

## THE STATE OF PRETRIAL RELEASE DECISION-MAKING IN TRIBAL JURISDICTIONS: CLOSING THE KNOWLEDGE GAP

*John Clark\**

Pretrial release decisions are made thousands of times a day in federal, state, municipal and tribal courts. The decision, one of the most important in the processing of a criminal case, must also be made quickly. Within hours of arrest, the judicial officer must weigh the defendant's presumption of innocence against the interests of society in public safety and the return of the defendant to court to face the charges. Detaining a defendant who could be safely released leads to unnecessary use of an expensive resource—a jail bed. Releasing a defendant who poses high risks could harm the safety of the community.

Much has been written about the state of pretrial release decision-making in federal, state and municipal courts, including its historical development,<sup>1</sup> descriptions of current practices,<sup>2</sup> highlights of best practices,<sup>3</sup> data on outcomes,<sup>4</sup> and

---

\* John Clark is a Senior Associate at the Pretrial Justice Institute, where he has worked closely with officials in many jurisdictions to gain support for pretrial reforms and implement recommended changes. He has extensive experience in conducting system assessments, gathering and analyzing data, and presenting findings both orally and in writing. He is also the editor of THE PRETRIAL REPORTER.

---

1. See, e.g., WAYNE H. THOMAS, BAIL REFORM IN AMERICA (1976); John S. Goldkamp, *Danger and Detention: A Second Generation of Bail Reform*, 76 J. CRIM. L. & CRIMINOLOGY 1 (1985).

2. See, e.g., MARIE VANNOSTRAND & GENA KEEBLER, OFFICE OF THE FED. DET. TR., U.S. DEP'T OF JUSTICE, PRETRIAL RISK ASSESSMENT IN THE FEDERAL COURT (2009), available at <http://www.luminosity-solutions.com/publications/Pretrial%20Risk>

research on evidence-based practices.<sup>5</sup> Very little information, however, is available regarding pretrial release decision-making practices in tribal courts. This is so even though efforts have been made in recent years to learn more about how justice is administered in tribes. In 2002, the Bureau of Justice Statistics of the U.S. Department of Justice conducted a census of tribal justice agencies.<sup>6</sup> That census gathered detailed and very useful information regarding tribal law enforcement, court, and correctional practices—including the availability of probation and other intermediate sentences for those convicted.<sup>7</sup> The census, however, included no questions regarding pretrial release decision-making.

But tribal courts, like their counterparts in federal, state, and local systems, must address the issue of how to assure the safety of the community pending adjudication of the charges and appearance of the accused in court.

What limited information is available suggests that tribal courts may be having difficulty in addressing these issues. According to the Bureau of Justice Statistics, the number of in-

---

[%20Assessment%20in%20the%20Federal%20Court%20Final%20Report.pdf](#); John Clark & D. Alan Henry, *The Pretrial Release Decision*, 81 JUDICATURE 76 (1997); JOHN CLARK & D. ALAN HENRY, BUREAU OF JUSTICE ASSISTANCE, U.S. DEP'T OF JUSTICE, PRETRIAL SERVICES PROGRAMMING AT THE START OF THE 21ST CENTURY: A SURVEY OF PRETRIAL SERVICES PROGRAM (2003), available at <http://www.ncjrs.gov/pdffiles1/bja/199773.pdf>.

3. See, e.g., BARRY MAHONEY ET AL., NAT'L INST. OF JUSTICE, U.S. DEP'T OF JUSTICE, PRETRIAL SERVICES PROGRAMS: RESPONSIBILITIES AND POTENTIAL (2001), available at <http://www.ncjrs.gov/pdffiles1/nij/181939.pdf>.

4. See, e.g., THOMAS H. COHEN & BRIAN A. REAVES, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, PRETRIAL RELEASE OF FELONY DEFENDANTS IN STATE COURTS: STATE COURT PROCESSING STATISTICS, 1990-2004 (2007), available at [http://www.in.gov/idoi/files/US\\_Dept\\_of\\_Justice\\_Pretrial\\_Release\\_Report.pdf](http://www.in.gov/idoi/files/US_Dept_of_Justice_Pretrial_Release_Report.pdf); BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, FEDERAL CRIMINAL CASE PROCESSING, 2002: WITH TRENDS 1982-2002 (2005), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/fccp02.pdf>.

5. See, e.g., John Clark, *A Framework for Implementing Evidence-Based Practices in Pretrial Services*, in NAT'L INST. OF CORR., U.S. DEP'T OF JUSTICE, TOPICS IN COMMUNITY CORRECTIONS: APPLYING EVIDENCE-BASED PRACTICES IN PRETRIAL SERVICES 3, 3 (2008), available at <http://nicic.org/Downloads/PDF/Library/022997.pdf>; Michael R. Jones & Sue Ferrere, *Improving Pretrial Assessment and Supervision in Colorado*, in NAT'L INST. OF CORR., U.S. DEP'T OF JUSTICE, TOPICS IN COMMUNITY CORRECTIONS: APPLYING EVIDENCE-BASED PRACTICES IN PRETRIAL SERVICES 13, 13 (2008), available at <http://nicic.org/Downloads/PDF/Library/022904.pdf>.

6. See STEVEN W. PERRY, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, CENSUS OF TRIBAL JUSTICE AGENCIES IN INDIAN COUNTRY, 2002 (2005), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/ctjaic02.pdf>.

7. See *id.*

mates confined in Indian country<sup>8</sup> jails was up 24 percent from 2004 to 2007.<sup>9</sup> Twenty-two percent of Indian country jails are operating above 150 percent capacity, including 7 percent that are operating above 300 percent.<sup>10</sup> Of all inmates confined in Indian country, 41 percent are awaiting adjudication of their charges.<sup>11</sup>

Conditions of confinement in Indian country jails run by the Bureau of Indian Affairs (BIA) have come under sharp scrutiny. A 2004 assessment of these jails by the Inspector General's Office of the U.S. Department of the Interior described Indian country jails as extremely unhealthy and unsafe facilities, with inmates sleeping on mats on the floor because facilities were holding two to three times their capacity.<sup>12</sup>

This article seeks to pull together information from several sources to assess what is known about the state of pretrial release decision-making in tribal courts and to identify the information needed to close any gaps in knowledge that remain. It reviews tribal appellate court case law on pretrial release decision-making, matches data from a census of tribal justice agencies with data from a survey of jails in Indian country to assess the frequency with which pretrial release decisions must be made in tribal courts, and presents results from focus groups and a survey of tribal courts that handle criminal cases to assess the issues they face in pretrial release decision-making.

This article finds that there is very limited case law from tribal appellate courts on pretrial release decision-making; that the criminal caseloads of tribal courts are very low—500 or fewer criminal cases a year in almost three-quarters of the tribes; and that the populations of tribal jails are small—only eight out of 41 jails hold more than 50 inmates. Notwithstanding the relatively small volume, about a third of tribal jails were

---

8. "Indian country" is a statutory term that includes all lands within an Indian reservation, dependent Indian communities and Indian trust allotments. See 18 U.S.C. § 1151 (2006).

9. See TODD D. MINTON, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, *JAILS IN INDIAN COUNTRY*, 2007 1 (2008), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/jic07.pdf>.

10. *Id.* at 5.

11. *Id.* at 6.

12. See OFFICE OF INSPECTOR GEN., U.S. DEP'T OF INTERIOR, "NEITHER SAFE NOR SECURE": AN ASSESSMENT OF INDIAN DETENTION FACILITIES 50 (2004), available at <http://www.doi.gov/upload/IndianCountryDetentionFinal%20Report.pdf>.

operating at or above capacity. The focus group and survey responses, although limited to just 29 tribes, revealed a range of experiences among the tribes in the percent of defendants who are detained before trial and how long-detained defendants remain in jail awaiting disposition of their charges.

## Background

Several factors come into play in defining the bounds of this inquiry.

### The Existence of Criminal Courts

There are about 560 federally-recognized tribes in the United States.<sup>13</sup> Most of these tribes do not operate criminal courts, leaving all aspects of the prosecution of a criminal case, including pretrial release decision-making, to federal or state courts. According to the 2002 census of tribal justice agencies, 188 tribes operated a court on their reservation; of these, 158 handled criminal cases.<sup>14</sup> Thus, any inquiry into the state of tribal pretrial release decision-making must confine itself to those tribes that operate criminal courts.

### Jurisdictional Issues Relating to Tribal Criminal Courts

The jurisdiction over a crime committed in Indian country has been described as “a confusing maze of rules and restrictions,” where jurisdiction can be determined by the state the reservation is located in, the nature of the offense, and the identity of the accused.<sup>15</sup> Federal law treats reservations differently depending on where they are located. One set of federal laws establishes concurrent federal and tribal jurisdiction over Indians who are accused of committing offenses on tribal land.<sup>16</sup> But a separate federal law transfers federal jurisdiction over crimes committed by Indians on tribal land to a select group of states.<sup>17</sup> These so-called Public Law 280 states include: Alaska,

---

13. See Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 72 Fed. Reg. 13,648, 13,648 (Mar. 22, 2007).

14. See PERRY, *supra* note 6, at *iii*.

15. See CARRIE E. GARROW & SARAH DEER, TRIBAL CRIMINAL LAW AND PROCEDURE 76 (2004).

16. See 18 U.S.C. §§ 1152-1153 (2006).

17. See 18 U.S.C. § 1162 (2006).

Arizona, California, Florida, Idaho, Iowa, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, and Wisconsin.<sup>18</sup> To complicate matters further, state jurisdiction within these Public Law 280 states varies, and several of these states include individual tribes that are excluded from state jurisdiction, reverting instead to concurrent federal and tribal jurisdiction.<sup>19</sup>

The nature of the offense comes into play in determining jurisdiction because of a provision in the Indian Civil Rights Act (ICRA),<sup>20</sup> passed by Congress in 1968. The provision prohibits tribal governments from imposing “for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year and a fine of \$5,000, or both.”<sup>21</sup> As a result, tribal criminal courts typically confine themselves to hearing misdemeanor and traffic cases, leaving felony cases to the appropriate federal or state authority.

As to the role of the identity of the accused in determining jurisdiction, tribes do not have the authority to prosecute non-Indian defendants.<sup>22</sup> Thus, a non-Indian arrested for an offense committed on tribal land will be prosecuted, if prosecution is brought, in either federal or state court.<sup>23</sup>

### The Legal Framework of Pretrial Release Decision-Making

The legal framework for the pretrial release decision in any jurisdiction is defined through provisions of the jurisdiction’s constitution and statutes, court rules, and case law. In tribal jurisdictions, the legal framework may also be defined by customs and traditions, some of which may not be recorded in writing.

The pretrial release decision is implicated in at least three amendments to the U.S. Constitution. The Fourth Amendment

---

18. See CAROLE GOLDBERG & HEATHER VALDEZ SINGLETON, NAT’L INST. OF JUSTICE, U.S. DEP’T OF JUSTICE, PUBLIC LAW 280 AND LAW ENFORCEMENT IN INDIAN COUNTRY 3 (2005), available at <http://www.ncjrs.gov/pdffiles1/nij/209839.pdf>.

19. See *id.*

20. 25 U.S.C. §§ 1301-1303 (2006).

21. 25 U.S.C. § 1302(7).

22. [Ed. Note – for an article arguing that tribes may assert criminal jurisdiction over non-Indian through their Treaty powers, see Carrie E. Garrow, *Treaties, Tribal Courts, and Jurisdiction: The Treaty of Canandaigua and the Six Nations’ Sovereign Right to Exercise Criminal Jurisdiction*, in this issue.]

23. See PERRY, *supra* note 6, at 65-79.

prohibits “unreasonable searches and seizures.”<sup>24</sup> In 1975, in the case of *Gerstein v. Pugh*,<sup>25</sup> the U.S. Supreme Court held that this provision of the Fourth Amendment requires that a person arrested without a warrant must be brought before a judicial officer promptly for a probable cause determination as a prerequisite to continued restraint of liberty following an arrest.<sup>26</sup> In 1991, in the case of *County of Riverside v. McLaughlin*,<sup>27</sup> the Court ruled that the probable cause determination must be made within 48 hours of arrest.<sup>28</sup>

The Fifth Amendment provides, in part, that “[n]o person shall . . . be deprived of life, liberty, or property, without due process of law.”<sup>29</sup> Relating to the issues of pretrial release and detention, the U.S. Supreme Court has held that punishment before trial violates due process,<sup>30</sup> but that the detention provisions of the federal Bail Reform Act of 1984—which allow a defendant to be detained without bail in certain limited situations<sup>31</sup>—comports with due process requirements given the procedural protections built into the law.<sup>32</sup>

The Eighth Amendment reads, in part, that “[e]xcessive bail shall not be required.”<sup>33</sup> The U.S. Supreme Court has never directly defined what the term “excessive bail” actually means, but in dicta in a 1951 case, the Court noted that “[b]ail set at a figure higher than an amount reasonably calculated to [assure the defendant’s appearance in court] is ‘excessive’ under the Eighth Amendment.”<sup>34</sup>

Tribal courts are not bound, however, by the rulings of the U.S. Supreme Court or any other federal court on U.S. constitutional issues, including what constitutes an unreasonable

---

24. U.S. CONST. amend. IV.

25. 420 U.S. 103 (1975).

26. *Id.* at 126.

27. 500 U.S. 44 (1991).

28. *Id.* at 56.

29. U.S. CONST. amend. V.

30. See *Bell v. Wolfish*, 441 U.S. 520, 535 (1979) (“[U]nder the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law.”).

31. 18 U.S.C. §§ 3141-3150 (2006).

32. See *United States v. Salerno*, 481 U.S. 739, 741 (1987).

33. U.S. CONST. amend. VIII.

34. See *Stack v. Boyle*, 342 U.S. 1, 5 (1951) (citing *United States v. Motlow*, 10 F.2d 657, 659 (7th Cir. 1926)).

seizure, lack of due process, or excessive bail.<sup>35</sup> While these terms do appear in the ICRA as well as in many of their own constitutions, each tribe is free to interpret these terms as they see fit.<sup>36</sup>

The next legal authority for pretrial release decision-making can be found in the statutes and court rules of the jurisdiction. Many tribes have statutory language addressing the pretrial release decision. An analysis conducted in 2008 of tribal pretrial release statutes and court rules identified many tribes that have provisions as detailed as any state bail statute, addressing every step of the decision-making process from release on citation in lieu of a custodial arrest to release pending appeal of a conviction.<sup>37</sup> Several other tribes, however, have very limited provisions.<sup>38</sup>

Finally, pretrial release decisions are also governed by case law. There have been hundreds of federal appellate court decisions, including some by the U.S. Supreme Court, that address the pretrial release decision, and thousands of decisions relating to state pretrial release decision-making practices. For the past 32 years, these decisions have been identified, analyzed and summarized on a regular basis.<sup>39</sup>

The National Tribal Justice Resource Center, through its web site, lists tribal appellate court opinions on the full range of issues confronting these courts.<sup>40</sup> But these opinions have never been analyzed to assess the state of tribal case law as it relates to pretrial release decision-making.

---

35. See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (1978) (“As separate sovereigns pre-existing the Constitution, tribes have historically been regarded as unconstrained by those constitutional provisions framed specifically as limitations on federal or state authority.”).

36. Individuals can, however, bring habeas corpus proceedings in federal court to enforce the ICRA. See 25 U.S.C. § 1303.

37. See JOHN CLARK, PRETRIAL JUSTICE INSTITUTE, A GUIDE FOR DEVELOPING TRIBAL CODES FOR PRETRIAL RELEASE DECISION MAKING 43-134 (2008), available at <http://www.pretrial.org/Docs/Documents/tribal%20codes.pdf>.

38. See *id.*

39. These cases are regularly summarized in *The Pretrial Reporter*, a bi-monthly publication of the Pretrial Justice Institute. See, e.g., 35 NO. 4 THE PRETRIAL REP. 1 (July/Aug. 2009), available at <http://www.pretrial.org/Docs/Documents/PTRJulyAug09.pdf>.

40. See National Tribal Justice Resource Center, Tribal Court Opinions, Tribal Justice System Rulings, <http://www.ntjrc.org/triballaw/opinions.asp> (last visited Jan. 18, 2010).

## Methodology

This assessment of the state of pretrial release decision-making in tribal jurisdictions is drawn from the following:

- A comprehensive review of tribal case law relating to pretrial release decision-making;
- Matching findings from the 2002 Bureau of Justice Statistics census of tribal justice agencies with findings from the 2007 Bureau of Justice Statistics survey of jails in Indian country; and
- Focus group meetings and a survey of tribes.

## Review of Case Law Relating to Pretrial Release Decision-Making

The web site of the National Tribal Justice Resource Center contains 1,816 court opinions from 18 tribes.<sup>41</sup> A word check was conducted on the terms “bail” and “pretrial release.” Thirty-two cases were identified that contained the word “bail” and 79 that contained either “pretrial” or “release.” Each of these cases was reviewed to determine which were relevant to pretrial release decision-making.

## Matching Census of Tribal Justice Agencies Data with the Survey of Jails in Indian Country

Census data were used to identify the tribes that have tribal courts that handle criminal cases, and how many cases they handle. The census identified 157 tribes that have courts that handle criminal cases—however, the census did not include Alaska Native tribes and villages.<sup>42</sup> Of the 157 identified tribes, criminal case filing information was available for 144.

Jail survey data<sup>43</sup> were used to identify the capacity of jails in Indian country, the numbers housed in those jails, and the percent of the jail population comprised of unconvicted inmates.

The jail population data were matched with the census data showing which tribes have criminal courts. Of the 157 tribes with criminal courts, 43 percent ran their own jails, 20 percent used Bureau of Indian Affairs jails, 33 percent relied

---

41. *See id.*

42. *See PERRY, supra* note 6, at 19.

43. *See generally* MINTON, *supra* note 9.

upon county jails, and four percent had no access to jail facilities.<sup>44</sup>

### Focus Group and Survey

Three focus groups of tribal justice leaders were conducted—one at the 2007 National Training Conference for Criminal Justice and Community Leaders in Green Bay, Wisconsin, and the other two at the 2007 Tribal Justice and Safety Conference in Santa Ana Pueblo, New Mexico. All tribal justice leaders attending these conferences were invited to attend the focus groups. Approximately 50 tribal justice leaders participated, representing 19 tribes.

**Table 1. Tribes Participating in Focus Groups**

Name of Tribe	Location of Tribe
Cheyenne River Sioux	South Dakota
Chippewa Cree	Montana
Comanche Nation	Oklahoma
Confederated Salish and Kootenai Tribes	Montana
Confederated Tribes of the Chehalis	Washington
Confederated Tribes of the Umatilla	Oregon
Gila River Indian Community	Arizona
Havasupai	Arizona
Hualapai	Arizona
Kalispel Tribe of Indians	Washington
Menominee Tribe	Wisconsin
Navajo Nation	Arizona, New Mexico, Utah
Pueblo of Acoma	New Mexico
Pueblo of Zia	New Mexico
Standing Rock Sioux	North Dakota, South Dakota
Southern Ute	Colorado
Turtle Mountain Band of Chippewa	North Dakota
Ute Mountain Tribe	Colorado
Zuni Tribe	New Mexico

44. See *infra* app. Table A-1.

To reach other tribes not participating in the focus groups, a brief survey was sent to the tribes identified in the 2002 census of tribal justice agencies as having tribal courts that handle criminal cases, excluding the 19 tribes that had participated in the focus groups. About 140 surveys were sent. Also, since the 2002 census did not include Alaska, the survey was sent as well to the 35 Native tribes and villages located in Alaska with no foreknowledge of whether these tribes and villages had criminal courts. The survey contained the same questions that were asked of the focus group participants. Tribes that did not respond to the first request for information were contacted a second time. Ten tribes responded to this survey.

**Table 2. Tribes Participating in the Survey**

Name of Tribe	Location of Tribe
Choctaw Nation	Oklahoma
Moapa Band of Paiute Indians	Nevada
Native Village of Kwigillingok	Alaska
Northern Cheyenne	Montana
Pueblo of Picuris	New Mexico
Pueblo of Santa Clara	New Mexico
Pueblo of Taos	New Mexico
Te-Moak Tribe of Western Shoshone	Nevada
Traditional Village of Togiak	Alaska
Yavapai-Apache Nation of the Camp-Verde Reservation	Arizona

Combining the tribes contacted through the focus groups and those responding to the survey, information was collected on a total of 29 tribes that have their own courts that handle criminal cases. With such a small response rate—29 out of 157—these 29 responding tribes cannot be said to be representative of the 157 that handle criminal cases. But, as noted, very little is known about pretrial release decision-making in tribal courts, so any data, however limited, can be useful in efforts to begin closing this knowledge gap.

## Analysis

### Findings from Case Law Review

The review of tribal case law suggests that tribal appellate courts have not been called upon often to resolve challenges to pretrial release decisions of tribal trial courts. The review identified only three appellate court decisions with relevance to pretrial release decision-making.<sup>45</sup> In one, the Supreme Court of the Navajo Nation was asked to address the issue of whether the trial court's decision to detain a defendant without bail without entering detailed written findings of fact for the denial of bail represented an unreasonable seizure of the defendant.<sup>46</sup> The Court noted that Navajo Nation court rules require that, in deciding to detain a defendant without bail, the court make a finding that "the defendant is dangerous to public safety or that the defendant will commit a serious crime, or will seek to intimidate any witness, or will otherwise unlawfully interfere with the administration of justice if released," and that the court must state its reasons for the record.<sup>47</sup> The Supreme Court noted that there was no requirement that the reasons be stated in writing.<sup>48</sup>

In another case involving unreasonable seizure, the Colville Confederated Tribes Court of Appeals addressed whether a defendant's rights were violated when he did not receive a probable cause hearing within 48 hours of arrest.<sup>49</sup> In ruling that there was no violation, the Court dismissed the defendant's argument that the *Gerstein* and *Riverside* rulings of the U.S. Supreme Court should apply to the tribal court:

Just as the United States is the ultimate authority on how the Bill of Rights applies to its citizens, so too is the Colville Tribe the authority on how the [ICRA] applies to its members and others over whom it rightfully exercises jurisdiction. Through its Law and Order Code and through court practices over many years, it is clear that the Tribe does not require a probable cause determination before the Court within 48 hours of arrest. Instead, the Tribe has found that the requirements of the ICRA, as well as its

---

45. See *Apachito v. Navajo Nation*, 8 Navajo Rptr. 339 (Navajo 2003); *Williams v. Colville Confederated Tribes*, No. AP99-003, 2002 NACC 0000008 (Colville Ct. App. Apr. 30, 2002) (VersusLaw); *Norris v. Hopi Tribe*, No. 98-AC-000007, 1998 NAHT 0000020 (Hopi App. Ct. Nov. 23, 1998) (VersusLaw).

46. See *Apachito*, 8 Navajo Rptr. at 343.

47. See NAV. R. CR. P. 15(d).

48. See *Apachito*, 8 Navajo Rptr. at 345.

49. See *Williams*, 2002 NACC 0000008, at ¶ 20.

own civil rights statute, are satisfied by an initial appearance within 72 hours of arrest.<sup>50</sup>

In a case that implicated due process, the Appellate Court of the Hopi Tribe ruled that the trial court violated the defendant's due process rights when it refused to release the defendant on personal recognizance without stating why a money bail was needed to assure the defendant's appearance at trial.<sup>51</sup> As the court noted:

The Hopi notion of due process encompasses the idea that bail should not be punitive. Fundamental fairness requires the court to restrict an individual's liberty interest before trial no greater than the extent necessary to advance the regulatory goals of the Hopi bail scheme. Because assuring the presence of the accused in court remains the central concern of the bail system, a trial judge should impose a bond as a condition of pre-trial release only after determining that the defendant is not likely to appear at trial.<sup>52</sup>

No cases could be identified that addressed issues relating to excessive bail.

#### **Criminal Case Filing and Jail Population Data**

Criminal case filing data, drawn from the 2002 census of tribal agencies, were sought to assess the number of criminal cases in which tribal courts must make pretrial release decisions each year. Forty-nine out of 144 tribes that have criminal courts (and where criminal case filing data are available) handle 50 or fewer criminal cases per year. Added together, 103 tribal courts prosecute 500 or fewer cases per year.

---

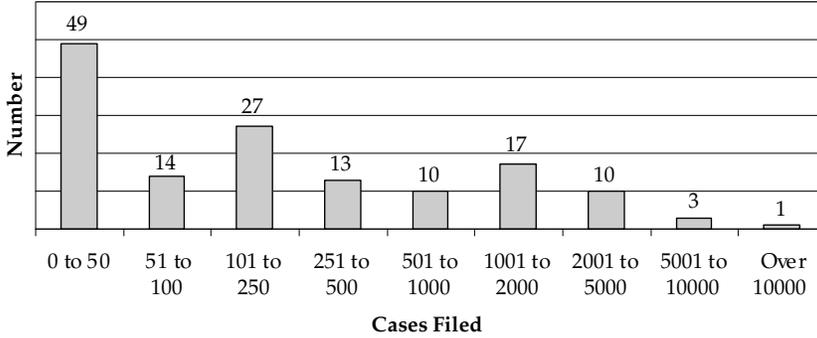
50. *Id.* at ¶ 25.

51. See *Norris v. Hopi Tribe*, No. 98-AC-000007, 1998 NAHT 0000020, ¶ 19 (Hopi App. Ct. Nov. 23, 1998) (VersusLaw).

52. *Id.* at ¶ 26.

**Figure 1. Number of Criminal Cases Filed Per Year**

(N = 144)

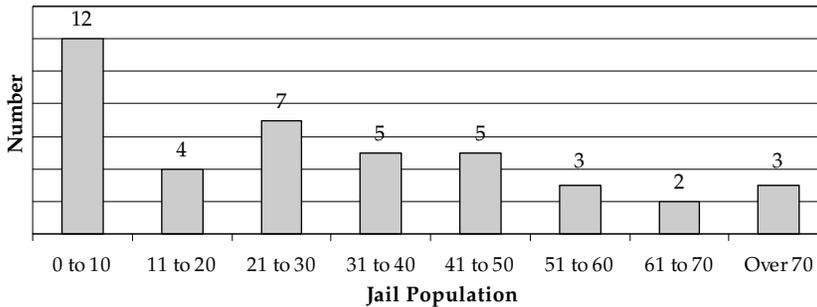


The availability of jail space can impact pretrial decisions made by any court. When the jail is full, especially when significantly over capacity, the court may look to alternatives that would allow for the pretrial release of persons who might otherwise remain in custody.

Data on the populations of jails in Indian country were available for 41 of the tribes that handle criminal cases. Thirty-eight of the jails were run by the tribes themselves, and three by BIA. The population of these jails at midyear 2007 ranged from zero to 241 inmates. Twelve of the jails held between zero and 10 inmates, and four between 11 and 20 inmates. Eight of the jails held more than 50 inmates.

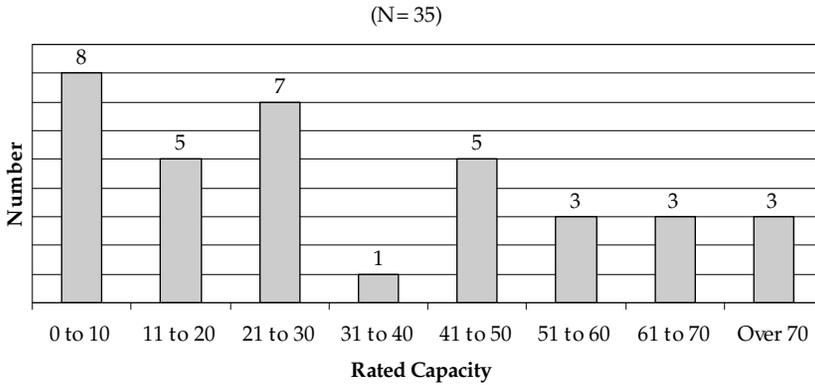
**Figure 2. Population of Tribal Jails Where Tribe Handles Criminal Cases**

(N = 41)



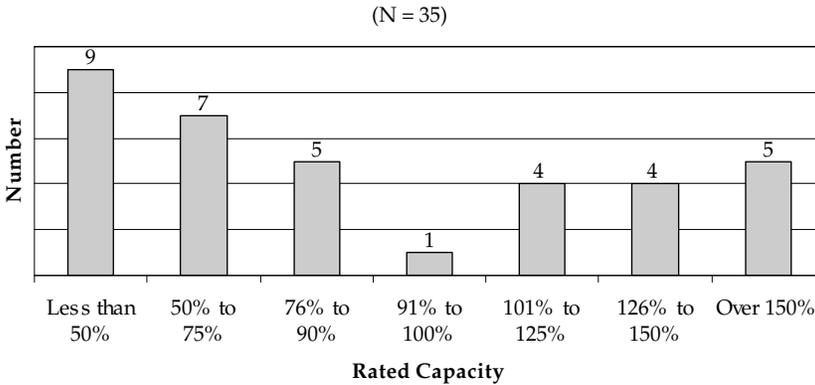
The rated capacity of Indian country jails in tribes that handle criminal cases ranges from 2 to 224 inmates. Nearly a quarter, or eight jails, have a capacity of 10 or fewer. Another nine can hold fifty or more inmates.

**Figure 3. Rated Capacities of Tribal Jails Where Tribe Handles Criminal Cases**



At midyear 2007, 13 of 35 jails in Indian country were operating at or above capacity, including five that were above 150 percent of capacity.

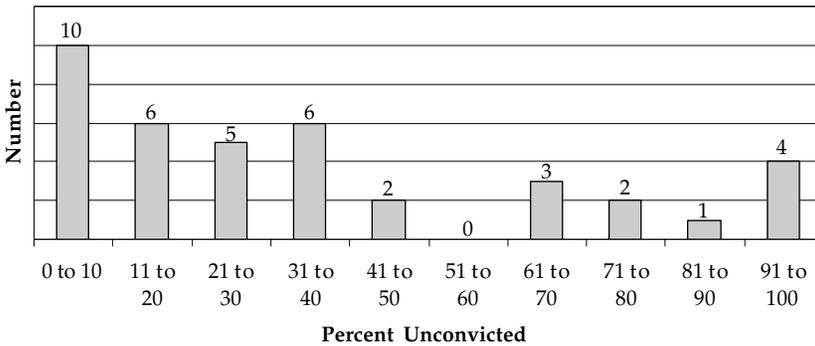
**Figure 4. Percent of Rated Capacity Occupied**



The percentage of the jail population comprised of inmates not yet convicted ranged from zero to 100 percent. In 10 of the 39 jails, at least 61 percent of inmates were unconvicted. In four, pretrial detainees comprised between 91 percent and 100 percent of the total jail population. In 10 of the jails, unconvicted inmates comprised 10 percent or less of the population.

**Figure 5. Percent of Tribal Jail Populations Comprised of Unconvicted Inmates**

(N = 39)



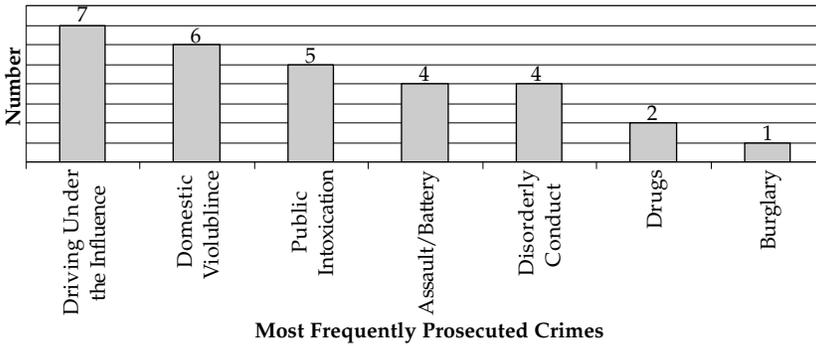
**Focus Group and Survey Data**

Focus group and survey participants were asked a series of questions designed to assess the state of pretrial decision-making in tribal courts.

The first question was: *What types of crimes are most frequently prosecuted in your tribal court?* “Driving Under the Influence” was mentioned by seven respondents, or 25 percent, as one of the most frequently prosecuted crimes, followed by domestic violence-related offenses (including violation of protection orders and harassment) — six respondents — and public intoxication — five respondents.

**Figure 6. Most Frequently Prosecuted Crimes**

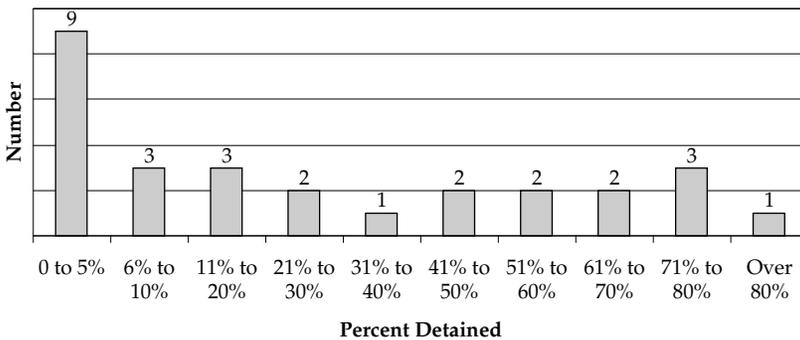
(N=29)



The next question was: *What percentage of defendants is detained prior to disposition?* Here, there was a very wide range of responses, going from zero to 85 percent. Of the 28 tribes responding, eight estimated that more than half of defendants remain detained throughout the pretrial period, including four where more than 70 percent remain detained. Nine tribes estimated that the pretrial detention rate is 10 percent or less.

**Figure 7. Percentage of Defendants Detained Prior to Disposition**

(N=28)

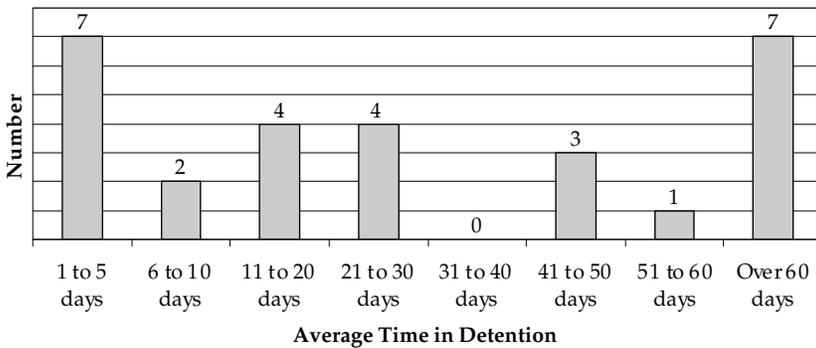


Respondents were next asked: *What is the average length of time that defendants who are not released during the pretrial period spend in pretrial detention?* Once again, there was a wide range

of responses—from one day to two years. In seven of the 28 tribes responding, the average time in detention is 60 days or longer. In another seven the case is disposed of within five days.

**Figure 8. Average Time in Pretrial Detention for Detained Defendants For Each of the Tribes**

(N = 28)



Next, they were asked: *What laws or regulations govern pretrial release in your jurisdiction?* Tribal codes or tribal court rules define the pretrial release decision-making process in most of the tribes. Ten tribes reported having bond schedules, which set forth recommended money bail amounts by offense charged. One tribe reported that if bond cannot be posted within three days the bond is modified to personal recognizance. Four reported having a “cooling off period” in domestic violence cases, whereby the defendant is held for a short time—for example, 12 hours—before being released.

Focus group participants and survey respondents were then asked a series of questions regarding pretrial services. Such services, available in all federal districts and many state and local courts, assure that judicial officers have the information and options available at the pretrial release decision-making hearing to arrive at an informed decision. The information that is gathered generally includes the defendant’s current address, length of residence, who the defendant lives with, any concurrent addresses, employment, length of employment, and

substance abuse and mental health problems. The options can include release on the defendant's promise to appear in court, release on conditions (such as reporting to an entity on a regular basis while the case is pending), staying at or away from a certain address or area, substance abuse testing or treatment, setting of money bail, and detention without bail when no condition or combination of conditions can reasonably assure the safety of the community or the appearance of the defendant.

The first of these questions was: *What do you see as the potential benefits of pretrial services in your jurisdiction?* Only two reported having anything resembling pretrial services. One reported that the defender usually tries to gather information about the defendant before the initial court appearance. A judge from another tribe indicated that he asks the defendant the same types of questions that pretrial services programs do. Another tribal representative stated that the tribal probation department does a limited inquiry into defendants arrested and facing initial appearance in court.

There was virtually universal agreement among the tribes participating in the focus groups or survey that pretrial services would be beneficial in tribal justice systems. One representative pointed out that while a formal pretrial program should be available to the larger tribes, those tribes that handle only a few cases a month can get by with a more informal process, such as exists in many tribes currently—whereby some existing system actor, i.e., defender, probation, is responsible for gathering relevant information about the defendant.

Tribal justice leaders identified the following as potential benefits of pretrial services:

- Eliminate arbitrary decision-making through the use of objective assessments of risk
- Assure that judges are making informed decisions
- Allow for a more complete gathering of criminal records from state and federal sources, such as the National Crime Information Center (NCIC), as well as from other tribes
- Assure that the indigent will have access to pretrial release opportunities
- Provide appropriate supervision to better protect the safety of the community

- Provide greater opportunities for defendants in need of services
- Help address the problems of jail crowding
- Give the defendant a chance to establish a track record of compliance with release conditions that might help the defendant at sentencing
- Provide better assurance that defendants who are released pretrial will not lose their jobs while their cases are pending because they are able to go to work rather than being jailed.

Tribal justice leaders were then asked: *What are the obstacles to implementation of pretrial services in your jurisdiction?* Obstacles included: lack of resources to fund pretrial services, the need for training and technical assistance to assure successful implementation, the need to obtain buy-in from tribal leaders, assimilating pretrial services into traditional tribal practices, and sharing information among different tribal justice agencies and parties.

The final question was: *What resources currently exist in your jurisdiction that could be utilized to implement pretrial services?* Five tribes indicated that substance abuse services are available either within the tribal jurisdiction or nearby. Three stated that elders in the community counsel persons with substance abuse problems.

## Conclusion

This article has sought to begin to close the gap in the knowledge of pretrial release decision-making in tribal courts. It has shown that tribal appellate courts are rarely asked to address issues relating to pretrial release. Many tribal courts must make a pretrial release decision in a very small number of criminal cases each year, while in many others thousands of decisions must be made. Many tribal jails seem to be operating well within their rated capacities, while many others are grossly overcrowded. While limited by the small number of tribal courts participating in the focus group or survey—only 29 of at least 157 known tribal courts handling criminal cases—it is clear that tribes are experiencing a wide range of circumstances regarding pretrial release decision-making. In many tribes, it

appears that a very large majority of defendants are released, and released very quickly. In others, the opposite seems to be true—many defendants remain detained, often for very long periods of time.

Much more information is needed, however, to close the knowledge gap in tribal pretrial release decision-making. Over the past 50 years, federal, state, and local courts have learned a great deal about pretrial release decision-making, such as how to identify risks of danger to the community and non-appearance in court for each individual defendant, and then how to address those identified risks through the use of appropriate options. Much of this knowledge has been gained by learning from each other. Officials in one state court may adapt their pretrial risk assessment procedures based on the experiences of another state court. One federal court may move to develop a particular pretrial release technique after hearing of the success of that technique in other federal courts. Through the dissemination of information, federal, state, and local courts have not had to seek to improve pretrial release decision-making in isolation of one another.

While each tribe is a sovereign nation, operates within its own customs and values, and makes its own determinations regarding the meaning of such terms as “unreasonable seizure,” “lack of due process,” and “excessive bail,” there is no need for tribal courts to operate in isolation when it comes to pretrial release decision-making. There is much that tribal courts can learn about effective pretrial release decision-making from the experiences of federal, state, and local courts, and, particularly, from other tribes.

There are a number of questions for tribes seeking to improve pretrial release decision-making. While a great deal of work has been done to empirically identify factors related to the risks of pretrial misconduct in federal and state courts, that work has been done on largely heterogeneous populations, charged with the full range of felony and misdemeanor offenses. Because of jurisdictional issues, tribal courts must assess risks for a homogeneous population charged mostly with misdemeanor and traffic offenses. What are the implications of this for risk assessment in tribes? What factors best predict risks of pretrial misconduct in tribes? How can those factors

best be identified? Do those factors vary among tribes? The work done on supervision of pretrial release conditions has likewise focused on heterogeneous populations charged with all offense categories. What pretrial supervision techniques work best for tribal members? Are those techniques transferable among tribes? Many of the pretrial services that are available today can be found in jurisdictions with larger criminal caseloads. How can such services be offered in tribal jurisdictions where maybe only a few criminal cases are heard a month?

These are the types of questions that should be addressed by the 157 tribal courts that handle criminal cases, which are listed in the following table, as well as other tribal courts considering adding criminal jurisdiction.

APPENDIX

Table A-1. Case Processing and Jail Data for Tribes That Handle Criminal Cases

State	Tribe	Annual Number of Criminal Cases	Jail Run By	Tribal Jail Population	Percent of Tribal Jail Population Pretrial
AL	Poarch Band of Creek Indians of Alabama	27	COUNTY	N/A	N/A
AZ	Ak-Chin Indian Community	197	TRIBE	7	26
	Fort McDowell Yavapai Tribal Council	131	COUNTY	N/A	N/A
	Gila River Indian Community of the Gila River Indian Reservation	1,450	TRIBE	241	25
	Hopi Tribe	1,609	BIA	UNKNOWN	UNKNOWN
	Hualapai Indian Tribe of the Hualapai Indian Reservation	400	BIA	UNKNOWN	UNKNOWN
	Kaibab Band of Paiute Indians of the Kaibab Indian Reservation	100	NONE	N/A	N/A
	Navajo Nation	31,057	TRIBE	156	82
	Pascua Yaqui Tribal Council	289	TRIBE	1	UNK
	Quechan Tribe of the Fort Yuma Indian Reservation	6	COUNTY	N/A	N/A
	Salt River Pima-Maricopa Indian Community of the Salt River Reservation	825	TRIBE	69	41
	San Carlos Apache Tribe	3,512	TRIBE	UNKNOWN	UNKNOWN
	Tohono O'odham Nation	UNKNOWN	TRIBE	124	33

State	Tribes	Annual Number of Criminal Cases	Jail Run By	Tribal Jail Population	Percent of Tribal Jail Population Pretrial
	Tonto Apache Tribe of Arizona	20	BIA	UNKNOWN	UNKNOWN
	White Mountain Apache Tribe of the Fort Apache Reservation	UNKNOWN	TRIBE	57	30
	Yavapai-Apache Nation of the Camp Verde Indian Reservation	270	BIA	UNKNOWN	UNKNOWN
	Yavapai-Prescott Tribe	40	BIA	UNKNOWN	UNKNOWN
CA	Fort Mojave Indian Tribe of Arizona, California, and Nevada	116	TRIBE	3	100
	Washoe Tribe of Nevada and California	250	BIA	UNKNOWN	UNKNOWN
CO	Southern Ute Tribe	444	TRIBE	33	18
CT	Mashantucket Pequot Tribe	14	NONE	N/A	N/A
ID	Coeur D'Alene Tribe of the Coeur D'Alene Reservation	468	TRIBE	UNKNOWN	UNKNOWN
	Kootenai Tribe of Idaho	UNKNOWN	COUNTY	N/A	N/A
	Nez Perce Tribe of Idaho	296	COUNTY	N/A	N/A
	Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho	2500	TRIBE	19	32
KS	Iowa Tribe of Kansas & Nebraska	10	COUNTY	N/A	N/A
	Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas	20	TRIBE	UNKNOWN	UNKNOWN
	Prairie Band of Potawatomi Indians	5	TRIBE	UNKNOWN	UNKNOWN

State	Tribe	Annual Number of Criminal Cases	Jail Run By	Tribal Jail Population	Percent of Tribal Jail Population Pretrial
	Sac & Fox Nation of Missouri in Kansas and Nebraska	2	TRIBE	UNKNOWN	UNKNOWN
LA	Chitimacha Tribe of Louisiana	7	COUNTY	N/A	N/A
	Coushatta Tribe of Louisiana	2	TRIBE	UNKNOWN	UNKNOWN
	Tunica-Biloxi Tribe	2	COUNTY	N/A	N/A
MA	Wampanoag Tribe of Gay Head (Aquinnah)	0	COUNTY	N/A	N/A
ME	Passamaquoddy Tribe of Maine	83	COUNTY	N/A	N/A
	Penobscot Tribe of Maine	121	COUNTY	N/A	N/A
MI	Grand Traverse Band of Ottawa and Chippewa Indians of Michigan	48	TRIBE	UNKNOWN	UNKNOWN
	Hannahville Indian Community, Michigan	279	COUNTY	N/A	N/A
	Keweenaw Bay Indian Community, Michigan	255	COUNTY	N/A	N/A
	Lac Vieux Desert Band of Lake Superior Chippewa	51	TRIBE	0	0
	Little River Band of Ottawa Indians	3	COUNTY	N/A	N/A
	Little Traverse Bay Bands of Odawa Indians	7	COUNTY	N/A	N/A
	Pokagon Band of Potawatomi Indians	0	COUNTY	N/A	N/A
	Saginaw Chippewa Indian Tribe of Michigan	609	COUNTY	N/A	N/A
	Sault Ste. Marie Tribe of Chippewa Indians of Michigan	112	TRIBE	17	0
MN	Minnesota Chippewa Tribe	350	COUNTY	N/A	N/A

State	Tribes	Annual Number of Criminal Cases	Jail Run By	Tribal Jail Population	Percent of Tribal Jail Population Pretrial
	Minnesota Chippewa Tribe - Bois Forte Band of Chippewa	350	COUNTY	N/A	N/A
	Minnesota Chippewa Tribe - Fond du Lac Reservation	50	COUNTY	N/A	N/A
	Minnesota Chippewa Tribe - Mille Lacs Band of Ojibwe	710	COUNTY	N/A	N/A
	Red Lake Band of Chippewa Indians, Minnesota	2,996	TRIBE	43	74
MS	Mississippi Band of Choctaw Indians	1,873	TRIBE	41	29
MT	Assinibione and Sioux Tribes of Fort Peck Indian Reservation	3,036	TRIBE	UNKNOWN	14
	Blackfeet Tribe of the Blackfeet Indian Reservation of Montana	7,795	TRIBE	62	UNKNOWN
	Chippewa Cree Indians of Rocky Boy's Reservation	1,400	TRIBE	10	0
	Confederated Salish & Kootenai Tribes of the Flathead Reservation	2,000	TRIBE	22	41
	Fort Belknap Indian Community of the Fort Belknap Reservation	2,804	TRIBE	UNKNOWN	UNKNOWN
	Northern Cheyenne Tribe	2,000	BIA	34	68
NC	Eastern Band of Cherokee Indians	1,800	COUNTY	N/A	N/A
ND	Spirit Lake Tribe, North Dakota	800	BIA	UNKNOWN	UNKNOWN
	Three Affiliated Tribes of the Fort Berthold Reservation	1,777	BIA	UNKNOWN	UNKNOWN

State	Tribe	Annual Number of Criminal Cases	Jail Run By	Tribal Jail Population	Percent of Tribal Jail Population Pretrial
	Turtle Mountain Band of Chippewa Indians of North Dakota	4,800	BIA	23	13
NE	Omaha Tribe of Nebraska	2,000	TRIBE	48	75
	Winnebago Tribe of Nebraska	30	TRIBE	UNKNOWN	UNKNOWN
NM	Jicarilla Apache Nation, New Mexico	1,200	TRIBE	32	25
	Mescalero Apache Tribe	2,500	BIA	UNKNOWN	UNKNOWN
	Pueblo of Acoma	655	TRIBE	27	11
	Pueblo of Cochiti	90	BIA	UNKNOWN	UNKNOWN
	Pueblo of Isleta	1,075	COUNTY	N/A	N/A
	Pueblo of Jimenez	375	BIA	UNKNOWN	UNKNOWN
	Pueblo of Laguna	950	TRIBE	31	6
	Pueblo of Nambé	22	BIA	UNKNOWN	UNKNOWN
	Pueblo of Picuris	15	BIA	UNKNOWN	UNKNOWN
	Pueblo of Pojoaque	200	COUNTY	N/A	N/A
	Pueblo of San Ildefonso	UNKNOWN	TRIBE	UNKNOWN	UNKNOWN
	Pueblo of San Juan	55	TRIBE	6	0
	Pueblo of Sandia	40	TRIBE	UNKNOWN	UNKNOWN
	Pueblo of Santa Ana	150	COUNTY	N/A	N/A
	Pueblo of Santa Clara	517	NONE	N/A	N/A

State	Tribes	Annual Number of Criminal Cases	Jail Run By	Tribal Jail Population	Percent of Tribal Jail Population Pretrial
	Pueblo of Santo Domingo	540	BIA	UNKNOWN	UNKNOWN
	Pueblo of Taos	162	TRIBE	4	100
	Pueblo of Tesuque	32	COUNTY	N/A	N/A
	Pueblo of Zia	200	COUNTY	N/A	N/A
	Zuni Tribe of the Zuni Reservation, New Mexico	8,131	TRIBE	22	1
NV	Duckwater Shoshone Tribe of the Duckwater Reservation	22	COUNTY	N/A	N/A
	Ely Shoshone Tribe of Nevada	25	BIA	UNKNOWN	UNKNOWN
	Fort McDermitt Paiute and Shoshone Tribes	47	BIA	UNKNOWN	UNKNOWN
	Las Vegas Paiute Tribe	UNKNOWN	BIA	UNKNOWN	UNKNOWN
	Lovelock Paiute Tribe of the Lovelock Indian Colony	6	COUNTY	N/A	N/A
	Moapa Band of Paiute Indians of the Moapa River Indian Reservation	100	BIA	UNKNOWN	UNKNOWN
	Paiute-Shoshone Indians of the Fallon Reservation and Colony	0	TRIBE	UNKNOWN	UNKNOWN
	Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation	220	COUNTY	N/A	N/A
	Reno-Sparks Indian Colony	274	BIA	UNKNOWN	UNKNOWN
	Shoshone-Paiute Tribes of the Duck Valley Reservation	156	BIA	UNKNOWN	UNKNOWN
	Te-Moak Tribe of Western Shoshone Indians of Nevada	83	BIA	UNKNOWN	UNKNOWN
	Walker River Paiute Tribe	UNKNOWN	TRIBE	UNKNOWN	UNKNOWN

State	Tribe	Annual Number of Criminal Cases	Jail Run By	Tribal Jail Population	Percent of Tribal Jail Population Pretrial
	Yerington Paiute Tribe of the Yerington Colony and Campbell Ranch	200	BIA	UNKNOWN	UNKNOWN
	Yomba Shoshone Tribe of the Yomba Reservation	0	BIA	UNKNOWN	UNKNOWN
NY	Onondaga Nation of New York	UNKNOWN	COUNTY	N/A	N/A
OK	Absentee-Shawnee Tribe of Indians of Oklahoma	13	COUNTY	N/A	N/A
	Cherokee Nation	65	TRIBE	UNKNOWN	UNKNOWN
	Cheyenne-Arapahoe Tribes of Oklahoma	UNKNOWN	TRIBE	UNKNOWN	UNKNOWN
	Choctaw Nation of Oklahoma	13	NONE	N/A	N/A
	Citizen Potawatomi Nation	9	COUNTY	N/A	N/A
	Comanche Nation	50	TRIBE	UNKNOWN	UNKNOWN
	Iowa Tribe of Oklahoma	2	TRIBE	1	100
	Kaw Nation	1	COUNTY	N/A	N/A
	Kickapoo Tribe of Oklahoma	10	COUNTY	N/A	N/A
	Muscogee (Creek) Nation	43	COUNTY	N/A	N/A
	Osage Tribe	27	TRIBE	UNKNOWN	UNKNOWN
	Otoe-Missouria Tribe of Indians	19	TRIBE	UNKNOWN	UNKNOWN
	Pawnee Nation of Oklahoma	31	COUNTY	N/A	N/A
	Ponca Tribe of Indians of Oklahoma	50	TRIBE	UNKNOWN	UNKNOWN
	Sac and Fox Nation of Oklahoma	34	TRIBE	23	0

State	Tribes	Annual Number of Criminal Cases	Jail Run By	Tribal Jail Population	Percent of Tribal Jail Population Pretrial
OR	Tonkawa Tribe of Indians of Oklahoma	UNKNOWN	COUNTY	N/A	N/A
	Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon	197	COUNTY	N/A	N/A
	Confederated Tribes of the Umatilla Indian Reservation	132	COUNTY	N/A	N/A
	Confederated Tribes of Warm Springs Reservation of Oregon	519	TRIBE	50	34
	Cow Creek Band of Umpqua Indians	0	COUNTY	N/A	N/A
SD	Cheyenne River Sioux Tribe	7,511	TRIBE	51	67
	Crow Creek Sioux Tribe	1,800	TRIBE	UNKNOWN	UNKNOWN
	Flandreau Santee Sioux Tribe of South Dakota	72	COUNTY	N/A	N/A
	Lower Brule Sioux Tribe of the Lower Brule Reservation	UNKNOWN	BIA	UNKNOWN	UNKNOWN
	Oglala Sioux Tribe	2,000	TRIBE	23	0
	Rosebud Sioux Tribe	1,752	TRIBE	24	100
	Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation	3,000	TRIBE	10	70
	Standing Rock Sioux Tribe of North and South Dakota	2,683	BIA	UNKNOWN	UNKNOWN
UT	Yankton Sioux Tribe of South Dakota	UNKNOWN	TRIBE	UNKNOWN	UNKNOWN
	Confederated Tribes of the Goshute Reservation	2	TRIBE	UNKNOWN	UNKNOWN
	Ute Indian Tribe of the Uintah and Ouray Reservation, Utah	1,084	COUNTY	N/A	N/A

State	Tribes	Annual Number of Criminal Cases	Jail Run By	Tribal Jail Population	Percent of Tribal Jail Population Pretrial
WA	Confederated Tribes and Bands of the Yakama Nation	3,500	TRIBE	UNKNOWN	UNKNOWN
	Confederated Tribes of the Chehalis Reservation	100	TRIBE	7	14
	Confederated Tribes of the Colville Reservation	UNKNOWN	COUNTY	N/A	N/A
	Hoh Indian Tribe	150	TRIBE	40	40
	Kalispel Indian Community	39	BIA	UNKNOWN	UNKNOWN
	Lower Elwha Tribal Community of the Lower Elwha Reservation	120	COUNTY	N/A	N/A
	Lummi Tribe	470	COUNTY	N/A	N/A
	Makah Indian Tribe	500	TRIBE	9	33
	Nisqually Indian Tribe of the Nisqually Reservation	UNKNOWN	TRIBE	53	UNKNOWN
	Nooksack Indian Tribe of Washington	10	COUNTY	N/A	N/A
	Port Gamble Indian Community	121	TRIBE	UNKNOWN	UNKNOWN
	Puyallup Tribal Council	245	TRIBE	8	38
	Quileute Tribe of the Quileute Reservation, Washington	190	COUNTY	N/A	N/A
	Quinalt Tribe of the Quinalt Reservation, Washington	252	TRIBE	12	8
	Sauk-Suiattle Indian Tribe of Washington	16	COUNTY	N/A	N/A
	Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation	25	TRIBE	UNKNOWN	UNKNOWN
	Skokomish Indian Tribe	0	NONE	N/A	N/A

State	Tribes	Annual Number of Criminal Cases	Jail Run By	Tribal Jail Population	Percent of Tribal Jail Population Pretrial
	Spokane Tribe	1,000	BIA	15	0
	Squaxin Island Tribe	100	NONE	N/A	N/A
	Stillaguamish Tribe	120	TRIBE	UNKNOWN	UNKNOWN
	Suquamish Indian Tribe of the Port Madison Reservation	81	TRIBE	UNKNOWN	UNKNOWN
	Swinomish Indians of the Swinomish Reservation	200	TRIBE	UNKNOWN	UNKNOWN
	Tulalip Tribes	156	TRIBE	UNKNOWN	UNKNOWN
	Upper Skagit Indian Tribe of Washington	18	TRIBE	UNKNOWN	UNKNOWN
WI	Ho-Chunk Nation of Wisconsin	1	COUNTY	N/A	N/A
	Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin	12	COUNTY	N/A	N/A
	Menominee Indian Tribe of Wisconsin	350	TRIBE	48	19
WY	Arapahoe Tribe of the Wind River Reservation	1,330	BIA	UNKNOWN	UNKNOWN
	Shoshone Tribe of the Wind River Reservation	1,330	BIA	UNKNOWN	UNKNOWN