*, 1982/1982).

COMPLIANCE WITH FEDERAL GUIDELINES

Federal guidelines over the operation of jails and prisons are extensive, but they do not necessarily cover tribal jails. Where, however, the tribal jail is operated under a 638 contract (Indian Self-Determination and Education Assistance Act, 1975), the American Indian nation agrees to meet BIA standards. Furthermore, where tribal police are employed pursuant to a 638 contract, they are designated by the BIA to carry out the federal government's responsibilities.

The BIA has formulated minimum standards for detention programs on Indian reservations. These standards include guidelines for medical care, safety of inmates, and numbers of inmates allowed in each cell (Bureau of Indian Affairs, 1991). However, even though these standards are established, they are frequently violated by the conditions that exist in tribal jails.

COST OF RUNNING A TRIBAL JAIL

The cost of running a tribal jail is a significant commitment by any law enforcement agency but particularly for one of limited resources. Most tribal police departments run on extremely limited budgets. Almost half of all tribal police agencies (46.6%) have operating budgets of \$500,000 or less. These

budgets are composed of a bundle of funding. For almost half of the tribal police departments (41.4%), the BIA provides 100% of the funding. Only 17.2% indicate that they receive none of their budget from the BIA. However the departments are funded, the expenditures for incarceration and corrections are a heavy commitment. The question is whether these expenditures bring a level of value to tribal communities, which makes the outlay of funds worthwhile.

STAFFING OF TRIBAL JAILS

Tribal jails exist throughout Indian country. The jails are generally small and consume a number of staff out of proportion to the rest of tribal law enforcement. The 10 largest jails house approximately 40% of those in custody. These 10 largest jails are all in Arizona, with Gila River's Sacaton Juvenile Detention Facility having a rated capacity of 100 and the Sacaton Adult Detention Facility having a capacity of 86. With their third detention facility, the Gila River facilities have the capacity to house 230 inmates, making this the largest in Indian Country. The Tohono O'odham Detention Center, although rated for 33 adults and 16 juveniles, housed a total of 98 inmates at midyear in 1999. The 8 facilities of the Navajo Nation have a total capacity of 206 detainees. On the other end of the spectrum, 42 of the 69 tribal jails (61%) are rated for fewer than 25 inmates, and 19 of the 69 (27%) are rated for fewer than 10 inmates (Ditton, 2000).

For many tribes, the staffing of a jail is a serious commitment. According to the 2000 BJS study (Ditton, 2000), 66 of the 69 facilities studied asserted that they needed additional jail staff to meet the needs of running the jail, and 67 reported that their staff needed additional training. Most tribal police departments are relatively small. For some of these, staff assigned to run and maintain jail services can adversely affect police services available to the whole tribal community. Table 1 sets forth a comparison of a number of tribes' staffing for the tribal police department and the tribal jail. The jail staffing numbers include only those personnel actually assigned to guard functions. The numbers do not include administration or facilities personnel, which in many instances would increase the numbers significantly.

THE INCARCERATION OF JUVENILES IN INDIAN COUNTRY

Indian people have had many adverse experiences in jails and prisons run by federal, state, and local governments. These experiences are complicated by the age of the detainee. The number of American Indian youth in custody is on the rise. A recent study found that the number of American Indian youth

TABLE 1: A Comparison of the Staffing Levels of Tribal Jails and Law Enforcement Departments

<i>Tribe</i>	<i>Law Enforcement Services Male Staff</i>	<i>Law Enforcement Services Female Staff</i>	<i>Jail Staff Male</i>	<i>Jail Staff Female</i>
Colorado River Indian Tribes	30	2	9	12
Navajo	231	61	40	51
Pascua Yaqui	18	3	11	9
San Carlos	20	0	11	9
White Mountain Apache Tribes	41	10	4	9
Blackfeet	23	1	1	7
Flathead	17	1	2	4
Ft. Peck	19	2	5	7
No. Cheyenne	9	1	2	3
Rocky Boy	5	0	4	5
Omaha	7	0	2	5
Jicarilla	22	5	7	5
Pine Ridge	101	10	5	8
Sisseton-Wahpeton	10	6	6	2
Puyallup	16	2	4	4
Yakima	30	2	5	5
Menominee	29	4	10	7

increased 50% between 1994 and 2000. Throughout Indian country, juveniles account for 16% of the total number in custody (Ditton, 2000). Federal guidelines require that juveniles be kept out of view or hearing of adult prisoners; however, not all tribal jails comply with such rules. Of the 43 facilities eligible to hold juveniles, in 9 facilities juveniles were separated from adults by sight only (21%), and in 4 facilities (9%) juveniles were not separated from adults at all.

The federal government does not own or operate any juvenile detention facilities. Thus, requirements enacted for the safety of juveniles can complicate the situation for youth who are in temporary custody for substance abuse. Ted Quasula, director of BIA Law Enforcement Services, has been quoted as saying, "It's not uncommon for a juvenile to ride around in the back of a squad car until they sober up somewhat, because we simply don't have the facilities" (Coalition for Juvenile Justice, 2000).

This failure of the federal government to own or operate any juvenile detention facilities requires that American Indian youth under federal supervision be incarcerated in public and private jail facilities far from their home communities, thus increasing their alienation from their culture and kinship relations (Coalition for Juvenile Justice, 2000).

Tribal jails have tried to address these problems with incarceration and cultural dislocation through the development of tribal juvenile facilities. There are eight facilities that deal specifically with the incarceration of juveniles, two of which are run by the Navajo Nation. Although tribal jails that house adults routinely exceed their rated capacity, that is not the case with these juvenile facilities. On June 30, 1999, tribal jails housed 197 male and 70 female juvenile inmates. On this same date, only one juvenile facility exceeded its rated capacity (Ditton, 2000).

TRIBAL INCARCERATION OF ADULTS

The situation for American Indian youth is echoed in the adult Indian community as well, with members of the Indian community subjected to difficult experiences and cultural dislocation by incarceration within the non-Indian world. Thus, although the development and staffing of tribal jails can be both a financial and operational burden for tribes, they can also bring significant benefits for tribal people. Tribal jails allow tribal members to be housed within or close to their home tribal community, thus increasing the possibility of family and cultural contacts while also holding miscreants directly accountable to the Indian nations themselves, which can be a significant step forward for law and order in Indian country.

Inmates in tribal jails are generally those convicted of misdemeanors. A total of 10 facilities held inmates convicted of felonies, and 9 held only those inmates in detention for less than 72 hours (Ditton, 2000). Tribal jails are routinely overcrowded, with 11 in 1999 under a court order or consent decree that restricted the maximum number of inmates who could be incarcerated.

On June 30, 1999, tribal jails housed 1,354 male inmates and 223 female inmates. More than half of the adult detention facilities operated above 100% capacity, and 15 (22%) operated at above 150% of rated capacity. Approximately 5% of inmates in tribal jails were housed in areas not originally intended for holding prisoners. A total of 11% of inmates in tribal jails were double-bunked in single occupancy cells, and 7% of inmates were housed in holding areas or drunk tanks (Ditton, 2000).

The overcrowding in smaller facilities was worse than in larger ones. In mid-1999, whereas overall Indian country jails were at 108% capacity, the occupancy rate for jails with capacities of fewer than 10 was 161% of capacity and 155% of capacity for those rated to hold up to 24 inmates.

CASE STUDY EXAMPLES

During the course of this research, 2000 to 2001, the author conducted site visits and interviews at three tribes. Two tribes, the Tohono O'odham and the Puyallup, operate tribal jails. The Tohono O'odham house only their own prisoners and on occasion provide a holding space for federal detainees. The Puyallup tribe has a regional jail with contractual relationships with a number of tribes in the Pacific Northwest. The third, the Lummi Nation, does not have its own jail but instead has a contract with the county within which the tribe is located. The chiefs of police at each tribe were interviewed, along with jail personnel at Puyallup and Tohono O'odham. The jail director for Whatcom County was interviewed pursuant to Lummi prisoners.

The Tohono O'odham

The primary issue for the Tohono O'odham jail is severe overcrowding. The jail is rated for holding 33 adult prisoners. According to jail administrators, the population has often exceeded 130 inmates. The nation does not transport or house any inmates in facilities of another Indian nation, the BIA, or the county due to transportation issues and the costs attendant to house prisoners pursuant to a contract. Due to the overcrowding, there is minimal movement within the jail and limited access to diversion programs, advocacy services, or ceremonies. All of these inmates are members of the O'odham

community. The nation does not contract with other Indian nations to house its prisoners, as there are not enough beds.

In 1995, the BIA and the U.S. Department of Justice's National Institute of Corrections conducted a facility review and preliminary assessment of the Tohono O'odham detention facility (Martin & Alese, 1995). This review was requested by the Support Services Commander of the Tohono O'odham Nation Police Department. The review found that there were many facility-related problems, including inefficient design, malfunctioning mechanical systems, and overcrowding. The report further found that overcrowding, inadequate staffing, a lack of written policies and procedures, and a lack of space for effective programs resulted in a number of operational deficiencies. Six years later, the site visit by the author confirmed that these problems continue.

The O'odham jail is supported through tribal funding only. In the past, the nation received funding for the jail from the BIA. Now, due to the overcrowded conditions, federal funding has been largely eliminated, leaving the nation to support the jail mainly through tribal funding. The jail costs \$1.2 million to operate, of which \$300,000 comes from BIA 638 funding. The nation applied recently for grant funding but was denied. The nation was told it was denied because it is a gaming tribe, placing it very low on the priority list.

The overcrowded conditions are complicated by a number of situations. The jail houses a number of prisoners for long periods of time. Although the average stay is 10 to 15 days, one inmate, for example, is serving a sentence of 12 years. There is one cell used for suicide watch, which is absolutely bare. It is supposed to be used for minimum periods of time; however, due to the overcrowded conditions, individual inmates have remained there for 10 to 15 days at a time. The drunk tank is yet another feature affected by overcrowding. It now contains double bunks but has no bathroom or television. It has been used to house up to 10 inmates at a time.

Yet another issue is the overcrowding that results from tribal police picking up undocumented aliens on tribal land. The traditional lands of the nation are split by the U.S.-Mexico border. The border stretches for more than 75 miles over nation lands. Frequently, the police of the nation apprehend migrants crossing the border illegally. Until recently, these migrants were then transported to the jail and held there until the U.S. Border Patrol picks them up. This often resulted in scores of migrants being held in the yard of the jail for up to 6 hours. The nation provided water and food for these people, whose numbers on some occasions have exceeded 300. The nation was not compensated for the provision of custodial service or food or water; however, the jail staff ensured that the detainees were safe and sheltered.

This practice was a problem for jail personnel as well as for the inmates. The detainees were placed in the jail yard, which is the sole recreation area for inmates and also the location of the classroom where all education, counseling, and programs are held. Advocate services are conducted in the classroom, as are church services and meetings between inmates and their families.

Traditional ceremonies are considered a privilege. There is an average of 15 to 20 inmates who wish to participate in traditional ceremonies, and their participation depends on good behavior and a process of random selection from among those who request to participate. Traditional healers meet with inmates in the yard and a sweathouse is set up there. Some traditional elders have come into the jail to work with individual inmates, and there is a belief that there is a need for more spiritual healing. The nation is largely Roman Catholic; however, church services are also limited. When there were detainees in the yard, all programs were stopped and there was no opportunity for recreation or ceremonies. Given the overcrowded conditions, the ability to move outside is very important. This ability is curtailed when migrants occupied the yard. In 2002, due to the above concerns, the nation discontinued housing Border Patrol detainees.

The Puyallup

Unlike the Tohono O'odham, the Puyallup Nation provides a regional jail for the tribes of the Pacific Northwest. The jail has a bed capacity of 25 with an average jail population of 10 to 15. The highest number of inmates has been 23. With this low average population, the Puyallup Nation has been able to enter into contracts with a number of the 12 tribes in the I-5 corridor. At present, 7 of the 12 tribes have contracts with the Puyallup to house their prisoners.

The Puyallup jail houses only Native prisoners. Approximately 40% of the inmates are Puyallup tribal members. The jail admits only misdemeanor offenders with a maximum sentence of 1 year. The average stay is from 7 to 30 days. The jail requires inmates to serve time certain. Absent a tribal court order, it does not allow for early release, which, however, jail staff may request.

The Puyallup jail no longer takes juvenile prisoners. Prior to 1977, the nation housed juveniles; however, issues arose regarding sight and sound separation, so the nation ceased this responsibility. There is now a move to build a juvenile facility.

The jail has recently undergone a complete remodeling to bring it up to federal codes. The cost to complete this upgrading was \$350,000. The opera-

tional costs per year are approximately \$300,000. The costs are primarily borne by the Puyallup Nation, with some federal funding. Additional funding is received from contracting with other tribes to house their prisoners.

The primary issue for the jail, besides meeting the federal requirements, has been staffing. The jail operates in a Public Law 280 state. All jail staff members are state certified and cross-deputized with the state of Washington and with the county. A total of 70% of the staff is Native, with half of those being Puyallup tribal members. Four of the eight staff are female, as is the chief jailer. The chief of police favors the hiring of female staff. He stated that individual inmates open up to female staff in a way that they would not to male staff.

The training level of staff is very high. The Puyallup Nation emphasizes professional staff development with internal and federal training as well as participation in state training programs. The jail staff also conducts training sessions for the staff of surrounding agencies. This highly qualified staff results in a high attrition rate, however, as custodial staff frequently leave for other jurisdictions where the salaries are significantly higher.

The Lummi

The Lummi tribe is geographically within Whatcom County, Washington. Washington is a Public Law 280 state, and thus all enumerated major crimes are under state jurisdiction. The Lummi have asserted tribal jurisdiction over all misdemeanors committed by Indians on the reservation and over all juvenile crimes other than homicide. The tribe has its own police department and judicial system but does not maintain its own jail. Rather, the tribe maintains contracts with Whatcom County to house both adult and juvenile tribal prisoners.

The contract is negotiated for 2 years at a time. The 2000 contract is per bed night, with a charge of \$90 per night for juveniles and \$53 per night for adults. The total cost for 2000 was \$60,000 for adults and \$13,000 for juveniles. In addition, the tribe is billed separately for any necessary medical services for tribal inmates.

The Lummi tribal court handles all prosecution of charges. However, although a defense attorney is not required under the Indian Civil Rights Act, the state of Washington is a PL 280 state. Thus, the tribal attorney has required that the state laws prevail in this instance, and the tribe must provide a defense attorney for all criminal charges.

This arrangement seems to meet the needs of the Lummi tribe. They report no problems between tribal prisoners and jail personnel. When the Lummi tribe decided that it wanted inmates to serve time certain rather than

being allowed to earn early release, the county agreed even though this was contrary to county laws. Another issue was the length of time tribal detainees were incarcerated pending arraignment. Lengthy stays prior to arraignment by tribal courts were a problem for the county jail. Therefore, as a result of negotiations between the county and the tribe, the tribal court now holds a probable cause hearing within 48 hours of arrest.

The issue of access to ceremonies and religious activities has been resolved through agreement. There is no place for ceremonies in the Whatcom County Jail. Instead, when ceremonies are held, the tribal court issues temporary releases and the county releases the prisoners into tribal custody. The prisoner is then escorted to the ceremony by tribal personnel and then returned to county custody.

In the past, the county had limited beds for juveniles, so youth sentenced to detention by the Lummi tribal court were denied entry. The tribe then contracted for a designated bed at the county juvenile facility for tribal youth. However, elders have begun to intercede with minor criminal conduct by juveniles. The tribal court now routinely refers juvenile cases to the Elders Council rather than sentencing them to county juvenile detention. The tribe has found that most juveniles prefer this resolution process. The juvenile must stipulate to the elements of the crime to participate.

INTEGRATION OF NATIVE TRADITIONS AND CUSTOMS

Many native people and researchers contend that incarceration within a tribal setting allows the inmate to come to reconciliation with traditional values and thus limits recidivistic tendencies. The author inquired specifically about access and availability of traditional and cultural activities at Puyallup and Tohono O'odham and regarding the arrangements made by Lummi for its prisoners held in county detention.

The Puyallup custodial staff asserted that access to religious and ceremonial activities and sweat lodges was one of the reasons why the nation felt so strongly about the importance of having a tribal jail. The tribal police chief stated that the state of Washington handles incarceration very differently than the Puyallup Nation. The nation emphasizes diversion and treatment and the continuation of family and community connections. Domestic violence and alcohol counseling programs are held at the jail. Ceremonies and sweats are held off-site at the tribal medical building, but inmates may choose to participate as long as the tribal court agrees. When the tribal court wants a prisoner released for participation in a ceremony, the order is faxed to the jail, and jail personnel provide transportation for the prisoner.

The Tohono O'odham jail personnel asserted that few inmates request to participate in traditional ceremonies, as most tribal members are Roman Catholic. However, due to the overcrowded conditions, even church participation is restricted.

There is a sweat lodge set up in the small recreation yard and traditional healers are allowed to enter the jail facilities and work with inmates; however, access is restricted. The nation encourages elders and other community members to come to the jail and meet with inmates, as it is believed that this would help to instruct them in proper O'odham behavior. Some elders have taken the initiative to do this, with the support of jail staff.

The Lummi require that a request for participation in spiritual or ceremonial activities come from the tribal court. The court may make a request to the tribal police department for temporary release of a prisoner. As long as the prisoner is being held solely for tribal charges, the tribal police department notifies the county jail of the temporary release and transports and guards the prisoner during the time of release. The tribe asserts that religious ceremonies are held for all and that there has never been a problem with the attendance of inmates.

ALTERNATIVES TO INCARCERATION

Alternatives to incarceration serve a number of purposes in Indian country. They are often perceived as a more culturally compatible approach to punishment for crimes. Incarceration as a punishment was almost nonexistent prior to colonialization. Western society is based on the concept of individual liberty; thus, the deprivation of liberty is seen as the worst punishment that can be imposed. In traditional Indian societies, however, the greatest good is the community. Incarceration was not normally practiced. Rather, restoration of harmony and restitution for the crime was the norm.

Many Indian communities have followed the tradition of compensation for the victim and restoration of harmony for the community. These communities have placed an emphasis on alternatives to incarceration, thus preserving the perpetrator within the community and stressing the need for the perpetrator to accept responsibility for his or her actions. The Ditton (2000) study found that the number of persons in 1999 who were supervised in the communities rather than being incarcerated rose by 8% during 1998. Of those in alternative programs, 19% were electronically monitored, 14% were in home detention, 42% were sentenced to perform community service, 7% were required to report daily, and 15% were sentenced to other alternatives. The fact that almost half of those in alternative systems were required to per-

form community service underscores the attempt by tribal communities to emphasize restitution and restoration of community harmony.

CONCLUSION

The expansion of tribal sovereignty and the safety of Indian communities are critical priorities for tribal governments, and an essential element of each is the detention and rehabilitation of criminal perpetrators. Detention is an activity done reasonably well by any detention facility, be it federal, state, or tribal. However, rehabilitation is often not a priority in state or federal institutions. Jails in Indian country, on the other hand, give expressed support and some resources to the idea that perpetrators should be reintegrated into their tribal communities and that there should be a restoration of community harmony.

The Puyallup tribal jail is an example of this attempt to rehabilitate criminal perpetrators. The management of the Puyallup tribal jail asserts that inmates frequently request to be held in tribal jail rather than in the county facility, as they contend that they are treated with greater respect there and that the jail personnel work with the inmates and their families in an attempt to restore the family and community harmony. The Puyallup jail has counselors and medical personnel readily available and encourages inmates to seek work release conditions, which helps them to support their families while serving their sentence.

The idea of rehabilitation is one that has largely been replaced in mainstream facilities, where warehousing is the norm. Often, degrading practices are not only engaged in but also supported and encouraged by the community. An example of this is the Maricopa, Arizona, county jail facility run by Sheriff Joseph Arpaio. Sheriff Arpaio houses inmates in large tents in an area where the daytime temperature can exceed 110 degrees, requires them to dress in pink, and feeds them bologna sandwiches that are tinted green. This is defended as a means of discouraging further participation in crime, but few, if any, diversion or counseling programs are available.

Intentional degradation of inmates in tribal custody was not observed during this study. Rather, concern was frequently expressed about the welfare of prisoners and the belief that programs are needed to try to change their misguided behavior. Counseling; diversion programs; drug, alcohol, and domestic violence programs; and religious and ceremonial activities are provided in an attempt to restore the inmate to a higher level of responsibility.

The focus of tribal jails and tribal courts seems to be the welfare of the whole community, of which the inmate is a part. The tribal legal system antic-

ipates and encourages the return of inmates to tribal society on completion of their term of incarceration. The emphasis, both stated and unstated, is that inmates are tribal members and that they have a responsibility to change their pattern of behavior and to take up their role as community members in sovereign communities on their release. The tribal community and the jail staff accept a role in the rehabilitation of the inmate and in the restoration of the inmate to the community when his or her time has been served. However challenged the tribal jails are financially, administratively, or in staffing, this goal of rehabilitation and restoration is a worthy one, and one that should be supported, as it is through the healing of individuals and communities that true sovereignty can flower.

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