

# TRIBAL PROBATION:

## An Overview for Tribal Court Judges

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## **MESSAGE FROM EUGENE WHITE-FISH, PRESIDENT NATIONAL AMERICAN INDIAN COURT JUDGES ASSOCIATION CHIEF JUDGE, FOREST COUNTY POTAWATOMI, WI**

As President of the National American Indian Court Judges Association (NAICJA), I have been privileged to travel to many tribal courts and learn about their justice systems. Most tribes exercising criminal jurisdiction in Indian Country do not have access to quality jails or juvenile detention facilities. These tribes primarily rely on their probation services to provide supervision services aimed at rehabilitating defendants convicted of criminal behavior while also protecting the community from future harm while perhaps avoiding the most grievous of tribal “punishments” – banishment from the tribe for life or for a specific duration.

Incarceration is not necessarily a cultural value among many tribal cultures; therefore, community supervision is a desirable alternative for misdemeanor-level offenders. For tribes with these services in place, tribal probation officers are the backbone of the tribal criminal justice process where rehabilitation, treatment services, and ultimately success is measured in reduced recidivism rates and successful reentry back into the community. Effective use of tribal probation officers also depends on the classification of defendants into appropriate supervision levels, thereby making more efficient use of tribal probation officer time as well as effective use of valuable jail space. There is a trend indicating more violent crimes are being committed in Indian Country, which challenges tribal sentencing capabilities and tribal probation officers to successfully perform.

NAICJA works with a number of agencies to train tribal probation officers, and we are proud to support this effort of the American Probation & Parole Association (APPA) to bring their training and technical assistance services to tribal justice systems. NAICJA is working to strengthen our relationship with APPA in supporting the building of successful tribal probation programs that address these and many other components of a successful tribal probation system. The concept of intermediate sanctions, community service, drug and alcohol rehabilitation, victim restitution, and classification of probationers are vital to a successful probation process. Working with state probation departments also helps keep the peace within tribal jurisdictions. It is important that communication and understanding of each government’s sovereignty be recognized, and state probation officers must learn to work with tribal courts and tribal probation officers. Through funds provided to APPA from the Department of Justice, Bureau of Justice Assistance, this bulletin is an important first step in educating tribal judges on the important role tribal probation officers can play in their justice system.

Megwech, thank you.

## **INTRODUCTION**

There is great variation among tribes in terms of the amount of discretion that tribal court judges have when imposing sentences and sentencing conditions. Some tribal codes have specific guidelines for how certain criminal offenses are to be treated and provide very little, if any, discretion for tribal court judges. Other tribal codes allow tribal court judges more discretion and provide more general sentencing guidelines. They also may allow tribal court judges to impose other types of conditions such as probation (Garrow & Deer, 2004).

Research suggests that crime and victimization rates involving Native Americans exceed those of other minority groups across the United States. A troubling realization, however, is that many tribes lack adequate resources and funding to properly enforce laws and incarcerate offending criminals (Wilkins, Hammond, Teigen, & Luna-Firebaugh, 2008). Tribal jails and detention facilities are crowded and budgets are stretched thin. As a result, there is a growing appreciation for developing “cost-effective sentencing strategies that take into account not just the short-term goal of protecting the public by incarcerating people who break the law and threaten the safety of the community, but also the long-term goal of helping offenders<sup>1</sup> avoid future criminal behavior, thereby reducing the number of future victims of crime” (American Bar Association, 2007, p. 4). As such, community supervision<sup>2</sup> of offenders

<sup>1</sup> While individuals under supervision, such as those on pre-trial release, are typically referred to as defendants, the word offender will be used throughout this document as a general reference to individuals under supervision—regardless of the point of supervision.

<sup>2</sup> In this article, the term community supervision and probation will be used interchangeably. However, it should be noted that, in general, community supervision can encompass pre-trial release and parole, in addition to probation services.

has become a desirable alternative to address the problems of jail overcrowding, monitor conditions of supervision, enforce interventions to hold offenders accountable, address offenders' substance abuse issues, help change offenders' behavior, and protect the public.

The use of probation among tribes is growing. Tribal justice systems are ever developing in many tribal communities. In the planning of these systems, many times only the basic justice personnel are planned for (i.e., judge, prosecutor, court clerk). Community supervision/probation positions are often an afterthought. In fact, many community supervision/probation officer positions in tribes start out as grant-funded positions. For some tribes, if the grant money is not renewed, then the position simply fades away, leaving offenders in the community with no systemic supervision. Other tribes attempt to find ways to write the position into their new tribal budgets once they see the value and benefit the position provides to the tribal community.

According to the Bureau of Indian Affairs, there are 562 federally recognized tribes currently in the United States. While it is difficult to get an accurate count of the number of tribal courts (which may or may not include Healing to Wellness Courts, Drug Courts, and other specialized courts), the National Tribal Justice Resource Center Tribal Court Directory reports approximately 330 tribal courts are currently in operation. The most recent information available pertaining to probation in Indian Country from the Bureau of Justice Statistics (BJS) indicates that of the 314 tribes responding to the last census, 70 percent of those operating their own tribal court system indicated they offer probation for adults and 66 percent indicated they offer probation for juveniles (Perry, 2005).

What is unclear from the BJS census report is how tribal courts defined and carried out the function of probation within their tribes. For some tribal courts, probation may be offered as an alternative sentence; for others, it may entail merely paying a fine with little or no other compliance monitoring. The probation function may be unsupervised or be overseen by the tribal court judge, court clerk, or elder in the community rather than being monitored by a designated probation officer. While in some instances it is appropriate and useful to assign an offender to unsupervised probation, for community supervision to be used more effectively and systematically as an alternative sentence, it is important to have a trained professional designated to serve as a community supervision (probation) officer to monitor offenders' compliance with their imposed conditions.

As in county/state and federal justice systems, the size of caseloads that tribal probation officers carry varies significantly; however, there are some tribal probation officers that carry caseloads in excess of 400 offenders. Considering the role of a probation officer is to not only monitor compliance, but also assist offenders in accessing services to help them change their behavior, the large caseload sizes of some tribal probation officers (in addition to large geographical areas some tribal probation officers are required to supervise) can create significant workload issues and barriers to effective supervision. It is also not uncommon in tribal justice systems for a probation officer to supervise a dual caseload consisting of both adult and juvenile offenders—which often have very different needs and require the probation officer to have two unique skill sets.

For tribes that do have probation officers, the background and level of training that these individuals receive is quite diverse. Some have degrees and experience in the criminal justice system or a related field, while others may only have a high school degree and no formal background or training on criminal or juvenile justice issues. One important factor that cannot be overlooked is the importance of belonging to the tribe, working for the tribe. While tribal probation officers may come to the position with varying educational, professional, and personal backgrounds, those who come to the position as a member of the tribe they are serving are

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able to incorporate the values, beliefs, and teachings of their tribe into their supervision of tribal offenders (American Indian Policy Center, n.d.). Professionalization of the field of tribal probation is an important topic that needs to be explored with a focus on how it can yield greater accountability of offenders and enhance public safety in tribal communities, but any professionalization process must not overlook the value of the cultural and spiritual knowledge and history that tribal probation officers can bring to the field of probation as well.

Tribal court judges have the capacity to initiate and develop a successful community supervision/probation program. To do so, however, tribal court judges must have a clear understanding of what community supervision is and what probation officers are charged with doing so they can take full advantage of the vast amount of information and services probation officers can offer. This article is designed to provide tribal court judges with a general understanding of community supervision and how it can benefit tribal justice systems, as well as provide some insight into the role of community supervision officers.

### WHAT IS COMMUNITY SUPERVISION?

Community supervision—the conditional release and supervision of offenders in a community setting—can include the supervision of individuals placed on pre-trial release, diversionary status, probation, and/or parole. For some tribal justice agencies, community supervision is currently used as an alternative sentence. That is, an adult offender or juvenile delinquent who has been found guilty of or has plead guilty to a crime is released into the community, in lieu of serving jail time, on the condition that they follow and adhere to certain conditions of release (e.g., pay a fine, perform community service work, attend a drug treatment program, submit to random drug tests). If the offender/delinquent violates the conditions of supervision, he or she can be referred back to the court and possibly have his or her probation revoked, incur additional penalties, and/or serve jail time.

**COMMUNITY SUPERVISION:**  
the conditional release and supervision of offenders in a community setting.

A resolution adopted by the American Bar Association (ABA) in 2007 urges prosecutors and other criminal justice professionals to utilize community supervision for offenders in appropriate cases. It acknowledges that qualifications for eligibility for community supervision will vary among locales, but generally it maintains that community supervision is advisable when the offender (ABA, 2007, p. 1):

- Poses no substantial threat to the community;
- Is not charged with a predatory crime, a crime involving substantial violence, a crime involving large scale drug trafficking, or a crime of equivalent gravity;
- Has no prior criminal history that makes community supervision an inappropriate sanction; and
- Is not currently on parole or probation, unless the supervising authority specifically consents.

At its core, community supervision has myriad (and often overlapping) benefits to communities, offenders, and tribal justice systems.

## BENEFITS TO THE TRIBAL JUSTICE SYSTEM

One of the most significant benefits of community supervision from a tribal justice system perspective is that it serves as a viable alternative to jail or other confinement that can result in cost savings for the tribal justice system. The costs associated with operating a tribal jail can be a financial burden and an onerous commitment for tribes, and there are sometimes questions as to whether these expenditures provide a level of value to tribal communities which makes the investment worthwhile (Luna-Firebaugh, 2003).

Jail crowding, for those tribes that have facilities, is also a pressing issue in many tribal communities. In 2004, 13 tribal jail facilities were under a court order or consent decree to limit the number of detainees/inmates they housed and to maintain certain conditions of confinement such as detaining inmates under humane conditions, not housing juveniles, separating males and females, and limiting detoxification holds to 8 hours (Minton, 2006).

Sporadic enforcement of imposed jail terms for tribal offenders in some tribal communities also can present problems for justice authorities. For example, in tribal communities whose facilities are operated by the Bureau of Indian Affairs (BIA), the jail administrators may opt not to follow a tribal judge's ruling or detention orders; thus, the orders could possibly be set aside and the inmate released.

Despite the challenges related to jailing tribal offenders, the reality is that confinement of some individuals—whether in tribal jails, county/state jails or federal institutions—is necessary for community protection and public safety. However, not all offenders pose the same level of risk to public safety. For many tribes, incarceration in tribal detention facilities may be the only recourse tribal judges have in the absence of sentencing alternatives, such as probation. Having alternative sentences—including probation—can provide tribes with an array of correctional options that can be responsive to offenders' different levels of risk, hold them accountable for their actions, and address their individual needs in an effort to facilitate behavioral change and enhance public safety.

Not all offenders are alike—each has a unique set of factors that leads him or her to engage in criminal or delinquent behavior. Yet many times the justice system attempts to apply a one-size-fits-all approach to sanctions and interventions with offenders, and is surprised when the results are not as good as they would like. Community supervision officers can gather information about offenders from a variety of sources (e.g., criminal histories, screening information, various assessment results, interviews with offenders and families and other social networks of support) to make informed judgments about the likely causes of the individual's criminal or delinquent behavior (Taxman, Shepardson, & Byrne, 2004). This information can be provided to tribal court judges prior to pre-trial release through a report, prior to sentencing through a presentence investigation report, or after sentencing, as

## BENEFITS TO TRIBAL JUSTICE SYSTEMS

- Provides a viable alternative to jail or other confinement
- Frees limited space allocated for those offenders who pose the most threat to public safety
- Provides cost savings to tribes
- Adds credibility to the tribal justice system and to imposed sentences
- Provides judges with pertinent and relevant information about offenders to aid in decision making
- Increases accountability of offenders
- Directs offenders to needed services

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needed, to modify or update sentencing conditions or address probation violations. These types of reports can help them make decisions about who presents a higher risk of re-offending and needs to be confined to protect the community, who is most suitable for probation, and what types of services and conditions will be most effective and relevant for an individual offender that will help decrease his or her propensity to engage in criminal or delinquent behavior.

For tribal courts that do utilize supervised probation, community supervision can offer tribal justice systems a viable alternative to jail or confinement, provide a credible means for enforcing offenders' conditions of release, and help identify and direct offenders to needed services. Without compliance monitoring, the credibility of the justice system is hindered and accountability of offenders—and ultimately public safety—can be called into question. Concurrently, secure confinement can be more effectively utilized for those who are a public safety threat.

### BENEFITS TO COMMUNITIES AND VICTIMS

Garrow and Deer (2004, p. 358) state that tribal sentencing policy often takes into account the premise that the offender is a member of the tribal family, and therefore “tribal communities have a great incentive to ensure that tribal defendants receive treatment and/or rehabilitation so they can become well-functioning community members.” Effective community supervision practices can facilitate a process toward meeting that goal for tribal communities. In addition to monitoring compliance with sentencing conditions—often viewed as the law enforcement side of probation—the other main goal of probation is to provide assistance to offenders that will help them in changing their attitudes and behaviors. This blended approach is referred to as the behavioral management approach to community supervision. The behavioral management approach to supervision can lead to enhanced public and community safety by using supervision strategies aimed at motivating offenders to change, helping offenders gain skills useful to be a productive contributor to the community, and ensuring compliance with goal-oriented conditions of supervision (Taxman, Shepardson, & Byrne, 2004).

### BENEFITS TO THE COMMUNITY AND VICTIMS

- Chance for restoration
- Enhanced public safety
- Enhanced credibility and accountability of the tribal justice system

Through interviews and assessment of offenders' risk (i.e., an offender's likelihood to re-offend) and needs (i.e., factors present in an offender's life that increase their likelihood to continue to engage in criminal and delinquent behavior), probation officers gather information which they can use to determine and direct services to meet the needs of individual offenders. Prioritizing and targeting services to meeting the individual needs of offenders (e.g., antisocial attitudes, values and beliefs, low self control, criminal peers, substance abuse, dysfunctional family) has been shown to produce reductions in recidivism, thereby enhancing public safety (Andrews & Bonta, 1998; Lipton, et al., 2000; Elliot, et al., 2001; & Harland, 1996 as cited in Bogue, et al., 2004).

Allowing the offender to remain in the community also increases the opportunity for him or her to repair the harm—to the extent possible and appropriate, given the nature of the offense—caused by his or her actions to victims, families, and/or the community. Reparation can be sought through various means including payment of restitution, targeted community service requirements, individual and family counseling, and use of sentencing circles or other restorative methods to help mend broken and damaged relationships.

## BENEFITS TO OFFENDERS

Community supervision benefits the offender in numerous, potentially life-changing ways. While on community supervision, the offender can be privy to a multitude of services geared to alleviate the precipitators of his/her criminal behavior. Tribal probation officers can identify and devise a supervision and treatment plan aimed at addressing factors that have been shown to contribute to criminal behavior (e.g., history of antisocial behavior, antisocial personality, antisocial values and attitudes, criminal/deviant peer association, substance abuse, and dysfunctional family relations); help offenders identify and determine how to avoid places, situations, and events in their lives that can create or set off certain behaviors at certain times; and provide services to reduce the likelihood that offenders will recidivate (Taxman, Shepardson, & Byrne, 2004). For most people (including offenders), change is a process and does not occur overnight. Through the utilization of effective community supervision practices, probation officers facilitate the change process for offenders “through a series of interactions that provide the recipient (offender) with opportunities to learn about his/her behavior and patterns, to acquire new skills to address problematic issues, and to develop the self-maintenance tools to ensure long-term success” (Taxman, Shepardson, & Byrne, 2004, p. 4).

Being placed on community supervision can open up access to group, family, and individual counseling; alcohol and substance abuse counseling and treatment services; anger management interventions; and programs aimed at strengthening parenting skills (*which could have long-ranging, generational benefits*), educational and vocational training services, and other programs and services that incarceration simply is not equipped to provide. Returning offenders to the community with this unmet treatment need (Williams, 2007) has been positively correlated with recidivism risk. The provision of these services has the capacity to modify an individual’s behavior and reduce the likelihood that they will reoffend.

In addition to accessing needed treatment services, offenders placed on community supervision can continue to work and/or seek employment so they can provide for themselves and/or their families and dependants and remain productive members of their community. They also can maintain involvement (or be encouraged to become involved) in spiritual and cultural practices.

## HOW CAN JUDGES UTILIZE COMMUNITY SUPERVISION OFFICERS?

Community supervision officers, i.e., probation officers, can wear many hats, depending how their system operates, how their duties are designed, and what role judges need them to play. One way tribal court judges can utilize community supervision officers is with information gathering. Community supervision officers can be charged with conducting screenings and risk/need assessments and preparing sentencing recommendations (presentence investigation reports) based on the information collected. Having such information synthesized in a meaningful way can allow judges to make sentencing decisions that take into account factors known to have an influence on risk of recidivism (e.g., prior criminal history, ties to the community/family, employment status, mental health status, etc.). Community supervision officers can gather this information and take this responsibility off the judge and/or court clerk, who are already overburdened with growing caseloads and other administrative duties.

## BENEFITS TO THE OFFENDER

- Remain at home
- Maintain connection to the community
- Maintain (or seek) employment
- Access to needed treatment and other resources/services
- Maintain (or encourage) involvement in spiritual and cultural practices

## ROLE OF A TRIBAL PROBATION OFFICER

The myriad roles of a probation officer revolves around two primary functions—surveillance and services (Burrell, 1994). Common tasks associated with these functions include but are not limited to:

- Assess the risk and needs and investigate the background of an offender to provide the tribal court judge with relevant and pertinent information about the offender to consider during sentencing.
- Utilize risk and needs assessment information to identify the level of supervision required of offenders on probation and develop an appropriate case plan.
- Develop a case/supervision plan that outlines the conditions of probation and a plan for services that promotes positive behavior change in offenders and incorporates culturally focused interventions when available.
- Monitor the activities and behavior of the offender utilizing both evidence-based strategies and tribal resources such as elders.
- When appropriate, determine and provide access to appropriate services to help bring about positive behavioral changes in offenders, including spiritual and cultural interventions (e.g., restorative justice programs, substance abuse assessment, substance abuse treatment, mental health counseling, job readiness development, involvement in spiritual or cultural activities).
- Apply graduated sanctions (e.g., more frequent reports to the probation officer, more frequent drug tests, probation violation report, recommendation for revocation) to respond to noncompliant behavior.
- Provide appropriate rewards or incentives (e.g., travel permits, early termination from probation, decrease frequency of drug tests) to respond to compliant behavior.

Additionally, probation officers can monitor court-ordered conditions placed on offenders to ensure compliance. This increases offender accountability and the credibility of the tribal justice process. If an offender is placed on community supervision and begins to exhibit signs of noncompliance or is charged with a probation violation, judges can utilize the community supervision officer's unique perspective and knowledge about the offender for additional justification when making revocation decisions. Through regular contact with the offender and his or her family and social networks of support, as well as through the results of subsequent re-assessments, community supervision officers often have helpful insight into what may have prompted the offender to relapse or violate. For example, in some instances, there may have been extenuating circumstances surrounding the situation about which the community supervision officer can inform the judge. In other cases, the supervision officer may be able to point out and demonstrate willful noncompliance on the part of the offender with certain conditions of supervision.

Another way tribal court judges can utilize community supervision officers is in the rallying of community resources to address offenders' criminogenic needs. Through their understanding of offenders' needs (e.g., drug and alcohol treatment, housing, mental health services) in the community, tribal probation officers can provide information to tribal court judges that can aid them in making more informed decisions about the use of existing and the development of new resources and services for tribal court offenders.

In addition, community supervision, by its very nature, relies on the provision of offender services by a multitude of community-based agencies. Unlike community supervision officers, judges often do not have the time to assess community resources

to identify available services and form alliances for services. For tribal judges, this difficulty is magnified often by a lack of resources and services available on tribal land, the travel distance to available non-tribal resources, and the lack of Memorandums of Understanding/Memorandums of Agreement (MOUs/MOAs) with neighboring county/state agencies that provide needed services. Additionally, many tribes are inhibited by their reliance on contracts with federal agencies, such as Indian Health Services, that serve as sole providers of services. However, tribal judges can look to probation to assist with the identification of varying services available to offenders that address criminogenic needs to increase the sentencing options available to judges and provide a richer menu of options for judges to ensure offenders are receiving interventions based on their individual risk and needs.

For tribes that opt in, having a community supervision system in place within the tribal justice system will ideally increase capacity of tribes to implement mandates under the Adam Walsh Act. Because sex offenders are considered a dangerous offender population and their crimes have an impact on their victims for a lifetime, constant and close supervision is essential. When tribal probation officers are provided with the appropriate training, tools and resources can assist them in monitoring community notification, offender registration, residence, and GPS requirements, as well as provide the court with notices of violations when necessary.

## **HOW CAN A TRIBAL COURT JUDGE SUPPORT COMMUNITY SUPERVISION OF OFFENDERS?**

There are many ways in which tribal judges can support community supervision practices in their tribal justice systems. One of the main ways tribal court judges can enhance their tribal justice systems is to gain a better understanding of and appreciation for what probation officers can do so they can utilize tribal probation officers to their fullest potential.

Tribal court judges also can provide needed judicial backing and support for probation officers to enforce and monitor conditions of supervision and work with offenders on changing their behavior. Judges have the ultimate authority, in most cases, to decide what sanction is imposed on each offender before the court. If community supervision is granted, the judge determines how long the probation will last and how much will be paid in fines, restitution and supervision fees, and assigns any special supervision conditions he/she deems necessary to steer an offender toward rehabilitating his or her behavior (e.g., drug testing, counseling, home visits). Conversely, if a probationer breaks a condition of supervision, the judge has the authority to revoke community supervision and require the offender to serve the original sentence imposed by the court or to impose more severe sanctions while maintaining community supervision.

Tribal court judges can also provide credibility to the community supervision process and the position of probation officer by working to professionalize the position in the eyes of the court and the community. This can be done by creating an official job description which outlines duties, responsibilities, and expectations for those in the community supervision/probation position; conducting personnel performance reviews and evaluations; ensuring that community supervision/probation officers receive adequate initial training and continuing education so they are knowledgeable about current evidence-based practices for working with tribal offenders; and preparing for the sustainability of the position by advocating its adoption into the tribes' annual budget and eliminating the dependence on grant funding.

Community supervision/probation officers need many resources in their toolbox to provide good, effective supervision to a diverse population of offenders. Comprehensive and ongoing training to improve knowledge of offender issues and enhance job skills is certainly critical; however, tribal court judges can assist community supervision/probation officer in gaining access to other needed resources as well. For example, tribal court judges can work to ensure that, under their watch, probation officers have access to the needed assessment instruments (screening, risk/need, specialized, and strength-based) as well as have

## **WAYS TRIBAL COURT JUDGES CAN SUPPORT COMMUNITY SUPERVISION**

- Educate yourself about what probation officers do and about evidence-based practices of community supervision
- Consider ways to implement and utilize community supervision services more effectively
- Provide necessary judicial backing and support for probation officers working with offenders and monitoring and enforcing conditions
- Professionalize the position of probation officers
- Provide opportunities for training, continuing education, and professional development of probation officers
- Review current tribal code and advocate for changes that will enhance community supervision services and practices
- Provide adequate tools and resources to enable probation officers to implement supervision practices shown to be more effective
- Plan for prolonged sustainability of the position

the latitude to individualize supervision/treatment plans according to the results of those assessments. Additional tools and resources that may benefit some community supervision/probation officers include access to training and appropriate and proper safety equipment to protect officer safety (e.g., bullet-proof vests, less-than-lethal weapons), drug and/or alcohol-testing supplies, electronic supervision tools, reliable transportation, and back-up assistance from law enforcement officers when needed to conduct safe searches and seizures.

Tribal court judges also can conduct a review of current tribal codes to ensure that they support good probation practice and, when necessary, advocate for modifications to the code that are deemed appropriate. For example, proactive supervision practices require probation officers to supervise offenders beyond the boundaries of their offices by stepping out into the community and visiting with offenders in their homes, at their workplaces and in other community settings. Tribal court judges can work with tribal leaders, when necessary, to establish policies and procedures that allow supervision officers to conduct home and employment visits to aid in monitoring and enforcement activities.

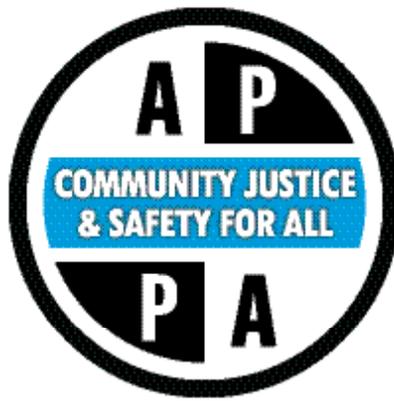
### **CONCLUSION**

Tribal court judges have an important role to play in developing and sustaining effective community supervision programs in their communities. Tribal justice systems are not new; they existed long before federal, state, and county systems, but they are being asked to address new challenges and taking on new forms and dimensions within which community supervision/probation can play a vital role. The key is for tribal court judges to recognize and have a full understanding of how implementation and utilization of effective community supervision practices can benefit their system and their community and use these services to their fullest potential.

Tribal court judges are in a unique position to construct changes within systems not currently utilizing community supervision/probation strategies. They often oversee the tribal justice system and are able to take the steps necessary to either initiate the use of community supervision/probation or enhance what currently exists to make it a more valuable justice resource. Jail crowding is a nationwide justice issue, and is often exacerbated in Indian Country; probation offers a cost-effective and community-oriented approach for the release of low-risk offenders back into the community where they can maintain family and community connections, receive treatment interventions, and repair the harm they have caused the tribal community. With the assistance and support of tribal court judges, offender supervision in Indian Country can mesh evidence-based practices for community supervision with traditional tribal-specific interventions and practices.

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*According to the American Probation and Parole Association (1987), probation is premised upon the following beliefs:*

- Society has a right to be protected from persons who cause its members harm, regardless of the reasons for such harm. It is the right of every citizen to be free from fear of harm to person and property. Belief in the necessity of law to an orderly society demands commitment to support it. Probation accepts this responsibility and views itself as an instrument for both control and treatment appropriate to some, but not all, offenders. The wise use of authority derived from law adds strength and stability to its efforts.
- Offenders have rights deserving of protection. Freedom and democracy require fair and individualized due process of law in adjudicating and sentencing the offender.
- Victims of crime have rights deserving of protection. In its humanitarian tradition, probation recognizes that prosecution of the offender is but a part of the responsibility of the criminal justice system. The victim of criminal activity may suffer loss of property, emotional problems, or physical disability. Probation thus commits itself to advocacy for the needs and interests of crime victims.
- Human beings are capable of change. Belief in the individual's capability for behavioral change leads probation practitioners to a commitment to the reintegration of the offender into the community. The possibility for constructive change of behavior is based on the recognition and acceptance of the principal of individual responsibility. Much of probation practice focuses on identifying and making available those services and programs that will best afford offenders an opportunity to become responsible, law-abiding citizens.
- Not all offenders have the same capacity or willingness to benefit from measures designed to produce law-abiding citizens. Probation practitioners recognize the variations among individuals. The present offense, the degree of risk to the community and the potential for change can be assessed only in the context of the offender's individual history and experience.
- Intervention in an offender's life should be the minimal amount needed to protect society and promote law-abiding behavior. Probation subscribes to the principle of intervening in an offender's life only to the extent necessary. Where further intervention appears unwarranted, criminal justice system involvement should be terminated. Where needed intervention can best be provided by an agency outside the system, the offender should be diverted from the system to that agency.
- Punishment. Probation philosophy does not accept the concept of retributive punishment. Punishment as a corrective measure is supported and used in those instances in which it is felt that aversive measures may positively alter the offender's behavior when other measures may not. Even corrective punishment, however, should be used cautiously and judiciously in view of its highly unpredictable impact. It can be recognized that a conditional sentence in the community is, in and of itself, a punishment. It is less harsh and drastic than a prison term but more controlling and punitive than release without supervision.
- Incarceration may be destructive and should be imposed only when necessary. Probation practitioners acknowledge society's right to protect itself and support the incarceration of offenders whose behavior constitutes a danger to the public through rejection of social or court mandates. Incarceration can also be an appropriate element of a probation program to emphasize the consequences of criminal behavior and thus effect constructive behavioral change. However, institutions should be humane and required to adhere to the highest standards.
- Where public safety is not compromised, society and most offenders are best served through community correctional programs. Most offenders should be provided services within the community in which they are expected to demonstrate acceptable behavior. Community correctional programs generally are cost-effective and they allow offenders to remain with their families while paying taxes and, where applicable, restitution to victims.