

N A A T A P

Native American and Alaskan Technical Assistance Project



PROJECT GUIDE:
Alternatives to
Incarceration of Offenders

*Part of A Series of Guides for Planning, Designing
and Constructing Adult and Juvenile Correctional and
Detention Facilities on Tribal Lands*

The Native American and Alaskan Technical Assistance Project (NAATAP) was created pursuant to an interagency agreement between the National Institute of Corrections and the Bureau of Justice Assistance.

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Purpose

The purpose of each NAATAP Guide is to communicate substantive information concerning a range of subjects that are relevant to the development of adult and juvenile detention and correctional facilities in Indian Country. This series of guides grew out of a recognition that there were common concerns and questions being raised by tribes and consultants developing new correctional facilities on Native lands throughout the country. The guides seek to provide research and information on issues of common concern to the Tribes. These guides also seek to document the knowledge and experience gained by Justice Planners International LLC (JPI) while providing technical assistance to tribes engaged in the facility development process.

Acknowledgements

JPI acknowledges the assistance of the many consultants who contributed their expertise in the preparation of this series of guides. These materials were developed and reviewed by individuals with diverse backgrounds, expertise and experience in planning and design of juvenile and adult correctional and detention facilities, as well as analysis, design and operation of justice programs, facilities and systems on a local, state and national level.

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I. Introduction

The most effective strategy for treating and rehabilitating adult and juvenile offenders and preventing recidivism is through a comprehensive, system-wide approach designed to support broad criminal and/or juvenile justice system objectives, including the reduction of crime and recidivism. This comprehensive justice system model integrates prevention programming, a continuum of pre-trial and sentencing placement options, services and sanctions, and comprehensive aftercare programs. This is as true in Indian Country as it is in every federal, state and local criminal jurisdiction in the United States.

New secure tribal facilities should be programmed and designed within the context of this justice system model as an integral part of the continuum of services and sanctions available for adult and juvenile offenders on the reservation. Based on the particular needs of each tribe, this continuum may include a broad and varied array of alternatives to detention and incarceration (Alternative Programs).

Each tribe seeking funding to build new “secure” beds should first examine very carefully their adult and juvenile offender populations and the classification systems that are being used to determine secure bed space needs. This study should examine what Alternative Programs exist and whether they are being effectively utilized. New beds should be built only for adults and/or youth who cannot function safely and effectively in less restrictive Alternative Programs. This makes both fiscal and programmatic sense, since secure placement is the most expensive and often the least effective response to criminal behavior.

Developing the “links” between new secure facilities and the existing or planned system of Alternative Programs is the real challenge. This requires broad-based teamwork and planning among all the stakeholders within each tribal system. It requires careful analyses of the adult and/or juvenile populations entering the justice system, and participation of stakeholders to ensure that Alternative Programs are being utilized effectively and new secure facilities are developed only when warranted.

II. Practical Issues related to Alternative Sanctions

One of the most pressing needs is for literature and materials on Alternative Programs or “best” practices in criminal justice case management, alternative practices and effective operations. Tribes engaged in the programming and construction of new and/or renovated detention and correctional centers need current information on how other jurisdictions at all levels operate when making decisions about the punishment and treatment of offenders. To that end, many tribes have visited other jurisdictions where they have had the opportunity to tour facilities, and more importantly, to converse with program administrators and staff about how both secure correctional and detention facilities and alternative programs function from an operational perspective.

Following is selected information derived from literature on Alternative Programs. It is being provided to address questions that have been raised by tribes developing new correctional and detention facilities. :

- a. In many jurisdictions (tribal and non-tribal) sentencing offenders to secure detention or correctional facilities is the primary response of judges to criminal behavior. Too often this response is not questioned, despite the fact that it may not be appropriate for all offenders, because there are few other options available.
- b. Changes in local justice policies and practices only come from within. Local decision makers must accept the responsibility of exploring and establishing new and innovative Alternative Programs that will provide judges with options other than the secure detention and incarceration of adult and juvenile offenders
- c. Policy makers must establish guidelines that govern the use of Alternative Programs in specific cases.
- d. The implementation of Alternative Programs should take into consideration the following:
 - i. Needs of the defendant/offender population (juvenile and adult)

- ii. Funding resources
 - iii. Tribal council objectives and agenda
 - iv. Constraints of local politics (e.g. the thinking of local professionals, executive staff, elected officials, etc. on the reservation)
 - v. Public opinion and values
- e. All relevant stakeholders (i.e., correctional system personnel, judges, prosecutors, etc.) should be involved in the design and development of Alternative Programs. The ultimate success of such programs, both in terms of frequency and effectiveness of use may depend on whether or not all of those stakeholders support the utilization of such programs.
 - f. Appropriate use of Alternative Programs may lead to more appropriate sentences based on the nature and severity of crimes, and consequently to more positive changes in behavior on the part of defendants/offenders.
 - g. Effective use of Alternative Programs, leaving secure detention and incarceration for more serious/violent offenders, promotes the efficient use of scarce resources.
 - h. Alternative Programs must be designed to ensure that the overall use of these programs is consistent with the jurisdiction’s goals as well as with the principles and values that govern criminal justice systems, such as proportionality, uniformity, neutrality, and fairness.

III. Effective Justice System Planning

Following are key elements of an effective justice system plan (Beck, Allen R., Ph.D., *Two Approaches for Determining Jail Needs*, (Kansas City, MO: Justice Concepts, Inc., 1999):

1. **Comprehensive** – There should be a comprehensive array of pre-trial and sentencing options available within the tribal justice system. Often the tribal jail or secure juvenile facility becomes the primary option for dealing with the majority of repeat minor offenders. If alternatives

are viewed as part of a permanent, comprehensive service system (rather than as stop-gap measures to deal with overcrowding or lack of money), the courts are much more likely to buy into their use.

2. **Coordinated** – Coordination refers to both the sequencing and combination of supervision and treatment options within the local system. Sanctions, which are typically used in an “either/or” fashion, should be used in a coordinated process that provides a progressive structure designed to achieve justice system objectives.
3. **Timely** – Timeliness refers both to the processing of cases and to access to services. Delays in case processing or availability of services often result in over-utilization of secure confinement.
4. **Explicit** – Explicitness means that the system is clearly defined, standardized and documented. Objective screening criteria should be established for referral to available supervision options and treatment to assure a good fit between the risk and needs presented by the offender and the services provided. A well-documented system also includes procedures to explain the mechanics of how programs work in conjunction with each other and how services are accessed.

IV. Key Decision-Making Points in Case Processing

In developing a comprehensive approach it is helpful to integrate policies, practices and programs within the context of the case flow process for the jurisdiction. Case processing is basically a series of stages or decision points that occur as the case of a person accused of a crime moves from arrest through final disposition. Policies and practices can be modified at each stage to achieve optimal use of adult and juvenile detention and correctional facilities and other alternative programs available to the system. The range of policy, practice and program options appropriate to each key decision point are outlined below:

DECISION POINT #1 – Decision to Arrest

Following a report or observation of an offense, law enforcement has several options in dealing with the alleged perpetrator. The officer may elect to:

- Warn and release
- Issue a citation

- Divert or refer the alleged perpetrator to other services
- Arrest and transport to jail

The system goals at this point are to stop the offending behavior, report the behavior to the prosecutor for the possible filing of charges, and to assure the alleged perpetrator’s appearance in court. Many situations can be resolved informally at this stage by law enforcement officers possessing good problem assessment and resolution skills and discretion to divert alleged perpetrators to alternative services. Policy and practice options that should be in place at this stage include:

- Agency policy authorizing citation in lieu of arrest for specified offenses
- Agency policy authorizing diversion in lieu of arrest for specified offenses
- Court policy authorizing summons in lieu of arrest for persons with active warrants
- Mental health crisis intervention training for law enforcement officers

Alternative programs/strategies to consider for use at this stage of the process include:

- Detoxification facilities/services
- Emergency mental health services
- Mobile crisis intervention services
- Law enforcement diversion programs

DECISION POINT # 2 –Decision to Detain Pre-trial

Once the alleged perpetrator is taken into custody, a decision regarding the need for pre-trial detention is made. This decision is typically based upon the severity of the charges, the alleged offender’s level of stability in the community, and his or her behavior at the time of arrest. The availability of resources in the community to mitigate the risk of further offending is also often a factor. The judge may delegate release authority to the jail or other criminal or juvenile justice officials for certain offenses based upon some preset criteria. Some jurisdictions have established pre-trial release programs to conduct pre-trial release screening and supervision. Pre-trial screening programs are able to conduct more in-depth background assessments and often use risk assessment instruments to measure and predict risk of re-offending of offend-

ers who may be released. Pre-trial programs may also screen individuals who may be appropriate for diversion from formal processing.

The goals of the system at this stage are to prevent further offending and to assure availability of the accused for appearance in court. Policy and practice options that improve decision-making and outcomes at this stage include:

- Court delegated release authority
- Court established bail schedule and procedures
- Use of validated risk instruments
- Pre-trial release and diversion screening

Alternative programs/strategies to consider at this stage include:

- Pre-trial services program
- Community supervision
- Electronic monitoring
- Day reporting
- House arrest
- Urinalysis
- Access to mental health and substance abuse services

DECISION POINT #3 – Decision to Prosecute

When a case is presented for prosecution, the prosecutor reviews the arrest report or citation and decides how to proceed. The prosecutor may proceed with the original charge, amend the charge based upon the facts of the case, or decline prosecution. The prosecutor may also elect to defer prosecution while providing the accused the option of participating in a diversion program if such is available.

The prosecutor is the gatekeeper of the system. He or she decides what cases get filed and at what level of charges. The prosecutor also influences how quickly cases get processed through the system. A number of policy and program options are appropriate at this stage to improve the efficiency of the system and assure appropriate use of program resources. Policy and practice options include:

- Early case screening
- Accelerated calendar for jail/detention cases
- Use of diversion

Alternative programs/strategies to consider at this stage include:

- Diversion programs
- Dispute resolution/mediation programs
- Access to mental health and substance abuse services
- Community service and competency development programs

DECISION POINT #4 – Decision to Release from Pre-trial Detention

If an individual is initially detained upon arrest, he or she has the right to a detention hearing before a judge. The judge may elect to release the accused from detention with or without conditions. The goal of the system at this stage is to provide the level of supervision and structure necessary to prevent further offending and to assure the availability of the accused for court. Information about the alleged crime, the individual's background and home situation, and risk of re-offending are helpful to the judge in making the pre-trial release decision.

Policy and practice options that improve decision-making and outcomes at this stage include:

- Prompt bail settings
- Realistic bail schedules
- Timely bond review hearings
- Range of non-bail release options
 - Release on own recognizance (ROR - unsupervised)
 - ROR - supervised
 - Third party release
 - Conditional release
- Range of bail release options
 - Unsecured bail
 - Deposit bail
 - Property bail
 - Surety bail
 - Full cash bail
- Access to counsel or advocate at initial hearing

Alternative programs/strategies to consider at this stage include:

- Pre-trial release screening programs

- Community supervision
- Electronic monitoring
- Day reporting
- House arrest
- Urinalysis
- Access to treatment and support services as needed

DECISION POINT # 5 – Decision of Guilt or Innocence

As the case proceeds, there may be several hearings including a preliminary hearing, arraignment, trial, etc. The goal of the system is to make a determination of guilt or innocence. The timeliness and efficiency of the trial process has a significant impact on use of the jail and other resources. There are a number of policy and program options that serve to reduce the amount of time accused offenders spend in jail awaiting the outcome of their case. Policy and practice options include:

- Effective calendaring of cases
- Docket priority for in-custody cases
- Implementation of case progression standards
- Periodic bond review

Alternative programs/strategies that support efficient functioning of the system at this stage include:

- Expediter program
- Community supervision
- Electronic monitoring
- Day reporting
- House arrest
- Urinalysis
- Access to services

DECISION POINT # 6 – Sentencing Decision

If the offender has been found guilty at trial or upon adjudication, the court has several options. It may order a pre-sentence investigation, impose a sanction immediately, or defer sentencing pending successful completion of specified conditions. The timeliness and efficiency of the pre-sentence investigation process is a factor at this stage. Time delays between the finding of guilt and imposition of sentence impact detention use. Having a range of sentencing options available at this

stage provides the court the flexibility to impose sanctions and conditions that may be more effective in addressing the offending behavior.

The goals of the system at this stage are to protect the community, hold the offender accountable, and to prevent future offending through rehabilitative programming. Policy and practice options that may improve decision-making and outcomes at this stage include:

- Timely preparation of pre-sentence investigations (PSIs)
- Enhanced case advocacy at sentencing
- Criteria for use of alternative sanctions
- Use of risk assessment tools to decide level of supervision

Alternative programs/strategies to be considered to provide a range of sanctioning options include:

- Fines/restitution
- Community service
- Day fines
- Community supervision/case management
- Intensive community supervision
- Electronic monitoring
- Day reporting
- Drug testing
- Alternative education programs
- Job training/placement services
- Mediation/Victim reconciliation programs
- Counseling
- Substance abuse treatment
- Family support services
- Work programs
- Residential programs (halfway houses, foster and group home care for youth, residential treatment)

DECISION POINT #7 – Sentence Modification Decision

After conviction/finding of delinquency, the sentences offenders/delinquents receive may be modified under certain circumstances. For some, good behavior and compliance with the provisions of their sentences can lead to early release or discharge. More often, sentence modifications occur as a result of a violation of a condition of probation or

parole. When a probation or parole violation is alleged, the offender/delinquent is often placed into jail/detention pending a hearing on the matter. When limited options are available to respond to such violations, revocation often results in additional jail time for offenders. Many tribes discover a sizable portion of their jail population to be comprised of probation and parole violators. A number of policy and program options may be considered to manage the use of detention for this population while holding them accountable for their behavior on community supervision. Policy and practice options to consider include the following:

- Use of graduated sanctions in lieu of detention for probation/parole violations
- Time sensitive policies regarding detainers and revocations
- Use of good time
- Use of incentives including early release/discharge for good behavior

Program options include many of those listed in the previous decision point as sanctioning options. The goal is to think strategically in the use of these sanctions in level of intensity and in combinations that allow a “ratcheting up” in response to misbehavior and a “ratcheting down” as offenders demonstrate positive behavior and compliance with conditions of community supervision.

V. Case Management

Formalized case management as a technique for the supervision of defendants or offenders in the criminal justice system is an essential element of a comprehensive, coordinated justice system. Effective case management can help reduce re-offending, strengthen the motivation of offenders to engage in treatment, and increase public safety. Effective case monitoring and use of graduated sanctions for misbehavior are considered key factors to successful case management. In most tribal justice systems, the role of case management falls upon the probation department. A comprehensive justice system model must include an adequate number of properly trained probation officers with reasonable caseloads to provide effective case management.

Structured Decision-Making

A comprehensive justice system model utilizing an array of Alternative Programs and strategies requires policies and tools that structure decision-making within the case process. That is, decision-makers use objective criteria and risk assessment instruments to match offenders with the appropriate levels of supervision and programs based upon an assessment of their risks and needs. *Risk instruments* are typically used within the criminal/juvenile justice system to guide pre-trial release decisions and placement decisions after disposition. These instruments generally measure the probability that an offender will re-offend within a particular time frame if placed in community supervision.

Before developing or adapting an existing risk instrument, the justice system needs to decide what it wants to accomplish with the risk instrument. In a pretrial context, it may be to decrease failure-to-appear rates and further criminal actions by defendants awaiting trial, while releasing the maximum number of defendants under the least restrictive conditions. Research into different risk instrument models helps to answer questions about what characteristics to measure, how this is accomplished, what interventions are most effective, what client populations are most positively impacted, and how community safety can be taken into consideration.

Traditional and Specialized Courts

There is a trend in Indian Country to incorporate traditional ways Native people resolve disputes into the court process. Many tribal courts use methods such as “Peacemaking” and Sentencing Circles” that resemble traditional approaches used before the current court structure evolved. These are very similar to *community courts* and *restorative justice approaches* emerging in many state courts.

There is also a trend in both Indian and non-Indian jurisdictions toward the use of specialized courts, such as *drug courts*, *gun courts*, and *mental health courts*. Most common are drug courts whose mission is to stop the abuse of alcohol and other drugs that are contributing factors in criminal activity. These courts may be established as a diversion program, where prosecution is deferred pending successful completion of the drug court program, or as a direct alternative to the regular court process for eligible cases.

VI. Descriptions of Alternative Programs and Strategies

Brief descriptions of common Alternative Programs and strategies that may be included within a comprehensive justice system model are provided below:

Police Diversion. Instead of arrest, law enforcement may counsel or reprimand; handle within the department, or refer the individual taken into custody to another agency. If certain conditions are met, charges are not filed against the individual.

Probation Diversion. The case is diverted from the court process with the agreement of the offender to meet certain conditions that are typically supervised by the Probation Department.

Citation/summons. The law enforcement officer issues a citation or summons at the time of arrest with the individual's promise to appear in court in lieu of detention.

Station House Bail. A uniform bail schedule and procedures are established by the court that allows law enforcement officers to collect pre-established bail at the station or jail.

Delegated Release Authority. A term that refers to authority given to criminal/juvenile justice agency staff by the courts or other legal entities to release defendants at different decision points in the criminal/juvenile justice process. Procedures differ from one jurisdiction to the next, but a common process is for the court to set specific criteria or guidelines that determine when designated staff can release defendants from custody. This authority is used typically in cases where defendants are perceived as relatively low risk in terms of danger and/or failure-to-appear. Most processes include charge-based eligibility criteria, along with other guidelines that can be combined with subjective or objective risk instruments to ensure that defendants meet established risk thresholds.

Release on Own Recognizance (unsupervised). Carefully screened detainees charged with misdemeanors and certain felonies are released on their promise to appear in court. Used as an alternative for persons who cannot raise bail but are eligible for bail release.

Release on Own Recognizance (supervised). Essentially the same as unsupervised ROR except the individual is released only after agreeing to abide by special conditions including some program of supervision.

Third Party Release. A responsible third party agrees to supervise the individual and assure their appearance at court.

Day Reporting (non-site based). Individual is required to appear at the reporting center early in the morning and provide the supervisor with a detailed schedule and itinerary for the day. The individual may be required to attend a variety of education, treatment, work, and related activities during the course of the day.

Day Reporting (site-based). The individual attends a site-based program during specified hours. Program may include life skills, tutoring, treatment, counseling, structured recreation, and related activities.

House Arrest. Individual is required to remain confined in the home during specified hours. May or may not be permitted to leave the home for specific purposes; e.g. work, school, or treatment. House arrest may be used in conjunction with electronic monitoring, day reporting, and intensive field supervision.

Deferred Prosecution (diversion). Prosecutor agrees to defer filing of charges if the alleged offender agrees to participate in a remedial program, agrees to certain conditions, stay out of trouble, and complete the program within a specified time.

Defender Based Advocacy. Advocate for the accused helps develop a plan of habilitation or restoration for the prosecutor and/or court's consideration as a dispositional or sentencing plan.

Community Service. The court orders the offender to devote unpaid time to some worthwhile project in lieu of detention.

Day Fines. Day fines are used to reduce the number of inmates in detention because they cannot pay their fines. The concept tries to equalize the impact of financial penalties on offenders from various economic backgrounds. Each unit of fine is equivalent to the offender's gross wage for one hour of work. This system increases the likelihood

of the fine being paid because they are seen as more affordable by poor offenders.

Electronic Monitoring. A tracking device attached to the offender monitors his or her movement. Electronic monitoring is often used in conjunction with house arrest.

Job Readiness Programs. Offenders/delinquents receive miscellaneous employment services; e.g. vocational training, job search, etc.

Counseling. Individual, group or family therapy usually conducted in weekly sessions.

Mediation/Dispute Resolution. As an alternative to court, a trained mediator or panel of community residents helps resolve disputes.

Restitution. Offenders/delinquents repay their victims or the community through financial compensation or assigned community service work.

Intensive Supervision. Supervising officers maintain a high level of contact with offenders/delinquents. May be used in conjunction with electronic monitoring, house arrest, and day reporting.

Expediter Program. An expediter is an individual who tracks the status of cases as they move through the system. Expeditors assure that cases do not “fall through the cracks” and may assist in coordinating services and supervision that allow accused offenders to be conditionally released pending the outcome of their cases.

Outpatient Treatment. Mental health and/or substance abuse treatment that is office-based.

Residential Treatment. Mental health and/or substance abuse treatment is part of a residential program.

Work/School Release. Offenders/delinquents are housed in custody at night and during non-work hours but released to work or attend outside school during the day time.

Intermittent Sentences. Offenders/delinquents are sentenced to detention on weekends or specified days over a period of time.

Shock Incarceration/Probation. Sentences that combine short periods of incarceration with probation supervision. Used in response to indications the probationer needs external controls; e.g. is in crisis, acting out, has violated probation conditions, etc.

Minimum Security Programs. Includes honor farms, work camps, boot camps, forestry camps, etc.

Halfway House. These are structured residential settings in the community that provide re-integrative services that emphasize basic economic and living responsibilities. A halfway house placement may be used prior to release as an alternative to more restrictive forms of incarceration. Offenders may also be placed in a halfway house for a limited period of time as a consequence of failing to abide by the conditions of supervision or to provide temporary residence and support services.

Work Release Center. Similar to a halfway house in terms of setting, but the offender typically remains in the official custody of the jail rather than being under probation supervision.

Group Home (youth only). Six to twelve youth typically live with house parents or rotating staff. The group home provides an organized and supervised structured living environment. May function as an alternative to secure confinement; a transitional living arrangement for youth in crisis; a remediation program for probation violators; a pre-release program for youth in long-term restrictive settings; or as therapeutic programs providing specialized mental health and/or substance abuse services.

VII. Closing

The development of an effective system of local alternatives and sanctions is largely dependent upon the ability of the jurisdiction to bring key criminal justice decision makers together as a “policy team” or “criminal justice coordinating committee.” Typically, no single agency or person has the authority, or ability, to bring about changes in “system” policies that impact every agency that has a stake in how the local criminal justice system functions. If the highest authority (the Tribal Council) sanctions a policy team, effective leadership is established, the membership represents all major system players, and it is charged with a definitive mission with clear goals and objectives, the opportunity to implement lasting, effective and efficient change is substantial. In order for alternatives to traditional detention and correctional placement to have lasting system-wide impact, the effort must be well organized, with thoughtful input, consistent participation and on-going support.



ALSO AVAILABLE:

Project Guide: Adult Correctional Facility Design Resources

Project Guide: Alternatives to Incarceration of Offenders

Project Guide: Assessment of Project Status
& Technical Assistance Needs

Project Guide: Best Practices - In-Custody Programs
for Juveniles and Adults

Project Guide: Design Review

Project Guide: Existing Facility Evaluations

Project Guide: Objective Classification Analysis

Project Guide: Population Profiles, Population Projections
and Bed Needs Projections

Project Guide: Selecting an Architect-Developing
RFQs and RFPs

Project Guide: Site Selection

Project Guide: The NEPA Land Use Process for Proposed
Development of Correctional Facilities in Indian Country

Project Guide: Tribal Justice System Assessment