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Tribal Justice, Tribal Court

Strengthening Tribal Justice Systems Using Restorative Approaches

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In Partnership with:

Sisseton Wahpeton Oyate



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We also want to acknowledge the many tribal justice practitioners, community members, council members, and researchers who have brought the need for community-engaged research and Indigenous data sovereignty to the forefront, inspiring so many graduate students, scholars, and allies to do community-based and community-engaged research.

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Tribal-Researcher Partnership Report

Table of Contents

Executive Summary	4
Summary of Research	5
Conceptualization	5
Re-Conceptualization	6
Statement of Problem and Research Question	7
Background	8
Methods	12
Findings	13
Process of Collaboration	16
Intention of Process	16
Description of Actual Process	16
Reflections	19
Challenges Experienced	19
Lessons Learned & Successes	20
Conclusion	22
References	23
Appendices	26
Appendix A: Tribal Resolution	26
Appendix B: Research Office Presentation	29
Appendix C: Sellins & Wolfgang	56
Appendix D: SWO Index	62

Executive Summary

“Problems cannot be solved using the same mindset that created them.”

-attributed to Albert Einstein

Tribal communities had their own unique justice systems prior to colonization. These justice systems were developed over centuries and were highly specific to the individual tribal community. During the Assimilation Era (1890-1930) and Reorganization Era (1930-45) many tribal nations adopted constitutions and developed tribal courts modeled after the US. The imposition of a western approach to governance and justice has not always had the effect that was intended. As the US shifted to promoting Self-Determination, many tribal nations re-evaluated their governance systems, including their tribal courts. CRF Courts gave way to tribal courts, which began incorporating elements of traditional values.

This research project represents a collaboration between the University of Hawai'i and Sisseton-Wahpeton Oyate Tribal Court. The Tribal Court is part of the Executive branch and consists of one Chief Judge and two Associate Judges. Judges are appointed for two-year terms by the Tribal Council after receiving a two-third vote of the Tribal Council. Judges may only be removed based on recall and impeachment. In the past the Tribal Court had an active Wellness Court, however, it has since been replaced. Some tribal leaders have recently expressed interest in reviving this type of work. This landscape prompted our research team to understand when and how tribal judges use restorative approaches in their cases. We specifically hoped to look at the role of substance use and crime severity in the decision of when to use restorative approaches.

Summary of Research

Original Conceptualization

The original proposal for this research project was conceptualized under significantly different circumstances than when it was implemented. As a result, we were required to make significant revisions to the research design to account for the changed situation. The research team believes there is value in articulating the genealogy of this project.

The original proposal was submitted in May of 2019. At this time COVID-19 had not yet been identified and the Sisseton-Wahpeton Oyate Tribal Court Chief Justice was B.J. Jones. The research project was originally intended to be co-designed with Tribal Court staff in accordance with community-based participatory principles. The Tribal Court had already engaged in some restorative justice through the Sisseton Wahpeton Oyate Wellness Court and some of the Judges used restorative concepts in the disposition of their cases believing it to provide better outcomes.

In recognizing that the western approach to criminal justice, which focuses on punitive measures has failed to produce the desired effects on the community, this project focused on restorative approaches. Because restorative approaches have not been studied before, their efficacy and value have not been fully defined. Restorative approaches were therefore limited in their adoption. A finding that restorative approaches to justice produced the same or better results than punitive approaches could support the expansion of restorative programs. Our hope was that this research would provide the first step to developing evidence-based support for tribal policies related to criminal justice by creating a baseline for when restorative approaches were used.

Our project aimed to answer when and how Tribal Courts use restorative approaches. A key distinction in our research design was that the research plan itself would be co-developed. The Tribal Court would be a participant in each stage of the planning,

Tribal-Researcher Partnership Report

implementation, and analysis process. This was critical to ensure that culturally grounded methods were utilized. We also hoped to incorporate Dakota frameworks in the analysis, aided by the inclusion of Tribal Court co-researchers. To answer the question, we intended to develop a Dakota specific crime seriousness matrix.

Currently, the majority of measures for crime seriousness are based on a Western perspective of appropriate behavior. The first study to develop a measure for crime severity was implemented by Sellins and Wolfgang. After this seminal study, several studies applied the Sellins and Wolfgang's crime seriousness index to Asian cultures and found that there were notable differences due cultural variation. We intended to develop a Dakota crime seriousness index in-house using tribal court and government employees. Once the index was created, we would obtaining a sampling of tribal court dispositions and using the newly developed index calculate a score for each case. Finally, we would conduct a qualitative analysis of the court cases to determine when restorative justice was applied by the Tribal Court and when more punitive approaches were mandated.

Re-Conceptualization 1

Due to several challenges, discussed in detail below, we revised our research design significantly. The original proposal aimed to answer when and how restorative interventions are offered by Tribal Court Judges. The re-conceptualized version of the research project strove to answer the same question, however, instead of developing the crime seriousness index internally, we would administer a survey to tribal citizens that currently reside or have resided on tribal lands. Once the crime seriousness index was developed, we would use it to analyze a sampling of cases and assign each case in the sample a value.

In the original project design the sampling of cases would be a census of the cases over a period of ten years. However, this was revised to a smaller sample to align with the resource needs of the Tribal Court as well as the PI's ability to travel during the pandemic.

Tribal-Researcher Partnership Report

Finally, a qualitative review of the cases would be conducted to determine if restorative approaches were used and, if so, what type. This information would be cross-referenced with the severity score of the type of crime to identify trends. The re-design effectively placed much of the focus on the development of the crime seriousness index rather than an analysis of the case dispositions.

Re-Conceptualization 2

Despite the best efforts of all involved the COVID-19 pandemic continued to create significant backlogs at the Tribal Court. As a result, the Tribal Court notified the PI on October 1, 2022 that they would be unable to pull, anonymize, and provide a sampling of tribal court dispositions for analysis. As a result, the project scope was revised. In addition to developing the tribal specific crime seriousness index, the study also conducted a comparison with the Sellins and Wolfgang results identifying areas of divergence.

Statement of Problem and Research Question

Behavioral health includes both disruptive and criminal behavior, a recognition that criminal behaviors are often rooted in dysfunction and disconnection. Sisseton-Wahpeton Oyate Tribal Court identified substance abuse as playing a role in many crimes that came before the Court. Moreover, the Sisseton-Wahpeton Oyate Health Services had identified behavior health and co-dependency as their number one priority. Thus, the community clearly recognized that much of the criminal behavior occurring in the community may be due to underlying reasons that a punitive approach would not resolve. The Tribal Court started a Tribal Wellness Project to address these issues, but unfortunately it was paused in favor of a more punitive approach. Since then, several tribal leaders have re-considered this position. This project sought to answer the question of when and how the Tribal Court uses restorative justice.

Background

Restorative Justice

The foundation of the Western conventional judicial model is due process. The focus on due process serves to privilege decisions made by unfamiliar arbiters who often lack connection with the communities that they work in. This results in an undervaluing of community producing a retributive lean. In contrast, Indigenous justice systems often include a restorative element. The goal of these restorative systems is to make the victim whole while allowing the perpetrator to return as a productive member of the community. Rather than focusing on retribution on behalf of the victim, the Indigenous model works on a micro and macro level to heal the individual and community, respectively.

The modern Western criminal justice system arose out of the rise of state order. Prior to the rise of the state, crimes were viewed as a wrong by one person (offender) inflicted upon another (victim). This was seen as a private matter and punishment left to the family of the victim (Hunter, 1994). This began to change in feudal Europe (Johnstone, 2009), where crimes became crimes against the Lord or King (Jones & Johnstone, 2009). Over time this evolved into the prosecution of crime by the state to ensure that society remained orderly (Braithwaite, 2002; Hostetler & Child, 2009). Under the modern criminal justice system, punishment itself is seen as a means to rehabilitate the offender and deter future offenses (Frase, 2005). Harsh sentences that “make an example” are often utilized to dissuade others from committing crime (Frase, 2005). For such a system to be seen as legitimate (Dolovich, 2014; Levasseur, 2002), due process rights were implemented that guaranteed fairness (Rutland, 1993).

Restorative justice, conversely, is a direct contrast to the conventional Western criminal justice process. A retributive or punitive model focuses on offenders and victims, through the prosecution, as adversaries, discouraged from communicating directly with each other, and

Tribal-Researcher Partnership Report

expected to remain passive whilst all the key decisions are made by professionals” (Johnstone, 2003). In restorative justice, the two parties take part in mediation focusing on the future in a process that is designed to restore control to the victim. Moreover, in a restorative process a secondary goal is to help provide reparations to the victim and community by helping the offender understand the inappropriateness of their actions and feel remorse. This reparative action not only serves to make the victim whole, but also helps to reintegrate offenders back into the community (Anihotri & Veach, 2017; Reimund, 2004).

Because many tribal courts now operate using a Western influenced system, due process concerns have become more present in the analysis. In order for the offender to feel remorse and apologize, they are effectively admitting guilt (Reimund, 2004), which creates significant due process issues when conducted pre-conviction. This betrays the disconnect between the value system underpinning Indigenous vis-a-vis Western conceptions of justice. Nonetheless, many tribal justice systems incorporate traditional peacemaking or restorative practices in their judicial system. In some cases, tribes opt to create separate peacemaking system. In other cases the tribe attempts to incorporate traditional restorative practices into their existing court system. Restorative justice is rooted in many Indigenous communities. Today, tribal nations are exercising self-determination by redressing the overreliance on colonial justice systems (Hand et al., 2012) and infusing more traditional restorative values into their legal systems.

By using traditional methods these communities can address the deep-rooted nature of an offender’s destructive and sometimes criminal behaviors. Recent research on criminal behavior desistance suggests that it is a de-escalation process that unfolds over one’s life (Bushway, 2003; Kazemian, 200). When coupled with the cultural match of restorative justice (Meyer, 1998), it is likely that tribes are already incorporating restorative processes in their judicial system and may have unique approaches for using restorative justice that other jurisdictions may benefit from. Additionally, prior research suggests that the seriousness of

Tribal-Researcher Partnership Report

the criminal act influences victim desires to participate in restorative processes and influences which types of restorative processes that they are willing to engage in (Vanfraechem, Bolivar, and Aertsen, 2015).

The influence of controlled substances may also play a role in the appropriateness of restorative approaches as decisionmaking may be impaired. According to the Bureau of Justice Assistance, 62 percent of crimes in Indian Country are alcohol related compared to 42 percent for the rest of the U.S. during 1992-2000 (Perry, 2004). The Sisseton-Wahpeton Oyate Wellness Court was developed in large part by the Sisseton-Wahpeton Oyate Tribal Court. It emphasized culturally-based restorative treatment in the rehabilitation of repeat tribal alcohol offenders. A South Dakota survey found that individual Lakota, Dakota, and Nakota people who were more oriented to their culture drank less heavily (2002), which lead to the incorporation of cultural coping methods such as drumming in the Sisseton-Wahpeton Oyate Wellness Court. The Sisseton-Wahpeton Oyate Wellness Court services were integrated in the Sisseton-Wahpeton Oyate Tribal Court and included a one-year long program where participants were monitored by the Court.

In Indigenous communities, intimate knowledge of the community and its members is not necessarily seen as a detriment to justice. Rather this intimate knowledge may be beneficial in crafting a course of action that will bring the parties and community back to a place of balance. The Sisseton-Wahpeton Oyate Wellness Court was successful in that it was highly integrated and there was a high graduation rate. However, tribal members reported that they were less satisfied with tribal law enforcement handling of drug related offenses compared to alcohol related offenses and felt less safe over the long term as a result.

The Sisseton-Wahpeton Oyate Wellness Court also provided an option for juveniles. The hiring of a juvenile probation officer appeared to improve the Court's ability to monitor juveniles and coordinate with neighboring probation officers. In addition, culturally appropriate treatment services were integrated. While the juvenile program was suspended in favor of a

Tribal-Researcher Partnership Report

more Western punitive approach, the adult Wellness program continues to be sustainable (Joe, et al., 2008).

Crime Seriousness Indices

Most post-industrial nations have a crime index and more often than not these indices merely provide a raw count of criminal incidents painting an incomplete picture of what the community is experiencing. Crime seriousness indices, on the other hand, seek to provide additional granularity by considering the seriousness of crimes committed. Using a weighting system, crime seriousness indices assign higher values to more seriousness crimes based on the perceptions of the community (Blumstein, 1974). Ever since Sellins and Wolfgang first wrote about measuring crime seriousness, scholars have attempted to replicate their findings in other areas and in other communities (1964). Replication studies among Canadians and French-Canadians were similar with the original Sellins and Wolfgang study (D. Akman et al., 1966; D. D. Akman et al., 2006).

Sellins and Wolfgang claimed that their crime seriousness scale would fit most Western nations. Only a handful of studies explicitly set out to test this hypothesis with some finding cultural, social, and gender differences influenced their results. In fact, 35% of the articles in our scoping review found at least one socio-cultural difference when developing their crime seriousness measurement. Significant differences were shown between Blacks and Whites for not only individual crimes, but also in the aggregate (Hawkins, 1980). Social class differences were also identified in this study (Hawkins, 1980). In Taiwan, culture was a significant factor affecting value judgements (Hsu, 1973). Similarly, in India specific crimes existed, such as dowry deaths, that do not have complementary crimes in Western society (Desikachar, 1994). Thus, there is reason to believe that Western developed crime seriousness indices may not apply well to Indigenous communities.

Tribal-Researcher Partnership Report

Crime seriousness indices can provide significant value to policymakers. Traditional crime indices provide justification for differential police service and evidentiary support for legislative changes. A crime seriousness index is additionally “useful for analyzing crime trends - not just the amount of crime coming to the attention of the police, but the severity of this crime.” It also highlights whether crime is more or less serious across years (Wallace, 2009). However, since crimes are police reported most crime indices do not include unreported crimes (Babyak et al., 2009). Moreover, all crime indices will not include inappropriate behavior that is not codified as a crime but is considered universally inappropriate in a community. Thus, highly inappropriate behavior that may be unique to certain communities such as those related to religion or spirituality, natural resource management, or culture will not be captured. Nonetheless, understanding trends related to all crimes will support evidence-based decisions by policymakers.

Methods

First, a scoping review was conducted of the development of crime seriousness indices to select the method that would be used in this study. Five methods were identified: 1) survey; 2) in-depth interviews; 3) paired comparison; 4) records/sentencing analysis; and 5) secondary modeling. Several experts in tribal law and policy recommended the survey method because of its ease of implementation on a virtual basis, availability of validated questions, and ability to apply in a tribal context.

An online survey was administered using a convenience sample of Sisseton-Wahpeton Oyate citizens. The survey asks respondents to rank descriptions of certain crimes from 1 to 10 (with 1 being the least serious and 10 being the most serious). The survey used questions from the original crime seriousness index study by Sellins and Wolfgang.³¹ questions of the 141 that were validated by prior studies that verified the Sellins and Wolfgang study were

Tribal-Researcher Partnership Report

used. The data from the survey were then analyzed and a crime seriousness index was developed using the geometric means.

Next, a comparison of the results of the Sisseton-Wahpeton Oyate crime seriousness index to the original Sellins and Wolfgang results were conducted. While there was some overlap, in the majority of questions there were statistically significant differences between the respondents and the original Sellins and Wolfgang results. In some instances, these differences made sense because of the significant time difference between when these studies were administered. For example, issues around rape have changed significantly since the 1960s. However, in other instances, such as around assault or theft, remain socially unacceptable. These differences indicate that there is a cultural element to crime severity perceptions.

Findings

We conducted a scoping review to determine the methods that can be used to develop a crime seriousness index. We pulled 563 articles from databases and added an additional 26 from a review of their bibliographies. After conducting a review of the title and abstract, we then conducted a full-text review, which resulted in 12 articles meeting our inclusion criteria. Data was extracted from these articles and the results were categorized into five distinct methods. The five methods to develop a crime seriousness index were: 1) survey (n=22); 2) paired comparisons (n=3); 3) in-depth interviews (n=1); 4) records/sentencing reviews (n=4); and 5) secondary modeling (n=2)

The number of events or questions that were asked of participants varied significantly. In the original crime seriousness study by Sellins and Wolfgang 141 “events” or description of the criminal act in plain language were included. Sellins and Wolfgang identified 14 main events. These main events provided the backbone of their index. Events provide only

Tribal-Researcher Partnership Report

information about the crime committed without any contextual description of the perpetrator and victim.

Based on our scoping review we identified various sampling strategies including convenience, randomized, census sampling, and a mix of sampling strategies. Several measurement methods were utilized, including categorical, magnitude, paired comparison, and sentencing data. Categorical measurement asks respondents to rate the crime using a number within a certain range whereas magnitude measurement seeks to measure severity by determining a reference to an identified “true zero.” In magnitude measurement participants are asked to provide a number for severity with no bounds based on a set example.

As a result of the findings of our scoping review along with discussion with tribal legal scholars we decided to develop a survey that included the original 14 main events of the Sellins and Wolfgang study along with some additional events that we believed would be relevant based on our background research. We modified several of the questions, including changing the dollar amount of thefts and property damage to align with inflation and the tribe’s regional area. In contrast to the Sellins and Wolfgang study, which did not provide information on the offender, we repeated several questions adding in that the offender was intoxicated to see if that impacted perceived crime. Finally, we added questions asking respondents to articulate the role of a tribal court to identify the strength of identification with restorative principles.

Based on the responses received we have sufficient power to develop a tribal specific crime seriousness index. Respondents self-rated their knowledge of traditionally appropriate behavior as a 7.2 and knowledge of appropriate modern day behavior as 7.6 out of 10. Respondents overwhelmingly believed that the Tribal Court should focus on “getting to the truth” and “making the perpetrator a productive member of society;” however, respondents

Tribal-Researcher Partnership Report

were equally split as to whether the Tribal Court should “punish the offender” or “make the victim whole.” These questions served as a type of baseline for the values of the community as to the role of the Tribal Court. Further, these results indicate that the community has endorsed a desire for a restorative focused tribal justice system.

Almost all of the questions produced results that did not align with the original Sellins and Wolfgang. This could be a variety of reasons, including that significant time has passed since the original survey was conducted. For example, questions revolving around marijuana use were significantly different, however, because marijuana is now legal in many states when it was not when the original study was completed. However, questions around heroine use had less variation.

In addition, the cultural differences and experiences of individuals living on reservation is significantly different than those in the general population. We did alter some of the questions slightly in order to better align with the time period and geographic location. For example, the original study included a question about cashing a false check at the bank, which we changed to using a credit card without permission.

There is general internal consistency in the perceived severity of crime. There were few outliers in the responses and those outliers involved intoxication and rape. There is some data to indicate that intoxication mediates perceived crime severity, in assault and rape, but not in drunk driving. In other words, respondents found that when a perpetrator was intoxicated the crime of rape was more serious; however, in the crime of assault if the perpetrator was intoxicated the crime was less serious so long as there was no significant injury. However, intoxicated did not significantly alter perception of vehicular homicide.

Process of Collaboration

Intention of Process

In recognition of the importance of connection to place and people, the data collected was originally designed to be conducted during two lengthy site visits by the PI. At the proposal stage, the research team had communicated with the Tribal Research Office and determined that because court records were public no Tribal IRB was needed. Nonetheless, our intent was to re-engage with the Research Office in order to ensure proper protocol was followed.

Biweekly virtual meetings were to be held with the Tribal Court collaborator to go over methods and to plan the logistics of these visits. Moreover, pre-work including reviewing the tribal codes and developing internal crime seriousness index procedures would be developed for discussion in person.

Description of Actual Process

The project was originally a tribally driven participatory research project that drew on SWO's Tribal Court's identified priority area of crimes involving substance abuse. At various stages of proposal development, the Tribal Court and Legal Department were consulted for their input. At that stage a resolution was prepared and passed by the Tribal Council to officially engage in the project. Although this initial planning phase does not involve human subjects, the SWO Internal Review Board was also consulted. Originally, we were informed that because the tribal court records were public, and the crime seriousness index would be developed in-house there would be no need for Tribal IRB review. All parties' input was sought prior to submission of the proposal in order to ensure that the proposal incorporated the collective wisdom of tribal leadership.

From submission of the proposal on May 6, 2019 until the receipt of funds there was minimal contact between the parties as tribal partners preferred to re-engage once it was

Tribal-Researcher Partnership Report

clear that the project would move forward. Once funding was received, we learned of a significant change in personnel that had significant impacts. The projects' main collaborator at the Tribal Court was no longer the Chief Judge resulting in the need to develop new relationships and socialize the project.

As the pandemic continued to unfold our intent to conduct the majority of the data collection at two site visits became impossible for multiple reasons. First, travel was limited for much of the early stages of the research. Second, the University of Hawai'i instituted strict limits on travel, which still have not fully lifted. Third, the Tribal Court and government was not fully operational for the majority of the grant period. Fourth, the Tribal Court remained backlogged and overburdened due to the pandemic and personnel issues.

A new Chief Judge was appointed by the Tribe in early 2020. A virtual collaborative meeting was held on September 2, 2020 between the research team and Tribal Court. The Chief Judge indicated her support of the project but identified staff concerns. While the meeting was productive it did not result in significant movement despite the project's willingness to allocate additional funding to the Tribal Court. However, several months after our meeting the Tribal Chief Judge was replaced with an Acting Chief Judge resulting in the need to re-develop relationships. Two tribal citizens were brought on to facilitate meetings and assist with in-person tasks at the Tribal Court.

At the January 27, 2021 Tribal Council Meeting the Tribal Council reaffirmed their support of this project. It was also brought to the project's attention that the Tribal Research Office had a new director resulting in the need to have our project re-evaluated. Thus, on March 5, 2021 the research team met with the Sisseton-Wahpeton Oyate Institutional Review Board (SWO IRB). A new director has been hired at the SWO IRB and new interpretations of the Tribal Research Code along with a new application have been promulgated. Thus, this project now falls within a different category of research and a de novo review must be undertaken. The PI drafted the application and submitted it in July 2021. This meeting was

Tribal-Researcher Partnership Report

highly productive because the Tribal Court remains overwhelmed and is not able to engage to the degree we initially proposed, however, the SWO IRB has become an active partner in this project.

Two graduate students were brought on to assist with the systematic review and the development of the survey. A survey was developed in November of 2021 and sent out to the community in April-June 2022. The delay was a result of misalignment between multiple institutional review boards and discussion of data sovereignty issues related to the archiving of tribal data. Because the Tribal Court has still been overwhelmed with cases and their ability to engage in a meaningful way has been limited. As a result, the research team has engaged largely with the Tribal Research Office and individual tribal leaders and citizens.

Reflections

Challenges Experienced

COVID

It goes without saying that the COVID-19 was unexpected and created significant challenges across the board. The pandemic had rippling effects both at the University of Hawai'i and for Sisseton-Wahpeton Oyate. As discussed above, the tribal government was sporadically open from 2020-2022 making coordinate meetings, obtaining data, and validation information difficult. Because the tribe had several spikes in cases this also impacted the availability of individual employees that we communicated with. The Tribal Court continues to be backlogged due to having been shut down for so long and was unable to provide the support needed to conduct the second phase of this project. The research team firmly believes that research should not come at the expense of the health and wellbeing of tribal citizens and has opted to try to work within the comfort level of tribal partners.

The State of Hawai'i and the University of Hawai'i took a very conservative approach to conducting research. This impacted our work because it made travel impossible for many months. In fact, while travel is now allowed, our research protocol is still under heightened level of security. The University of Hawai'i remains at an elevated level for research involving human subjects, which resulted in additional administrative tasks that needed to be completed.

Personnel Changes

One of the biggest challenges that we experienced was a personnel change at the Tribal Court. Our original project was co-conceptualized with Chief Judge BJ Jones. Unfortunately, soon after the funding was received, he was removed from his position after over a decade in that position. From 2019 to the present there have been multiple Chief Judges or Acting Chief Judges. The instability of the Tribal Court leadership coupled with the

Tribal-Researcher Partnership Report

backlog experienced by COVID (not to mention the inability to travel to site) made it unlikely that the Tribal Court could be the same type of collaborator that we originally hoped. As a result, we had to make the difficult decision to revise our research design from a tribally-driven project to a community-engaged project. These changes precipitated the lengthy IRB modification processes.

Multiple Institutional Review Boards

To be clear, the research team highly values the role that Institutional Review Boards play, especially Tribal Institutional Review Boards. However, the overlapping IRBs in this project created significant delays and additional work by having to go through three IRBs for any changes. Perhaps more important than the number of IRBs involved was that the current principles used to review research projects do not align well with projects that use community-based participatory research principles. For example, IRBs require that a research project be fully conceptualized before submitting a protocol for review. However, under community-based participatory research principles a project is co-conceptualized. Thus, at the funding proposal stage and even at the beginning of the project stage research questions and methods may not be fully developed. Moreover, given that many tribal nations are under-resourced it is difficult to ask tribal collaborators to engage in detailed planning before there is funding available to ensure that the project moves forward. These issues have been articulated by numerous scholars (Stiegman & Castleden, 2015). We reiterate the need to Indigenize funding proposals and research project review processes.

Lessons Learned & Successes

Many lessons were learned throughout this project. We believe that Indigenous research should be relational and reciprocal, however, when this relationship is contingent on specific individuals in specific positions it can be difficult. Patience and dedication are required

Tribal-Researcher Partnership Report

to continue to develop relationships across the community. This work often pays off because of the richness of understanding that it brings. As a result of this research project, we have developed stronger relationships and a deeper understanding of the community. We also have been able to engage with a variety of individuals, which no doubt, improves the validity of our crime seriousness index.

The process of conducting this research has uncovered new passions for members of this research team. As Shawn Wilson said, “if research hasn’t changed you as a person, then you haven’t done it right” (Wilson, 2008, p. 135). Tribal data sovereignty was an underlying feature of this project, but has emerged as an element that the research team finds critical. Tribal data sovereignty is intertwined research and the critical role that the Tribal Research Office played throughout this process was deeply appreciated by the research team. While we shared that working with multiple IRBs was challenging, we found that the Tribal Research Office had the capacity to manage all of our issues. A future topic of exploration may be to find additional ways to assert the sovereign right of tribal nations to control research on their lands and in their communities.

Finally, this project resulted in the development of multiple Indigenous researchers. Through this project two Indigenous graduate students and one Indigenous faculty member were able to develop skills in research design, grant management, project management, and data management. In addition, these Indigenous researchers were able to develop the soft skills needed to conduct quality work in Indigenous communities. We are grateful to the Department of Justice for the opportunity to engage in this work and feel that future work will only be stronger because of this experience.

Tribal-Researcher Partnership Report

Conclusion

This research project has and will continue to uncover important truths about how tribal citizens view the role of the Sisseton-Wahpeton Oyate Tribal Court, how they understand restorative approaches to justice, and when and how tribal judges use restorative approaches in the cases that come before them. Developing a tribal specific crime seriousness index can be used by tribal leaders to make decisions that align with the values of their community. For example, decisions on how to allocate resources, what new programs to develop, and engaging in open discussion on topics that the community cares about can improve citizens quality of life and increase tribal legitimacy. The research team sincerely appreciates the support we received from numerous locations throughout the lifecycle of this project and hope that it will inspire more work on restorative justice in the future.

References

- Blumstein, A. (1974). Seriousness Weights in an Index of Crime. *American Sociological Review*, 39(6), 854. <https://doi.org/10.2307/2094158>
- Rutland, R. (1993). *The Birth of the Bill of Rights, 1776-1791* Collier.
- Johnstone, G. Ed. (2003). *A Restorative Justice Reader: Texts, sources, context* p.2 Willan Publishing.
- Agnihotri S. & Veach, C. (2017). Reclaiming Restorative Justice: An Alternate Paradigm for Justice, 20 CUNY L. Rev. 323.
- Reimund, M... (2004). Is Restorative Justice on a Collision Course with the Constitution?, 3 Appalachian J.L. 1
- Jones, M. & Johnstone, P. (2009). *History of Criminal Justice*.
- Hunter, V. (1994). *Policing Athens: Social Control in the Attic Lawsuits 420-320 B.C.*
- Braithwaite, J. (2002) *Restorative Justice and Responsive Regulation*, Chapter 1: The Rise and Fall of Restorative Justice, p. 5 (2002).
- Hostetler, J. and Child, J. (2009). *A History of Criminal Justice in England and Wales*. Waterside Press.
- Dolovich, S. (2014). Legitimate Punishment in Liberal Democracy, *Buffalo Criminal Law Review*, 7, 2.
- Levasseur, A. (2002). Legitimacy of Judges, 50 *Am. J. of Comparative Law*, 43.
- Frase, R. (2005). Punishment Purposes, 58 *Stanford L. Rev.* 67.
- Hand, C.A, Hankes, J. & House, T. (2012). Restorative justice: the indigenous justice system. *Contemporary Justice Review*, 15(4): 449-467.

Tribal-Researcher Partnership Report

Joe, J.R., Chong, J., Young, R., Lopez, D., Jones, B.J., & Gaikowski, G. (2008). Final Report Participatory Evaluation of the Sisseton Wahpeton Oyate IASAP Demonstration Project (Report No. 222740). Tucson, AZ: U.S. Department of Justice.

Kazemian, L, Farrington, D.P., Le Blanc, M. (2008). Can we Make Accurate Long-term Predictions about De-Escalation in Offending Behavior?. *Journal for Youth Adolescence*, 38:384-400. doi:10.1007/s10964-008-9338-z

Meyer, J. (1998). History Repeats itself: Restorative Justice in native American Communities. *Journal off Contemporary Criminal Justice*, 14:42-57.
doi:10.1177/1043986298014001004

Perry, S. W. (2004). American Indians and crime, 1992-2002. Washington, DC: Bureau of Justice Statistics.

Vanfraechem, I., Bolivary, D., and Aertsen, I. (2015). Victims and restorative justice. Abingdon, UK: Routledge.

Akman, D. D., Normandeau, A., Sellin, T., & Wolfgang, M. E. (2006). Towards the Measurement of Criminality in Canada: A Replication Study. *Acta Criminologica*, 1(1), 135–260. <https://doi.org/10.7202/017002ar>

Akman, D., Normandeau, A., & Turner, S. (1966). Replication of a delinquency and crime index in French Canada. *Canadian Journal of Criminology and Criminal Justice*, 8(1), 1–19. <https://doi.org/10.3138/cjcor.8.1.1>

Babayak, C., Wallace, M., Turner, J., & Matarazzo, A. (2009). Measuring Crime in Canada: Introducing the Crime Severity Index and Improvements to the Uniform Crime Reporting Survey. *Canadian Centre for Justice Studies ...*, Query date: 2021-05-17 14:39:06.

Tribal-Researcher Partnership Report

- Desikachar, P. (1994). Measurement of Crime. *Indian Journal of Criminology*, Query date: 2021-05-17 14:39:06.
<https://www.ncjrs.gov/App/abstractdb/AbstractDBDetails.aspx?id=157178>
- Hawkins, D. F. (1980). Perceptions of Punishment for Crime. *Deviant Behavior*, 1(2), 24.
- Hsu, M. (1973). Cultural and Sexual Differences on the Judgment of Criminal Offenses: A Replication Study of the Measurement of Delinquency. *The Journal of Criminal Law and Criminology (1973-)*, 64(3), 348. <https://doi.org/10.2307/1142378>
- Stiegman, M. And Castleden, H. 2015. Leashes and Lies: Navigating the Colonial Tension of Institutional Ethics of Research Involving Indigenous People in Canada.
<https://doi.org/10.18584/iipj.2015.6.3.2>
- SELLIN, T., & WOLFGANG, M. (1964). *Crime Index*.
- Wallace, M. (2009). *Measuring crime in Canada: Introducing the crime severity index and improvements to the Uniform Crime Reporting Survey*. Query date: 2021-05-17 14:39:06.
- Wilson, S. 2008. *Research Is Ceremony: Indigenous Research Methods*. Fernwood Publishing: Halifax, Nova Scotia.

Appendix A: Tribal Resolution (3 pages)



Sisseton-Wahpeton Oyate

LAKE TRAVERSE RESERVATION
P.O. Box 509
12554 BIA Hwy. 711
Agency Village, South Dakota 57262
Phone: (605) 698-3911

EXECUTIVE RESOLUTION NO. 19-02

Authorize the University of Hawai'i, West O'ahu to conduct research in partnership with Sisseton-Wahpeton Oyate Tribal Court and Research Office

- WHEREAS,** The Sisseton-Wahpeton Oyate of the Lake Traverse Reservation is organized under a Constitution and By-Laws adopted by the members of the Tribe on August 1-2, 1966 and approved by the Commissioner of Indian Affairs on August 25, 1966, and last amended effective November 15, 2006; and,
- WHEREAS,** The said Constitution and By-laws ARTICLE VII, Section 1, authorizes the Tribal Council to: (a) represent the Tribe in all negotiations with Federal, State and local governments; (g) to take actions by ordinance, resolution or otherwise which are reasonably necessary through committees, boards, agents, otherwise, to carry into effect the foregoing purposes; and (h) to promote public health, education, charity, and other services as may contribute to the social advancement of the members of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation; and,
- WHEREAS,** ARTICLE III, Section 1, states that, the Chairman, Vice-Chairman and Secretary of the Council shall be elected at large, which Officers shall constitute an Executive Committee; and,
- WHEREAS,** The Constitution Article III, Section 2, authorizes the Executive Committee of the Tribe to act on behalf of the Tribal Council in matters arising between sessions of the Tribal Council, subject to review by the Tribal Council; and,
- WHEREAS,** The By-Laws Article I, Section 1(c)(d), authorizes the Tribal Chairman to see that all ordinances and resolutions of both General Council and the Council are carried into effect and to sign on behalf of the Tribe all official papers when authorized to do so; and,
- WHEREAS,** Tribal Courts have an immense responsibility to ensure the safety and continued welfare of Tribal citizens, and in an effort to improve their effectiveness and responsiveness to the needs of the community, have begun to re-incorporate traditional restorative justice principles in their opinions; and

“Authorize University Hawai‘i West O‘ahu to conduct research in partnership with SWO Tribal Court and SWO Research Office”

WHEREAS, The University of Hawai‘i, West O‘ahu is interested in conducting research in partnership with the Sisseton-Wahpeton Oyate Tribal Court to study some of the restorative legal approaches utilized in sentencing decisions, diversionary orders, and other legal orders in the criminal context; and

WHEREAS, Because the Sisseton-Wahpeton Oyate Tribal Court has made efforts to incorporate restorative justice into their dispositions, specifically, in the Wellness Court and because the Sisseton-Wahpeton Oyate Tribal Court is interested in participating in a research project in collaboration with the Univeristy of Hawai‘i, West O‘ahu to study restorative justice approaches; and

WHEREAS, Understanding that the research design will be developed in coordination with the Sisseton-Wahpeton Oyate Tribal Court in order to ensure that the process is Tribally driven and participatory and that the results of this research will be shared with the Tribe, upon request, the larger Tribal justice community to share best practices in restorative justice with other Tribal nations as well as state and local courts thereby having a broad appeal and applicability; and

WHEREAS, Knowing that the potential impact of this research utilizing court record data could be broad, including providing the Tribe with evidence of effective restorative processes in their current judicial system as well as providing evidence based research that can be utilized to inform tribal policy making; and

WHEREAS, The University of Hawai‘i, West O‘ahu is submitting a federal grant to start a collaborative partnership with the Sisseton-Wahpeton Oyate Tribal Court to the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice requesting \$100,000 to conduct the above research; and

WHEREAS, In the event that funding is received the project will be funded for 18 months, which will ensure sufficient time for all tribal protocols to be followed as well as include at least two in-person meetings with appropriate tribal court administration and other interested stakeholders.

NOW, THEREFORE BE IT RESOLVED, That the Sisseton-Wahpeton Oyate supports this research, and in accordance with the Tribal intent spelled out in Chapter 77, Sisseton-Wahpeton Oyate Research Code, this research will be conducted with the Research Office and the Tribal Local Research and Review Board, being kept apprised of every aspect of the research conducted on the Lake Traverse Reservation and in the Tribal Court.



“Authorize University Hawai’i West O’ahu to conduct research in partnership with SWO Tribal Court and SWO Research Office”

CERTIFICATION

We, the undersigned duly elected Tribal Chairman and Tribal Secretary of the Sisseton-Wahpeton Oyate Tribal Council, do hereby certify that the above resolution was duly adopted by the Sisseton-Wahpeton Oyate Executive Committee, which is composed of 3 members, of whom 3 constituting a quorum, were present at an Executive Committee meeting, duly noticed, called, convened and held at the TiWakan Tio Tipi, Agency Village, South Dakota, April 29, 2019, by a vote of 3 for, 0 opposed, 0 abstained, 0 absent from vote, 0 not voting, and that said Resolution has not been rescinded or amended in any way.

Dated this 29th day of April 2019.



Verlyn Beaudreau, Interim Tribal Chairman
Sisseton-Wahpeton Oyate

ATTEST:



Myrna Thompson, Tribal Secretary
Sisseton-Wahpeton Oyate

Copy to: SWO Tribal Court
SWO Research Office
SWO Legal Office



Appendix B: Tribal Research Presentation (8 pages)

Tribal Justice, Tribal Court

Strengthening Tribal Justice
Systems Using Restorative
Approaches

Lorinda Riley, SJD

University of Hawai'i, Office of Public Health Studies

Native Hawaiian and Indigenous Health

This resource was prepared by the author(s) using Federal funds provided by the U.S. Department of Justice. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Background

- This project was originally conceived in Spring 2018
 - DOJ funded the project in April 2019
- Intended to be a highly collaborative project where the PI would be on site for the summer of 2019 and 2020
- Due to COVID-19 pandemic and changes in Tribal Court the project was revised
 - Approved by DOJ in July 2021

Project Background

- Many traditional Indigenous justice systems are based on restorative principles with a two-fold goal of making the victim whole while rehabilitating/reincorporating the offender. While the use of traditional tribal peacemaking as a separate process has been explored by researchers there is little to no empirical research done on how tribal courts incorporate restorative methods into their primary court system. This project will focus on how traditional restorative justice approaches are incorporated in a tribe's primary court.
- Courts not only rule on the guilt or innocence of an individual, but they are charged with determining the appropriate sentence. Crime seriousness scales have been used as a way to measure the severity of a criminal event. Concerns have been raised about current crime seriousness indices because they are largely based on white middle class respondents. Studies attempting to validate the scale in non-Western countries have found inconsistent fit. Thus, this project seeks to develop a culturally relevant crime seriousness scale, which will be applied to a sample of tribal court cases.

Research Question

- 1) When do tribal court judges use restorative approaches in the disposition of their cases?
 - a) Does the severity of the alleged criminal act influence the use of restorative justice?
 - b) Does the offender characteristics influence the use of restorative justice?
 - c) Does drug or alcohol use influence the use of restorative justice?
- Our goal is to better understand how the community perceives certain criminal actions and whether this impacts the use of restorative justice measures by tribal judges.

Methods

- 1) Develop a culturally appropriate crime seriousness index
 - a) **Conduct an electronic survey among adult tribal citizens using purposeful sampling (n > 30)**
 - b) **Conduct 2-5 interviews with tribal citizens knowledgeable about traditionally appropriate behavior**
- 2) Analyze a sampling of court records using the crime seriousness index as a categorization tool
 - a) **Collect 30 public tribal criminal court records**
 - b) **Conduct an inductive qualitative analysis the cases using Atlas-ti or NVivo**

Confidentiality

- This study was designed to minimize on the infringement of tribal citizen privacy
- Even though Tribal Court Records are public, the project will de-identify the records
- Survey results will be de-identified
- Interviews will not be recorded and participant will not be named
 - Further, the interviews are meant to provide context to the survey responses and assist in developing the crime seriousness index
 - Thus, interview data will not be published

Expected Outcomes

- We expect to be able to see a pattern of when tribal judges utilize restorative justice. Factors such as the severity of crime, perceived ability to rehabilitate, etc. may play a role in the outcome of a case.
- Expected Products:
 - 1) Crime seriousness index that can be used to evaluate the perceived severity of a criminal event OR to track the crime rate of in the community
 - 2) Digitized tribal court records for the Tribal Court's use
 - 3) Method of developing a crime seriousness index that can be applied in Indian Country
 - 4) Evaluation of the when restorative justice approaches are used (to facilitate dialogue/policy actions in alignment of community desires)
 - 5) Ho'ike or Sharing of Results

Contact



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Tribal Court, Tribal Justice: Restorative

Lorinda Riley, SJD
University of Hawai'i Mānoa



agenda

Re-Cap of Project Goals
3

Methods
4

Findings
5

Dissemination Plan
10

Potential Application/Future Research
13

Position Statement

As an Indigenous researcher, I understand the influence that our worldview and experiences have on the inquiry process and interpretation of findings.

My positionality encourages me to reflect deeply on my place within the academy and the community. Engaging community partners at all levels throughout the process, and especially in the conceptualization of the research design, is what I strive for. As you likely already know, although this was the intent behind this project, it was not fully actualized.

Having said that it was my great privilege to be able to re- envision this project in a manner that ensured the safety of all citizens while still developing a tribal specific crime seriousness index. The privilege to be allowed to do this work motivates me to continue to work to improve Indigenous well-being in ways that uplift Indigenous values.



The slide features a light gray background with a large, dark brown circular shape on the left side. A green circular shape is partially visible in the top right corner. In the bottom right, there are white, wavy lines. The title 'Project Goals' is centered in white serif font within the brown circle.

Project Goals

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Revised Project Goals

- Develop a tribally specific crime seriousness index
 - Crime seriousness indices measure how serious a crime is to a community
 - A crime index counts the number of crimes reported in a time period
- SWO crime seriousness index:
 - Severity measure is relative to other crimes
 - Severity is determined on a scale of 1-10
 - Other ways to measure severity include using difference ranges or a magnitude scale



Methods

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Methods

- Informal interviews with 2 tribal elders (no PII collected, no transcripts) to help inform project and interpretations
- Released online survey that aligned with Sells & Wolfgang's study on crime seriousness in the US
 - Revised several questions for relevancy
 - 29 questions that were adapted from S&W and 2 additional questions
 - Additional questions on self-rating on knowledge of appropriate behavior and values related to the justice system
- Conducted descriptive statistics
 - Comparative analysis with Sellins & Wolfgang results



Findings

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Findings: Baseline Beliefs

- Respondents self-rated their knowledge of traditionally appropriate behavior as a 7.2 and knowledge of appropriate modern day behavior as 7.6 out of 10
- Respondents overwhelmingly believed that the Tribal Court should focus on “getting to the truth” and “making the perpetrator a productive member of society”
- However, respondents were equally split as to whether the Tribal Court should “punish the offender” or “make the victim whole”
- Almost all of the severity questions produced results that did not align with the original Sellins and Wolfgang study
- Potential reasons for misalignment:
 - Significant time has passed since the original survey
 - Cultural differences and experiences of individuals living on reservation is significantly different than those in the general population
 - Modifications to the questions

Findings: Selected Variations

- Crimes of honesty: Use of a credit card without the permission for \$100 and underreporting of daily cash register earnings of \$50 were judged as higher severity than S&W study.
 - We made slight variations to the questions including changing the dollar amount to better align with community standards and shifting to credit cards as a mechanism rather than paper checks.
- Rape: Rape that did not involve physical injury and attempted rape was seen as a more serious than in the original S&W study.
 - The questions were identical, however, given the significant time between the original and current study social mores have changed, which may account for respondents significantly higher rating of the severity of crimes involving rape.
- Vandalism: Vandalism was judged as significantly more serious by respondents than in the original survey.
- Drugs: Possessing and using marijuana and selling marijuana were considered less serious crimes than in the original S&W study. However, use of heroine was similarly serious as in the original S&W study and the sale of heroine was significantly more serious among respondents than in the original study.
 - The marijuana results are unsurprising given the recent loosening of laws around marijuana in many states. This may be due to the epidemic level use of illicit drug use in some reservation communities resulting in community members viewing the crime more seriously.
- Sex with a minor: Respondents considered sex with a minor to be more serious than in the original S&W study.
 - However, the original question was changed from “The offender, over 16 years of age, has intercourse with a female under 16 who willingly participates in the act” to “An offender has consensual sex with a minor who is ten years younger than the offender.” This change was made to avoid respondents from thinking of an 18 year old offender and 17 year old “victim.”

Findings

- There is significant misalignment between the SWO respondents and the original S&W study.
 - Out of 29 crime seriousness questions that were adapted from the S&W study, there were 24 where the difference in responses were statistically significant
 - This can be seen in several areas, which pose unique issues to the community and therefore, likely make it more important to SWO community members.
- There is general internal consistency in the perceived severity of crime.
 - There were few outliers in the responses and those outliers involved intoxication and rape. Results suggest that intoxication mediates perceived crime severity, in assault and rape, but not in drunk driving.
 - This was determined by added questions that were identical except that one noted that the offender was drunk at the time of the incident.
 - Respondents identified that when a perpetrator was intoxicated the crime of rape was more serious;
 - However, if a perpetrator of assault was intoxicated the crime was less serious so long as there was no significant injury.
 - Finally, intoxicated did not significantly alter perception of the severity of vehicular homicide.



Dissemination Plan

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Dissemination Plan

- Results will be disseminated to the SWO Research Office
- Final Report will be shared with various tribal offices, including the SWO Tribal Court, SWO Attorneys General, and SWO Tribal Council
- PI is open to sharing results virtually at a session open to tribal citizens, however, would require assistance to arrange
- There are no plans, at this time, to publish results in a peer-reviewed journal
 - SWO Research Office will be notified if this changes to arrange for pre-review

The background features a light gray base with a large, dark brown circular shape on the left and a large, olive green shape on the right. In the top left corner, there is a faint, stylized pattern of foliage. In the bottom right, there are thin, white, curved lines that resemble a stylized path or abstract design.

Potential Application/ Future Research

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Potential Application

- Tribal judges can use this information to guide their sentencing along with other tribal policies and guidance
- Tribal councilmembers can use the results to gain a better understanding of the community's view on specific crimes
 - This can help prioritize efforts to combat specific crimes
 - This can guide the effective allocation of scarce resources
- Tribal officials can replicate this study later to determine if there are any changes in perceived crime severity
 - This could be especially powerful if there were active efforts or interventions that were implemented to determine if the community perceptions have changed accordingly

Future Research

- Originally, this project intended to use the scale to determine if there was a relationship between crime severity and use of restorative measures.
 - This work is still valuable to undertake, but would require active engagement by the Tribal Court.
- Deep-dive into specific crimes such as sexually motivated crimes and crimes while intoxicated may uncover community beliefs, perceptions, and even potential treatments
- Adopting a strength-based focus to analyze community values surrounding honesty would be interesting and could uplift other areas

Final Thoughts

- Shawn Wilson said that if research doesn't change you then you are not doing it right.
 - This research project was challenging, but it also provide significant growth opportunities that I will carry with me into the future.
- Indigenous communities already know that we are unique, especially vis-à-vis Western communities.
 - This data points to finding tribal solutions for what our communities feel is important.
 - True data sovereignty requires that Indigenous communities take control over all aspects of research, including the development of metrics, in order to ensure that they are relevant to our peoples.

Pidamayaye! Mahalo nui loa!

Lorinda Riley

lorindar@hawaii.edu



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Appendix D

141 Offense Versions Used in the Scaling Analysis

OFFENSE NUMBER	OFFENSE DESCRIPTION
1.	The offender stabs a person to death.
2.	The offender robs a person at gunpoint. The victim struggles and is shot to death.
3.	The offender forcibly rapes a woman. Her neck is broken and she dies.
4.	The offender kills a person by reckless driving of an automobile.
5.	The offender forces a female to submit to sexual intercourse. The offender inflicts physical injury by beating her with his fists.
6.	The offender forces a female to submit to sexual intercourse. No physical injury is inflicted.
7.	The offender drags a woman into an alley, tears her clothes, but flees before she is physically harmed or sexually attacked.
8.	The offender robs a person of \$1000 at gunpoint. The victim is shot and requires hospitalization.
9.	The offender robs a victim of \$1000 at gunpoint. The victim is wounded and requires treatment by a physician but no further treatment is needed.
10.	The offender robs a victim of \$1000 at gunpoint. No physical harm occurs.
11.	The offender, armed with a blunt instrument, robs a victim of \$1000. The victim is wounded and requires hospitalization.
12.	The offender with a blunt instrument robs a person of \$1000. The victim is wounded and requires treatment by a physician but no further treatment is needed.
13.	The offender, armed with a blunt instrument, takes \$1000 from a person. No physical harm is done.

OFFENSE

NUMBER

OFFENSE DESCRIPTION

14. The offender, using physical force, robs a person of \$1000. The victim is hurt and requires hospitalization.
15. The offender robs a person of \$1000 by physical force. The victim is hurt and requires treatment by a physician but no further treatment is required.
16. The offender, using physical force, robs a victim of \$1000. No physical harm is inflicted.
17. The offender threatens to harm a victim if he does not give money to the offender. The victim hands over \$1000 but is not harmed.
18. The offender robs a victim of \$5 at gunpoint. The victim is shot and requires hospitalization.
19. The offender robs a person of \$5 at gunpoint. The victim is wounded and requires medical treatment but no further treatment is required.
20. The offender robs a victim of \$5 at gunpoint. No physical harm occurs.
21. The offender with a blunt instrument robs a person of \$5. The victim is wounded and requires hospitalization.
22. A victim is robbed of \$5 by an offender with a blunt instrument. The victim is wounded and requires treatment by a physician but no further treatment is needed.
23. The offender, armed with a blunt instrument, robs a victim of \$5. No physical harm is inflicted.
24. The offender, using physical force, takes \$5 from a victim. The victim is hurt and requires hospitalization.
25. The offender, using physical force, robs a person of \$5. The victim is hurt and requires treatment by a physician but no further treatment is required.
26. The offender takes \$5 from a person by force but inflicts no physical harm.
27. The offender threatens to harm a victim if he does not give his money to the offender. The victim gives him \$5 and is not harmed.
28. The offender fires a gun at a victim who suffers a minor wound that does not require medical treatment.
29. The offender with a gun wounds a victim. The wound requires treatment on one occasion by a physician.
30. The offender wounds a person with a gun. The victim lives but requires hospitalization.
31. The offender stabs a victim with a knife. The victim does not require medical treatment.
32. The offender stabs a victim with a knife. The victim is treated by a physician but requires no further treatment.
33. The offender wounds a person with a knife. The victim lives but requires hospitalization.
34. The offender wounds a person with a blunt instrument. The victim requires no medical treatment.

OFFENSE NUMBER	OFFENSE DESCRIPTION
35.	The offender wounds a person with a blunt instrument. The victim is treated by a physician but requires no further treatment.
36.	The offender wounds a person with a blunt instrument. The victim lives but requires hospitalization.
37.	The offender beats a victim with his fists. The victim lives but requires hospitalization.
38.	The offender breaks into a residence, forces open a cash box, and takes \$1000.
39.	The offender breaks into a residence, forces open a cash box, and steals \$5.
40.	The offender breaks into a residence and steals furniture worth \$1000.
41.	The offender breaks into a residence and steals \$5.
42.	The offender breaks into a department store, forces open a safe, and steals \$1000.
43.	The offender breaks into a department store, forces open a cash register, and steals \$5.
44.	The offender breaks into a department store and steals merchandise worth \$1000.
45.	The offender breaks into a department store and steals merchandise worth \$5.
46.	The offender breaks into a public recreation center, smashes open a cash box, and steals \$1000.
47.	The offender breaks into a public recreation center, smashes open a cash box, and steals \$5.
48.	The offender breaks into a school and takes equipment worth \$1000.
49.	The offender breaks into a school and steals \$5 worth of supplies.
50.	While the owner of a small delicatessen is phoning, the offender breaks into the cash register and steals \$1000.
51.	The offender forces open the glove compartment of an unlocked automobile and takes \$1000.
52.	The offender snatches a handbag containing \$5 from a person on the street.
53.	The offender enters an unlocked car, forces open the glove compartment, and steals personal belongings worth \$5.
54.	The offender steals two diamond rings worth \$1000 while the owner of a small jewelry store is not looking.
55.	The offender steals \$1000 worth of merchandise from an unlocked automobile.
56.	The offender steals a bicycle which is parked on the street.
57.	The offender illegally enters a backyard and steals a bicycle.
58.	The offender breaks into a display case in a large jewelry store and steals \$1000 worth of merchandise.
59.	The offender trespasses in a railroad yard, tears loose \$1000 worth of equipment, and steals it.

384 Measurement of Delinquency

OFFENSE

NUMBER

OFFENSE DESCRIPTION

60. The offender forces open a cash register in a department store and steals \$5.
61. The offender trespasses in a railroad yard, wrenches loose some fittings worth \$5, and steals them.
62. The offender steals \$1000 worth of merchandise from the counter of a department store.
63. The offender trespasses in a railroad yard and steals tools worth \$1000.
64. The offender steals merchandise worth \$5 from the counter of a department store.
65. The offender trespasses in a railroad yard and steals a lantern worth \$5.
66. While in a public building during office hours, the offender breaks into a cash box and steals \$1000.
67. The offender trespasses in a city motor pool lot and wrenches off \$1000 worth of accessories from city cars and trucks.
68. The offender breaks into a parking meter and steals \$5 worth of nickels.
69. The offender trespasses inside a publicly owned building, rips from the wall and steals a fixture worth \$5.
70. The offender walks into a public museum and steals a painting worth \$1000.
71. The offender trespasses on a city-owned storage lot and steals equipment worth \$1000.
72. The offender steals a book worth \$5 from a public library.
73. The offender trespasses on a city-owned storage lot and carries off equipment worth \$5.
74. The offender picks a person's pocket of \$1000.
75. The offender picks a person's pocket of \$5.
76. The offender breaks into a locked car, steals, damages, and abandons it.
77. The offender breaks into a locked car and later abandons it undamaged.
78. The offender breaks into a locked car, steals it, but returns it undamaged to the place where he stole it.
79. The offender steals, damages, and abandons an unlocked car.
80. The offender steals an unlocked car and abandons but does not damage it.
81. The offender steals an unlocked car and returns it undamaged to the place where it was stolen.
82. The offender beats a victim with his fists. The victim is hurt but requires no medical treatment.
83. The offender beats a person with his fists. The victim is treated by a physician but requires no further medical treatment.
84. The offender signs someone else's name to a check and cashes it.
85. The offender embezzles \$1000 from his employer.

OFFENSE NUMBER	OFFENSE DESCRIPTION
86.	The offender embezzles \$5 from his employer.
87.	The offender knowingly passes a check that is worthless.
88.	The offender knowingly buys stolen property from the person who stole it.
89.	The offender, while being searched by the police, is found in illegal possession of a gun.
90.	The offender is found firing a rifle for which he has no permit.
91.	The offender illegally possesses a knife.
92.	The offender gets customers for a prostitute.
93.	The offender runs a house of prostitution.
94.	The offender is a prostitute in a house of prostitution.
95.	The offender, a prostitute, has sexual intercourse with a customer.
96.	The offender, a prostitute, offers to have sexual intercourse with a customer.
97.	The offender has sexual intercourse with his stepdaughter.
98.	A brother has sexual intercourse with his sister and thereby both become offenders.
99.	The offender runs his hands over the body of a female victim, then flees.
100.	The offender shows pornographic movies to a minor.
101.	Two male offenders willingly have anal intercourse.
102.	The offender forces a person to submit to anal intercourse.
103.	The offender offers to submit to anal intercourse.
104.	The offender, a married male, has sexual intercourse with a female not his wife.
105.	An unmarried couple willingly have sexual intercourse.
106.	The offender exposes his genitals in public.
107.	The offender with immoral intent tries to entice a minor into his automobile.
108.	The offender, over 16 years of age, has intercourse with a female under 16 who willingly participates in the act.
109.	The offender sells heroin.
110.	The offender sells marijuana.
111.	The offender possesses heroin.
112.	The offender has marijuana in his possession.
113.	The offender administers heroin to himself.
114.	The offender smokes marijuana.
115.	A juvenile illegally possesses a bottle of wine and thereby becomes an offender.
116.	The offender runs a house where unlawful sale of liquor takes place.
117.	The offender is intoxicated in public.
118.	A juvenile is found drunk on the street, thereby becoming an offender.
119.	The offender is a customer in a house of prostitution.

386 *Measurement of Delinquency*

OFFENSE

NUMBER

OFFENSE DESCRIPTION

120. A group continues to hang around a corner after being told to disperse by a policeman and thereby become offenders.
121. The offender disturbs the neighborhood with loud, noisy behavior.
122. The offender is a customer in a house where liquor is sold illegally.
123. An offender prowls in the backyard of a private residence.
124. The offender has no residence and no visible means of support and thereby becomes an offender.
125. The offender is engaged in a dice game in an alley.
126. The offender runs a house where gambling occurs illegally.
127. The offender is a customer in a house where gambling occurs illegally.
128. The offender takes bets on the numbers.
129. The offender performs an illegal abortion.
130. The offender telephones a victim and threatens bodily harm.
131. A juvenile plays hookey from school and thereby becomes an offender.
132. The offender turns in a false fire alarm.
133. The offender trespasses in a railroad yard.
134. A juvenile is reported to police by his parents as an offender because they are unable to control him.
135. A juvenile runs away from home and thereby becomes an offender.
136. The offender defaces and breaks public statues causing \$1000 damage.
137. The offender throws rocks through windows.
138. The offender sets fire to a garage.
139. The offender kidnaps a person. One thousand dollars ransom is paid but no physical harm is inflicted on the victim.
140. The offender wilfully makes false statements under oath during a trial.
141. The offender makes an obscene phone call.

Tribal-Researcher Partnership Report

Appendix D: SWO Crime Seriousness Index (3 pages)

	QUESTION
1	An offender takes property worth \$50 without breaking into or entering a building (i.e. taking property from a yard).
2	An offender takes property worth \$1,000 without breaking into or entering a building (i.e. taking property from a yard).
3	An offender breaks into a HOME when no one else is present takes property worth \$100.
4	An offender breaks into a BUSINESS when no one else is present takes property worth \$100.
5	When no one else is present an offender vandalizes the exterior of a home causing damage in the amount in excess of \$50.
6	An offender WITHOUT a weapon threatens to harm a victim unless the victim gives him money. The offender takes the victim's money (\$20) and leaves without harming the victim.
7	An offender WITH a weapon threatens to harm a victim unless the victim gives him money. The offender take's the victim's money (\$20) and leaves without harming the victim.
8	An offender breaks into a locked vehicle and takes money (\$5) causing less than \$50 of damage to the vehicle.
9	An offender uses a credit card without the permission of the named card holder in the amount of \$100.
10	An offender underreports his daily case register earnings at his place of employment and pockets the difference in the amount of \$50.
11	An offender is driving recklessly and crashes into another vehicle. The driver of the other vehicle dies from the injuries. The offender is NOT intoxicated.
12	An intoxicated offender drives and crashes into a victim who dies from the injuries.
13	An offender stabs a victim. The victim dies from the injury.

Tribal-Researcher Partnership Report

14	An offender inflicts injury on a victim. The victim is treated by a physician and his injuries require him to be hospitalized.
15	An offender inflicts injury on a victim. The victim is treated by a physician and his injuries require him to be hospitalized. The offender was intoxicated at the time of the incident.
16	An offender inflicts injury on a victim. The victim is treated by a physician, but his injuries do NOT require him to be hospitalized.
17	An offender initiates a fight with another person. The victim does not sustain injuries requiring medical attention.
18	An offender initiates a fight with another person. The victim is hurt, but does not require medical treatment. The offender was intoxicated at the time of the incident.
19	An offender forces a female to submit to sexual intercourse. No other physical injury is inflicted.
20	An offender forces a female to submit to sexual intercourse. No other physical injury is inflicted. The offender is intoxicated at the time of the incident.
21	An offender forces a female to submit to sexual intercourse. During the incident the victim sustains injuries requiring hospitalization.
22	An offender attempts to rape a woman, but is scared off after tearing her clothes.
23	An offender has consensual sex with a minor who is ten years younger than the offender.
24	An offender smokes marijuana. No one else is injured.
25	An offender takes illicit drugs. No one else is injured.
26	An offender is publicly intoxicated. No one else is injured.
27	An offender is in possession of several small bags of marijuana and intends to sell the bags.
28	An offender is in possession of heroin and intends to sell it.
29	An offender makes false statements on a government document.

Tribal-Researcher Partnership Report

30	A juvenile skips school, is deemed a truant, and is thereby an offender.
31	A juvenile is found drunk and is thereby an offender.