

Calculating OJJDP's Native American Pass-Through Funding

Mysteries, Challenges and Next Steps

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Background

OJJDP's authorizing legislation—the Juvenile Justice and Delinquency Prevention (JJDP) Act includes a provision in the Formula Grants program to “pass funds through” the State to tribes.

- Specifically, these funds are to be based on:

The proportion of the State youth population under 18 years of age who reside in geographical areas where Federally recognized tribes perform law enforcement functions.

Law enforcement functions are defined broadly--include activities pertaining to the custody of children, including, but not limited to, police efforts to prevent, control, or reduce crime and delinquency or to apprehend criminal and delinquent offenders, and/or activities of adult and juvenile corrections, probation, or parole authorities.

- **To carry out this requirement, OJJDP is to provide each State with the pass through amount which is based on:**
 - *the most recent Bureau of Census statistics on the number of persons under age 18 living within the State, and*
 - *the number of persons under age 18 who reside in geographical areas where Indian tribes perform law enforcement functions.*

The Mystery: How did we get here?

- 2009 Formula Grants Solicitation includes an overview of estimated funding amounts that should be “passed through” to eligible tribes. (see handout)
- Documentation indicating how these numbers were derived is vague, limiting OJJDP’s confidence in the AI/NA population numbers.

Mystery = Research

- GAO Fact Sheet from 1994
- Memorandum from OJJDP to State Juvenile Justice Specialists and SAG chairs from 2002
- Numerous calls, questions, meetings

A cross-division and cross-agency effort

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GAO

United States General Accounting Office

Fact Sheet for the Committee on
Education and Labor, House of
Representatives, and the Committee on
the Judiciary, U.S. Senate

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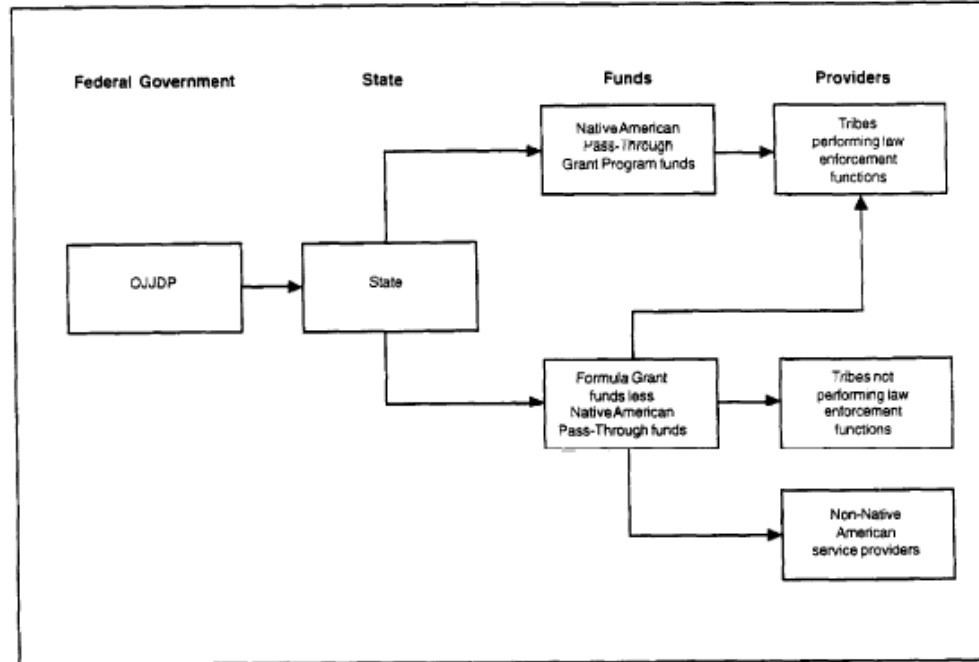
JUVENILE JUSTICE

Native American Pass-Through Grant Program



GAO/GGD-94-86FS

ALLOCATION OF FORMULA GRANT FUNDS



Note: Up to 10 percent of the formula grant funds are used for such purposes as planning and administration. An additional amount of funds is available to support SAG activities.

APPENDIX III

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INDIAN PASS-THROUGH CALCULATION

State: _____
Fiscal Year: _____

- a. Total formula grant award _____
- b. State advisory group allocation _____
- c. Amount of funds applicable to
pass-through requirement
(item "b" subtracted from item "a") _____
- d. Total pass-through requirement
(item "c" multiplied by 66 2/3%) _____
- e. Total youth population under age 18 _____
- f. Total youth population under age 18
residing in geographic areas where
Indian tribes perform law enforcement
functions (1990 census) _____
- g. Percent of youth residing in
geographic areas where Indian tribes
perform law enforcement functions
(item "f" divided by item "e") _____
- h. Indian pass-through proportion
(item "d" multiplied by item "g") _____

Source: OJJDP.

2002 Memo to State JJ Specialists and SAG Chairs

In making a determination of which tribes perform law enforcement functions, OJJDP used two sources. The first source was the Bureau of Indian Affairs, Office of Law Enforcement Services that provided a list of tribes that have law enforcement capabilities. This source was supplemented by the U.S. Department of Justice, Community Oriented Policing Services. This office provided a list of tribes that receive Tribal Resources Grant Program funds, a grant program that assists tribes in establishing and enhancing law enforcement infrastructures and community policing efforts.

Calculations clear as mud

- Initiating an effort in 2009 to re-examine the calculation methodology for the “pass through” amounts.
- OJJDP first reached out to BJS and BIA for assistance in developing a new methodology.
- For 2010, OJJDP has put in place a more consistent (and reliable) process for the annual calculation of these amounts—JRSA will assist.

Challenge A: Identifying the best population data source for the Pass Through calculation

The JJDP Act regulations say that Census Bureau data should be used in the calculation. OJJDP already uses Census Bureau data to make State level formula grant allocation decisions;

The regulations also specify that OJJDP calculate the “pass through” formula based on the *number of persons under age 18 who reside in geographical areas where Indian tribes perform law enforcement functions*. BIA’s 2005 American Indian Population and Labor Force Report, is what OJJDP has used to date -- it identifies tribal enrollment and service population), by State.

Major limitation:

Unavailable data has resulted in different numerator (BIA data) and denominator (Census data) sources.

Challenge B: The BIA report's age categories are limited, and the data are a few years old.

The BIA report includes a category of "Under age 16" and "16-65." Is it possible to estimate for the 16 and 17 year olds, in order to add them to the "Under age 16" totals?

The BIA data are from 2005 and the State level Census Bureau data being used for the calculation are from 2007. Is it possible to account for the 2 subsequent years of population growth/change in the BIA data?

Limitation: BJS has developed a statistical process to estimate for the 16 and 17 year olds, and to account for the population growth/change between 2005 and 2007.

Challenge C: Which tribes should be counted as part of the eligible population? Regulations say “*Indian tribes [that] perform law enforcement functions*”

Various possibilities:

(1) Count tribes within non PL-280 States?

(2) Count tribes that responded “yes” to BJS’ Tribal Law Enforcement Survey?

(3) Count tribes that operate a current tribal law enforcement agency, detention or criminal justice center (according to BIA)?*

(4) Count tribes that receive Tribal Resources grants from the Community Oriented Policing Services (COPS) Office?*

[Or some combination of the above?]

Count only tribes in Non PL-280 States?

Public Law 83-280 was a transfer of legal authority (jurisdiction) from the federal government to state governments which significantly changed the division of legal authority among tribal, federal, and state governments. Congress gave six states criminal and civil jurisdiction over tribal lands within their borders and permitted the other states to acquire jurisdiction at their option. The result has meant an increased role for state criminal justice systems in Indian Country, and increased obstacles to individual Nations in developing tribal criminal justice systems. There continues to be a lot of confusion and controversy with PL 280.

Would automatically eliminate key States that have traditionally received pass through funding from OJJDP: California, Minnesota, Nebraska, Oregon, Wisconsin and Alaska. Many other States could also be impacted.

Conclusion: Would eliminate far too many tribal communities from the count.

Count only tribes responding “yes” to BJS’ Tribal Law Enforcement Survey?

Question: “Does your tribe have a law enforcement agency employing sworn tribal personnel with general arrest powers?”

Conclusion: Too limited.

(1) OJJDP regulations do not require that “general arrest powers” have to be part of the tribe’s law enforcement function.

(2) There are many non-responders. They should not be automatically excluded.

Those that replied “yes” should be counted, but a “no” or missing response should not necessarily exclude the tribe. Further investigation is warranted.

Count tribes that have a tribal law enforcement (or quasi-law enforcement) agency, detention or criminal justice center?

- Tribal-owned law enforcement facilities indicate a law enforcement function (includes detention centers, tribal LEA). BIA's Office of Tribal Justice maintains a directory of all tribal agencies.
- Alaska is a PL 280 State, but has a strong Village Public Safety Officer (VPSO) program which provides quasi-law enforcement functions (the VPSOs are employed by the tribe).

Conclusion: These tribal communities should be counted, but too limited on their own.

Count tribes that receive Tribal Resources grants from the Community Oriented Policing Services (COPS) Office?

- Was a criteria in prior pass-through calculations (2002)
- TRGP is open to all Federally Recognized Tribes with established police departments and tribes currently served by Bureau of Indian Affairs (BIA) law enforcement

Conclusion: Providing funds only to TRGP recipients may be too limiting—especially as these funds are to be used to enhance law enforcement, delinquency prevention and intervention services.

Interim Conclusion—maybe!

Use a combination of options:

- (1) Count only tribes within non PL-280 States?
- ✓ (2) Count only tribes that responded “yes” to BJS’ Tribal Law Enforcement Survey?
- ✓ (3) Count tribes that operate a current tribal law enforcement agency, detention or criminal justice center?
- ✓ (4) Count tribes eligible to receive Tribal Resources grants from the Community Oriented Policing Services (COPS) Office?

Next Steps

- Formal agreement with BJS and JRSA to oversee calculation process and documentation – identifying the best data sources, methods
- Meetings with Census Bureau, BIA, other data source agencies
- OJJDP staff work with JRSA and BJS to build the most accurate and defensible methodology—goal is for new calculations for the 2010 Formula Grants
- Documenting the new methodology via a recommendation memo to the OJJDP administrator (who will approve it)

After approval:

- Training and overview for States and tribes on how calculations determined as well as how funds should be distributed
- Making the methodology publicly available—including the source data
- Annual updates (and transparency)