

UNDERLYING CAUSES OF CRIME IN OUR NATIVE COMMUNITIES

Wagenlander & Heisterkamp LLC

James Wagenlander

Sylvia Wirba

Christina Stanton

Crime Prevention National Summit, February 4 and 5, 2020

Denver, Colorado

PRESENTERS

- **Wagenlander & Heisterkamp LLC** is a Denver, Colorado firm that has worked in Indian Country for more than 40 years.
- Most of our clients are TDHEs (tribally designated housing entities).
- James Wagenlander, firm founder, a Managing Shareholder, and practicing in Indian housing for 47 years.
- Sylvia Wirba, Senior Associate Attorney at firm for 10 + years, enrolled Member of Navajo Nation.
- Christina Stanton, Associate Attorney at firm for almost 4 years.

I.
WAYS TO UNDERSTAND CRIME
IN INDIAN COUNTRY

- Crime in Indian Country is often 2 to 3 times higher than the national average
- Step back and look at underlying causes
- Be multi-faceted in understanding and in your approach
- Think differently about crime

2. CRIME IN INDIAN COUNTRY

SUBSTANCE ABUSE

- Native peoples are 2x as likely to become addicted and 3x as likely to die from an overdose compared to non-Natives
- Most violent crimes involve drugs or alcohol
- Almost half of AI/AN substance abuse treatment admissions are referred through the criminal justice system

VIOLENT CRIME

- Violent crime on reservations as high as 3x national average
- Violent crime is investigated by the FBI, often in partnership with local tribal police:
- Includes murder, rape, sexual assault, robbery and assault
- Investigations become complicated depending on status of perpetrator and victim (whether either was a tribal member)

DRUGS/METHAMPHETAMINE

- Highest rate of meth use of any demographic in the U.S.
- Also impacts family units and can lead to separation from family (i.e. 90% of child welfare cases at Yavapai-Apache were related to meth)
- According to the most recent Centers for Disease Control and Prevention (CDC) data, AI/AN populations had the second highest overdose rates from all opioids in 2017 (15.7 deaths/100,000 population) among racial/ethnic groups in the US. AI/AN populations also had the second highest overdose death rates from heroin (5.2) and third highest from synthetic opioids (6.5).
- 80-85% of the AI/AN families in child welfare systems are estimated to have drug or alcohol abuse issues.

MURDERED AND MISSING INDIGENOUS WOMEN

- Native women face murder rates at 10x national average
- CDC has found that homicide is the 3rd leading cause of death for 10-24 year old Native women
- In 2016, the National Crime Information Center reported 5,712 reports of MMIW, but only 116 logged in the U.S. Dep't of Justice database
- From 2010 to 2018, in 71 US urban areas 506 cases were reported
 - 128 cases were reported missing (25%)
 - 280 cases were murdered (56%)
 - 98 cases are still unknown (19%)

DOMESTIC VIOLENCE AND INTIMATE PARTNER VIOLENCE

- Rate of domestic violence exceeds all other races
- Native women are 2.5x more likely to be victim of sexual assault
- 97% of Native women who experience violence experience it at the hands of non-Native perpetrators (contrasted with most DV and IPV which occurs between members of the same race)

INCARCERATION AND POLICE BRUTALITY

- Native people more likely to be murdered by police than any other race
- Native people are largest group per capita in the U.S. prison system
 - Native youth, specifically, are disproportionately represented in federal prison system (1% of population and 70% in federal prisons)
- Federal Justice Statistics-during fiscal year (FY) 2016 (the most recent data available)—
 - 3,189 AIANs were arrested and booked by federal law enforcement agencies, up from 2,943 in FY 2015
 - 3,583 AIAN were held in federal prison at fiscal year-end, accounting for 2.1% of all federal prisoners.

GANGS

- Relatively new phenomenon on reservations dating back to 80s and 90s
- Increased presence on reservations (ex. In 2009, there were 225 gangs on the Navajo reservation in comparison with 75 in 1997)
- Often involves many jurisdictions (federal, state and tribal)
- Gangs sometimes provide support system that is missing from family

SUICIDE

- Highest rate in the country and is increasing
- 1/3 of 10-24 year old Native youth deaths are by suicide
- Certain factors increase the likelihood that someone will die by suicide (ex. Living in a nonmetropolitan area, poverty, substance abuse, difficulties access mental health services, unemployment, high levels and exposure to violence)

OTHER CRIMES IN INDIAN COUNTRY

- Elder abuse
 - Includes physical and/or emotional abuse, financial exploitation, or neglect
 - No statistics for Native elder abuse specifically
- Bordertown violence
 - Racially motivated crimes in towns that border traditionally indigenous land bases
 - “In constant and close proximity to the perceived ‘threat’ posed by this presence to the supremacy of U.S. common sense, border town residents uphold, reinforce, and inhabit practices of colonization in their assumptions and everyday dealings with Indigenous Peoples”
 - Limited research although in 2010 the Navajo Human Rights Council published report based on public hearings that spoke of discriminatory employment practices, denial of public services, predatory industries, and police brutality in bordertowns

3.
SOME CAUSES OF CRIME
IN
INDIAN COUNTRY

POVERTY

- Unemployment
- Feelings of hopelessness or despair
- Cycles of poverty are hard to break and often affect generations
- High poverty levels mean an individual is more likely to be engaged in the underground economy, use drugs and alcohol, which in turn is associated with violent crimes, domestic violence and high crime rates
- Native Americans are more than twice as likely to live in poverty compared to the general population (26% vs. 12%).
- More than 1 in 3 Native Americans lack health insurance coverage, and the average life expectancy for this population is 6 years lower than the national average.

LAW ENFORCEMENT

- Serious funding issues leading to lack of law enforcement, emergency services, etc.
- In 2004, tribes had only 71 jails and 171 courts
- Geographic challenges-understaffed police forces covering large reservations
- Many tribes have difficulty recruiting and keeping tribal police officers

JURISDICTION ISSUES

- Affects not only what law enforcement responds but who
- Jurisdictional maze including federal laws like the Major Crimes Act affect which jurisdiction (federal, state or tribal) can prosecute which crimes
- Federal failure to prosecute (in 2016, federal prosecutors failed to prosecute only 46% of reservation cases)
 - Violence against women is *not* a priority to prosecute

THE LEGACY OF COLONIZATION

- Loss of sense of belonging
- Loss of identity
- Diminishment of tribal culture and language
- Disconnection from family and tribe

SUBSTANCE ABUSE

- High rates of historical trauma, violence, racism, loss, legalized segregation, isolation, and discrimination in native communities place Native people at an increased risk for alcohol and drug abuse
- Native people are more likely than non-Native people to have needed treatment for substance abuse disorders (14.4 verses 7.6% for alcohol abuse; 6.5% versus 3.1% for illicit drug use)
- AI/AN youth initiate drug use at a younger age than non-Native youth

PROBLEMS IMPACTING FAMILIES AND CHILDREN

- Children not finishing school
- Bullying
- Rise of Suicide, especially amongst teens
- Family separation
 - Absent Fathers
 - Grandparents raising children
 - Parents required to leave reservation to work elsewhere
- Broken homes leads to youth seeking community elsewhere (i.e. involvement with gangs)

LACK OF HOUSING AND OVERCROWDING

- Poor housing impacts communities and crime
- Unsafe and unsanitary housing can be a major cause
- Often a consequence of little revenue and inadequate federal funds

OTHER CAUSES

- Geographic Isolation: Rural tribes often lack access to many services including addiction services, family and mental health counseling and other health care
- Underreporting: Because of the history of the relationship between Native peoples and law enforcement, many crimes are underreported (especially sexual assault and DV) which leads to little data and even less funding
- Generational trauma: the emotional and psychological harm that cumulates across one's lifespan and across multiple generations

4.
SOME WAYS
TO ADDRESS CRIME
IN
INDIAN COUNTRY

THE HEALING POWER OF NATIVE CULTURES

- Researchers have reported that a combination of western and traditional healing can be very affective for Native peoples
- [The Healing Power of Heritage, American Psychological Association](#)
- <https://www.apa.org/monitor/2018/02/cover-healing-heritage>
 - Yup'ik Alaska Native
 - White Mountain Apache
 - Cheyenne, Arapaho and other tribes
 - Great Plains Indians
 - CDC 3 Year Grants-Tribal Practices for Wellness in Indian Country

MORE FUNDING FOR LAW ENFORCEMENT

- Increased funding can strengthen the law enforcement available to tribes in many ways not just through individual law enforcement officers but also in courts or even jails
 - Tribal jails mean offenders can retain ties to their family and culture
- Cross-deputization with other nearby law enforcement can increase law enforcement available to tribe with limited resources
- Create a pathway for more Native men and women to join law enforcement

STRENGTHENING TRIBAL CODES

- 2010 Tribal Law and Order Act
 - Goal to enhance sentencing in tribal courts
- Revising tribal codes to reflect crime that was not reflected previously (i.e. methamphetamine provisions, elder abuse, etc.)
- Incorporate traditional practices into tribal laws, such as peacemaking or mediation, when appropriate
- Banishment

ADDICTION TREATMENT PROGRAMS

- Rural and nonmetropolitan tribes need local access to treatment programs
- Traditional native healing
- Other support needed-transportation/child care-to encourage use of available treatment
- Treatment as a part of overall healthcare needs
- Funding and prioritizing need for treatment facilities

MORE ACCOUNTABILITY FOR ALL

- Personal and family acceptance of responsibility
- Failure to be responsible for your actions damages communities
- Often societal changes are required
- Tribally organized meetings and strategies to combat crime, suicide, drugs, etc.

ECONOMIC DEVELOPMENT

- Need viable and sustainable communities-economically strong
- The value of self worth and employment
- The realities of living with the majority society
 - Living within a colonized society

MORE AND BETTER HOUSING

- Better management
- More federal funding
- Other funding

PROTECTING NATIVE WOMEN AND CHILDREN

- Violence Against Women Act
 - Expired in 2018
 - Reauthorization pending
- Increased access to health and counseling services including trauma-informed, culturally accessible and domestic-violence focused services like safehouses
- Native-women led initiatives and increased funding for those (i.e. Emmonak Women's Shelter)

YOUTH OUTREACH AND SUPPORT

- After school and summer programs
- Mentoring
- Access to mental health programs
 - Suicide prevention programs
- Tribal, non-profit and federal programs designed to support children
- Tribal Culture/Language
- Education on perils of substance abuse
- Listening sessions
- Safe places for children and youth to live, go to school and play

TRIBAL EFFORTS STATES OF EMERGENCY

- Oglala Sioux Tribe-2020 (homicides and methamphetamine use)
- Standing Rock Sioux Tribe-2020 (drug and sex crimes)
- Crow Tribe-2019 (missing and murdered indigenous women, lack of law enforcement)
- Bad River Band-2017 (substance abuse)
- Blackfeet Tribe-2018 (drug and alcohol abuse)
- Red Lake Band-2017 (public health emergency, heroin and opiate addiction)
- Northern Cheyenne-2016 (drug use)

BETTER NATIVE LEADERSHIP

- More accountability required from Tribal Leaders
- Setting positive examples for youth and children
- Understanding and committed leadership is needed
- Honest/effective leadership is required
- Increased representation at National level
 - “Congress has never had a voice like mine, a Native American woman who sees the blind spots that have existed for far too long. That’s why I’ve been working on multiple bills and legislation to address this crisis.” U.S. Rep. Deborah Haaland, Laguna Pueblo

5.
AN OPEN DISCUSSION
OF
CRIME IN INDIAN COUNTRY

Thank You!

Wagenlander & Heisterkamp LLC

1700 Broadway, Suite 1202

Denver, CO 80290

(303) 832-6511

wagenlander@wagenlander.com

sylviaw@wagenlander.com

christinaw@wagenlander.com