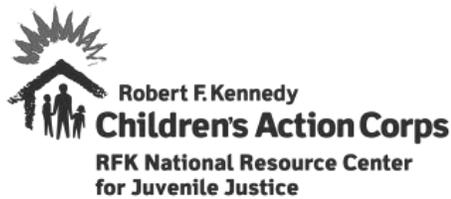




TRIBAL JUSTICE PROBATION SYSTEM REVIEW GUIDEBOOK

John A. Tuell

April 2019



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Robert F. Kennedy Children's Action Corps

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Additionally, the John D. and Catherine T. MacArthur Foundation’s *Models for Change: System Reform in Juvenile Justice* Initiative operated for over a decade in nearly two-thirds of the states to create successful and replicable models of juvenile justice reform. *Models for Change* sought and accomplished accelerated progress toward a more effective, fair, and developmentally sound juvenile justice system that holds young people accountable for their actions, and provides for their rehabilitation, protection from harm, and manages the risk posed to themselves and to the public. It was under the generous support of this initiative that the work to develop this probation system review methodology and process flourished. Robert F. Kennedy Children’s Action Corps and its Robert F. Kennedy National Resource Center for Juvenile Justice wishes to thank the MacArthur Foundation for its considerable contribution to this important area of juvenile justice and probation system reform.

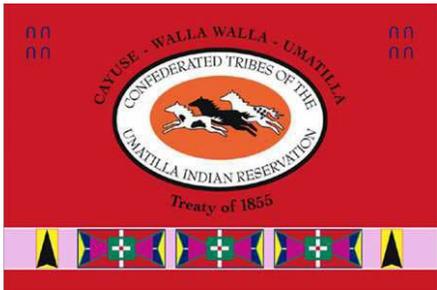


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FOREWORD

The Robert F. Kennedy National Resource Center for Juvenile Justice (RFK National Resource Center), led by Robert F. Kennedy Children's Action Corps, was launched in December 2013 with the intention to carry forward the legacy of over a decade of significant achievement in juvenile justice system reform made possible by the John D. and Catherine T. MacArthur Foundation's support of the *Models for Change: Systems Reform* in Juvenile Justice Initiative. While the RFK National Resource Center has only been operating since 2013, the work at RFK Children's Action Corps in support of the Models for Change Initiative has been ongoing since 2004. This partnership with the MacArthur Foundation permitted the growth and maturation of three primary focus areas in juvenile justice reform. These areas include:

- **Dual Status Youth Reform** - Development of multiple frameworks, tools, resources, and guiding publications for reform to improve outcomes for dual status youth, those youth known to both the dependency and delinquency systems, and to achieve integration and coordination between child welfare and juvenile justice systems. This work is advanced through the provision of technical assistance, resource development, and the ongoing practice innovations realized through an active Dual Status Youth Practice Network.
- **Information and Data Sharing Reform** - Development of an exemplary framework to address the myriad of local, state, and national laws and policies governing the exchange and sharing of data, information, and records for youth and families involved in the juvenile justice and related youth serving systems. Over the past ten years, this work has resulted in the development of publications, resources, an online training curriculum for attorneys, and on-site training and technical assistance.
- **Probation System Reform** - Development of a framework for the conduct of a rigorous review and assessment of probation practices to enhance youth outcomes and system performance by ensuring that policies and procedures, corresponding training, departmental management, and supervision of probationers all reflect best practices. This work is advanced by the provision of resources, technical assistance, and training to support probation review and reform efforts in state and local jurisdictions, the delivery of Juvenile Probation Review Institute/Academy training, and the ongoing practice innovations realized through an active Probation System Review Practice Network.

It is the latter focus area about which this Tribal Justice Probation System Review Guidebook is authored. The experiences in multiple state and local jurisdictions over the past fourteen years and more recently with the Pascua Yaqui Tribe in Arizona, the Confederated Tribes of the Umatilla Indian Reservation, and the White Earth Indian Nation in Minnesota, the latter

focusing on the coordination of probation and child welfare agencies that have brought new lessons learned and opportunities that mandate their inclusion in this instructional Guidebook. These experiences also bring more clarity for the purpose and effective use of the review, self-assessment, and evaluation methodologies that have historically been used by the team of RFK National Resource Center staff and consultants in the field.

As we present this Tribal Justice Probation System Review Guidebook (Guidebook) to you for your use – either independently or in partnership with external technical assistance – it is our belief, based on our history of field-based partnerships, that you will realize positive opportunities for enhanced practice within your tribal court, probation department and among your tribal youth serving partners that results in improved juvenile justice and probation system performance, and most importantly in improved outcomes for the youth and communities you serve. You will note throughout the Guidebook that we emphasize the “system” aspect of the review and its methodologies. It has been our experience that reforms and improvements in probation practice cannot be realized without the examination of relationships and coordination with key juvenile justice system partners (e.g., judges, prosecuting attorneys, public defenders, and community partners).

Based on the rich experiences the RFK National Resource Center and its staff and consultants have had in partnering with state and local juvenile justice leadership like yourself over the past fourteen years, we believe the framework and elements outlined in this Tribal Justice Probation System Review Guidebook can enhance your opportunities to realize those desired results for our nation’s tribal youth who have touched the juvenile justice and probation systems.

John A. Tuell, Executive Director

Robert F. Kennedy National Resource Center for Juvenile Justice
Robert F. Kennedy Children’s Action Corps

TRIBAL JUSTICE PROBATION SYSTEM REVIEW GUIDEBOOK

Background

The genesis for this Tribal Justice Probation System Review Guidebook was the probation system review work undertaken in Jefferson Parish, Louisiana as part of the work in the four core states associated with *Models for Change: Systems Reform in Juvenile Justice* and in Los Angeles County, California under a contract with the Los Angeles County Auditor-Controller's Office. In both of those jurisdictions there was a months-long review of programs and operations to support the goals of the probation departments, culminating in respective reports of findings and recommendations. A carefully tailored work plan was used to direct the reviews in each instance and the core elements of the plan, while the order has been slightly revised, have remained essentially the same and include:

- A. Administration
- B. Probation Supervision
- C. Intra- and Interagency Work Processes
- D. Quality Assurance

The principals, Janet Wiig and John A. Tuell, conducted the review in Jefferson Parish and Los Angeles County, and were asked to prepare the original Probation Review Guidebook for that purpose. As more jurisdictions became involved in the conduct of the RFK National Resource Center Probation System Review (Probation System Review), more experience was gained to inform the use of the wide variety of examination and analytical methodologies in local and state jurisdictions that resulted in the recent release of the Probation System Review Guidebook, 3rd Edition (Tuell & Harp, 2019).¹ This Tribal Justice Probation System Review Guidebook offers an enhanced look at the review process with enriched perspectives for the conduct of the review and the use of findings and recommendations that have proven successful in improving probation system performance and outcomes for the youth and families they serve.

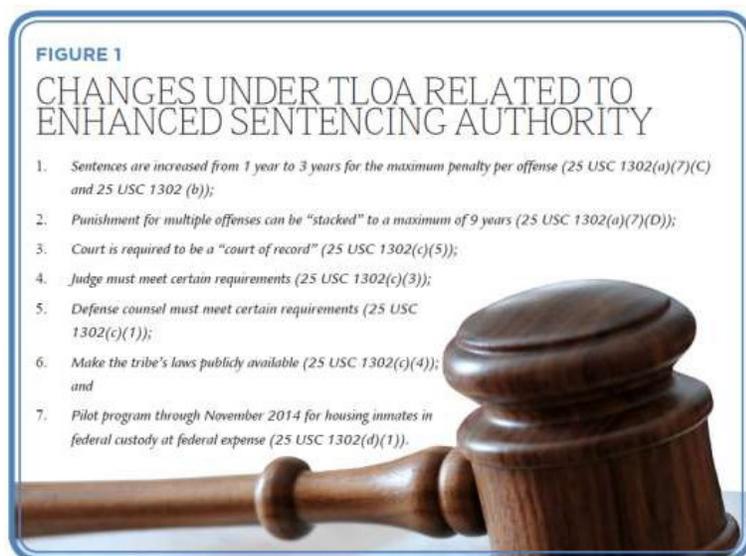
The project that supports the subrecipient partnership of the RFK National Resource Center with the American Probation and Parole Association and the conduct of this Probation System Review process in two competitively selected tribal jurisdictions and the development of the Tribal Justice Probation System Review Guidebook is made possible through under the FY16 Bureau of Justice Assistance's Building Community Corrections Capacity grant (CFDA #16.608 – Tribal Court Assistance Program) and is funded by grant award 2016-IC-BX-K005.

¹The material in this Tribal Justice Probation System Review Guidebook is drawn heavily from the field-based experiences of the authors of the original Probation System Review Guidebook (Janet Wiig and John A. Tuell) while working for CWLA and then subsequently from additional experiences of staff and consultants working for the RFK National Resource Center during a period covering 2013-2019. These included an array of both large and small state and local jurisdictions, supporting the concept that the framework contained herein could be applicable and useful in all types of jurisdictions (see Appendix A for a complete listing of the state and local jurisdictions).

Statutory Foundation for Tribal Court and Juvenile Probation System Review

The Tribal Law and Order Act of 2010 (TLOA) was signed into law on July 29, 2010 (*Pub. L. No. 111-211, 124 Stat. 2258*). TLOA was enacted in an effort to clarify governmental responsibilities regarding crimes in Indian Country; increase and improve collaboration among jurisdictions; support tribal self-governance and jurisdiction; reduce the prevalence of violent crime in Indian Country; combat crimes such as domestic violence, sexual assault, and drug trafficking; reduce the rates of substance abuse in Indian Country; and support the collection and sharing of crime data among jurisdictions (Folsom-Smith, 2015).

The TLOA amends the Indian Civil Rights Act (ICRA) by allowing felony sentencing for certain crimes through the provision of enhanced sentencing authority, establishes new minimum standards for protecting defendants' rights in the tribal court system, and encourages federally recognized Indian tribes to consider the use of alternatives to incarceration or correctional options as a justice system response to crime in their communities. The relevance and/or alignment with this law by tribes and the excellent opportunity to support a probation and juvenile justice system review is obvious when examining the requirements for Indian tribes to implement enhanced sentencing authority provisions. The specific provisions of the TLOA are detailed in Appendix B. Figure 1 (below) also highlights some of those requirements which support improved court practice and protection of defendants' rights (Folsom-Smith, 2015).



In addition to the TLOA, there are several additional federal statutes that require a foundational and historical understanding to support effective conduct of any tribal court and juvenile probation system review. What follows is a short list of the most relevant federal laws that impact Indian country and tribal courts with a brief abstract included. Please see Appendix B for additional relevant language, and citations and links for access to the complete text of each of this list of federal statutes.

Indian Civil Rights Act (25 U.S.C. §1301 et seq.)

The Indian Civil Rights Act (ICRA) of 1968 prohibits Indian tribal governments from enacting or enforcing laws that violate certain individual rights. The act applies to the Indian tribes of the U.S. and makes many, but not all, of the guarantees of the Bill of Rights which guarantees personal freedoms against actions of the federal government; and the Fourteenth Amendment to the Constitution, which extends those protections to actions of state governments. No Indian tribe in exercising powers of self-government may enact or enforce any law which denies anyone the right to:

- a. free exercise of religion and freedom of speech;
- b. freedom from unreasonable search and seizures;
- c. freedom from prosecution more than once for the same offense;
- d. not testify against oneself in a criminal case;
- e. not have private property taken for public use without just compensation;
- f. a speedy and public trial, to be informed of the charges, to confront witnesses, to subpoena witnesses and, at one's own expense, to be assisted by a lawyer in all criminal cases;
- g. freedom from excessive bail, excessive fines, cruel and unusual punishment and, for conviction of any one offense, freedom from punishment greater than imprisonment for one year and a fine of \$5,000 or both;
- h. equal protection of the laws and freedom from deprivation of liberty or property without due process of law;
- i. freedom from any bill of attainder or ex post facto law; and
- j. the right, if accused of an offense punishable by imprisonment, to a trial by jury of no less than six persons. (25 U.S.C. §1301 et seq.)

The ICRA also denies tribal governments the power to pass *ex post facto* laws and bills of attainder, provisions that are contained in the main body of the U.S. Constitution rather than the Bill of Rights and also contains provisions directing the Secretary of the Interior to create a model code for courts of Indian offenses (courts on reservations not created by the tribal government) and requiring consent by tribal governments before states can assume any criminal or civil jurisdiction over Indians on Indian land.

The Major Crimes Act (18 U.S.C. §1153 et seq.; §679-682 and §687-689)

Section 1153 of Title 18 grants jurisdiction to federal courts, exclusive of the states, over Indians who commit any of the listed offenses, regardless of whether the victim is an Indian or non-Indian. It remains an open question whether federal jurisdiction is exclusive of tribal jurisdiction. The enumerated offenses are, for the most part, defined by distinct federal statutes. Those offenses which are not defined and punished by federal law are to be defined and punished in accordance with the law of the state where the crime was committed.

The precursor to 18 U.S.C. § 1152 was section 25 of the Act of June 30, 1834, 4 Section 733, and it was not until 1885 that federal legislation was enacted granting federal courts jurisdiction over certain major crimes committed by an Indian against another Indian. Prior to 1885, such offenses were tried in tribal courts. Section 1153 is predicated on the Act of March 3, 1885, § 8, 23 Stat. 385, and former sections 548 and 549, 18 U.S.C. (1940 ed.). Under 18 U.S.C. § 1153, federal courts have jurisdiction exclusive of the states over offenses enumerated in the section when committed by a tribal Indian against the person or property of another tribal Indian or other person in Indian country. Legislative history indicates that the words "or other person" were incorporated in the 1885 Act to make certain the Indians were to be prosecuted in federal court. Major felonies involving an Indian, whether as victim or accused, are matters for federal prosecution. Because of substantial non-Indian populations on many reservations crimes wholly between non-Indians are left to state prosecution. The Major Crimes Act, like all federal regulation of Indian affairs, is not based upon an impermissible racial classification, but "is rooted in the unique status of Indians as 'a separate people' with their own political institutions. Federal regulation of Indian tribes, therefore, is governance of once-sovereign political communities; it is not to be viewed as legislation of a 'racial' group consisting of Indians" (Morton v. Mancari, 417 U.S. 535 (1974)).

Public Law 83-280

Public Law 83-280 (commonly referred to as Public Law 280 or PL 280), the 280th Public Law enacted by the 83rd Congress in 1953 was a transfer of legal authority (jurisdiction) from the federal government to state governments which significantly changed the division of legal authority among tribal, federal, and state governments. Congress gave six states (five states initially - California, Minnesota, Nebraska, Oregon, and Wisconsin; and then Alaska upon statehood) extensive criminal and civil jurisdiction over tribal lands within the affected states (the so-called "mandatory states"). Public Law 280 also permitted the other states to acquire jurisdiction at their option. Public Law 280 has generally brought about:

- an increased role for state criminal justice systems in "Indian country" (a term which is specifically defined in federal statutes (1)),

- a virtual elimination of the special federal criminal justice role (and a consequent diminishment of the special relationship between Indian Nations and the federal government),
- numerous obstacles to individual Nations in their development of tribal criminal justice systems, and an increased and confusing state role in civil related matters. Consequently, Public Law 280 presents a series of important issues and concerns for Indian country crime victims and for those involved in assisting these crime victims.
- Public Law 280, however, is a complicated statute which has been very controversial since the time of its enactment in 1953. It has often been misunderstood and misapplied by both federal and state governments. Moreover, the practical impact of Public Law 280 has gone way beyond that which was legally required, intended, and contemplated.

Why Undertake a Tribal Justice Probation System Review?

Juvenile probation departments and tribal courts, like a number of other longstanding agencies, function within a framework of statutes, policies and practices that were built up over the course of many years. In tribal justice communities, it may also be likely that new policies and procedures are in development as a result of more recent efforts to satisfy the requirements of the TLOA. Typically, there has been too little effort and reflection on that framework or the practical impact to determine how well it is working and whether it functions in a manner that is optimal for tribal youth and the community. There is often inadequate analysis as to whether the policies and practices comport with the current research and best practices to produce improved system performance and youth outcomes.

In general, Probation departments have also frequently taken a narrow view of their accountability for individual or cumulative outcomes for youth entering the system. If it can be said that we measure what we value, probation departments have all too often measured throughputs—how many cases were filed, how fast those cases are disposed of, and what type of offenses were involved. Further, a culture of doing things “the way we’ve always done them” often permeates daily operations and departmental approaches to probation supervision. It is plausible to proffer that most tribal juvenile probation and juvenile justice systems have paid insufficient attention to how system practices and individual decisions affecting case management might cumulatively impact public safety for better or worse. Correspondingly, relevant data has not been systematically collected or analyzed toward that end.

However, juvenile probation departments and tribal courts are becoming increasingly conscious of how their policies, processes and practices can improve outcomes for the young people with whom they come into contact while still incorporating historical beliefs and cultural traditions

regarding their reservation and tribes. That awareness also encompasses an understanding that the probation and court “system” does not operate in a vacuum. It is equally reliant on other agencies and individuals who engage with young people on a frequent basis to align their own practices in ways consistent with current research. That system obviously includes probation officers, judges, law enforcement, prosecutors, and defense attorneys and must necessarily include schools, substance abuse treatment providers, mental health professionals, child protective services, community-based youth programs, local government leaders, and certainly tribal youth and their families. Efforts to reform and enhance the operations and routine functioning of the probation, court, and juvenile justice system must involve all these participants (Ingram & Harp, 2016).

Through our work in the field with state and local jurisdictions over the past fourteen years, the RFK National Resource Center has witnessed an encouraging willingness to examine their operations as the volume of research on what works has been translated into improved system performance and youth outcomes. A growing number of probation departments are becoming more engaged in the development of refined policies and practices demonstrated to improve rates of recidivism across all risk classifications and improve other measures of positive youth outcomes. It has been our experience that jurisdictions that commit to this type of regular inquiry have demonstrated their value for accountability in both theory and action, including those tribes with whom we have recently partnered to conduct the Probation System Review. This in turn has fostered support, trust, and a collaborative investment from the community, youth, parents, staff and the multitude of system stakeholders for achievement of improved system performance and youth outcomes.

A probation system review is therefore an exciting opportunity for the principals involved in the management and day-to-day operation of a probation department and juvenile justice system to assess how they are doing in relation to their goals, objectives and outcomes for which they are accountable. It is an opportunity to enhance practice by making sure that policy and procedures, corresponding training,

Benefits of Undertaking a Tribal Justice Probation System Review:

- Improve recidivism and other youth outcomes
- Identify opportunities to create workforce and fiscal efficiencies
- Update code, policies and practices to align with best practice research (aligns with TLOA)
- Identify opportunities for routinizing practices through the development of new policies or protocols (aligns with TLOA)
- Opportunity to engage, educate, train and certify system partners and stakeholders on the role of probation and best practice research (aligns with TLOA)
- Opportunity to create effective community-based treatment and intervention alternatives to formal prosecution and secure care placement (aligns with TLOA)
- Creates impetus and methods for developing effective data collection, reporting and analysis process
- Enhance quality improvement/assurance methods for probation, court, and programs and service interventions

departmental management, and supervision of probationers are all lined up to reflect best practices. It also provides a chance to include important partners in the exploration and potential improvement of key decision processes and practices that impact the functioning of the tribal juvenile justice and probation system.

Undertaking such an inquiry requires the leadership of a champion for change as much as it requires the collaborative support of multiple stakeholders. System self-assessments don't just happen; they must be called for, supported, and integrated into the workflow of several agencies and stakeholders in order to be most effective. Advancing a culture of accountability among multiple system partners requires intentionality, planning, persuasion and perseverance.

The auspices for undertaking a review can be internal or external. The RFK National Resource Center believes that the character of the review and the commitment to its recommendations is enhanced when it is the department itself that initiates the review. Where there is resistance or opposition, many approaches have been used to secure support and buy-in from leadership ahead of the launch of the process. In the end this is not to say that there is no value in undertaking a review that has an external impetus, but the departmental participation in and the management of the review is potentially richer when the review is internally generated.

Alignment with Best Practices

There has been much learned over the past twenty-five years about how individual offender rehabilitation relates to reducing recidivism (Andrews, Zinger, & Hoge, 1990; Gendreau, French, & Taylor, 2002; Andrews & Bonta, 2010). The lessons focus specifically on service and program interventions that positively impact reductions in reoffending and increase pro-social behavior. As a result, among the most important policy reforms of recent years are the drive for evidence-based practice, which focuses on effective treatments, services, and supports for children and families, and the effort to establish systems of care to address the infrastructure of funding and linkages between services and programs. These themes have been embraced in educational, mental health, and child welfare policy

The Probation System Review assesses the system for alignment with the following best practice approaches:

1. Adoption of a *Risk-Needs-Responsivity assessment protocol*.
2. Integration of *trauma-informed practices* throughout the delinquency continuum.
3. Implementation of *effective tribal culture, family and community engagement strategies* throughout the entire juvenile delinquency process.
4. Implementation of *evidence-based and promising programs and services* that are proven to reduce recidivism and improve a variety of other youth outcomes, and evaluation of results of these services.

reforms, as well as in juvenile justice systems (Lipsey, Howell, Kelley, & Chapman, 2010).

More recently, additional systematic research reviews reveal very important findings that should further inform future practice reform in alignment with best practices. First, deterrence-oriented programs that focus on discipline, surveillance, or threat of punitive consequences (e.g., Scared Straight-type programs, boot camps, and intensive probation supervision) on average have no effect on recidivism and may actually increase it (Lipsey, 2009). Second, many “therapeutic” programs and services oriented toward facilitating constructive behavior change have shown very positive effects - even for serious offenders (Lipsey, 2009; Lipsey & Cullen, 2007). Therefore, with reductions in reoffending rates and its associated benefits for public safety as the primary result for which juvenile probation and justice systems are accountable, the implications of the current research findings are that:

- 1) “juvenile offenders with low risk for reoffending should be diverted from the juvenile justice system;
- 2) juvenile offenders with moderate or high risk for reoffending should be subject to the minimal level of supervision and control consistent with public safety and be provided with appropriate, effective therapeutic services; and
- 3) subjecting juvenile offenders to punishment beyond that which is inherent in the level of control necessary for public safety is likely to be counter-productive to reducing recidivism.” (Lipsey et al., 2010)

In the current practice environment for juvenile probation, the research therefore helps to identify the primary desired function of probation officers. These include short-term, risk management for probation clients supervised in the community and long-term behavioral reform that impacts recidivism reduction (Paparozzi & Hinzman, 2005). Additionally, we have learned that these public safety outcomes are best accomplished through attention to case management strategies involving a balanced combination of monitoring and oversight with targeted social/casework activities that includes focusing on the quality of interpersonal relationships – often specifically involving the positive relationship between the probation officer and the probation client.

The best practice approach also includes the commitment to the use of structured decision-making instruments that informs professional judgement at key decision points (e.g., risks-needs-responsivity tools), a continuum of graduated levels of supervision and responses to behavioral transgressions, monitoring that is integrated with effective behavior change service interventions and programs, and an effective system of departmental management and supervision practices.

We also know that youth show up in the juvenile justice system with high rates of trauma exposure and active trauma symptoms. The research reflects that more than 80% of youth in

juvenile justice settings have been exposed to more than one traumatic experience in their past (Greeson et al., 2014). Those events can have significant impact on the mental health, physical health, and behavior and responsiveness of youth with whom probation practitioners work. Given this prevalence, implementing the use of validated screening instruments for active trauma symptoms and providing the appropriate care and interventions is yet another best probation practice that contributes to the desired pathway to success. Additionally, a juvenile justice system committed to acknowledgement of tribal culture and heritage and to family involvement and community engagement ensures that there are flexible and authentic opportunities for tribal elders and councils and families to partner in the design, implementation, and monitoring of the case plan for the probation involved youth. The research, derived from practical experiences in juvenile probation, has increasingly reflected that institutionalizing these practices help to realize improved desistance of delinquent behavior.

It is in this holistic framework that a tribal juvenile probation and juvenile justice system may realize the best likelihood to operate in effective and efficient ways that result in achieving its goals, objectives and outcomes.

It is also a fact that effective departmental management practices are often overlooked or minimized when assessing how to realize desired system and youth outcomes in alignment with best practice. Probation departments and juvenile justice systems are often primarily only accountable for levels of effort (e.g., outputs) and are therefore focused on completing the “designated process.” Effective departmental management practice must involve clarity of mission and accountability measures (and the intention and capacity to routinely report outcomes), policies, and procedures. The alignment must also include a comprehensive training curriculum that ensures the probation and court staff possesses the requisite skills to practice the balanced approach with juvenile probationers.

It is unfortunate that virtually no effort has been expended on the relationship between professional orientation of probation officers and recidivism. According to recent research findings, the significance of the failure to examine the relationship between probation officer orientation and the success or failure of probationers cannot be overstated (Paparozzi & DeMichele, 2008). The very foundation upon which the delivery of appropriate treatment services is based is flawed if the individuals and the managers operationalizing and overseeing the delivery of services are inappropriate role models, inflexible in their response to probationer relapses, or philosophically opposed to intervention approaches and expected interactions with probationers. Examining, understanding, and modifying, when appropriate, the professional orientations and attitudes of probation officers is a critical step in the adoption of evidence-based practices.

It is therefore critical to understand that when references are made to the comprehensive elements of the Probation System Review detailed in this Guidebook, alignment with best practices speaks to the research related to effective service and program interventions in combination with effective management, training and quality assurance for both the tribal youth involved in probation and the tribal justice system.

Facilitation of the Review

The Probation System Review must be organized and carried out by specifically designated individuals whether they are outside consultants or individuals from within the jurisdiction of the review. For example, a probation department could designate one of its own employees with solid organizational, management, and analytical skills to develop and manage a work plan for the review or it could call on another organization within its jurisdiction that has personnel with a capacity to conduct organizational development activities. Whoever performs this function, it is critical that the person(s) be given both the time and the authority to keep the work plan and participants moving forward.

Development of a Probation System Review Team

The creation of a Probation System Review Team (PSRT) is the immediate first step in the review process. The team is integral to the successful administration and completion of the review and the importance of its role cannot be overstated. The collective function of the PSRT is to provide oversight and guidance on the scope of issues examined in the review, identify desired outcomes and goals, discuss and refine areas requiring deeper analysis and collaboratively respond to the findings.

The PSRT will convene during every Probation System Review site visit and will typically participate in routine conference calls and ongoing electronic communications with the outside consultants between on-site technical assistance visits. The team should meet to discuss and collaboratively plan the agenda for the scheduled on-site visits. The PSRT should also plan specific review activities, analyze data on probation services and programs, receive and discuss findings from the Probation System Review activities, and discuss and consider ideas for improvements based on those findings.

In order for the review and future implementation of the recommendations to be most successful, the following parties are ***strongly encouraged*** to be members of the PSRT:

- ✓ Director of Probation Services / Chief Probation Officer
- ✓ Probation Supervisor / Manager
- ✓ Presiding Juvenile Court Judge
- ✓ Tribal Council and/or members
- ✓ Prosecutor
- ✓ Defense Counsel
- ✓ Court Administration
- ✓ Special Court Supervisor(s) (e.g., Drug Court, Mental Health Court)

These entities represent the ideal minimum members of the PSRT. However, each tribal justice jurisdiction should thoughtfully consider who else should be on the team, including potential youth and/or family members with a previous history of involvement in the juvenile justice system, and identify all the major partner affiliates that influence the key decision points in a youth's process through the delinquency system.

Design and Work Plan

The design of the Probation System Review follows the framework detailed below. However, areas of emphasis may be identified through discussions with the PSRT and other leadership focusing on the most critical issues that are confronting the department. A review may also be prompted by concerns that have been raised in the broader community about a department's functioning or the handling of a particular high-profile case. Whatever the impetus, it is important that time be taken to "brainstorm the issues" and determine the priorities for review.

As previously indicated, the issues for review were originally organized into four elements. They are:

- A. Administration
- B. Probation Supervision
- C. Intra- and Interagency Work Processes
- D. Quality Assurance

Within each of the elements, the statement of work should describe the importance of the particular element to the jurisdiction, the questions that are to be answered and the methods that are to be used.

It is also important to highlight the fact that the comprehensive nature of the Probation System Review will intentionally seek to identify current strengths in policy and practice. In all elements of the review these areas are sought so that the PSRT and participating staff may

routinize and replicate those positive practices across their probation and juvenile justice system. Additionally, it is the perspective of the RFK National Resource Center that tribal justice communities must share those strengths and successes with other tribal courts and probation departments in jurisdictions across the country.

Methodologies

A critical part of the Probation System Review is deciding which methodologies will be most effective at identifying areas of the probation department's policies and practices that are in need of improvement or those which solidly align with current best practice. The identification of which methodologies to use should be accomplished by the individuals charged with organizing and carrying out the review in tandem with the leadership of the PSRT. Careful consideration of the chosen activities by these persons not only assures access to the people or documents needed for the particular activities, but also encourages ideas about the best way to conduct each selected analytical and review methodology. Following are the six primary methods that are routinely employed by the RFK National Resource Center to examine the four elements of the review. These methodologies have been used in multiple jurisdictions and have been integral to guiding the final findings and recommendations.

Document Review

An important methodology used to review the mission, vision, strategies, policies, and procedures of the probation department is a document review. It is particularly useful to direct significant attention to an analysis of the probation officer's manual and to any memorialized compilation of Indian country Constitution's, tribal court codes, policies and procedures since these core documents should be guiding the probation work on a day-to-day basis. A review of these documents should focus on its strengths, weaknesses, and areas for improvement and continually answer the following two questions:

- Do the documents reflect the mission, vision, goals and sought outcomes of the probation department?
- Do the documents provide a detailed description of how these foundational elements connect to the daily operations of a probation office?

Specific attention will also be given to whether the tribal governance, court and probation system documents reflect a focus on juveniles and their unique developmental needs as supported by current research. It is not uncommon to find that these documents have not been updated to reflect an understanding of the key tenets of adolescent developmental and the corresponding policies and procedures that translate the science and research into practice. In

addition to the above noted documents, other written materials such as the following will be reviewed as needed:

- Annual report
- Statistical reports detailing prevalence, case characteristics, and outcomes
- Probationer case files
- Standard probation orders
- Information sharing agreements
- Authorization/Consent for release of information
- Memoranda of understanding with stakeholder agencies (schools, behavioral health providers, etc.)
- Service contracts

The examination of these documents will help determine how well they support and reflect best practices for probation services and whether there are opportunities to improve upon or add to the guiding documents of a probation department.

Key Stakeholder Interviews

It is important to meet with internal and external stakeholders and agencies to determine what their experience has been working with the probation department. The review team should work with a set of questions focused on interactions or transactions with the department and interagency work processes.

Interviews with key stakeholders can take place in a group setting or with individuals and should be held early in the review process to ensure comprehensive examination of the issues identified in the 4 major elements of the review process. This method also is designed to solicit input on additional concerns or strengths (e.g., operational, philosophy, practices, etc.) from stakeholders external to the probation department. These key external stakeholders should be identified in concert with the PSRT. This process provides a finding in and of itself by identifying who the department's leadership believes is important to the examination and functioning of the department. It may also be important to get a perspective from individuals outside the department about other key stakeholder groups that could provide additional information on the department's practice. Key stakeholders may include:

- Judges
- Police
- Children's Services
- Court Administration
- Mental Health
- Substance Abuse
- Prosecutor
- Defense Counsel
- Schools
- Community Providers

Process Mapping

A process mapping exercise with a select group of probation officers and/or probation managers is an invaluable opportunity to analyze interfaces, handoffs, bottlenecks, and other case flow issues for youth involved with the probation and juvenile justice system. Using a well-defined protocol (see Appendix C), this exercise becomes the anchor for the entire review process and identifies key decision points and the practices that inform. The case flow mapping exercise can initially be accomplished by viewing or constructing a case-flow process for the juvenile justice system. The key decision points will be identified toward the goal of collectively clarifying professional staff responsibilities, and mandates and expected products and outcomes that support improved decision making at each key step. Against an established consensus for the probation systems' goals, this mapping process creates an understanding of the most appropriate decision points and practices around which improvements or reforms may be developed and/or planned on behalf of youth involved in the probation and juvenile justice system.

The following points illustrate what is sought by engagement in the process mapping activity:

- Understanding of the steps in the various system and court processes
- Identification of what happens (action), who is responsible (decision), and what output or outcome is expected or produced at each step (product)
- Discussion/Assessment of the quantity and/or quality of the information being gathered and utilized in each step of the process
- Identification of process gaps
- Identification of necessary resources (workforce and program)
- Identification of what is and is not working in the juvenile justice and probation system

The process mapping methodology is also very useful when holding supplemental meetings with outside agencies to gain external perspectives on interagency work processes. Issues identified during the process mapping exercise are used as targeted topics for discussion with the PSRT and system stakeholders and highlight areas of practice that require further analysis.

Court Observation

There are a myriad of benefits to be gained from observing court in session during the course of the probation system review. The observed proceedings include detention hearings/reviews, initial/arrestment hearings, plea/adjudication, disposition matters, and motions or revocation actions. The observation permits awareness of the routine practice of the prosecutor, public defender, probation officer, family and judge within the court room, as well as how each stakeholder interacts with their system colleagues.

Probation Officer Group Interviews

If the review is conducted by outside consultants, an important additional method to gain information from the probation officers, and to gain the trust that their participation in the review is a meaningful activity, is to extend an open invitation to all probation officers in the Department to meet with the consultants without any of the probation supervisors or managers present. The purpose of the meetings is two-fold: 1) to discuss the process map and how daily practices align or deviate from the written flowchart; and 2) to share results of the employee survey and to develop more clarity for the interpretation of the survey responses. The method encourages an open meeting to discuss perspectives and information that the probation officers believe is pertinent to the probation system review. In summary, this review method permits critique of operations and practice while encouraging recommendations for improvements and reform.

Youth Outcomes and System Performance Capacity Development

The identification of relevant and useful data to support a probation department's ability to report on achievement of desired outcomes and system performance is critical to the Probation System Review process. There is frequently an obvious need for an intensified focus on core data that will improve the long-term capacity of states and local sites to collect, manage, and track outcome and system performance measures for probation involved youth. Therefore, this methodology focuses on data collection, management and reporting. The review and analysis in this methodology is conducted to identify how and if the performance indicators relate to the achievement of desired client and system outcomes. The analysis is designed to ensure that probation officer activities are effective, efficient and aligned with those that positively impact youth outcomes and system performance.

ELEMENTS OF THE PROBATION SYSTEM REVIEW

Element A: Administration

The review of program planning and implementation focuses on a probation department's policies, procedures, and operations, as well as how probation practice is carried out as reflected in the feedback from probation officers, stakeholders, and consumers. This review element begins with a careful analysis of the policies and procedures. This is followed by descriptions of a department's operations and covers training, management practices, and probation practices. Probation practices include probation supervision, service delivery to probationers and a qualitative and subjective exploration of the various views, perspectives, and philosophies held about probation practices.

Issues

Some of the key issues in this review element may be:

- 1) Whether the standard operating procedures and/or probation manual is a relevant guide to daily practice,
- 2) How management practices contribute to the overall functioning of a department.
- 3) How the design and delivery of training support desired probation practices.
- 4) Whether the probation supervision is effectively carried out and whether services to probationers are effectively delivered.
- 5) How these practices work in coordination with court administration and the juvenile justice system.

In addressing departmental practice and implementation in Element A, the review begins with an analysis of policies, procedures, and operations that govern the administration of the department. Specifically, PSRT members and stakeholders examine how probation practice is informed and guided by its memorialized documentation related to departmental leadership, managerial oversight, supervision of clients, and training. This is also the initial opportunity to ensure that the review is significantly informed by feedback from probation officers and relevant stakeholders (e.g., judges, prosecutors, public defenders, etc.).

Questions that guide this part of the review within Element A include:

- Do the mission, vision, policies and procedures link well to each other, reflect best practices for achievement of youth outcomes, and connect to daily juvenile probation operations?
- Are the policies and procedures and youth outcomes articulated in a current manual or compilation of standard operating procedures (SOP)?

- Is the role of probation officers defined within those documents (e.g., enforcement, supporting positive behavior change, balance of both)?
- Is there a routinized system of managerial oversight that contributes to fidelity of best practice among all staff within the probation department and among its partners?
- Is there a training curriculum that ensures staff is effectively trained to use the best practices to achieve those articulated goals and outcomes?

These questions can be challenging to examine and the answers difficult to digest; however, they must be explored. An effective organization must have a clear mission that undergirds the strategies that guide its daily operations, and the policies, procedures, and protocols to govern the daily operations must also be included. High-performing organizations experience greater organizational effectiveness when vision, mission, and values statements are clearly articulated, and accountability plans are incorporated into a management strategy.

Data Sources and Resources

To determine whether the probation manual (sometimes developed as a SOP document) is an effective guide to daily practice, the review team needs to systematically analyze its content and elicit feedback from its users. The manual should serve as the foundation document to guide the probation officers' work. It should detail the operational functions of the probation officers and direct them to carry out their roles and responsibilities for probation supervision and treatment. In addition to the manual itself, additional sources include employee responses about the manual, key stakeholders' views of probation officers' daily functioning, and the views of supervisors and probation managers about the manual's utility. Authoritative resources should guide the manual review, including the statutory framework under which probation practices are mandated to function. Additionally, national guidelines from resources such as the American Probation and Parole Association and BARJ (Balance and Restorative Justice) principles or the Enhanced Juvenile Justice Guidelines (National Council of Juvenile and Family Court Judges, revised 2018) can assist in this activity.

In the review of how management practices contribute to the overall functioning of a department, the examination of management practice should be based on the foundation (or best practice standard) that a department has in place 1) a carefully articulated mission and vision, 2) a clear set of strategies to achieve the mission and vision, and 3) corresponding policies and procedures that clearly direct and evaluate the staff in its performance. Both the managers and the probation officers are significant sources of information in the review of management practices. The management can be guided through self-assessment and executive coaching to identify the strengths and weaknesses of its management practices. The employee survey responses are also a good source of data to evaluate the management practices as well as group interviews with probation officers and supervisors. Effective management is also characterized by a coordinated system of routine managerial meetings and communication

forums, including supervisory and line staff, intra- and interagency partners, community members, and key policy makers.

Sources for the review of the design and delivery of training to support probation practices should include a complete review of the training curriculum. This review will examine pre-service, orientation, in-service and special skills and all corresponding training materials. The training curriculum should at a minimum encompass the scope of activities contained in the probation manual. It should help the probation officer to understand his/her role and the tools and resources that need to be employed to effectively carry out that role.

This element of the review examines whether managerial and supervisory practices are in place to ensure that probation supervision is effectively carried out and to assess whether services to probationers are effectively delivered. The sources and methods for this aspect of the review include the results from the stakeholder meetings and interviews, focus groups with parents and probationers, and are reflective of the importance of informing the review through staff and consumer feedback. Review in this area can include an examination of the probation officer's role, assignment of cases and levels of supervision, and working conditions. The review of the actual delivery of services to probationers should include the capacity to deliver services, assessment and referral to services, resources and unmet needs of juveniles, and reports from juveniles on their probation experiences. Authoritative sources should include a department's own reports of its metrics for the delivery of services, covering not just the probation processes (completion of reports, number of contacts with probationers, etc.), but also its progress with the provision of treatment resources and achievement of related intermediate outcomes.

Potential Findings and Recommendations

A tribal jurisdiction will likely find the greatest volume of findings and recommendations in the Administration element because the areas of examination are the foundation upon which probation practices stand. It is possible that a jurisdiction will find that, absent a recent update, it needs a significant overhaul of its manual, or that its probation officer roles and responsibilities are not as clear as they need to be, or that its training curriculum is in need of updates and revisions. The recommendations that flow from these findings may be extensive and should be specific and provide clear direction as to the next steps a department might take to improve its practices.

Element B: Probation Supervision

The review and analysis of probation supervision practices and approaches includes the decision making processes throughout the juvenile justice system (e.g., arrest, referral, adjudication, disposition, case planning and management, revocation, case closure) and the resulting assignment and oversight of particular groups of probationers in specific programs

against the best practices' standards. The review necessarily focuses on the department's capacity for probation supervision and practice development and improvement.

Issues

Some of the key issues in this review element may be:

- 1) Analysis of the probation officer approach to supervision, the role of the probation officer, their day-to-day tasks and how they connect to desired youth outcomes.
- 2) Review of professional staff responsibilities, mandates and expected products and outcomes that support improved decision making at each key step.
- 3) Analysis of decision-making processes and the assignment and handling of particular groups of probationers (e.g., risk levels, special populations) in specific programs.

Questions that guide this part of the review within Element B include:

- How are cases assigned to Probation Officers?
- What role does the PO play in the life of a probationer?
- Are supervision levels matched based on risk-needs through structured decision-making tools?
- How are services matched to a youth's needs?
- What products are PO's responsible for creating? How are they used?
- What are the supervision criteria for each probationer group?
- How clearly are client outcomes identified for each probationer?
- How do PO tasks connect to desired youth outcomes?
- How is staff evaluated? Based on what criteria?

Data Sources and Resources

To determine whether decision making processes are clearly articulated, understood, and accompanied with corresponding tools, the review team should:

- Undertake a file review of sample cases
- Analyze the department's use of screening and assessment instruments.
- Consider the responses from the designated focus groups and tribal court system stakeholders.

It should also consider how the organization is structured to make key decisions about probationers (e.g., whether all of its probation officers should conduct assessments and make corresponding recommendations regarding individual probationers or whether this function

should be performed in a separate assessment unit). Authoritative resources for this review area include the ABA Joint Commission on Juvenile Justice Standards (2017), the National

Council of Juvenile and Family Court Judges' (NCJFCJ) 2017 Resolution Regarding Juvenile Probation and Adolescent Development, as well as a department's own reports of the effectiveness of its decision making and assessment practices.

How the methodology and performance for particular programs is supported by data and best practices can best be reviewed by examining a department's own data sources and the literature on evidence-based practice. Data development and getting an effective data collection system in place is a challenge for most probation departments. This is a critical review component to enable and assure that data drives and augments professional judgement toward effective probation practice. The questions the review team must ask include 1) whether it has data about the characteristics of youths placed in particular programs and 2) whether it has data about the outcomes achieved by youths in each of the programs in a way that is sufficient to assess the effectiveness of its programs. If the answer to these questions is "no," then the review team needs to address what data development needs to take place and develop corresponding recommendations.

Determining how well a department understands and employs best practices and evidence-based practices related to probation assignment and balancing supervision and monitoring with support for positive behavioral change can be accomplished in this portion of the review by examining the responses to the group interviews with probation. It can also be supplemented with file reviews to assess how well-structured decision-making tools are tied to treatment and supervision recommendations. Another important method involves solicitation of input from other key stakeholder interviews to ensure the full spectrum of perspectives regarding the department's challenges and most promising programs and practices.

Potential Findings and Recommendations

Once again, the findings and recommendations will be unique to each tribal court and jurisdiction. However, the history of the Probation System Review process suggests that the likely focus areas for further examination and improvement will include:

- Examination/improvement of decision-making tools (e.g. screening and/or assessment instruments, court reports, court process, etc.).
- Examination/improvement of the criteria or methodology for the assignment of youths in particular types of tribal court intervention or programs.
- Examination/improvement of probation supervision philosophies and methods and the corresponding oversight of same,
- Undertaking significant data development efforts so that it has the data to inform itself of its effectiveness.
- Constructing a new or improved benchmarking system for internal system performance, probation youth outcomes, or service provider results.

Element C: Intra- and Interagency Work Processes

Work processes impacting effective system performance and youth outcomes in probation and the tribal juvenile justice system involve sets of interconnected activities through which decisions are made and services are delivered. In order to be effective, these processes must be well conceived, clearly articulated, coordinated, and subject to periodic review and monitoring to ensure effectiveness and efficiency. Most often the work processes depend on the cooperation of many interrelated parts of the probation department as well as a wide array of outside organizations. Efforts to review these work processes will involve examination of various professional roles inside the department, within and across other public agencies, throughout the tribal court, and with private provider agencies.

Issues

Some of the key issues in this review element may be:

1. How the case flow process functions within a department and whether key information is available at critical decision-making points.
2. Whether the relationship with the tribal court is clear and functioning well in terms of roles and responsibilities.
3. How interagency processes function from the perspective of the department and the key agency partners and how linkages can be strengthened.
4. Whether ongoing forums exist to resolve issues between a department and other agencies.

Questions that guide this part of the review within Element C include:

- Are the responsibilities of all the tribal court partners reflected in policy or protocol?
- How effective are the linkages between the tribal court partners and probation?
- What is the nature of the relationships with outside stakeholders and partners?
- Is there an effective service/treatment referral protocol?
- What information do the service/treatment providers receive?
- Are there cross system collaborations and communication forums?
- What regular forums exist with stakeholders and providers for troubleshooting and problem solving?

In Element C, the review is concerned with examining the intra- and inter-agency partner relationships that impact practice and ultimately system performance and youth outcomes. Since this topic area is examined in every jurisdiction through the lens of *all* the relationships that are critical to the effective functioning of a probation department, below is a brief listing of the kinds of issues that have presented themselves with stakeholders and partners in

jurisdictions in which the RFK National Resource Center consultants have worked in the past fourteen years, including our more recent efforts in tribal communities:

PROBATION PARTNER	ISSUES / PRACTICES
Law Enforcement	Investigation and processing timelines for non-detention and detention arrests
Prosecution	Criteria for petition and/or alternative response decisions; timelines for filing; probation officer duties in informal adjustments and/or diversion
Judicial	Disposition and probation order practices, probation officer expectations
Courts	Notification processes, case processing/hearing timelines, reporting requirements
Education/School Systems	Disciplinary policies, school resource officer practices
Service Providers	Referral processing; coordination of participation and treatment summary information

While not all relationships will result in concerns that require revisions or reform to practice, the framework of this review calls for an exploration of current reciprocal policies and procedures that affect each of these youth serving relationships.

Data Sources and Resources

To determine how the case flow process functions within a department and whether key information is available at critical decision-making points, it is useful to identify a select group of experienced probation officers to analyze the intra-agency case flow process. This can be accomplished using a mapping exercise modeled on the Cross Functional Process. Process mapping allows members of an organization to:

- analyze interfaces, handoffs, bottlenecks, and other case flow process issues,
- identify information available at each point
- compliment on what works well
- identify any areas needing improvement
- identify what performance measures should follow from the desired work processes (Damelio, 2011)

The mapping process should consist of identifying probation officers’ actions in each of four functions (e.g., referral/intake, pre-adjudication investigation, adjudication and disposition, and supervision), the decisions to be made, and the resulting products. This method maximizes opportunities to learn about the multiple perspectives of probation officers.

To determine whether the relationship with the Tribal Court is clear and functioning well in terms of roles and responsibilities, the best sources of data are the responses to the group and/or individual interviews with probation officers, and interviews with the judges who are part of the key stakeholder group. Since this relationship is so important to the overall functioning of a department, this part of the review provides an excellent opportunity to reexamine the roles and responsibilities of the probation officers in relation to the court, the flow of paper and information between a department and the tribal court, the comportment of both probation officers and judges in relation to one another, and the level of satisfaction on the part of the department and the judges regarding the relationship.

The functionality of interagency processes and linkages with outside agencies, contractors, and community-based organizations should begin with a determination of the current effectiveness, strengths and opportunities for improvement. The data sources for this determination include key stakeholder interviews, focus group or stakeholder meetings with outside agencies, and meetings with supervisors and line staff.

Whether ongoing forums exist to resolve issues between a department and other agencies is an additional critical question to answer. The character of the relationships between a department and other agencies is ever changing due to developments in law, policy, and practice. These changes can jointly and individually impact each of the entities. It is therefore critical that forums be in place to resolve problems and modify practices. A probation department should have in place open forums for broad communications (announcements, personnel and policy changes, etc.); representative committees that meet regularly to do problem solving, potential problem solving, and joint policy development; and interagency agreements to specify actions that are to take place on a regular basis between agencies (for information sharing, joint protocols, etc.). If these do not already exist, the Probation System Review is a good opportunity to specify the need for their development and support methods to effectively implement these priority communication forums.

Potential Findings and Recommendations

In the intra- and interagency work processes review element, a department may find that there are hidden problems in the relationships within and outside the agency. It may find that the review only serves to highlight those problems that were already known. Whichever is the case, the review presents a fresh opportunity to look at and improve these relationships. A department might find that there are unnecessary steps or paperwork in its interagency work processes that slow the process and frustrate its probation officers in the performance of their functions and duties. Or, it might find things such as the referral process to outside agencies needs strengthening or the feedback from the providers regarding the treatment process is lacking. A department may recommend that its forums for resolution of ongoing issues, both internal and external, need to be strengthened in order to improve its intra- and interagency

relationships. The findings may also yield particular relationships that feature strengths that can and should be replicated in other inter-agency interactions. To be certain, it is clear that relationships and history of interaction must be examined and may be affecting the practices – and thereby impacting achievement of positive results. However, it is important to note that the primary focus of this area of the review is directed toward the development of enhanced policy and protocol language to ensure the sustainability of the practice improvements.

Element D: Quality Assurance

The achievement of successful outcomes for probationers should be the main business of any probation department and the gravitational point around which all of the probation officers' activities center. It is important to note that the review work conducted in Element D is also supported by and should be integrated with the analysis completed in Element A related to the routinized system of managerial oversight that contributes to fidelity of best practice among all staff within the department and among its partners. This combination of findings and recommendations provides the best opportunity to realize the goals of sustainable quality assurance.

“The achievement of successful outcomes first depends on a careful identification of what outcomes are sought; second, an examination and address of the factors that affect achievement; and third, the development of a measurement system to document achievement. The importance of the third item, or performance measurement, cannot be overstated because often what gets measured is what people value and where they focus their efforts.”

**Los Angeles County Probation
Program Audit report, p. 46**

Issues

Some of the key issues in this review element may be:

1. Whether a department and tribal court has established clear definitions for the various recidivism measures associated with their goals (e.g., closed probation cases, successful completion of probation terms, diverted youth, special populations, and court programs, etc.).
2. Whether a department and tribal court is focused on the achievement of intermediate outcomes related to positive behavioral change in addition to recidivism.
3. Whether probation has developed a clearly articulated set of client outcomes.
4. Whether worker performance and its measurement are related to desired outcomes.

The Probation System Review does not prescribe the set of youth outcomes for participant jurisdictions. The outcomes, measures and benchmark goals for each probation department and corresponding juvenile justice system should be developed and prioritized in consideration of the baseline data, characteristics (e.g., age, gender, race, offense type, etc.), policy and

statutory mandates unique to that jurisdiction. However, the Probation System Review process does prioritize a group of client outcomes that align with results likely sought and achieved by the implementation of best practice approaches and practices. Many of these outcomes have been mentioned throughout this publication but are offered here as a comprehensive, but not exhaustive, list for jurisdictions to consider:

- **Recidivism** (post-closure [by level of risk]):
 - Intensive supervision
 - Diversion
 - Informal adjustment/alternative response
 - Specialty court
 - Unique target populations [e.g., girls, minority, young offenders]
- **Program completion rates** (including all of the above, and):
 - Restitution
 - Community supervision
 - Special skills training programs (e.g., law education, special skills competency training, etc.)
- **Behavioral domains** (specifically identified in relation to the risk-needs tool(s) used, but including):
 - Education
 - Mental health
 - Substance abuse
 - Pro-social connections
 - Family functioning

In addition, since the Probation System Review focuses on system performance the following outcomes are examined for appropriate alignment with best practice and the jurisdictions population characteristics:

- **Length of probation terms** (e.g., by risk level)
- **Reductions in:**
 - Detention rates
 - Length of stay
 - Technical violations and rates of revocations
 - Secure correction commitments
- **Establishment of case processing time standards for each key decision point in the life of a youth's case:**
 - Arrest-referral [detained and non-detained]
 - Intake-initial hearing
 - Initial hearing-adjudication
 - Adjudication-disposition

The examination conducted under Element D that addresses system performance measurement and client outcomes is also intended to focus on worker performance, the completion of particular case processes, and setting and measuring client outcomes. The context for this discussion is in terms of whether probation officer activities and the time spent on the variety of mandated and preferred responsibilities is prioritized toward the activities have a clear and positive relationship with sought youth outcomes and system efficiency and effectiveness. The analysis is *not* intended to result in an evaluation of individual worker performance.

This review element also provides an opportunity to structure a performance measurement system for the array of service provider partners through the implementation of a performance-based contracting process. This ensures that the community partners (service providers) are effectively delivering treatment interventions that are contributing to or producing desired youth outcomes.

Questions that guide this part of the review include:

- What performance measures exist presently for the completion of specific case processes (e.g. meetings with probationers, collateral contacts, and timely completion of reports)?
- What measures exist for the achievement of successful client outcomes?
- What measures exist for the case assignment and caseload standards?
- Has the probation department clearly articulated a set of client outcomes?
- Do client outcomes drive probation practice and activities?
- Do treatment providers know what outcomes are expected of probationers?
- How are client outcomes identified in the individual case (intermediate and long-term outcomes)?
- What results are achieved by the current programs and practices?
- How do the practices relate to national standards for delivery of probation services?

Examples of Youth Outcome Benchmarks:

- ___% of youth will recidivate (include definitions)
- ___% of youth will complete probation successfully
- ___% of youth will realize improvement in behavioral domains after re-assessment and prior to case closure
- ___% of youth will be revoked for technical violations
- ___% will be removed from community supervision and placed in secure placement

Examples of System Performance Benchmarks:

- ___% of low-risk cases will be processed in an alternative manner (e.g., diversion, informal adjustment, etc.)
- ___% of youth will be screened for trauma
- ___% of cases a structured decision-making tool was used to guide key decisions (e.g., case processing, planning, and service interventions)
- ___% of cases will reach disposition within 60 days of referral
- ___% of time treatment is initiated within 30 days of the development of the case plan
- ✓ a graduated response tool was used in % of probation revocation decisions

Data Sources and Resources

To determine whether a department and tribal court is focused on the achievement of intermediate outcomes in addition to recidivism, the key sources of information will be its own internal performance reports and responses from interviews with key stakeholders. While recidivism cannot be ignored since it relates to the public's expectation regarding the role of the system and public safety, there are a number of other factors that influence whether the juvenile commits additional offenses. In fact, intermediate outcomes (e.g. enrollment in school, paying restitution, entering into treatment) may be more directly related to the performance of the juvenile justice system (Thomas, NCJJ, 2006, p. 3 citing to Petersilia, 1993 and Dilulio, 1991).

Determining how a department measures worker performance can be accomplished by looking at the reporting measures it uses for overall departmental performance and by looking at the performance review instrument for probation officers. Often, the performance indicators will focus primarily on the measurement of case processes (e.g. number of monthly contacts, timely completion of reports, other timely completion of forms, etc.). A related issue is consistency in the measurement of performance. This refers to whether the standards that constitute good performance are clear throughout a department and whether the performance measures are consistently applied by each supervisor using tools that reflect those standards. "Performance measures tell us where the organization is relative to its goals, how well the organization is doing, and point to things that can improve the organization's effectiveness. Ultimately, we measure to improve the performance." (Thomas, NCJJ, 2006, pp. 2-3)

Whether a department has a clearly articulated set of outcomes can be determined through group interviews with supervisors and probation officers. A department may have in place several documents that identify desired outcomes for probationers in the individual service plans, probation conditions, and recommendations to the court. The key is to determine whether the probation officers themselves can articulate the outcomes they seek for probationers and then make sure that the documents, tools, and activities in which they engage direct their performance toward achievement of the articulated outcomes.

Potential Findings and Recommendations

It is not uncommon to discover that there is ambiguity in the identification of desired outcomes and the review and evaluation of probation officer activity in relation to the outcomes. Many probation departments are focused on process outcomes as opposed to client outcomes and their performance measurement systems are similarly focused. While it is desirable to have client outcomes drive performance and activities, the Probation System Review may reveal that is not the case. A department and tribal court may find that it needs to revisit the construct of its whole performance measurement, evaluation and/or quality assurance system. Further, the

department may find that it needs to strengthen its articulation of desired client outcomes, focusing also on those intermediate outcomes whose achievement bears an important relationship to the variety of reduced recidivism measures commensurate with the population of youth in targeted programs (e.g., diversion, probation, specialty courts, etc.).

CONCLUSION OF THE REVIEW

Publication of Findings and Recommendations

Once the analysis phase of the review is complete, a report of findings and recommendations is created by the RFK National Resource Center team. In the case where the self-assessment and review is conducted internally, it is strongly advised this report is also completed. The memorialization of the comprehensive list of findings and recommendations provides the blueprint for action, a chance to prioritize next steps, and improved opportunities to institutionalize reforms. The publication and dissemination of these findings and recommendations and in what forums should be in the sole discretion of the department's management.² There is likely to be information in the report that the department will want to hold closely in order to accomplish its objectives. On the other hand, there is likely to be information that, if published could assist the department to effectively implement its recommendations for improvements. An Executive Summary can sometimes provide for a broader dissemination of the findings and recommendations because it can be written in a summary format that protects specific information. Further, it may be that excerpts of the report can be shared in particular forums to which they relate without sharing the entire report. These decisions should be considered carefully by the tribal court and probation to assure maximum benefit accrues from the ambitious undertaking of a probation system review.

Implementation of Review Recommendations

Once the review has been completed and the report has been accepted by the probation department's management, it is time to turn a department's attention to the implementation of the recommendations. The first step is to gather the personnel who are critical to the implementation of reform within the department and the tribal court. That group should consider the report in its entirety and identify what arenas and recommendations are priorities for implementation. It is likely that implementation will need to be a staged process, beginning with the areas that are ripe for action and provide the best opportunity to realize success. The plan will likely need to sequence action steps for other areas of reform over a prescribed period

² Noting the discretion of the department's management to share the results of the review with the public, in part or in the whole, relates to the situation in which the department itself has initiated the review. If the review was ordered by an outside agency, it will be incumbent upon that agency to decide how it is going to handle the publication of the review's findings and recommendations.

of time. Since each tribal court review frequently yields a unique set of findings and recommendations and the implementation of each will vary due to individual jurisdictional circumstances, it is useful to employ a set of principles from the emerging science on effective implementation of system change and reform. Over the past three years, the RFK National Resource Center has expanded the Probation System Review process to incorporate the principles of and research regarding Implementation Science. These include team development and function, stages and drivers, scaling and sequencing, and cycles of improvement. In a number of jurisdictions, we have provided enhanced technical assistance to support the development of the infrastructure, methods, and activities that a probation department and juvenile justice system stakeholders needs to effectively implement the recommendations made through a probation system review.

Implementation Science is described as “the study of factors that influence the full and effective use of innovations in practice” (National Implementation Research Network, 2015). The RFK National Resource Center has incorporated a focus on two sets of activities (intervention-level activity and implementation-level activity) and two sets of outcomes (intervention outcomes and implementation outcomes) when translating action plan strategies for community supervision practices. The development of expert Implementation Team(s) within each tribal justice jurisdiction intentionally disturbs the status quo among stakeholders, in particular among community supervision and probation practitioners. Consistent with the research, the Implementation Teams or “agents of change” are charged with refining a complex set of routines; demonstrating the knowledge, skills, and abilities to help practitioners and staff make full and

Jurisdictional Example

The RFK National Resource Center conducted a full-scale Probation System Review in partnership with the Pascua Yaqui Tribe and the Confederated Tribe of the Umatilla Indian Reservation during this project. A report of Findings and Recommendations was written for each tribal court jurisdiction that listed a set of recommendations for their consideration. Both tribal jurisdictions accepted and endorsed the recommendations contained with the reports. Each was apprised throughout the system review process of the preliminary findings and was therefore able to participate in a dynamic discussion of how their probation and tribal court leadership could actively inform and implement the final recommendations considering the unique environmental and contextual factors that impacted their juvenile justice system and community. The recommendations focused on issues such as documentation of probation practices and policies, use of a risk-need instrument or approach to inform court dispositions, expanded opportunities to explore alternative response to formal involvement in the probation and/or juvenile justice system, and reinforcing youth and family engagement in the probation and juvenile justice system processes, among others. Each tribal jurisdiction’s experience in the review provided corroboration of the fact that this Probation System Review process supported a valuable opportunity to enhance positive opportunities and outcomes for their probation and juvenile justice system – and their youth.

effective use of the innovations and providing guidance of the change processes through usability testing. Within this context, the development of a detailed work plan is critical. It is important to be realistic in deciding what can be undertaken, during what time period, and with what resources. Contextual factors will need to be taken into account such as budget periods and constraints, political pressures, employee participation and morale, and other department goals that must be managed during the period of implementation. The work plan should be very specific in terms of the recommendations that will be undertaken with specific individuals identified for involvement, and with deadlines for completion.

As the implementation plan progresses it is recommended that routine progress reports be provided. The updates should be provided to tribal justice personnel and the probation department, to relevant constituents outside the department, and to key stakeholders and consumers who are invested in the department's success. Upon completion of priority area of practice and policy change within the implementation plan, the department should publish routine implementation reports/updates. This should include improved outcomes already evident and a forecast of those improvements and outcomes likely to be realized in the future. Finally, a system of quality assurance should be developed so that the implementation of the recommendations can be tracked, reports on achievement of intended outcomes can be reported, and sustainability of the improved practices and reforms can be maintained. The use of Implementation Science to accomplish long-term, successful reforms has for too long been lacking and/or ignored. We at the RFK National Resource Center feel a professional responsibility to this work to "do better, now that we (and science) know better" and are working to support key implementation principles and practices within tribal court jurisdictions across the United States.

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APPENDIX A

Roster of Probation System Review Partners

State and Local Jurisdictions that have completed the RFK National Resource Center's Probation System Review:

2005 Los Angeles County, California

2010 Newton County, Georgia

2010 Jefferson Parish, Louisiana

2012 State of New Hampshire

2014 Hammond Region, Louisiana

2015 Territory of Guam

2015 Illinois (DuPage County, Ogle County, and the 2nd Judicial Circuit)

2016 Idaho (Twin Falls County and Jefferson County)

2016 Arkansas (Pulaski County, Sebastian County, and the 10th Judicial District)

2017 Milwaukee County, Wisconsin

2017 El Paso County, Texas

2017 Clark County, Nevada

2017 Fairfax County, Virginia

2017 Davidson County, Tennessee

2017 Lancaster County, Nebraska

2018 Washington County, Minnesota

2018 State of Delaware

2018 Cook County, Illinois

2018 Cobb County, Georgia

2018 Pascua Yaqui Tribe, Arizona

2019 Confederated Tribes of the Umatilla Indian Reservation

APPENDIX B

Statutory Foundation for Tribal Court and Juvenile Probation System Review – Additional Language

Indian Civil Rights Act (25 U.S.C. §1301 et seq.)

The Indian Civil Rights Act (ICRA) of 1968 prohibits Indian tribal governments from enacting or enforcing laws that violate certain individual rights. The act applies to the Indian tribes of the U.S. and makes many, but not all, of the guarantees of the Bill of Rights which guarantees personal freedoms against actions of the federal government; and the Fourteenth Amendment to the Constitution, which extends those protections to actions of state governments.

Complete text is available at: <http://www.tribal-institute.org/lists/icra1968.htm>

The Major Crimes Act (18 U.S.C. §1153 et seq.; §679-682 and §687-689)

Section 1153 of Title 18 grants jurisdiction to federal courts, exclusive of the states, over Indians who commit any of the listed offenses, regardless of whether the victim is an Indian or non-Indian. It remains an open question whether federal jurisdiction is exclusive of tribal jurisdiction. The enumerated offenses are, for the most part, defined by distinct federal statutes. Those offenses which are not defined and punished by federal law are to be defined and punished in accordance with the law of the state where the crime was committed.

Complete text of relevant statutes is available at:

<https://www.justice.gov/jm/criminal-resource-manual-679-major-crimes-act-18-usc-1153>

Public Law 83-280

Public Law 83-280 (commonly referred to as Public Law 280 or PL 280), the 280th Public Law enacted by the 83rd Congress in 1953 was a transfer of legal authority (jurisdiction) from the federal government to state governments which significantly changed the division of legal authority among tribal, federal, and state governments. Congress gave six states (five states initially - California, Minnesota, Nebraska, Oregon, and Wisconsin; and then Alaska upon statehood) extensive criminal and civil jurisdiction over tribal lands within the affected states (the so-called "mandatory states"). Public Law 280 also permitted the other states to acquire jurisdiction at their option.

Discussion of Issues and Concerns related to Public Law 280 is available at:

<http://www.aidainc.net/Publications/pl280.htm>

The Violence Against Women Act (P.L. 103-322; enacted in 1994)

The Violence Against Women Act (VAWA) was intended to change attitudes toward domestic violence, foster awareness of domestic violence, improve services and provisions for victims, and revise the manner in which the criminal justice system responds to domestic violence and sex crimes. The legislation created new programs within the Departments of Justice (DOJ) and Health and Human Services (HHS) that aimed to reduce domestic violence and improve response to and recovery from domestic violence incidents. VAWA primarily addresses certain types of violent crime through grant programs to state, tribal, and local governments; nonprofit organizations; and universities. VAWA programs target the crimes of intimate partner violence, dating violence, sexual assault, and stalking.

An overview about the legislative intent, history and funding is available at:

<https://fas.org/sgp/crs/misc/R42499.pdf>

Definition of Indian Country

The term Indian country is defined in 18 U.S.C. § 1151 and 40 C.F.R. § 171.3 as:

- a. all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;
- b. all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and
- c. all Indian allotments, the Indian titles to which have not been extinguished including rights-of-way running through the same.

Consistent with the statutory definition of Indian country, as well as federal case law interpreting this statutory language, lands held by the federal government in trust for Indian tribes that exist outside of formal reservations are informal reservations and, thus, are Indian country.

Additional information defining Indian country for jurisdictional purposes is available at:

<https://www.law.cornell.edu/uscode/text/18/1151>

APPENDIX C

Tribal Justice Probation System Review: Case Processing / Mapping

Thank you for participating in the Case Flow Process Mapping meeting as part of the Probation System Review initiative led by the Robert F. Kennedy National Resource Center for Juvenile Justice.

You have been selected to participate based on your knowledge, experience and perspectives that you bring to the important work you do in the probation and juvenile justice system. We will be asking that you work together to analyze interfaces, handoffs, bottlenecks, and other case flow issues in the handling of cases involved in your juvenile justice and probation system. You will be asked to use – or develop – a current depiction of the case flow for delinquency matters in your jurisdiction, from arrest to case closure.

Please take a few minutes to review the following description of suggested Case Flow Process Mapping activities that walk you through each key decision point with a structured set of questions. You will be encouraged to candidly share your knowledge, experiences and perspectives to our meeting.

The development of a case flow mapping exercise can initially be accomplished by viewing, or constructing if one does not exist, a case-flow process for the juvenile justice system. The key decision points in the processing a juvenile case will be identified, and we will collectively seek to clarify professional staff responsibilities and mandates and expected products and outcomes that support improved decision making at each key step. During this exercise, you may note references to Robert Damelio's *The Basics of Process Mapping*, 2nd Edition (2011) which provides guidance for the conduct of this case flow mapping process. Against an established consensus for the probation systems' goals, this mapping process creates an understanding of the most appropriate decision points and practices around which improvements or reforms may be developed and/or planned on behalf of youth involved in the juvenile justice and probation system. The following activities are offered to illustrate what is sought by your engagement in the process mapping activity:

- Understanding of the steps in the various system and court processes
- Identification of what happens (action), who is responsible (decision), and what output or outcome is expected or produced at each step (product)
- Discussion/Assessment of the quantity and/or quality of the information being gathered and utilized in each step of the process
- Identification of process gaps
- Identification of necessary resources (workforce and program)
- Identification of what is and is not working

As you consider these issues in the development of their graphic depiction of the process flow map and an accompanying narrative, the following questions will support a systematic review of each decision point:

- What is intended to happen at this step?
- What actually happens at this step?
- Who is responsible for taking this action?
- Who are the partners (existing and desired) collaborating in this action?
- What is expected to occur (output and outcome) before the next step occurs?
- What is missing in between steps?
- What are the key decision points at which change, or reform might be proposed?
- What are the necessary resources at each step (workforce and program)?