



SEARCH, The National Consortium for Justice Information and Statistics

## Sharing Criminal Record Information Among New Mexico Tribes and State

By Linda B. Townsdin and  
Ada Pecos Melton

The State of New Mexico and three Indian nations, the Pueblos of Acoma, Laguna and Zuni, have embarked on a ground-breaking effort to improve criminal record information sharing across tribal, state and federal jurisdictions. This effort has the potential to be mutually beneficial to the sovereign tribes, the state and the federal government, and is attracting attention as an important case study that deals with complex philosophical, policy and technical data sharing issues involving traditional justice systems and tribal sovereignty.

The American justice system was designed in an era when individual agencies and jurisdictions relied primarily on their own information to solve crimes within their boundaries. During the past 20 years that has changed significantly—due, in part, to rapid technological advances—to encourage sharing information with other jurisdictions. Tribal justice traditionally has been handled within the boundaries of the reservation according to tribal consensus and federal agreements.

Today, justice organizations are searching for common ground to share information across *all* boundaries, because criminal offenders routinely move from one jurisdiction to another, often crossing state lines. Overcoming obstacles to sharing information has a major impact on the safety of all Americans. However, political, operational and technical challenges make the noble goal of information sharing one that is complex and fraught with difficulty for tribes, states and local jurisdictions across the country.<sup>1</sup>

The New Mexico tribal-state collaboration effort could become a model for data sharing in Indian Country nationwide. It demonstrates a way to both retain tribal sovereignty and improve data sharing across jurisdictions through forging new partnerships with the common goal of improving public safety.

### Catalyst for Change

Unfortunately, just as in many other instances, it often takes a tragic incident to jump-start change and improvement in the justice system, and that is what happened to put New Mexico in the spotlight. On January 25, 2002, a Bureau of Indian Affairs (BIA) employee, Lloyd Larson, while intoxicated and driving the wrong way on an interstate highway on the Laguna Pueblo Indian Reservation in New Mexico, crashed into a car and killed two couples who were traveling back to their homes in Nebraska. The two families of the decedents sued the BIA, claiming that the agency was negligent when it was reported that Larson had nine prior arrests for drunk driving, although the BIA was not aware of many of them.

This heavily publicized drunk-driving case was the catalyst for new legislation and the formation of the New Mexico Pueblo Crime Data Project to address tribal policy and other issues related to information sharing among the tribes of New Mexico, the state and the federal government. The lack of information sharing between the tribes, state criminal justice agencies and licensing bureaus was the crux of the problem. For example:

- The New Mexico Motor Vehicle Division (MVD) did not have records of Larson’s arrests or convictions because many of them occurred on tribal lands.
- The New Mexico MVD keeps track of all traffic citations and convictions, including driving while intoxicated (DWI) convictions. However, not all state law enforcement agencies report citations and not all state or municipal courts report convictions.
- MVD records are not sufficient in court to prove prior convictions. Prosecutors must produce the actual court document with a judge’s signature. Old court documents sometimes prove impossible to find or are incomplete.<sup>2</sup>

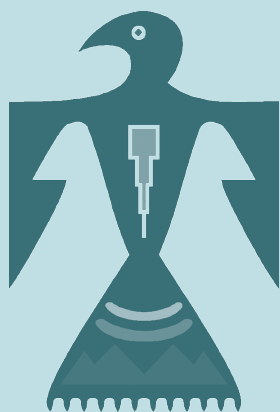
These are only a few of the challenges facing the tribes and state officials in New Mexico as they move toward finding a solution to the problems in sharing critical justice data.

### Tribal Justice Terminology

**Customary Law**—often unwritten, derived from custom or long-established practice that has acquired the force of law by common adoption or acquiescence; it does not vary.<sup>a</sup>

**Tribal Law**—based on the values, mores and norms of a tribe; in some cases it becomes case law.<sup>b</sup>

**Written or Law and Order Code**—The Indian Reorganization Act of 1934 encouraged tribes to enact their own laws and establish their own justice systems.



## New Legislation

A positive step toward improving data sharing was the introduction of legislation focused on justice data exchange. HB 278 allows the New Mexico MVD to exchange DWI conviction information with Indian tribes.<sup>3</sup> This amendment to the State Motor Vehicle Code was signed into law on April 7, 2003.

## New Mexico Pueblo Crime Data Project Created

Another tangible step toward improving statewide crime data was the 2003 creation of the New Mexico Pueblo Crime Data Project to improve tribal crime data management, integrate justice information systems, and develop methods for crime data sharing among tribal, state and federal agencies. Three New Mexico Pueblos,<sup>4</sup> along with state and federal agencies, are participating in the project, which is guided by an advisory committee of tribal, state and federal law enforcement and court representatives. It is funded by the Justice Research and Statistics Association, Tribal Justice Statistics Assistance Center, with funding from the U.S. Department of Justice’s Bureau of Justice Statistics. The project is administered by American Indian Development Associates (AIDA).<sup>5</sup>

At this stage of the project, strategies are being designed to: 1) develop an effective crime data sharing and management policy; 2) develop appropriate data collection instruments and reporting methods; and 3) implement appropriate intergovernmental agreements between Indian tribal governments and state agencies for crime data sharing.<sup>6</sup>

## Policy, Technical and Philosophical Roadblocks that Affect Data Sharing

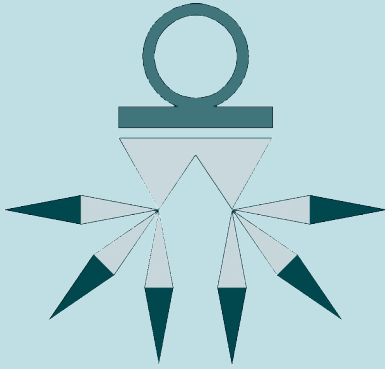
Federal-tribal relations and federal-state-tribal relations, American Indian policy and federal court decisions all affect crime data sharing in New Mexico. Project participants have addressed a number of difficult issues in their efforts to enhance intergovernmental relations and develop agreements between tribes and the state to share critical justice data.

**Legal, policy, procedural and technical obstacles** that must be overcome include:

- State laws and procedures regarding crime data collection, management and sharing are based on longstanding state, local and federal justice and public safety requirements, and interstate com-

## What is Tribal Sovereignty?

Tribes are distinct, independent political communities with authority to exercise powers of self-government by reason of their original tribal sovereignty. The sovereign authority of tribes is recognized by both the U.S. Constitution and the New Mexico Constitution, federal treaties, federal and state legislation, federal and state judicial decisions, and administrative practice.<sup>c</sup>



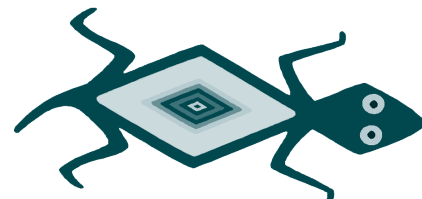
pacts. Overcoming resistance to changing existing systems to accommodate the unique circumstances related to tribal justice models will take a coordinated, collaborative effort by all federal, state, local and tribal stakeholders.

- Many tribes currently do not access criminal history information from the State Records Bureau, the FBI's National Crime Information Center or other computerized offender records.
- Changing the crime data reporting processes within the large crime data agencies and programs of the federal government to reflect specific tribal data will require time and effort.
- Sharing crime data may violate tribal values. Confidentiality protections that represent tribal requirements for data sharing must be implemented.
- The legal and technical infrastructure in many tribes is currently not in place to enable the dissemination or collection of accurate data.
- Lack of access by non-Indian jurisdictions to criminal histories of Indian offenders committing crimes on Indian lands, which hinders comprehensive investigation by off-reservation law enforcement and other justice authorities.

- Lack of access to criminal histories hinders effective prosecution of repeat offenders when they commit new offenses in other Indian and non-Indian jurisdictions.
- Lack of accurate and complete criminal histories may hamper charging and/or sentencing decisions, resulting in inappropriate outcomes for repeat offenders.
- Tribal court orders involving suspension or revocation of driving privileges may be unenforceable because the state Motor Vehicle Division does not recognize tribal court judgments. (Most tribal courts do not routinely provide DWI or other traffic information to the New Mexico MVD.)<sup>7</sup>
- Each of the 22 New Mexico Indian nations—19 Pueblos, two Apache Tribes and chapters of the Navajo Nation—manages its own unique justice system within each reservation. The lack of standardization is a hindrance to data sharing.
- Indian tribes lack criminal jurisdiction over non-Indians and, therefore, cannot prosecute them according to Indian law when they commit a crime on Indian lands.<sup>8</sup>

**Philosophical challenges to be overcome** center around the contrast between restorative versus retributive justice:

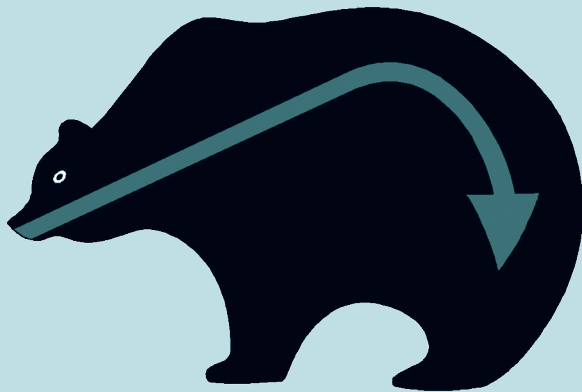
Tribal culture is traditionally restorative, with a goal of returning harmony to the tribe. The idea of sharing a formal record clashes with some tribal philosophies, which discourage disclosure of case proceedings to limit ongoing or new conflicts and to promote forgiveness and rehabilitation. “Restorative justice” can be defined in a number of ways. In general, it is a philosophical belief that crime is a violation of people and the community; violations create obligations and liabilities; and it seeks to heal and put right the wrongs.<sup>9</sup> In contrast, American justice is considered to be retributive; crime is a violation of the state, and the role of justice is to punish the offender.<sup>10</sup> This challenge and others are being addressed in efforts to honor tribal culture while improving data sharing among the jurisdictions.



Tribal restorative justice practices have had an important impact on the traditional American justice system over the past decade. The Office of Justice Programs, U.S. Department of Justice, has hosted a number of dialogues, symposia and conferences on the subject of restorative and community justice, particularly in dealing with juvenile offenders and spousal abuse cases.

### Understanding Treaties

The United States government recognizes Indian tribes through treaties. The right for Indian nations to maintain their own governments has been upheld since the 1830s, when federal courts first affirmed a trust responsibility to the tribes. In the treaties, tribes ceded vast segments of their homelands in exchange for honoring their right to retain small segments of this land for tribal members. The law states that an Indian nation possesses all of the inherent powers of any sovereign government, except those that have been limited or qualified by treaties, agreements or an act of Congress.<sup>d</sup>



### Tribal Statistics

There are more than 560 federally recognized tribes and approximately 275 Indian reservations—each with its own governing structure—in the United States. The largest is the Navajo Reservation with 16 million acres throughout Arizona, New Mexico and Utah.<sup>e</sup>

## Next Steps on the Road to Improving Data Sharing and Restoring Harmony

The New Mexico Pueblo Crime Data Project is currently working to develop models, stimulate dialogue and make resources available for tribes to build their capabilities to improve crime data collection, management and sharing.<sup>11</sup> Project deliverables and activities include:

- Developing a governance strategy that best meets tribal sovereignty requirements for data sharing with state and federal justice entities.
- Developing a model process guide for developing and entering into DWI information sharing agreements between the tribes and the state.
- The Zuni, Laguna and Acoma Pueblos have conducted information technology assessments with assistance from the AIDA and SEARCH, The National Consortium for Justice Information and Statistics.<sup>12</sup>
- Tribal and state stakeholders will use the Justice Information Exchange Modeling (JIEM) Tool<sup>13</sup> to define information exchanges that occur among justice entities within each tribe, among the three project tribes, and between the tribes, the state and the federal government.
- Defining exchange transactions and documents that conform with the Global Justice XML Data Model (GJXDM).<sup>14</sup>
- Developing a service-oriented technical architecture that best meets the unique tribal, state and federal data sharing requirements.
- Gathering information and designing a methodology for standards in *data quality* among the tribes, to ensure that the data collected and shared are accurate and timely.

A great deal of work remains. After all, most tribal justice systems under Indian control began in the 1950s and 1960s, while American jurisprudence has been in development for more than 200 years.<sup>15</sup> Meeting the project's goals involves continuing to address overall concerns for data collection, management and sharing, as well as specific state, tribal and federal concerns.

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## Endnotes

<sup>1</sup> See Lawrence P. Webster, “Roadmap for Integrated Justice: A Guide for Planning and Management,” in *Information Systems Integration: A Library of SEARCH Resources for Justice and Public Safety Practitioners* (Sacramento, CA: SEARCH Group, Inc., 2004). Available at <http://www.search.org/files/pdf/IntegrationLibrary.pdf>.

<sup>2</sup> Information prepared by American Indian Development Associates.

<sup>3</sup> For more information about this legislation, see [http://legis.state.nm.us/newsite/\\_session.asp?chamber=H&type=++&number=278&year=03](http://legis.state.nm.us/newsite/_session.asp?chamber=H&type=++&number=278&year=03).

<sup>4</sup> There are 19 Pueblos located in the Central, Northern and Western parts of New Mexico. They include the Zuni, Acoma and Laguna Pueblos, which are located in western New Mexico.

<sup>5</sup> AIDA is an Indian-owned technical assistance, training and research firm based in Albuquerque and founded in 1989. See <http://www.aidainc.net/>.

<sup>6</sup> Ada Pecos Melton, *Information Sharing in Indian Country: The New Mexico Experience*, a presentation at the 2004 Symposium on Integrated Justice information Systems: Supporting the Homeland, March 24, 2004, Washington, D.C. Available at <http://www.search.org/conferences/2004symposium/agenda/presentations.asp>.

<sup>7</sup> American Indian Development Associates, *The New Mexico Crime Data Project Technical Assistance Report* (Albuquerque: March 2004).

<sup>8</sup> *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

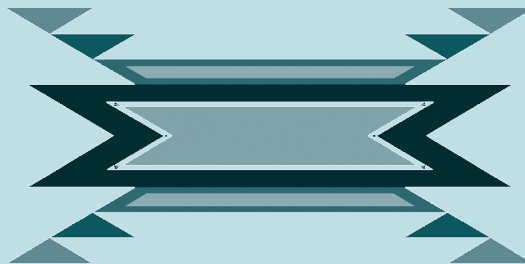
<sup>9</sup> Howard Zehr, Harry Mika, *Fundamental Concepts of Restorative Justice* (Akron, PA: Mennonite Central Committee, 1997) available at <http://www.ojp.usdoj.gov/nij/rest-just/ch1/fundamental.html>.

<sup>10</sup> See “Restorative Justice On-line Notebook,” U.S. Department of Justice, National Institute of Justice, available at <http://www.ojp.usdoj.gov/nij/rest-just/>.

### Tribal Court Models

Each tribe handles disputes in its own unique way. Many Pueblos do not have a “separation of powers” structure. They may include modified bureaucracies, often combining executive, legislative and judiciary functions. Combinations of family and community forums, traditional courts, quasi-modern courts and modern tribal courts are used, including:

- **American Model**—adoption of the American legal process.
- **Hybrid American Model**—largest group, serving populations of traditional and non-traditional people.
- **Dual Model**—employs a traditional and an American justice system model, but keeps a clear separation between them. Cases are diverted based upon subject matter to the different courts. The most notable of this class is the Navajo Nation Court. Many Pueblo courts have two court systems, although they have created an American model court to handle an increasing number of commercial claims.
- The traditional model court is rare. Several Pueblos continue to solve problems using age-old practices. Many do not allow non-Indian practitioners to participate in the deliberative process, which has brought criticism.<sup>f</sup>



## Endnotes, continued

<sup>11</sup> American Indian Development Associates, *supra* note 7.

<sup>12</sup> SEARCH provides onsite, no-cost assistance to tribal, state and local jurisdictions in planning for and implementing automated and integrated information systems. The assistance is funded by the U.S. Department of Justice, Bureau of Justice Assistance. See <http://www.search.org/programs/technology/>.

<sup>13</sup> For information on the JIEM Tool, see <http://www.search.org/programs/technology/jiem.asp>.

<sup>14</sup> For more information on the GJXDM, see [http://it.ojp.gov/topic.jsp?topic\\_id=43](http://it.ojp.gov/topic.jsp?topic_id=43).

<sup>15</sup> Carey N. Vincenti, Chief Judge, Jicarilla Apache Tribe, “The Reemergence of Tribal Society and Traditional Justice Systems,” originally published in *Judicature*, Vol. 79, No. 3, November-December 1995. Available at <http://www.ojp.usdoj.gov/nij/rest-just/ch1/reemerge.htm>.

<sup>a</sup> Ada Pecos Melton, “Indigenous Justice Systems and Tribal Society,” p. 4, citing Zuni, “Justice Based on Indigenous Concepts,” a paper presented at the Indigenous Justice Conference, 1992. Melton article originally published in *Judicature*, Vol. 79, No. 3, November-December 1995. Available at <http://www.ojp.usdoj.gov/nij/rest-just/ch1/indigenous.htm>.

<sup>b</sup> *Ibid.*, p. 4, citing Austin, “Incorporating Tribal Customs and Traditions into Tribal Court Decisions,” a paper presented at the Federal Indian Bar Association Law Conference, Albuquerque, NM, 1992.

<sup>c</sup> Patricia Madrid, New Mexico Attorney General, “Understanding Tribal Sovereignty,” available at [http://www.ago.state.nm.us/cia/cia\\_tribalsov.htm](http://www.ago.state.nm.us/cia/cia_tribalsov.htm).

<sup>d</sup> Patricia Madrid, New Mexico Attorney General, “Treaties,” available at [http://www.ago.state.nm.us/cia/cia\\_sovtreaties.htm](http://www.ago.state.nm.us/cia/cia_sovtreaties.htm).

<sup>e</sup> National Tribal Justice Resource Center, 2002. See <http://www.tribalresourcecenter.org/tribalcourts/history.asp>.

<sup>f</sup> Vincenti, *supra* note 15.

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