



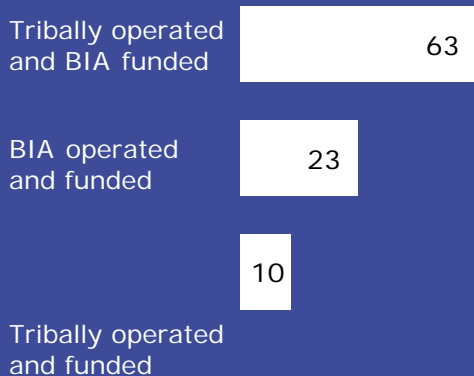
**CARES Act Inspection Report**

# The Bureau of Indian Affairs' Coronavirus Response at Indian Country Detention Facilities

The Office of Justice Services (OJS) provides guidance and oversight to 96 detention facilities currently in operation in Indian Country. These facilities fall into three categories:

1. Fully funded and operated by the BIA
2. Operated by tribal governments with BIA funding provided under Pub. L. No. 93-638 contracts or self-governance compacts
3. Fully funded and operated by tribal governments

**The BIA funds and/or operates all but 10 of the Indian detention programs.**



On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was enacted. It included \$8 billion for direct payments to Indian Tribes and \$522 million of direct appropriations to the Bureau of Indian Affairs (BIA) and Bureau of Indian Education (BIE) for COVID-19 response.

Given this infusion of funding, we examined the impact of COVID-19 on the Indian detention system from April 1, 2020, to May 31, 2020, including the actions the BIA and the tribes have taken to respond to outbreaks of this virus, and how other longstanding challenges have affected the BIA's response. Detention facilities that include housing, recreation, and food service components present unique challenges to control COVID-19 among inmates and staff. Inmates in detention facilities are particularly at risk of contracting COVID-19 because they live, work, eat, and participate in activities in close proximity to each other. These factors also increase the potential for COVID-19 to spread once introduced.

Due to the COVID-19 pandemic, we were unable to perform site visits. Instead, we worked with the OJS to distribute a questionnaire to all 96 Indian Country detention facilities, reviewed OJS policies, and conducted interviews with Bureau and detention facility officials.

## Results of Our Review

We received responses from detention officials at 59 of the 96 facilities (61 percent). These officials included chiefs of police, lieutenants, and administrators. The results provided us with overall case numbers and insight on how Indian Country detention facilities implemented the Centers for Disease Control (CDC) guidance for social distancing, cleaning, personal protective equipment (PPE), and health screenings.

The 59 facilities reported a total of 12,530 inmates and 1,154 staff for the period of April 1, 2020, to May 31, 2020. During this period, 9 percent of inmates and 60 percent of staff were tested for COVID-

19. Both groups had a test positivity rate of 4 percent (see Figure 1), which is within the World Health Organization’s (WHO’s) recommended positivity rate.<sup>1</sup> Eighteen detention facilities responded that they had positive COVID-19 cases (see Figure 2).

**Figure 1: Inmate and Staff COVID-19 Testing in April and May 2020**

	<b>Inmates</b>	<b>Detention Staff</b>
<i>Total individuals</i>	12,530	1,154
Individuals tested	1,067 (9%)	689 (60%)
Individuals with positive results	43 (4%)	27 (4%)

**Figure 2: Number of Positive Test Results by Facility**

<b>Facility</b>	<b>Inmates</b>	<b>Detention Staff</b>
Choctaw Adult and Juvenile Detention	1	3
Colorado River Male Adult, Female Adult, and Juvenile Detention	2	1
Gila River Department of Corrections and Rehabilitation Adult	2	5
Hopi Adult Transport	10	1
Hualapai Juvenile Detention	1	0
Jicarilla Department of Corrections Adult	1	0
Lower Brule Adult Detention	1	0
Navajo Kayenta Holding Detention	0	10
Navajo Shiprock Adult Detention	4	0
Omaha Adult Detention	2	1
Pascua Yaqui Holding Adult	0	3
Pine Ridge Justice Center for the People	5	0
Pine Ridge Oglala Sioux Tribal Adult Offenders Facility	0	1
Southern Ute Detention	0	2
Turtle Mountain Adult Detention	1	0
Wind River Adult Detention	9	0
Yankton Adult Detention	3	0
Zuni Department of Corrections Adult	1	0
<b>Totals</b>	<b>43</b>	<b>27</b>

<sup>1</sup> According to the WHO, a positivity rate higher than 5 percent may indicate that only the sickest individuals are being tested, making it difficult to know how extensively COVID-19 is spreading within a system (here, the detention system).

The OJS provided separate data showing that other large detention facilities that did not respond to our questionnaire also had positive COVID-19 cases. For example, White Mountain Apache Corrections, which operates a 76-bed facility, reported to the OJS that 66 inmates tested positive for COVID-19 at the end of May. We made several attempts to contact this facility, but we did not receive a response. Four facilities did not respond to our questionnaire but reported to the OJS that they had positive inmate cases:

- White Mountain Apache Corrections
- Rosebud Adult Detention
- Hualapai Adult Detention
- San Carlos Apache Adult

In addition, the OJS data identified a total of four employees who died due to COVID-19 at Navajo, Hualapai, and Choctaw detention facilities. However, this number may understate actual deaths, as OJS officials told us that their data was not complete because not all detention facilities reported COVID-19 cases to the OJS.

### **Access to Tests**

Eight facilities responded that they had difficulty obtaining COVID-19 tests for inmates and employees with symptoms. Some of the challenges these facilities reported were an initial lack of tests, a lack of knowledge about what entity or person to contact to obtain tests, and only giving a test if symptomatic. For example, the Hopi Transport Operation facility reported that its health care center advised against testing for front-line personnel and refused to permit employee testing when requested. In another example, the Colville Tribal Correctional facility reported delays in completing tests because there were not enough staff to conduct the tests at Indian Health Services.

### **Social Distancing**

Each facility implemented social distancing protocols in different ways. In response to our questionnaire, 47 facilities (79 percent) reported implementing at least one of the following strategies:

- Increased space between individuals in lines and waiting areas
- Staggered time in recreation spaces
- Staggered meals
- Modified group activities
- Modified housing arrangements
- Modified common areas

### **Cleaning and Personal Protective Equipment**

All facilities reported daily cleaning of frequently touched objects and equipment. In addition, all facilities reported having enough disposable medical gloves for employees and inmates, but four facilities reported insufficient face masks or coverings, and eight facilities reported insufficient eye protection (see Figure 3).

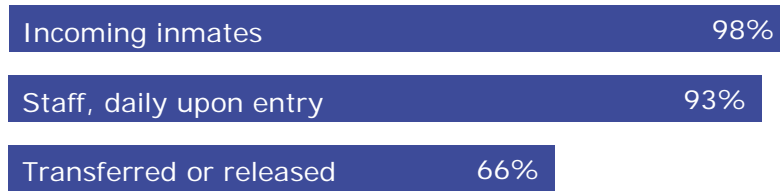
**Figure 3: Most Facilities Reported Having Sufficient PPE**



### Health Screenings

The CDC guidance recommends verbal screening and temperature checks for inmates, staff, volunteers, and visitors who enter detention facilities. Only four facilities responded that they allowed visitors at the time of the questionnaire. According to the responses received, most facilities implemented screenings for incoming inmates and staff, but fewer facilities implemented screening for transferred or released inmates (see Figure 4).

**Figure 4: Most Facilities Implemented Protocols for Verbal Screening**



### OJS Guidance and Support

In March 2020, the OJS issued a *COVID-19 Detention Operations Action Plan* (action plan) for the BIA and tribal detention facilities and updated the plan in June when the national guidance changed.<sup>2</sup> The action plan is based on guidance from the U.S. Bureau of Prisons, the WHO, the CDC, and the U.S. Office of Personnel Management. The action plan suspended social visits, work release, and inmate facility transfers for 30 to 60 days. It also mandated enhanced health screenings of inmates and staff and limited contractor access to detention facilities to only those performing essential services.

The OJS also developed COVID-19 screening tools for facilities to use before booking inmates or allowing entry of visitors, contractors, medical staff, and legal representatives. In addition, the OJS developed a flowchart for facilities to determine an inmate’s risk for COVID-19. OJS officials told us the action plan and screening tools were sent to all Indian Country detention facilities. The BIA made COVID-19 information available on its website, including an *Indian Affairs Pandemic Plan* and *IA COVID-19 Adaptive Operations Recovery Plan*.

Of the \$522 million appropriated to the BIA and the BIE for COVID-19 response, \$7.6 million was allocated for deep cleaning BIA and BIE facilities. The Office of Facilities, Property and Safety Management, an office under the Deputy

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To address the spread of COVID-19 in Indian Country detention facilities, the OJS:

- Issued guidance and screening tools
  - Provided funding for deep cleaning
  - Provided PPE
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<sup>2</sup> The June update added infectious disease program protocols, expanded the hold on training from 30 days to 30 to 60 days, updated requirements for inmate screening, and added a requirement for COVID-19 signage.

Assistant Secretary for Indian Affairs, is responsible for oversight of facilities management for all BIA and BIE facilities. As of July, it had obligated \$341,262 of CARES Act funding to deep clean the following facilities, which either had COVID-19 cases within the facility or had reasons to be concerned about potential infections:

- Lower Brule Justice Center
- Navajo-Kayenta
- Pine Ridge Detention Center – Oglala Sioux Tribal Offenders Facility
- Pine Ridge Detention Center – Justice Center for the People
- Rosebud Adult Detention Center
- Turtle Mountain Adult
- Warm Springs
- White Mountain Apache
- Winnebago Adult Detention Center

We received questionnaire responses from some but not all facilities that received funding from the OJS for deep cleaning.

We followed up on our questionnaire by interviewing facility officials who reported positive cases and learned that the following five facilities were deep cleaned using tribal funds:

1. Gila River Indian Department of Corrections and Rehabilitation Adult
2. Hopi Adult Transport
3. Jicarilla Department of Corrections Adult
4. Omaha Adult Detention
5. Southern Ute Detention Center

A BIA official told us that BIA regional directors held weekly calls with tribal leadership and communicated the process for requesting deep cleaning. They also told us that OJS officials provided the same information to detention facility supervisors during weekly calls. Notwithstanding these regular communications, officials from three of the facilities that we spoke with were unaware that the BIA had CARES Act funding available to pay for deep cleaning. Officials from one additional facility reported that they heard another facility in the region received funding to deep clean, but, when asked for more information, the region replied it was one-time funding.

The OJS was allocated \$2.2 million for PPE purchases and \$7.9 million for COVID-19 related costs for the detention and corrections program. The OJS procured and distributed PPE to Indian detention facilities (see Figure 5).

**Figure 5: The OJS Provided the Following PPE to Detention Facilities**

<b>PPE</b>		<b>Quantity</b>
<b>Masks</b>	KN95	27,820
	3-ply/surgical	26,950
	Cloth	17,950
	N95	3,465
<b>Protective Clothing</b>	Gloves	78,500
	Face shields/eye protection	4,768
	Disposable gowns/coveralls	6,050
	Boot covers	12,750
<b>Cleaning Products</b>	Disinfectant wipes	183,360
	Disinfectant spray	3,702
<b>Other</b>	Hand sanitizer (8 ounce)	72
	Hand sanitizer (gallon)	35
	Thermometers	223

**Key Action:** Continued oversight and support from the OJS will be critical for ensuring inmate and staff safety and meeting the COVID-19 related needs of both the BIA and tribally operated detention facilities. Specifically, the OJS should continue to monitor the latest guidance from health professionals, update and communicate its COVID-19 guidance documents as needed, and ensure that detention facilities implement the guidance to the extent possible. The OJS should also continue to provide PPE and other support to detention facilities as needed and resources allow.

## Longstanding Challenges Impact COVID-19 Response

Inmate overcrowding and inadequate staffing levels are two longstanding challenges that have affected Indian Country detention facilities. Our 2016 evaluation, [Bureau of Indian Affairs Funded and/or Operated Detention Programs](#), reported on these issues and emphasized that these two factors, particularly in combination, can have a harmful effect on inmates.

During our 2016 evaluation, we reported that some detention facilities did not have sufficient staff to operate at full capacity despite efforts made to address this concern. This occurred in part because the OJS was not always able to fully fund staff at some newer facilities that were larger than the facilities they replaced. As a result, this report explained that some of these programs operated only a portion of the facilities.<sup>3</sup>

### Overcrowding

Inmate overcrowding hampers a detention facility's response to COVID-19 outbreaks by limiting its ability to implement social distancing and isolation guidelines necessary for curbing the spread of the virus. Fourteen of

<sup>3</sup> We obtained information suggesting that these conditions have continued. For example, officials at the Uintah and Ouray Agency Justice Center told us during this project that their detention facility has 100 beds, but they only use the booking area, which holds no more than 10 inmates, due to staffing limitations.

59 facilities that responded to our questionnaire (24 percent) reported overcrowding between April 1, 2020, and May 31, 2020. To address inmate overcrowding, detention facilities reported using the following strategies:

- Working with tribal courts to amend sentences or grant early releases or home confinement for inmates charged with certain nonviolent crimes
- Working with tribal law enforcement to issue citations, rather than make arrests, for certain minor charges
- Moving inmates to contracted facilities

Of the 59 facilities, 51 (86 percent) reported that tribal courts cooperated in reducing inmate population by granting early release to 442 (4 percent) inmates and home confinement to 55 inmates. Fourteen of these 51 facilities were among those that responded that they had faced overcrowding between April 1, 2020, and May 31, 2020. Separately, eight facilities reported that they faced challenges in interactions with tribal governments, most commonly that tribal courts were reluctant to grant inmates early release.

### **Inadequate Staffing Levels**

Having enough staff to safely operate Indian Country detention facilities has been a longstanding challenge for detention facilities due to lack of available housing, low pay, lack of qualified candidates, and insufficient funding. One facility official commented that the unavailability of staff who contract the virus exacerbates already low staffing levels and that expanded cleaning requirements limit staff's ability to focus on security measures.

The results of our questionnaire showed that 25 of the 59 facilities (42 percent) reported that the operational staffing levels for their facility did not meet the minimum staffing level to safely operate their facility.

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**Key Action:** The BIA should continue to look for solutions to reduce overcrowding and improve recruitment and retention of detention staff.

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### **Conclusion**

Detention facilities, including those in Indian Country, face significant challenges in overcoming COVID-19 outbreaks because inmates live, work, eat, and participate in activities in close proximity to each other. Inmate overcrowding and inadequate staffing of detention facilities further increase the risk that inmates will contract COVID-19. The OJS distributed guidance and PPE to detention facilities, and facility officials told us that they attempted to obtain COVID-19 tests, work with tribal governments to obtain early releases or home confinement, increase social distancing, and screen inmates and staff within the unique constraints of each detention facility. It is critical that OJS and detention facility officials remain focused on this issue and continue to monitor, communicate, and implement the latest guidance from health professionals.

Due to the COVID-19 pandemic, we were unable to perform site visits and relied on information provided by Bureau and tribal detention facility officials. We conducted our inspection in accordance with the *Quality Standards for Inspection and Evaluation* as put forth by the Council of the Inspectors General on Integrity and Efficiency. We believe that the work performed provides a reasonable basis for our conclusions.