

**SHORT TERM ASSESSMENT & TREATMENT FACILITY  
FOR YOUTH IN REGION III  
DONOVAN FOUGHTY, DISTRICT JUDGE**

For the past several years Karen Olson, Juvenile Court Officer (now retired) in Devils Lake has argued that there is a need for an assessment center for youth in this region of the state. Her vision was that the facility would provide many of the same services that are associated with “Youth Works” located in Bismarck.

My interest in a youth assessment center became a lot more focused when I was made aware in 2013 that three tribal nations; Spirit Lake, Turtle Mountain and Standing Rock were housing delinquent juveniles in the regional jail in Devils Lake. These juveniles were being sentenced to determinate terms wherein they were serving 30, 60 or more days of incarceration. No counseling, treatment or educational services were being provided even though there was a state human service center less than a block away from the jail. The jail in Devils Lake no longer provides incarceration services for the three tribal nations. It is my understanding that these youth are now being transported to New Town for incarceration. It is also my understanding that they are not receiving any professional counseling or treatment services.

There is a disparity in the level of service provided to youth that are convicted of delinquent acts in state and tribal courts in North Dakota.

At the state level we have a two tiered system wherein services are provided by the Juvenile Court which is a part of the court system and the Division of Juvenile Services which falls under the Department of Corrections in the executive branch of government.

Generally, the juvenile offenders committing more serious crimes or are chronically involved in delinquent behavior are placed with the Department of Juvenile Services (DJS). Juveniles with less serious offenses are supervised in juvenile court either formally before a judicial officer or informally with a juvenile court officer. Whether a juvenile is with DJS or the juvenile court the philosophy of case management is the same. A continuum of care will be provided with comprehensive case management.

The Division of Juvenile Services operates eight regional offices in eight cities across the state providing services to all counties in the state. DJS does not provide direct services to the juvenile tribal courts. Drawing from their on line home page the milieu of services provided by DJS are set out below:

“Services are provided through a complement of professional juvenile corrections specialist who deliver correctional case management services across their respective region. Juvenile Corrections Specialist are responsible for developing a comprehensive, individualized plan for treatment and rehabilitation for each youth placed onto their case load. Plans are built based on a comprehensive correctional assessment of risk and need. Correctional assessment is accomplished through a collaborative effort between the Youth Correctional Center Assessment Center staff as well as community based Juvenile Corrections Specialist staff. Additional assessments and evaluations are arranged based on the needs of the individual and the availability of specific assessments across the public and private statewide child serving system.

“The goals of the treatment and rehabilitation plan are accomplished in a variety of settings across the continuum of care. Youth might receive treatment services in their own home, the home of a family member, in foster or group care,

in psychiatric residential treatment care, inpatient care, or institutional care including secure correctional placement.”

The Juvenile Court essentially provides the same services for juveniles except the services are provided within the community. Certainly, services are being provided to delinquent Native American youth on the Indian Nations. However, I do not believe that the services being provided on Indian Nations are comparable to those being provided by the state.

Just this past week, a juvenile officer from Spirit Lake contacted our juvenile court director seeking advice on a juvenile who had been on the run for several months and was in the legal custody of the Bureau of Indian Affairs. He had delinquency convictions in tribal court. If this action were in state court, he would be placed with the North Dakota Department of Juvenile Services and assessed at the Youth Correctional Center in Mandan. I called the director of ND DJS and inquired if a juvenile from tribal court could be placed at YCC for assessment and treatment. She said they could provide those services. What DJS needed was a contract signed by an agent for BIA or an authority from Spirit Lake. The director of DJS emailed me a copy of the contract and I emailed it to BIA and the tribal chairman. My understanding of the case before the tribal court is that they are looking at placement in detention in New Town with no evaluations or counseling services. I hope that someone in authority will sign this contract so that the tribal judge can get the juvenile assessed at YCC and get him placed for proper treatment. I am telling you this story to illustrate the disparity in services provided to juveniles in the state and tribal systems.

In 2013, there were 1,812 children in foster care in North Dakota. This does not include the 638 BIA cases. In the Lake Region (Devils Lake), for the 2014 reporting period, there are 201 children in foster care and it is estimated an additional 200 in BIA custody.

Our area of the state has experienced long-standing mental health care disparity challenges. Sioux, Benson, and Rolette counties comprise the three counties in North Dakota as having “persistent poverty.” Persistent poverty relates to time wherein poverty has been identified over the past three census decades. Rolette and Benson counties are in Region III. One in four residents in Region III lives in poverty.

Region III has 6% of the state’s population but has 38% of all TANF (Temporary Assistance for Needy Families) families. We have 7% of the state’s youth population but comprise 41% of all North Dakota youth who are on TANF (July 2014 data). Our TANF population is more than twice that of any other region. For clarification, Region III includes Ramsey, Benson, Towner, Rolette, Eddy, and Cavalier counties.

Presently in Region III, we have no adolescent psychiatric beds, no substance abuse treatment beds, no safe beds for “heightened but not imminent risk adolescents,” no detox for adolescents, and no detention for delinquency. Tribal courts, at the present time, do not have access to the Department of Juvenile Services or to Youth Correctional Center placements.

In my view, what we need in our region is a “Regional Adolescent Assessment and Treatment Center.” We need two units. One unit would hold juveniles for up to 60 days for assessment to determine what services a child and family needs, a safe place for a runaway, for those individuals who blow out of

foster care, and for adolescents waiting for court hearings. The long-term unit would serve youth with severe behaviors and mental health needs, physical aggression, sexual behavior issues, or self injury. The vision is that this facility would serve the Spirit Lake and Turtle Mountain Nations and the counties in Region III.

In response to the violent deaths of children in Indian Country, the U.S. Attorney General established, in 2013, an advisory committee on Native children exposed to violence. This committee met in Bismarck in December of 2013 seeking public comment. I sent in written comments. I would like to read a part of that memo as it relates to the state and the Indian Nations in North Dakota:

...

“The over arching problem, as I see it, is the paradigm wherein Indian Nations in North Dakota turn first to the federal government/BIA to address issues that arise in Indian Country. My view is that the Indian Nations should first turn to the state to seek out collaborative solutions.

...

Tribal governing authorities and tribal courts need to initiate a conversation with the state of North Dakota to discuss services for juveniles. How can current services be optimized for Native American youth? There needs to be a conversation between the tribes and state generally, but more specifically with the Department of Human Services, Department of Juvenile Services, and state juvenile court. Native American juveniles are being sentenced from Spirit Lake, Turtle Mountain, and Standing Rock tribal courts and jailed in Devils Lake, North Dakota, some for several months. These juveniles are not being provided educational or counseling services. This does not happen to juveniles in the state

court system. The state juvenile court and the Department of Juvenile Services provide services to juveniles.

We need to explore the possibility of juveniles adjudicated in tribal courts being placed with the ND Department of Juvenile Services. We also need to consider collaboration between tribal and state courts in formal and informal juvenile dispositions to ensure that assessments are completed and services are being provided.” (End of quote)

Thank you, Chairman Johnson and committee, for giving me the opportunity to speak here today.

I would also like to thank Chairmans Russ McDonald and Richard McCloud for their interest and input on this project. I am grateful to the management and department heads at the Lake Region Human Service Center in Devils Lake and the director of the Department of Juvenile Services for their input. The social service directors from Benson and Ramsey counties, along with juvenile court mangers from Judicial Unit One have also contributed.

I also thank the tenacious Scott Davis and his staff from the ND Indian Affairs Commission for their efforts in making state and tribal governments responsive to the needs of youth.

# MEMORANDUM

**To:** Attorney General's Advisory Committee on American Indian/Alaska  
Native Children Exposed to Violence  
**From:** District Judge Donovan Foughty, North Dakota   
**Date:** December 30, 2013  
**Subject:** Written comment to the Committee December 19, 2013 Meeting in  
Bismarck, North Dakota

I am a State Court District Judge in North Dakota. Attached is a brief professional biographical sketch. I reluctantly submit these comments to the task force. My concerns are that my comments and opinions will be construed as dictating what needs to be done. My intent is to add to the conversation in the search for solutions. The bottom line for me personally is that I would regret not responding to the call for written comments requested. The work of the task force in North Dakota is important.

My comments are directed towards the Indian Nations in North Dakota. I have no opinion as to whether my comments are relevant on a national level.

## I.

The over arching problem as I see it is the paradigm wherein Indian Nations in North Dakota turn first to the Federal Government/BIA to address issues that arise in Indian Country. My view is that the Indian Nations should first turn to the State to seek out collaborative solutions.

Let me first address law enforcement and more specifically; law enforcement on the Spirit Lake Nation. Clearly, there are not sufficient BIA law enforcement patrol officers on Spirit Lake to provide true community policing. That is the type of policing where the mere presence or anticipated presence of an officer prevents crime. Where they now have one officer on night patrol there should be four. That being said, there are other options. Spirit Lake and other Indian Nations should consider deputizing state highway patrol to provide services on state highways that go through Indian Nations. Those arrested or cited that are Native American would go to tribal court and non-Indians would go to state court.

According to a North Dakota Impaired Driving Program Assessment 2013; Native Americans represent 5.5% of the State's population, but comprise 15-20% of the State's motor vehicle fatalities. Of the 27 Native Americans killed in motor vehicles in North Dakota in 2012, 78% of the crashes were alcohol related. The statewide average is half the fatalities are alcohol related.

Another option to increase a police presence on Spirit Lake would be to cross deputize the Benson County Sheriff's Office and BIA police giving both agencies the authority to arrest Native Americans and non-Indians. At this time I don't think either the highway patrol or the sheriff are welcome on Spirit Lake.

Neither the Governor nor the Benson County Commissioners are going to suggest these proposals because they don't want to be seen as dictating to the Spirit Lake Nation or any other tribal government what should or should not be done. On the other hand the state and county governing boards would be I think receptive to discussions on deputization and cross deputization if tribal authorities were to make the proposals.

## II.

Tribal governing authorities and tribal courts need to initiate a conversation with the State of North Dakota to discuss services for juveniles. How can current services be optimized for Native American youth? There needs to be a conversation between the tribes and state generally, but more specifically with the Department of Human Services, Department of Juvenile Services and State Juvenile Court. Native American juveniles are being sentenced from Spirit Lake, Turtle Mountain and Standing Rock tribal courts and jailed in Devils Lake, North Dakota some for several months. These juveniles are not being provided educational or counseling services. This does not happen to juveniles in the state court system. The State Juvenile Court and the Department of Juvenile Services provide services to juveniles.

We need to explore the possibility of juveniles adjudicated in tribal courts being placed with the ND Department of Juvenile Services. We also need to consider collaboration between tribal and state courts in formal and informal juvenile dispositions to ensure that assessments are completed and services are being provided.

At the end of this year, 2013 the jail in Devils Lake will no longer hold juveniles from tribal courts. It is my understanding that the juveniles will be housed someplace in South Dakota. I suspect they will not be receiving any educational or counseling services. I hope that tribal authorities look into this.

### III.

In the area of domestic violence the Tribal State Court Committee is working on passport wherein all state and tribal court protection orders have the same cover sheet and all orders will be put into the national information system. I hope we can reach this goal within the next eight months.

### IV.

In North Dakota Native Americans make up 5.5% of the state's population, but constitute between 20 and 25% of the prison population. Proportionately even with the oil boom North Dakota has a low prison incarceration rate. The rate in North Dakota is 213 per 100,000 people. The national rate is 480. One of the more significant reasons Native Americans are over represented in the prison system is that they can hide out on Indian Nations. They simply walk away from supervised probation rather than confront the issue/violation with their probation officer. When they are eventually arrested prison appears to be the only reasonable alternative because of non-compliance with probation. It is my understanding that Standing Rock will not honor state court arrest warrants. Other Nations extradite fugitives back to the state, but it is not frequent and it appears from my experience that they are sent back to the state when they are arrested on other charges. There does not appear to be an effort to look for folks with outstanding state warrants in Indian Country. This well may be a function of police officer shortages. The lack of effort to look for state fugitives aggravates the crime problem in Indian Country. A drug addict fugitive still needs the drugs and will either sell or steal to address the habit. Domestic abuse fugitives are not likely to change their ways without sanctions and treatment.

The other side of the coin is that tribal warrants are not systematically distributed off the Indian Nations. North Dakota has an extradition statute wherein law enforcement can arrest on tribal warrants and offenders can be returned to the tribal court. I would like to see the Indian Nations adopt the North Dakota extradition statute and return fugitives to the state and tribal warrants be integrated into the state information system or at least filed with the local sheriff.

### V.

There have been significant tribal social service issues particularly on Spirit Lake. I have attended several tribal/Benson County Social Service meetings over the past several months. The bifurcated BIA/tribal social service system that is now in place is not an efficient way to deliver services and I bet it is expensive. If I was in charge I would return social services to the tribe and have an oversight

policy committee made up of tribal council members, and experts in the field from the state, BIA, and the University of North Dakota. My long range goal would be to consolidate tribal social services with Benson County. The single agency would serve both the state and tribal courts. I would like to see someone put a pencil to the money that is now being spent and assess what you might have if the agencies were consolidated. My bet is you would have more people in the field with higher pay and better oversight.

## VI.

I now return to my over arching theme. The paradigm wherein Indian Nations look to the BIA and Federal Government first to search for solutions is wrong headed. Tribal Nations should be looking to the state to plan and collaborate on finding solutions to problems. The tribal nations should be looking to the federal government for funding solutions. The fear that the tribal nations and the State of North Dakota have is that the Federal Government will walk away once they start talking.

Thank you for the opportunity to comment.

## DISTRICT JUDGE DONOVAN FOUGHTY

Judge Foughty is a district judge of the Northeast Judicial District in North Dakota. He was admitted to the State Bar in 1983. He began his judicial career by election to the county bench in 1987. He was elected to the district bench in 1995 where he continues to serve.

Judge Foughty has served as a trial judge in tribal courts in North Dakota and as an appellate court judge for the Northern Plains Intertribal Court of Appeals in Aberdeen, South Dakota. He has also served by assignment on the North Dakota Supreme Court.

Judge Foughty chaired the Tribal/State Court Forum in North Dakota with a final report being submitted to the Chief Justice in December of 1993. He chairs the standing Committee on Tribal and State Court Affairs. He is a past chair of the Judicial Conduct Commission. He co-chaired the North Dakota Commission to study Racial and Ethnic Bias in the Courts submitting a final report to the Chief Justice in June of 2012. He now sits as chair of the Minority Justice Implementation Committee. He sits on the board of directors of the National Consortium on Racial and Ethnic Fairness in the Courts and is chair of its Ad Hoc Project Committee.