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CREATING A CULTURE OF TRAFFIC SAFETY ON RESERVATION ROADS:

Tribal Law & Order Codes and Data-Driven Planning



Margo L. Hill* & Christine S. Myers**

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I. Introduction

Traffic safety for American Indians and Alaskan Natives (AI/AN) represents a great disparity when compared to national data for all other groups.¹ The national motor vehicle crash fatality data indicate American Indians in the United States are experiencing disproportionate numbers of crash fatalities across Indian Country.² According to the Center for Disease Control (CDC), the leading cause of death for American Indians and Alaskan Natives (AI/AN) under the age of 44 is unintentional injury due to motor vehicle crashes.³ In Washington State, the overall crash fatality rates for the AI/AN population are four times that of any other group, with state-wide rates for failure to use seatbelts seven times higher, and rates for alcohol and impaired driving fatalities five times higher.⁴

Many reservation leaders and tribal members are aware of the loss of life. This devastating pattern impacts the lives of tribal members, seemingly without the needed outcry for change. Although crash data is

¹ Nat'l Ctr. for Health Statistics, *Motor vehicle traffic deaths, Health Indicators Warehouse* (last visited Apr. 15, 2016), http://www.healthindicators.gov/Indicators/Motor-vehicle-traffic-deaths_1076/Profile/ClassicData.

² Bureau of Indian Affairs Office of Justice Services, *2016 Indian Nations Highway Safety Plan*, U.S. Dep't of Transp., 14, (July 1, 2015), www.nhtsa.gov/links/statedocs/FY16/FY16HSPs/BIA_FY16HSP.pdf.

³ Ctr. for Disease Control & Prevention, *Tribal Road Safety: Get the Facts*, Injury Prevention & Control: Motor Vehicle Safety (Nov. 23, 2015), <http://www.cdc.gov/motorvehiclesafety/native/factsheet.html>.

⁴ Wash. Traffic Safety Comm'n, *Target Zero- Wash. State Strategic Highway Plan 2013, 20-22, 21* (Dec. 13, 2013), <http://www.targetzero.com/PDF2/targetzero2.pdf>.

being collected, often it has not been organized and analyzed by tribes. Crash data collection and analysis supports tribal transportation safety planning and policy-making in the development of a broad range of countermeasures including tribal traffic safety law and order codes. Crash data can provide the context for action by tribal governments to direct change, create a tribal culture of traffic safety, and ultimately establish safer reservations roads.

Today tribes are developing their traffic safety culture to reduce the number of fatalities and serious injuries on reservation roads by implementing proven countermeasures. Countermeasures are best practices in the field, which are evidence-based activities and strategies proven to solve safety problems.⁵ However, we found from a tribal law perspective, there are unique considerations involving jurisdictions, intergovernmental relationships, and complex governing structures that frequently make implementing countermeasures challenging. The focus of this Article is to describe the work of the Eastern Washington University Tribal Traffic Safety Demonstration Project, from the cultural and behavioral standpoint, in an assessment of the tribal law and order codes that impact tribal traffic safety for six Pacific Northwest Tribes in Washington State.⁶ Through this study, this Article hopes to provide examples of best practices for other tribal governments to adopt to improve traffic safety in their communities.

Washington State's Fatality Analysis Reporting System (FARS) data for 2010 to 2014 showed that the number one killer on reservation roads for the six tribes in the study was impaired driving.⁷ The study of traffic safety laws for the six tribes overall, and the impaired driving laws more specifically, illuminates the governance trends that these tribes have taken to increase community safety. We will discuss the need for tribal communities to develop traffic safety committees and how these committees can work with tribal leadership to develop effective tribal law and order codes. This work provides a basis for future research evaluating tribal traffic safety culture and policy effectiveness.

The first part of this article will provide a brief background on tribal transportation safety planning overall, including the strategy of the *Target Zero* planning approach. The research indicates a need for American Indian tribal governments to set community goals specific to their circumstances, particularly with a goal towards zero deaths or serious injuries on

⁵ Arthur Goodwin, Bevan Kirley, Laura Sandt, William Hall, Libby Thomas, Natalie O'Brien, & Daniel Summerlin, *Countermeasures That Work: A Highway Safety Countermeasure Guide for State Highway Safety Officers*, Nat'l Highway Traffic Safety Administration, 1, (Apr. 2013), www.nhtsa.gov/staticfiles/nti/pdf/811727.pdf.

⁶ This research by Eastern Washington University Urban & Regional Planning, Tribal Planning Program was supported by a grant from the Washington Traffic Safety Commission, *WA State Tribal Traffic Safety Assessment*, WTSC. Agreement Number: M1*CP 15-0. Special thanks to the WTSC for their assistance and to MJ Haught for her insight and support on this project.

⁷ Washington State Fatality Analysis Reporting System (FARS) data, 2010-2014.

their roads. The second part of this article, discusses the research and case study of six tribes who participate in the Washington State's *Target Zero* planning process. Furthermore, the second part compares the crash fatality data on and near the six reservations to the related tribal traffic safety law and order codes to examine the effectiveness of those traffic safety laws. The last part of this article recommends some best practices and culturally appropriate countermeasures that tribes are actively implementing in Washington. This paper calls for other tribal governments to learn from the six Pacific Northwest Tribes and implement their own culturally appropriate best practices and countermeasures for traffic safety.

II. Background on Tribal Transportation Safety Planning

A. Tribal Civil Regulatory Jurisdiction

Tribes are distinct sovereign nations. Tribes have governments with their own legal structures and political systems, which maintain a distinctive legal status embodied in their inherent tribal sovereignty and rights typically reserved in treaties (and later agreements) they negotiated with the United States.⁸ These treaties and Executive Orders create a unique legal relationship between the federal government and federally recognized tribes.⁹ Tribes maintain sovereign rights that predate the formation of the United States and the State of Washington, including regulating their internal and social relations.¹⁰ As sovereign nations, they have the inherent right to "make their own laws and be ruled by them."¹¹ Most tribes have developed their own law and order codes, law enforcement, and justice systems.

In 1953 Congress adopted Public Law 280, which made some state laws applicable on Indian lands.¹² The State of Washington opted to assume partial jurisdiction over eight subject areas in 1957, which included the "operation of motor vehicles upon public streets, alleys, roads, and highways" on reservations for tribes who gave their consent.¹³ The State amended the law in 1963 to assert their jurisdiction regardless of tribal consent, extending over all non-trust lands on reservations and over non-Indians on reservations. A process for the retrocession of civil and/or criminal jurisdiction was promulgated by law in 2012.¹⁴ In general, it

⁸ U.S.CONST. art. VI, § 2; *See also* Worcester v. Georgia, 31 U.S. 515 (1832).

⁹ Timpanogos Tribe v. Conway 286 F.3d 1195, 1202, n.3 (10th Cir. 2002); *See also* FELIX S. COHEN, COHEN'S HANDBOOK OF FEDERAL INDIAN LAW, 127-28 (Lexis Law Pub, 1982 ed.).

¹⁰ United States v. Kagama, 118 U.S. 375, 381-82 (1886); *See also*, Worcester v. Georgia, 31 U.S. 515, 37 (1832).

¹¹ Williams v. Lee, 358 U.S. 217, 220 (1959).

¹² Public Law 280 ch. 505, 67 Stat. 588 (1953) (codified at 18 U.S.C. § 1162 (1988)).

¹³ Wash. Rev. Code § 37.12 (1957).

¹⁴ Wash. Rev. Code § 37.12.160 (2012).

is assumed that when the state has jurisdiction in Indian Country, it is considered concurrent with Tribal authority.¹⁵

Each tribe, on a case-by-case basis, has to contend with potential jurisdictional issues with local and state government entities when it concerns roads open to public travel. Tribes, like any other government, have the power to regulate activities within Indian Country; typically defined as within the exterior boundaries of their reservations, and on trust lands.¹⁶ This regulatory authority extends to members of the tribe and Native non-members.¹⁷ Tribal civil jurisdiction can also include non-Indians when there is a consensual relationship or contract, and where it is determined that the conduct engaged in by non-Indians threatens or effects the political integrity, economic security, or health and welfare of the tribe.¹⁸ Non-Indians who reside or work on the reservation are generally considered subject to tribal civil jurisdiction.¹⁹

Tribal police have the inherent authority to stop non-Indians driving motor vehicles on public roads within the boundaries of the reservation when they have allegedly violated state and/or tribal laws.²⁰ They may detain drivers until they can be turned over to state authorities for charging and prosecution.²¹ The state's actions under Wash. Rev. Code § 37.12 (1963), which asserted criminal jurisdiction over the operation of motor vehicles on Indian lands did not divest Tribal governments of their inherent authority to stop and detain non-Indians allegedly violating state and/or tribal law while traveling on public roads across a reservation.²²

Tribal courts do not typically have criminal jurisdiction over non-Indians who commit crimes on their reservations, instead non-Indian offenders are subject to state and/or federal prosecution according to the seriousness of their offense.²³ The Washington Mutual Aid Peace Officer Powers Act worked to reduce obstacles to “mutual aid and cooperative enforcement of the laws” between the local, state, tribal and federal agencies.²⁴ Tribal police may be authorized “to act as general authority Washington state police officers” when certain criteria are met, and therefore “recognized and authorized” to perform duties enforcing state laws on the reservations, including issuing citations, arresting, and transporting offenders.²⁵

¹⁵ Wash. Rev. Code § 37.12 (2012); *See also* Vanessa J. Jimenez & Soo C. Song, *Concurrent Tribal and State Jurisdiction Under Public Law 280*, 47 U.L. REV. 1627 (1998).

¹⁶ 18 U.S.C.A 1151 (2011); *Atkinson Trading Post v. Shirley*, 532 U.S. 645 (2001).

¹⁷ *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980).

¹⁸ *Montana v. United States*, 450 U.S. 544 (1981).

¹⁹ *Water Wheel Camp Recreational Area, Inc. v. La Rance*, 642 F.3d 802 (9th Cir. 2011).

²⁰ *State of Washington v. David P. Schmuck*, 121 Wn.2d 373, 850 P.2d 1332 (1993).

²¹ *Id.*

²² *Id.*

²³ *Oliphant v. Suquamish*, 435 US 191 (1978).

²⁴ Wash. Rev. Code § 10.93 (1985).

²⁵ Wash. Rev. Code § 10.92.020 (1) (2008).

Tribal law and order codes can help codify tribal civil regulatory authority and are typically a mixture of Anglo-American and Tribal law and custom. Tribes do not simply apply Anglo (non-Indian) law and order codes and planning to tribal lands and government. Instead tribal law is based on the unique status and powers of American Indian tribal governments through a knowledge of tribal sovereignty, and the dynamics and complexity of strategic planning – policy analysis, management, and community planning.²⁶ To assert tribal sovereignty and civil regulatory jurisdiction, many tribes develop law and order codes to clearly state their authority and develop a transparent governance structure.

B. *Requirements for Reporting Motor Vehicle Crash Data*

Motor vehicle crash data collection, reporting, and analysis are congressionally mandated for each state government. Tribes recognize the value of sharing at least some data from crashes, but, federally recognized tribes are not required to report their crash data into a state or federal reporting system, nor are they required to maintain their own systems.

In December of 2015, the Fixing America's Surface Transportation (FAST) Act passed in Congress. Section 1117 in the Act amends 23 USC § 201(c) (6) Federal lands and tribal transportation programs. This amendment recognizes the problems with tribal data reporting: disproportionate representation in crash fatality statistics, better reporting would benefit tribal governments by improving their ability to apply for State and Federal funds for safety projects; it identifies some causes for under-reporting crash data; and states the benefits of better reporting also include the ability to identify problems more clearly and apply appropriate countermeasures. The law now mandates the Secretary of Transportation to submit a report to Congress within a year (December 2017) after consulting with the Secretary of the Interior, the Secretary of Health and Human Services, the Attorney General, and the Indian tribes.²⁷

The reported crash data is typically organized by contributing factors such as: if drug or alcohol impairment was involved, weather and road conditions, and the time of day. Officers at the crash site are tasked with determining what the contributing factors are for each crash. There can be a great deal of variation of the factors reported from officer to officer, despite similar training, and often limited time to assess and report these contributing factors play a role in the variation. In fact, one aspect of implementing traffic safety improvements is to continue to improve officer training and reporting protocol, including support for simplified data collection methods. For example, if the related agencies in the tribe make sure to keep records on the age, gender, location, time of day, and other factors surrounding an incident; they can pinpoint issues related

²⁶ Interview with Dr. Dick Winchell, Dep't Chair, Urban & Reg'l Planning, E. Wash. Univ, in Spokane Wash. (Feb. 2, 2015).

²⁷ Pub.L. 114-94, 23 USC § 201(c) (6) (b) (2).

to the impaired driving epidemic so that tribal leaders can address the issues more effectively.

Crash data reporting, like tribes' inherent right to plan for their roads and set transportation safety policies, has progressively gained traction through legislative measures. The passage of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, Public Law 102-240, dramatically affected federal transportation programs.²⁸ This legislation moved the nation beyond merely engineering of the roadway surface, to address the full range of transportation issues while promoting an equity-based and cooperative problem-solving paradigm. This moved transportation planning towards a focus on fairness in the broad and complex interactions of transportation systems within communities.²⁹

ISTEA expanded the role of tribal governments in transportation planning on their reservations, but also in the broader community in a number of ways. First, the law made tribes eligible for funding through federal programs administered by the states.³⁰ Second, tribes were able to begin developing their transportation planning programs due to a 2% funding set aside with the support of the Tribal Technical Assistance Programs (TTAP). TTAP's mission is to "help to develop a sound transportation system through training, technical assistance, and technology transfer."³¹ ISTEA mandated states to involve tribes in all aspects of transportation planning on a government-to-government basis. Lastly, funds distributed through the Bureau of Indian Affairs Indian Reservation Roads (IRR) Program became eligible as local matching funds for some federal aid programs encouraged tribal partnerships with local and regional state jurisdictions on larger infrastructure projects.³²

Adopted in 2005, the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) fully embraced the need for surface transportation investment changes to address safety. The Bureau of Indian Affairs (BIA) and the Federal Highway Administration (FHWA) are jointly responsible for tribal transportation under the IRR Program. Both agencies have identified and developed planning processes for tribal traffic safety planning. Through tribal input, a separate fund was created to focus on safety, the Tribal Transportation Safety Program (TTSP), which restructured previous

²⁸ Transp. Research Bd., *A Guidebook for Successful Communication, Cooperation, and Coordination Strategies Between Transportation Agencies and Tribal Communities*, REPORT 690, National Cooperative Highway Research Program, 9-10 (2011).

²⁹ 105 Stat. 1915 (1991).

³⁰ Transp., *supra* note 28, at 9.

³¹ Nelda Bravo, *ISTEA's Tribal Technical Assistance Program Legacy*, Public Roads, (May/June 1998), <https://www.fhwa.dot.gov/publications/publicroads/98may/tribal.cfm>.

³² Dick Winchell & Richard Rolland, *Tribal Transportation Planning Guide for Washington State*, Washington State Department of Transportation, 10 (2009), <http://www.wsdot.wa.gov/NR/rdonlyres/D9668173-F25F-448B-B571-57EB32122036/0/Tribal-TransportationPlanningGuideforWashingtonState.pdf>.

IRR program dollars, now known as Road Improvement Shares funds for transportation safety projects.³³

SAFETEA-LU provisions transformed the IRR Program by allowing “maximum flexibility” for tribal administration of transportation programs including contracting or compacting “any or all of the program under rules established for the Indian Self-Determination & Education Assistance Act.”³⁴ This includes the capability to contract directly with the United States Department of Transportation through funding agreements administered by the Federal Lands Highway Office.³⁵ A new position for a Deputy Assistant Secretary (DAS) for Tribal Government Affairs within the Department of Transportation was created to participate in any rulemaking within the Department that impacts the Tribal Transportation Program, however this position has not been filled. There is currently an organized movement to request the United States President to appoint someone to this position.³⁶

Since SAFETEA-LU went into effect, the national crash rate has decreased from 18.00 per 100,000 registered vehicles in the United States in 2004 to 12.26 per 100,000 in 2013. This is a decrease of 5.74 deaths per 100,000.³⁷ SAFETEA-LU brought a mandated process for traffic safety across the nation with the requirement that the nation as a whole, and each state individually, create a transportation safety plan to reduce traffic fatalities and serious injuries. The most prominent framework proposed was “Target Zero” planning which develops strategies based on a goal of zero deaths and serious injuries on the planning horizon. Many states have subsequently developed and adopted what have become known as *Target Zero* plans, and more importantly they began implementation of those plans which have resulted in significant reductions in fatalities.³⁸

Moving Ahead for Progress in the 21st Century (MAP-21), which passed in 2012, continued previous safety initiatives and included tribal input into administration of programs. The IRR Program was reconfigured and renamed the Tribal Transportation Program (TTP) with the purpose of providing “access to basic community services to enhance the quality of life in Indian country.”³⁹ The tribal provisions created a separate set of TTSP initiatives through legislation which funded and authorized U.S. federal surface transportation spending for tribal transportation

³³ See Federal Highway Administration (FHWA), *A Guide to Federal-Aid Programs and Projects* (Oct. 18, 2012), <https://www.fhwa.dot.gov/federalaid/projects.pdf>.

³⁴ Winchell, *supra* note 32, at 84.

³⁵ Winchell, *supra* note 32, at 84.

³⁶ See Sonosky, Chambers, Sachse, Endreson & Perry, LLP, *Tribal Transportation Unity Caucus*, Sample Letter to President Obama, (Mar. 5, 2016), <http://www.sonosky.com/f-ttuc.html>.

³⁷ National Highway Traffic Safety Administration, *Traffic Safety Facts*, U.S. Dep’t of Transp., 2, Table 1, (2013) <http://www.nrd.nhtsa.dot.gov/Pubs/812139.pdf>.

³⁸ 119 STAT. 1144 (2005).

³⁹ Fed. Highway Admin., *MAP-21 Moving Ahead for Progress in the 21st Century*, U.D. Dep’t of Transp., Program Purpose, (last modified Sept. 12, 2013), <https://www.fhwa.dot.gov/map21/factsheets/ttp.cfm>.

planning.⁴⁰ Also, MAP-21 required inspection of tribal bridges and their inclusion on the National Bridge Inventory.

Under MAP-21, each state was mandated to create a Strategic Highway Safety Plan and that plan for Washington is called *Target Zero*. In their plan, the state set a goal for “no highway fatalities by the year 2030” and laid out a blueprint for how they would reach that goal using data-driven issue analysis to set priorities and apply appropriate countermeasures. This planning framework involved many of the 29 tribes in the State in a collaboration of “traffic safety professionals and activists from many different organizations and disciplines;” Washington State Department of Transportation (WSDOT) engineers and local public works departments; tribal and city police, county sheriffs, and State Patrol worked along with “medical professionals from hospitals and public health agencies.”⁴¹

The FHWA/BIA develop their own Strategic Highway Safety Plan for Indian Lands, including an Implementation Plan. Because circumstances vary from tribe to tribe, each tribe from state to state has its own relationships within the transportation planning system. More and more, tribes are acquiring direct funding from the FHWA, setting their own priorities and directing their own projects. Tribes could consider implementing their own versions of the “Strategic Highway Safety Plan Implementation Process Model” developed by FHWA.⁴²

Trends in recent legislation, like the Fixing America’s Surface Transportation (FAST) Act, have continued to move towards an expanded role for tribal governments in transportation planning and decision-making, with a continued expansion of funding and increased “collaboration and consultation with states.”⁴³ The FAST Act became law on December 4, 2015.

III. The Need to Adopt *Target Zero* Plans: Today is Not a Good Day to Die

As tribal people, we want the best for our communities. We too, need to set an aggressive goal to reduce the number of fatalities and serious injuries on our reservation roads and follow through with plans for direct action. The federally mandated state transportation programs have outlined some quality best practices that can be tailored to reservation communities. A look at the trends across the nation shows that under plans like Washington’s *Target Zero*, traffic deaths and serious injuries have been significantly reduced. Meanwhile, on our reservations the great disparity between American Indians and the rest of the nation is increasing as our

⁴⁰ 126 STAT. 405 (2012).

⁴¹ Wash. Traffic Safety Comm’n, *supra* note 4, at 1.

⁴² Fed. Highway Admin., *Strategic Highway Safety Plan Implementation Process Model*. U.S. Dep’t. of Transp., (Jun. 2010), http://safety.fhwa.dot.gov/hsp/shsp/fh-wasa10024cd/pdf/FHWA_SHSP_IPM_Report.pdf.

⁴³ Pub. L. 114–94, 23 USC § 201(c) (6) (b) (2).

fatalities continue to be relatively high, while the rates for the rest of the populations decline. Many tribes in Washington are committed to participation in the state *Target Zero* plan. By adapting state programs and policies to our cultures and circumstances, we can implement strategies that will work to reduce the fatalities on and near our reservations.

The Affiliated Tribes of Northwest Indians (ATNI), a regional tribal organization, has worked to build strong intergovernmental relationships with Oregon, Idaho, and Washington State governments. They provide leadership and guide policy direction on transportation issues in Indian County. ATNI provided direct input into the “development of ISTEA and subsequent legislation.”⁴⁴ Tribes in Washington and the Washington Traffic Safety Commission (WTSC) have been active partners in drafting the state’s *Target Zero* plan to support traffic safety. The tribes worked with the WTSC to develop the Tribal Traffic Safety Advisory Board, which provides input from tribes into the state’s transportation planning process.

WTSC has also attempted to create more public awareness through the use of a commercial called *Target Zero: What’s your goal?* This advertisement has a video version and airs on the radio. In the ad, they ask people on the street how many deaths are acceptable on Washington’s highways. People at first give an off-hand answer of some random number like 500 or 1,000 lives. Then the interviewer asks them, “How many of your friends and family is it acceptable to have die?” The answer. Zero.⁴⁵

This same question can be posed for each reservation. It may be difficult to imagine no fatalities for a state or a county or a city, but it is possible to imagine a reservation with zero fatal crashes. This is the goal for *Target Zero* planning that can be applied on each reservation, and the *Target Zero* data-driven transportation model can be applied to set into motion plans, strategies and actions to achieve that goal.

IV. A Call for Tribal Traffic Safety Planning

There is an urgent need to coordinate tribal traffic safety strategies between programs, like Emergency Medical Services (EMS) and the roads department. Tribes can effectively reduce traffic fatalities and serious injuries when tribal government programs and departments work together to share data and information, as opposed to operating in silos off by themselves. Tribal leaders, staff, and community members need a plan that sets a tribal goal for zero fatalities.

The Eastern Washington University (EWU) research team encourages each tribe to establish their own form of Tribal Traffic Safety Committee, which will use their tribal data to help identify issues and implement strategies and measures for success within the tribal community. In this way, strengthening tribal governments through developing a more traditional form of social and cultural support for each tribal councils’

⁴⁴ Winchell, *supra* note 32, at 10.

⁴⁵ Wash. State Traffic Safety Comm’n, *Target Zero: Questions & Answers*, YouTube, (Nov. 13, 2014), <https://www.youtube.com/watch?v=jMw4HblXy3k>.

decision-making. These committees work together to take action. They can include tribal leaders and residents of all ages, and promote efforts that facilitate changes that save the lives of their friends and family members. These committees are also culturally based because each person's knowledge base contributes to the "social, political, and cultural support of consensus and shared goals necessary to maintain and lead an engaged and mobilized political community."⁴⁶

The creation of Tribal Traffic Safety Committees on reservations are an important step in ensuring tribal sovereignty and self-governance. Tribal Traffic Safety Committees should be made up of tribal leaders; staff from the Planning, EMS, Roads, Law Enforcement, and Health and Human Services programs; as well as residents of all ages. Such committees can develop an understanding of the importance of reporting basic crash data, and encourage each tribe to understand and establish its own appropriate policy toward reporting at least essential crash data into the FARS system.

The committees typically complete data-driven safety plans which 1) identify and implement actions from proven countermeasures in road design and safety measures, 2) promote education and awareness, 3) implement models for codes and enforcement, and 4) support improvements in services like EMS. Tribes can benefit from adopting on-going data collection processes for crash data that can inform law and order codes and be used as a metric to measure the effectiveness of policies and countermeasures for safety strategies and actions over time.

Those in first contact with crashes, law enforcement and EMS, recognize the tremendously negative impact, but this does not always carry over into the other critically needed components of tribal safety programs. Tribal transportation safety crosses many tribal, state and federal programs, and it is difficult to understand the complexity and inter-relationships that exist.

A few of the many challenges tribes face include: (1) Insufficient and inconsistent funding that is made available through an overwhelming number of funding streams and complicated application procedures; (2) Building relationships to overcome historical frictions with local governments in order to form partnerships and collaborate on regional transportation projects; (3) Geographic isolation and remote locations of transportation facilities for roads on or near Indian reservations is often a barrier to efficient and cost-effective delivery of essential services like road construction and maintenance, law enforcement, public transit, fire, and Emergency Medical Services (EMS); (4) High crash rates on reservation roads; and (5) Transportation data on crashes, traffic counts and other information is incomplete or inaccurate and complicated by the involvement of multiple jurisdictions in data collection and analysis.⁴⁷

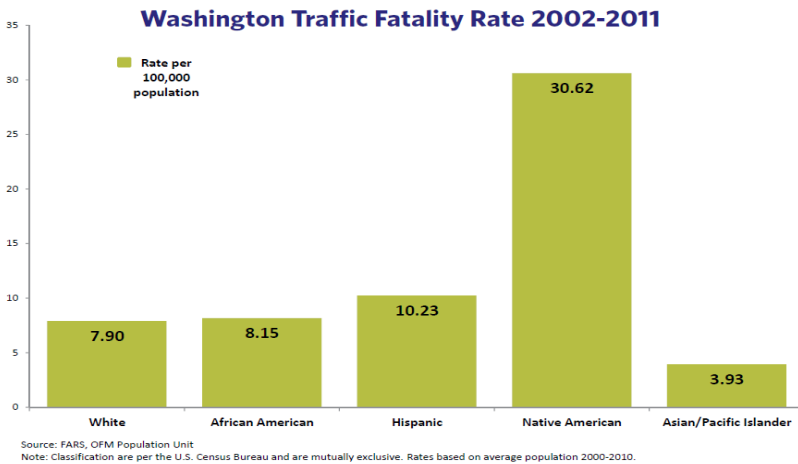
⁴⁶ Duane Champagne, *Renewing Tribal Governments: Uniting Political Theory and Sacred Communities*, 1 UCLA INDIGENOUS PEOPLES' J.L. CULTURE & RESISTANCE 24, 36 (2004).

⁴⁷ Pub. L. 114-94, 23 USC § 201(c) (6) (b) (2).

A. *Every Person Counts, Especially in Tribal Communities*

It is a known fact by many tribal communities that American Indian fatality rate in Washington State are high. Many Washington tribes have developed some innovative traffic safety initiatives and programs on many reservations to lower the number of fatal traffic crashes. *Target Zero* data revealed that American Indians in Washington State experience an increasingly “disproportionate” number of recorded crash fatalities compared to non-Indians.⁴⁸ From 2002 to 2011 American Indians died in car crashes at a rate roughly four times higher than White or African American fatalities and about three times higher than the fatalities in the Hispanic population.⁴⁹

Figure 1. Washington State Traffic Fatality Rates for 2002-2011.⁵⁰



Tribal governments have the authority and responsibility to educate their communities about expected tribal member behavior and implement policies and strategies proven to reduce fatalities and serious injuries on the roadways. Many of these crashes are happening due to bad choices within individual tribal members’ control. For generations now, we have lived with the death of tribal members and family members as if it were an accepted part of life. We know we have a significant number of fatalities in our communities going uncounted in these national and state statistics.

Eisenhower Fellow and Confederated Tribes of the Colville Reservation tribal member Adam Amundsen conducted research on State Route 155 from Nespelem to Omak, WA over his reservation lands. Through his research, he found six memorial sites that were not identified in the crash data from the state. Instead of the 10 crash fatalities reported;

⁴⁸ Wash. Traffic Safety Comm’n, *supra* note 4, at 21.

⁴⁹ *Id.*

⁵⁰ *Id.*

there were really at least 16 that actually occurred.⁵¹ Tribal people are reminded every time we see crosses and makeshift memorials along our roadways that every person counts in our communities.

To reduce traffic fatalities, it will take everyone to set higher expectations— tribal leaders, law enforcement, tribal courts, emergency medical technicians (EMTs), roads departments, health and human service staff and our community members. Tribal resources and tribal programs are limited, so focus areas need to be identified where funding and efforts will have the most impact. One key way to increase effectiveness is to share resources in government-to-government relationships with non-tribal entities, such as county and city law enforcement, state agencies, and medical facilities.

In order to approach traffic safety issues in this context, it may be useful for tribal governments to think about the state's Strategic Highway Safety Plan, *Target Zero*, like “a detailed roadmap” which seeks to coordinate efforts and funding for “all traffic safety organizations.”⁵² In order to do this, it strives to use the most effective strategies and track progress toward the ultimate goal of zero deaths or serious injuries by 2030.⁵³

B. *Making Our Own Decisions: The Need for Basic Data to set Tribal Traffic Safety Priorities*

Tribal administrators and decision-makers acknowledged their data is underreported and the numbers are likely higher than what is reported in Fatality Analysis Reporting System (FARS), a national census of motor vehicle traffic crashes, which specifies the contributing factors behind traffic fatalities across the United States.⁵⁴ The few crash data sources available are inadequate and err toward significant under-reporting of crashes on reservations.⁵⁵ Most tribes are either not accustomed to collecting data, just beginning to do so, or reporting the data inconsistently.⁵⁶

As a result of SAFETEA-LU more data has been reported than was previously available concerning reservation traffic fatalities, but tribal specific assessment of crash data is relatively recent. Between 1975 and 2002 fatal motor vehicle crashes on reservations across Indian Country increased by “52.5 percent, (from 181 fatal crashes in 1975 to 276 fatal crashes in 2002), while the number of fatal crashes across the nation declined 2.2 percent.”⁵⁷

⁵¹ Adam Amundson, *Traffic Safety Issues on State Route 155 through the Colville Reservation*, Unpublished Report, E. WASH. UNIVERSITY 4, 7-8 (2016).

⁵² Wash. Traffic Safety Comm'n, *supra* note 4, at 1

⁵³ *Id.*

⁵⁴ Nat'l Highway Traffic Safety Admin., Fatality Analysis Reporting System, (2015, Dec 31), <http://www.nhtsa.gov/FARS>.

⁵⁵ Bureau of Indian Affairs Indian Highway Safety Program, FY 2008 Annual Report, Dept. of the Interior, 6 (April 2010).

⁵⁶ *Id.*

⁵⁷ Keith Poindexter, *Fatal Motor Vehicle Crashes on Indian Reservations 1975 – 2002*, NHTSA, 1 (April 2004).

Quality data for good decision-making is in short supply across the nation, and Indian Country is currently no exception. The Bureau of Indian Affairs' Indian Highway Safety Plan found that between the years of 2007-2011, "there is no clear trend-line, fatalities went up and down each year" for crash data in Indian Country.⁵⁸ The fluctuating numbers may be due to the fact that tribes inconsistently reported their crash and fatality data into the system. The Bureau of Indian Affairs' (BIA) 2015 Strategic Highway Safety Plan stated that it was "evident from the self-reported data from the Tribes, that alcohol impaired driving, speed, and non-use of seat belts play a significant role in fatal and injury crashes on the reservation."⁵⁹

Developing a data-driven approach means each individual tribe collects, reports, and uses their data as the underlying basis for safety plans, which set the priorities that provide direction to their tribal programs. As an example, the elements of the state's *Target Zero* plan provide statistics, which highlight local factors most contributing to fatalities and serious injuries. The WTSC and NHTSA's FARS program both recognize tribal sovereignty and work with tribes to make agreements where personally identifiable information is withheld as appropriate, while still recording the basic crash data.⁶⁰ This is essential for data driven safety planning.

With grants available, tribes in Washington State may work with WTSC to report crash incidents and cooperate on road safety data management. Several tribes currently report their crash data through the State. Tribes can make similar arrangements for reporting directly to NHTSA. Tribal crash data reporting typically involves releasing only the data-sets that tribes deem appropriate—mostly fatal crash counts with the contributing factors.

Many tribes have begun to report data through states or the Fatality Analysis Reporting System (FARS) because of the need for data driven planning, or to keep their own databases and analysis of crashes. Tribes are not currently required to their report data but the issue of crash data reporting is coming into focus due to mandated federal reports that will be generated over the next few years. The recently approved FAST Act requires one of these reports be submitted to Congress within a year of its enactment on the "quality of transportation safety data collected by States, counties, and Indian tribes."⁶¹

There are two primary crash data sources for traffic safety: 1) National and State Data in the FARS⁶² and 2) Center for Disease Control (CDC) data.⁶³ FARS data is based on incident reports made by police

⁵⁸ Bureau of Indian Affairs Indian Highway Safety Program, FY 2015 Highway Safety Plan, Department of the Interior, 7 (2015).

⁵⁹ *Id.*, at 13.

⁶⁰ Pub. L. 114-94, Sec. 1117 Federal Lands and Tribal Transportation Programs, (b) (2); Winchell, *supra* note 32, at 23.

⁶¹ Pub. L. 114-94, 23 USC § 201(c) (6) (b) (2).

⁶² Nat'l Highway Traffic Safety Admin., *supra* note 54.

⁶³ Centers for Disease Control and Prevention, Injury Prevention & Control: Motor

officers on the scene and other sources⁶⁴, while CDC data is based on coroner reports of cause of death, and both have problems of consistency or lack of reported data.⁶⁵ The federal and state FARS data is disaggregated to county level, and can be requested by tribes for reservations.⁶⁶ Data from these sources are new for reservations, but includes only the data reported by tribes that choose to report their motor vehicle crash and fatality data to NHTSA or the states.

Emergency Medical Services (EMS) data provides another source for tribal crash data collection, but there is no standardized reporting system or formal process to integrate this data with FARS and CDC data for more effective analysis of crashes. Some tribes provide their own EMS, in which case they may report general data to Indian Health Service for funding purposes. Other tribes contract with local counties to provide EMS services, thus making it difficult to track their own data through those contracted services.

Tribes, as sovereign governments, are not required to report their crash data within their jurisdiction to other entities. While this has led to variation in the reported data, this is a decision for each tribe to make. Many tribes are beginning to report data through states or national FARS, because of the need for data driven planning, or to keep their own databases and analysis of crashes. Even though tribes are not currently required to their report data, the issue of crash data reporting is coming into focus due to mandated federal reports that will be generated over the next few years.⁶⁷ The recently approved FAST Act requires one of these reports be submitted to Congress within a year of its enactment on the “quality of transportation safety data collected by States, counties, and Indian tribes.”⁶⁸ Developing Tribal Traffic Safety Committees may become necessary for many tribes to adopt to ensure accurate and reliable traffic crash data.

Tribes can work with their state agencies on data collection or directly with NHTSA at the federal level to report only data which tribes deem appropriate. However, it is important both for planning and funding that tribes identify appropriate reporting policies for key data. An enduring Tribal Traffic Safety Culture requires good data to support decision-making and grant funding, with the recognition that the crash data reflects lives lost or injuries sustained, and that eventually zero deaths and serious injuries can be sustained.

Vehicle Safety (Aug 28, 2015) <http://www.cdc.gov/motorvehiclesafety/states/index.html>.

⁶⁴ National Highway Traffic Safety Administration, *Report to Congress NHTSA's Crash Data Collection Programs*, DOT HS 811 337, USDOT, 8 (2010)

⁶⁵ Centers for Disease Control and Prevention *Injury Prevention & Control: Data and Statistics (WISQARS)*. <http://www.cdc.gov/injury/wisqars/fatal.html> (2016).

⁶⁶ National Highway Traffic Safety Administration, NCSA Publications & Data Requests, (April 3, 2016) <http://www-nrd.nhtsa.dot.gov/CMSWeb/index.aspx>.

⁶⁷ Pub. L. 114-94, § 1117 (b)(2).

⁶⁸ *Id.*

Tribes should commit to developing a system of internal records for crash data to inform the creation of laws and policies. Tribal Traffic Safety Committees and tribal governments can take the lead in collecting and reporting tribal crash data, setting tribal traffic safety priorities, and drafting new laws for tribal councils to adopt.

C. *Adapting the Four E's for Tribal Traffic Safety Strategies*

Tribal Traffic Safety Committees can assist with planning with state agencies, but they can also develop their own Strategic Highway Safety Plan for the reservation. This plan, informed by the data, can be tailored to the needs of the community and serve as a roadmap for tribal governments to improve traffic safety in their communities. In order to help the tribes reduce traffic fatalities and serious injuries, understanding some examples of Washington's *Target Zero* planning strategies can inform effective strategies for tribal communities.⁶⁹ The focus of these strategies build on the Four E's of Traffic Safety plus Leadership which are: Education and information, Enforcement and regulation, Engineering, and Emergency Medical Services (EMS), along with the additional focus of Leadership (policy and the creation of laws) which is very important in tribal communities.⁷⁰

The Four E's of Traffic Safety plus Leadership from a tribal perspective are:

Education – Through programing and outreach, teach tribal community members, leaders, and staff information to make good behavioral choices like; not driving impaired, make a habit of buckling their seatbelts, and slow down on reservation roads.

Enforcement – Utilize a data driven approach to help tribal police and tribal courts identify behavioral issues contributing to fatalities. Help tribal police identify locations where fatal crashes and injuries are happening and identify the cause of the crash (speed, rollover, road conditions) to improve unsafe roads.

Emergency Medical Services (EMS) – Work with tribal EMS staff to understand how to better provide high quality and rapid medical and emergency response to injury collisions.

Engineering – Work with tribal roads departments and programs to complete road safety audits, safety plans, design reservation roads departments, and use cost effective and proven countermeasures as solutions to reduce collisions and fatalities.

Leadership/Policy – Work with the tribal councils to examine tribal law and order codes to promote best practices that can be developed to reduce crashes and improve safety for issues such as impaired driving and seatbelt use laws. Use collected data to inform policy creation and to evaluate the effectiveness of regulations.

⁶⁹ Wash. Traffic Safety Comm'n, *supra* note 4, at 7.

⁷⁰ *Id.*

By using the Four E's of Traffic Safety plus Leadership strategy, tribal leaders and Tribal Traffic Safety Committees can either participate in the state plans or develop their own successful Strategic Highway Safety Plans for their reservations, based on quality data and culturally informed policies and goals.

V. Case Study: Six Tribes in Washington State

There are 29 federally recognized tribes in Washington State.⁷¹ Each tribe has a unique history, its own culture and languages, and comes with its own distinctive structure for self-government.⁷² These differences will inform the creation of unique tribal traffic safety strategies. Tribal traffic safety programs can be designed and implemented by tribal governments utilizing existing resources for traffic safety planning and program development including the *Target Zero* data driven processes, examination of the 4 E's with data and assessment of programs within each reservation, and creation of community traffic safety education and tribal leadership to direct improvements and change. This case study demonstrates the application of these processes to support data driven tribal traffic safety planning, strategic actions, and implementation of safety programs, services, and initiatives.

A. *The Eastern Washington University Tribal Traffic Safety Demonstration Project*

The Eastern Washington University Tribal Planning Program proposed the EWU Tribal Traffic Safety Demonstration Project (demonstration project) to identify and demonstrate the complexity of tribal traffic safety on reservations.⁷³ Six tribes located in both rural and urban communities across Washington participated in the study. In this study, the *Target Zero* planning model was applied based on data-driven factors to better understand the tribal traffic safety context ranging from road conditions, use patterns, and behavioral choices. The project looked at the current conditions starting with crash data collection and analysis of contributing factors like; unsafe roads, weather conditions, and behavioral factors underlying high fatalities and serious injuries rates on reservation roads.

The demonstration project used a data-driven approach to the law and order codes analysis. This was meant to help tell the tribal traffic safety story in the data and help the tribal communities challenge the complacent acceptance of high fatality and serious injury rates on reservations. Three out of six of demonstration project goals were key to the development of this law and order codes analysis:

⁷¹ Washington Tribes, *About Washington Tribes*, WASHINGTON INDIAN GAMING ASSOCIATION (April 3, 2016) <http://www.washingtontribes.org/>.

⁷² *Id.*

⁷³ Margo Hill, *Every Person Counts: Reflections on our EWU Tribal Traffic Safety Demonstration Project*, NORTHWEST TTAP E-NEWSLETTER 8 (April – May 2015), http://www.ewu.edu/Documents/CBPA/NWTTAP/Newsletter/Vol23_Issue2.pdf.

- Encourage the use of *Target Zero*'s data-driven approach to setting priorities and implementation of proven and recommended strategies.
- Work with tribal leaders to review and analyze their traffic safety law and order codes and continue to work with the tribes on analyzing the effectiveness of these laws through the entire system from law enforcement through courts and into the realm of behavioral health.
- Work with tribal programs to develop or improve a system for gathering, utilizing, and sharing traffic collision data involving deaths and serious injuries.

The demonstration project was funded by the Washington Traffic Safety Commission (WTSC)⁷⁴ to assist with coordinating tribal traffic safety programs to better align tribal priorities and strategies with a common language and approach to traffic safety efforts with the tribes across Washington State. WTSC engages in innovative partnerships and collaborations with tribal governments to increase awareness of the needless deaths and serious injuries occurring on reservations and to support tribal involvement and leadership in addressing these issues using *Target Zero* planning.⁷⁵ The State utilizes the national *Target Zero* model that includes a goal for ZERO fatalities from auto crashes by 2030. The program uses data-driven strategies for the state and each jurisdiction within the state in order to address their specific data issues and problems. At the tribal level, this model works with tribal collection and use of crash data which routes through a traffic safety committee and tribal elected leaders, staff, and community members to set goals, strategies, and actions.

The EWU research team has been working to develop the EWU Tribal Traffic Safety Model based on the complex nature of how traffic safety is analyzed in tribal communities. The EWU Model builds on the Four E's, plus Leadership principles as a framework for Tribal Traffic Safety in Indian Country.

The demonstration project utilized the best available traffic safety data with the development of the EWU Tribal Traffic Safety Model. All of the tribes in the demonstration project were collecting crash data in some form prior to the project. The research team worked with each tribe to explain the importance of collecting and analyzing their data from broader spectrum of tribal programs. This included doing an analysis of their tribal law and order codes, evaluating their external relationships, and their internal tribal traffic safety behavioral systems. This analysis informed the creation a plans with proven and recommended strategies for reducing traffic deaths and serious injuries.

⁷⁴ Target Zero planning within the state of Washington is carried out by WTSC, which has long recognized the critical disparities and the complexities of American Indian traffic safety on and near reservations.

⁷⁵ Wash.TrafficSafetyComm'n., *Tribes*, Wash.State (2015) <http://wtsc.wa.gov/programs-priorities/tribes/>.

The EWU team partnered with and provided support for the six tribes to better understand how to take actions to reduce crashes and save lives. Along with code analysis, the team went into the field and interviewed tribal program managers and employees, as well tribal leaders. The main findings of the interviews prove that tribal leaders recognize the importance of traffic safety as a critical issue, but traffic safety has not gained the urgency it needs to increase safety in the community.

The research team found that among the six tribes in the study, there are already multiple safety programs implemented that represent potential models for Indian Country to address many of the key aspects of tribal traffic safety. Each tribe has created some framework to coordinate across their many departments and programs around traffic safety, generally organized through some form of traffic safety committee. For example, the research showed the Confederated Tribes of the Colville Reservation have completed traffic safety plans and are already taking action to implement the projects they have outlined in those plans.⁷⁶ The research collected in the demonstration project with the six Washington tribes has provided detailed data to inform best practices that can be adopted by other tribal governments.

B. *Tribal Law and Order Code Analysis for the Six Washington Tribes*

Tribal law and order codes are easily conceptualized as the written policies that tribal leaders and the community have put into place to govern tribal member behavior on specific subject-matter, like driver impairment or requiring drivers to wear seat belts. In this study, sections of tribal code influencing tribal member traffic safety-related behavior were identified first from the trends in the available state-wide data for American Indian crash fatalities, and then described for the Colville, Kallispel, Lummi, Spokane, Swinomish and Yakama tribes.

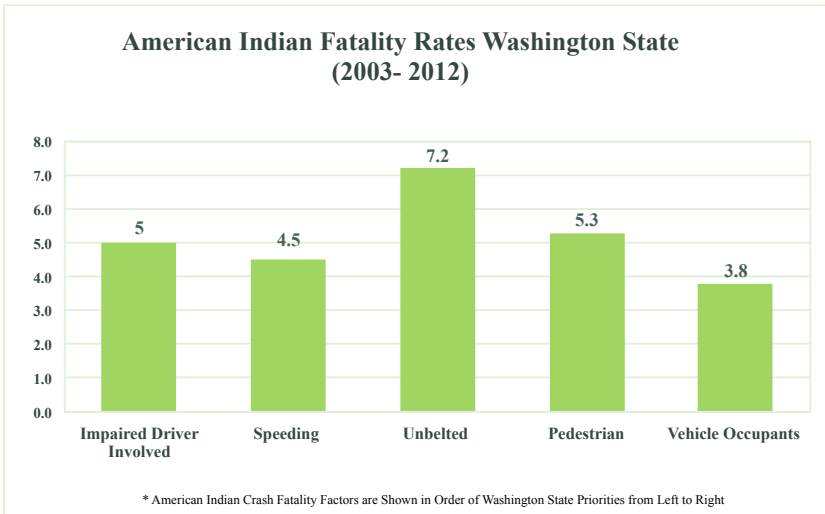
In their legislative capacity, the tribal council are leaders who pass law and order codes, ordinances, and resolutions. Typically, the council has powers to promulgate and enforce ordinances that govern the conduct of tribal members on the reservation. For some tribes like the Colville, passing law and order codes still requires the review of the Secretary of Interior but other tribes like the Spokane Tribe, have removed this requirement in their constitutional provisions.

The first step of the law and order code analysis was to identify the areas of tribal law where the categories of most urgent concern are being documented by currently available data. The top five contributing factors and associated fatality rates were identified from the FARS data collected from 2003-2012. This data was then put into order by the Washington's *Target Zero* priorities, in order to compare the difference in priorities for contributing factors between the State and the tribes.

⁷⁶ Confederated Tribes of the Colville Reservation, *CCT Department of Transportation*, (2016) http://www.colvilletribes.com/cct_department_of_transportation.php.

For the crash data analysis, Unbelted and Vehicle Occupants are considered related categories where Unbelted is a fatality of any occupant not wearing a safety belt, and Vehicle Occupants includes fatalities for all passengers whether belted or unbelted. The fatality types were then matched with related tribal codes for Impairment, Speeding, Seatbelts and Child Restraints, and Pedestrians. As seen in the chart below, the highest priorities according to available data for tribal fatalities, do not fully align with Washington State's *Target Zero* priorities.

Figure 2. American Indian Fatality Rates (per 100,000 population) in Washington State 2003-2012.⁷⁷



The tribal codes were located and analyzed, along with relevant sections of the Washington State traffic safety codes. The Washington codes were used as a reference to those sections of state code which were adopted into tribal law, as well as to better relate the outline of crash types in the *Target Zero* plan for American Indians and Alaska Natives (AI/AN).

Leaders in the Colville and Kalispel tribes adopted Washington traffic codes into their tribal laws by reference in whole, in part, or with specific exclusions. The Lummi, Spokane, Swinomish, and Yakama tribal leaders appear to be developing their own code language by using the Washington State codes as a model which they customize to suit their own circumstances. The table below was organized to analyze the tribal codes for provisions related to the top five fatality categories shown in Figure 2 and Table 1.

Tribal traffic fatality crash types are shown with the related Washington code. Each tribe is listed across the top and then each section in the column indicates if the tribe adopted the state code by reference, developed their own code, or has no code related to the crash type specified. Deaths in the Vehicle Occupants category are inter-related with all

⁷⁷ Nat'l Highway Traffic Safety Admin., *supra* note 54.

the codes listed in the other categories but in this process child passenger restraints have been included in the Vehicle Occupant row.

Table 1. Tribal Code Comparison by Crash Type, Organized by Washington's Target Zero priorities.⁷⁸

Type of Fatality	§ WA Code	Tribal Nations					
		Colville	Kalispel	Lummi	Spokane	Swinomish	Yakama
Impaired Driver	RCW 46.61.502	RCW adopted Criminal offense in tribal code CTC 3-3-40 (b)	RCW adopted Criminal Traffic Violation in tribal code KTC 4-A	Own Code LNC6A.02.090 LNC 6A.02.100 LNC 6A.01	Own Code STC 15-13.01 STC 15-13.02 STC 15-13	Own Code STC 5-02.180 STC 5-02.190 STC 5-02.200 STC 5-2 STC 5-02.210	Own Code YTC 50.21.03 YTC 50.21.05
Speeding	RCW 46.61.400 through 46.61.480	RCW adopted at CTC 3-3-1, Own codes at CTC 3-3-10 and CTC 3-3-11	RCW adopted	Own Code LNC 6.05.220 to LNC 6.05.240	Own Code STC 15-9	Own Code STC 5-01.450 to STC 5-01.470	Own Code YTC 50.19.01 YTC 50.19.15 YTC 50.19.19 YTC 50.19.23
Unbelted (Primary, Secondary, Silent?)	RCW 46.61.688 Primary	Excluded from RCW adoption: Own code CTC 3-3-12 Silent	RCW adopted at KTC 4-2.01 Silent	Own Code LNC 6.04.110 Silent	Own Code STC 15-4.11 Secondary	Own Code STC 5-01.310 Silent	Own Code YTC 50.25.45 Unknown
Pedestrian	RCWs 46.61.126 and 46.61.230 through 46.61.275	RCW adopted at CTC 3-3-1	RCW adopted at KTC 4-2.01	Own Code LNC 6.05.170 LNC 6.05.180 LNC 6.05.185	Own Code STC 15-701	Own Code STC 5-01.670 STC 5-01.680 STC 5-01.690	Own Code YTC 50.11.07 YTC 50.11.09 YTC 50.11.11
Vehicle Occupants	RCW 46.61.687 Child passenger restraint required	Own Code CTC 3-3-13	RCW under KTC 4-2.01	Own Code LNC 6.04.0120	Own Code STC 15-4.12	Own Code STC 5-01.320	Own Code YTC 50.35.111

All the tribes had laws in place to govern the main fatality factors which were identified. What the research revealed was that the complex relationships between the reservations and the state agencies in the surrounding communities, including any jurisdictional disputes and inter-governmental agreements for various services, are playing a major role in the traffic safety issues on and near reservations.

⁷⁸ Revised Codes of Wash., <http://apps.leg.wa.gov/rcw/>; Native American Rights Fund, National Indian Law Library, <http://www.narf.org/nill/triballaw/index.html>.

i. *Crash Data Findings and the Tribal Law and Order Code Analysis*

Tribes currently have access to the Washington Traffic Safety Commission Research and Data webpage, or can request data from “WS-DOT’s Highways and Local Programs division.” The national traffic safety data can be accessed online through the NHTSA site for FARS Data. The EWU Tribal Traffic Safety Demonstration Project is unique in that we utilized the 2010 - 2014 Fatality Analysis Reporting System (FARS) data for each reservation.

The EWU study obtained traffic crash data from the state and identified both on-reservation crashes, and those within five miles of the reservation boundaries (off-reservation).⁷⁹ The available data reveals that tribal members are being killed or injured at much higher rates than the rest of the population in Washington State.⁸⁰ The actual number of fatalities and serious crashes may be higher because as mentioned previously there are gaps in the data.⁸¹ Our findings indicate that the top three major causes of fatalities in the study are impaired driving, speeding, and pedestrian fatalities. Driver impairment is also the number one issue at the state level but the speeding and pedestrian fatalities rank as a much higher priority for the tribes than for the state.⁸²

According to the 2010-2014 FARS data, there were a total of 41 fatalities in the top three behavioral factor categories contributing to crash fatalities on the reservations of the six tribes in our study. These were (1) Driver Impairment including driving under the influence of alcohol (DUI) or driving under the influence of drugs (DUID) with 25 deaths, (2) Speeding which involved 6 deaths, and (3) accidents which involved hitting Pedestrians with 7 deaths. Driver impairment (DUI/DUID) constituted approximately 61 percent of the fatalities on the six reservations.

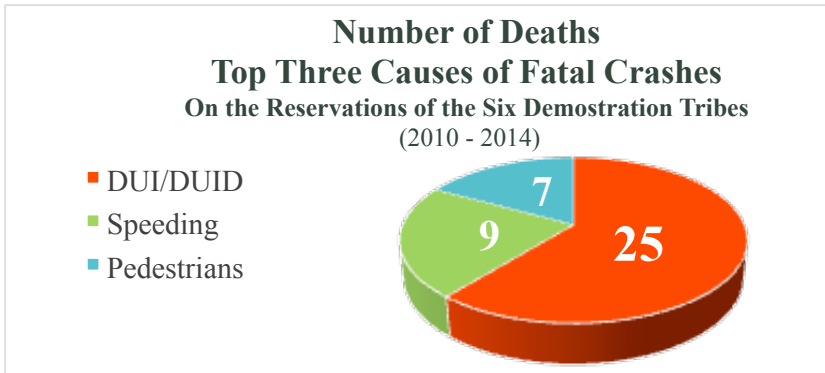
⁷⁹ Washington’s Fatality Analysis Reporting System (FARS) data for 2010-2014. Summarized from: Jeremy Charley, Kerry Brooks, Dick Winchell, & Margo Hill, *An Analysis of Traffic Crash Data for Six Tribes in Washington State 2010-2014* Unpublished Technical Reports (2015).

⁸⁰ Wash. Traffic Safety Comm’n., *supra* note 4, at 21.

⁸¹ Amundson, *supra* note 51, at 8.

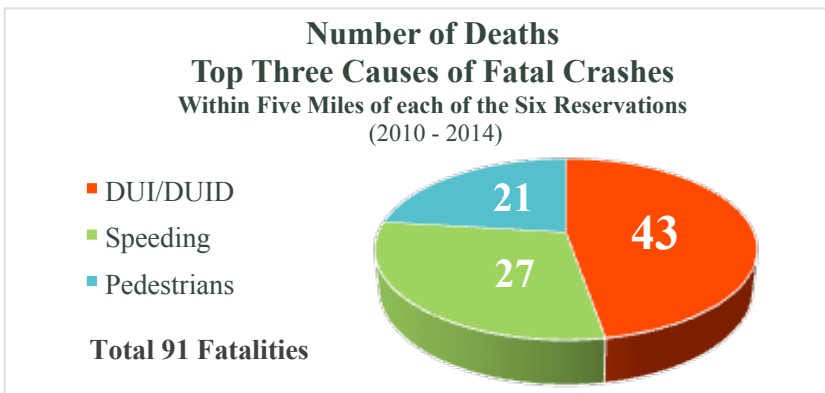
⁸² Wash. Traffic Safety Comm’n., *supra* note 4, at 21.

Figure 3. Number of deaths in the top three fatal crash categories on the six reservations from 2010 to 2014.⁸³



There were a total of 91 deaths in the top three behavioral factors contributing to crash fatalities on and within five miles of the six reservations. The top factors were (1) Driver Impairment including driving under the influence of alcohol (DUI) or driving under the influence of drugs (DUID) with 43 deaths, (2) Speeding which involved 27 deaths, and (3) accidents which involved hitting Pedestrians with 21 deaths. Driver impairment (DUI/DUID) accounted for approximately 47 percent of the fatalities within five miles of the six reservations.

Figure 4. Number of deaths in the top three causes of fatal crashes within five miles of the reservations (2010 - 2014).⁸⁴



When the data is examined for each tribe, both on and off the reservations, a slightly different pattern is observed. This subtle variation may be from the relative size of the reservations and the populations on them that differ along a spectrum. Reservation lands varied from vast rural reservation acreage with many miles of roads, to modest reservations closer

⁸³ Charley, *supra* note 79.

⁸⁴ Charley, *supra* note 79.

to urban centers. Some reservations allow the sale of alcohol, while others are dry reservations that prohibit alcohol sales on reservation lands.⁸⁵

The number one factor for fatalities was determined for each tribe both on and off the reservation. The numbers in parenthesis represent the total number of fatalities for that category of reservation crash data. The most common on and off reservation factor in fatal crashes was driver impairment due to alcohol and/or drug consumption.

Table 2. Top fatality factor for each of the six tribes, by location on and off the reservation.

Jurisdiction	On Reservation	Off Reservation
Colville	<i>Speeding (5)</i>	<i>Impairment (6)</i>
Kalispel	<i>Following too close (1)</i>	<i>Impairment (3)</i>
Lummi	<i>Distracted Driving (1)</i>	<i>Speeding (6)</i>
Spokane	<i>Impairment (1)</i>	<i>Impairment (4)</i>
Swinomish	<i>Impairment (1)</i>	<i>Impairment (5)</i>
Yakama	<i>Impairment (21)</i>	<i>Impairment (21)</i>

C. *Alcohol and Drug Impaired Driving Data and American Indians*

i. *Available Data on Driver Impairment*

The alcohol and drug related fatalities on or near the reservations in the study were extremely high. In tribal communities, the impression is that roadway fatalities are accepted as a way of life. Non-Indian communities have aggressive campaigns to change the public perception of driver impairment and they pass laws to enforce consistent consequences for people who drink and/or use drugs and drive.⁸⁶ These campaigns are frequently not present in tribal communities to help change longstanding behaviors, and bring down the numbers of community members being killed in impaired driving-related accidents due to funding scarcity.

Nationally, data on alcohol impairment is readily available but drug impairment is on the rise.⁸⁷ In the past 40 years, there have been five National Roadside Surveys (NRS) conducted by the National Highway Traffic Safety Administration (NHTSA) and the Insurance Institute for Highway Safety (IIHS).⁸⁸ While alcohol had been a primary focus in the previous years, the first testing procedures for “potentially impairing drugs” were added in 2007.⁸⁹ The national data showed that alcohol use had declined by approximately 30 percent between 2007 and 2014, while

⁸⁵ Fred Beauvais, *American Indians and Alcohol*, 22, *Alcohol Use Among Special Populations*, 258 (1998).

⁸⁶ U.S.GAO, *Drug-Impaired Driving: Additional Support Needed for Public Awareness Initiatives*, GAO-15-293 4 (February 2015).

⁸⁷ Amy Berning, ET. AL., *Results of the 2013-2014 National Roadside Survey of Alcohol and Drug use by Drivers*, 1 (2015).

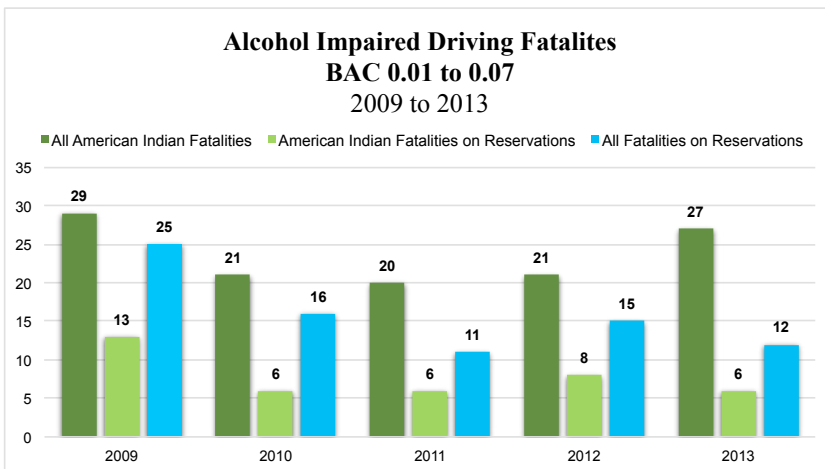
⁸⁸ *Id.*

⁸⁹ *Id.* at 2.

drivers testing positive for the presence of one or more “over-the-counter, prescription, and illegal drugs” such as “cannabinoids, stimulants, sedatives, antidepressants, and narcotic analgesics” increased from 16.3 percent to 20 percent.⁹⁰ Fatal crashes involving lower blood alcohol content may likely involve coinciding drug impairment but issues with blood testing like the time sensitivity of testing, the need to get search warrants, and difficulties with determining which substances to test for often inhibit data collection on drug-related contributing factors.⁹¹

The data shows that nation-wide, from 2009 to 2013, American Indian impaired driver fatalities involving a Blood Alcohol Content (BAC) of 0.01 to 0.07 had a five year average of approximately 24 deaths a year.⁹² Overall yearly fatalities were up from 21 deaths in 2012 to 27 deaths in 2013, after a three year decline between 2009 and 2012.⁹³ The last three years of nationally reported data show a steady loss of about 23 tribal members a year from moderate alcohol impairment-related crashes while deaths on reservations have declined from the high of 13 in 2009 to six in 2013.⁹⁴ All fatalities (Indian and non-Indian) on reservations have continued to decline overall.⁹⁵

Figure 5. American Indian fatalities on and off reservations, with overall total fatalities on reservations across the United States attributed to driver impairment with BAC of 0.01 to 0.07 (2008 to 2012).⁹⁶



⁹⁰ *Id.* at 2.

⁹¹ *Id.* at 3 - 4.

⁹² NHTSA, *American Indian Traffic Safety Facts*, National Highway Traffic Safety Administration (2015), http://www-nrd.nhtsa.dot.gov/departments/nrd-30/nca/STSI/NA_Report.htm.

⁹³ *Id.*

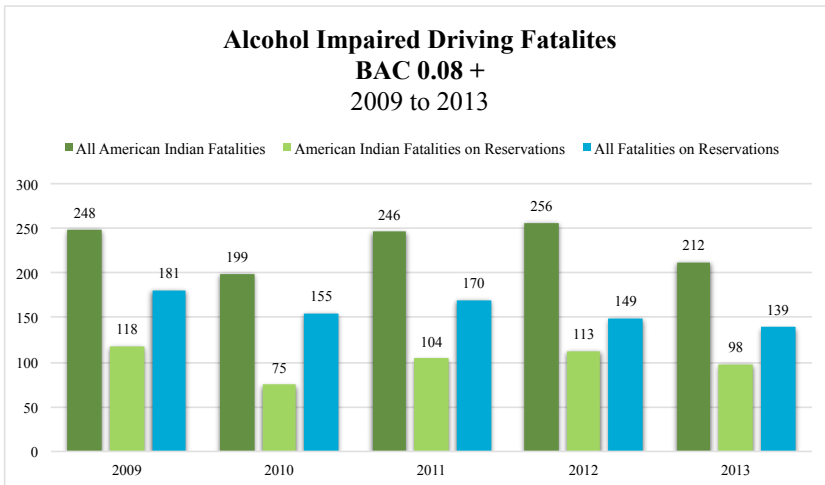
⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

A different trend emerges in the analysis of the data for the higher BAC impairment-related crashes.⁹⁷ Nation-wide, tribes lost an average of 232 tribal members a year between 2009 and 2013.⁹⁸ After an upward trend between 2009 and 2012, there was an overall 17.2 percent decrease in fatalities involving tribal members with a BAC of at least 0.08 BAC or more from 2012 to 2013 (down from 256 to 212 deaths).⁹⁹ Likewise, from 2012 to 2013, on-reservation fatalities involving Indians with a BAC of 0.08 and above decreased 13.3 percent nation-wide.¹⁰⁰ Total reservation fatalities (for Indians and non-Indians) related to high BAC crashes averaged about 159 deaths a year.¹⁰¹ Comparing the fatalities in 2009 to those in 2013, 42 less fatalities occurred nation-wide according to this five-year dataset (see Figure 6).¹⁰² Current impairment data sources lack categories of data for driver impairment due to drug impairment.¹⁰³

Figure 6. American Indian fatalities on and off reservations, with overall total fatalities on reservations across the United States attributed to driver impairment with BAC of 0.08 and above (2008 to 2012).¹⁰⁴



ii. Behavioral Factors in American Indian Driver Impairment

The loss is great, but not all is lost. There is a sobriety movement in Indian Country and there are an increasing number of tribal members who choose not to drink alcohol or take drugs at all.¹⁰⁵ An early study found that a greater number of Indian adults may abstain from alcohol compared to

⁹⁷ NHTSA, *supra* note 92.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ GAO, *supra* note 86.

¹⁰⁴ NHTSA, *supra* note 92.

¹⁰⁵ Beauvais, *supra* note 85, at 253 - 254.

non-Indian adults.¹⁰⁶ However, those that do drink and use drugs do so at a more intense or severe rate than other populations and nationalities.¹⁰⁷

American Indians drink differently.¹⁰⁸ In fact, research reveals that binge drinking is “a style of drinking frequently engaged in by both Indian youth and adults.”¹⁰⁹ American Indian drinkers “consume large amounts of alcohol in a short period of time and continue until the supply is gone” and this distinct binging pattern emerged, with drinkers “consuming five or more drinks in one session.”¹¹⁰ This drinking behavior “has been attributed to the early modeling of European colonists,” like trappers, miners, and soldiers, but further complicated by “the effects of prohibition, which encouraged rapid drinking to avoid the detection and confiscation of alcohol.”¹¹¹

Tribes typically assert that before the colonial invasion, they did not use drugs and alcohol in non-ceremonial ways.¹¹² Through subsequent removal, allotment, and termination policies of the United States government; Native communities have been impoverished economically and culturally oppressed.¹¹³ Tribes lost their traditional lands, lifestyles, languages, and were forced into unfamiliar settlement patterns.¹¹⁴ Isolation, stress, and the intergenerational trauma of colonization made American Indian communities vulnerable to substance abuse.¹¹⁵

Studies in social disorganization theory have shown that poverty and isolation are detrimental to the formation of positive social networks.¹¹⁶ Tribes have consistently lacked resources for infrastructure like roads and sidewalks, recreational facilities, libraries, community learning activities, Wi-Fi access, and have problems recruiting quality teachers to the rural areas where their reservations are located.¹¹⁷ Impoverishment contributes to the deterioration of social structures and processes because without adequate public facilities and services, positive interaction opportunities lead to drug and alcohol abuse.¹¹⁸

Euro-American impairment patterns have been culturally appropriated by many American Indians.¹¹⁹ These behavioral choices negatively im-

¹⁰⁶ *Id.* at 255.

¹⁰⁷ *Id.* at 254.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Nora D. Volkow & Kenneth R. Warren, *Advancing American Indian/Alaska Native Substance Abuse Research*, THE AM. J. OF DRUG AND ALCOHOL ABUSE 371, 371 (2012).

¹¹³ *Id.* at 371.

¹¹⁴ Carter Rees, Adrienne Freng, & L. Thomas Winfree Jr., *The Native American Adolescent: Social Network Structure and Perceptions of Alcohol Induced Social Problems*, J YOUTH ADOLESCENCE 405, 409 (2014).

¹¹⁵ *Id.* at 409.

¹¹⁶ Beverly Kingston, David Huizinga, & Delbert S. Elliott, *A Test of Social Disorganization Theory in High-Risk Urban Neighborhoods*, 41 YOUTH & SOCIETY 53, 57 (2009).

¹¹⁷ *Id.* at 59.

¹¹⁸ *Id.* at 58-59.

¹¹⁹ Beauvais, *supra* note 85, at 253.

pact tribal communities. Repeated behaviors lead to poor habits including; speeding, lack of seat belt and child safety seat use, or impaired driving. Tribal leaders and members of the community are empowered to address the issue of driver impairment through the adoption of law and order codes to govern tribal members' behaviors through their own justice systems.¹²⁰

D. Tribal Law and Order Codes for Alcohol and Drug Impairment

The leading cause and number one priority crash fatality factor in Washington State's *Target Zero* plan is Driver Impairment.¹²¹ Alcohol, illicit drugs, prescription and over-the-counter medications are a few of the possible substances which may constitute driver impairment. American Indians and Alaska Natives in Washington state had the highest motor vehicle traffic death rates for Impairment from 2007-2009.¹²²

According to Washington's *Target Zero*, impaired drivers were a factor in 50 percent of all traffic deaths (704 of 1,406) and 21 percent of all serious injuries (1,519 of 7,264) between 2009 and 2011.¹²³ Drug impairment is as deadly as alcohol impairment. The data shows that "drivers in fatal crashes were as likely to be impaired by drugs as by alcohol, with almost 25 percent impaired by both."¹²⁴ But recent reports indicate that the numbers of impaired drivers in Washington State is now on the decline. "In 2009-2011, impaired driver involved deaths and serious injuries" both decreased by 15 percent when compared to 2006-2008.¹²⁵

With the six tribes in our demonstration project, we found that the codes for impaired driving followed state law relatively closely in most cases. The Colville and Kalispel adopted Wash. Rev. Code § 46.61.502 (2013) and Wash. Rev. Code § 46.61.504 (2015), Colville also incorporated Wash. Rev. Code § 46.61.503 (2015) for minors.¹²⁶ Lummi, Spokane, and Yakama did not have an evident minor-specific impairment code, and Kalispel did not include the minor impairment code from the state among its adopted provisions. Swinomish has its own code for minor impaired driving laws.¹²⁷ All tribes but Kalispel include explicit clauses about Implied Consent to blood or breath testing.¹²⁸ Blood alcohol content levels were the same across the board at 0.08 or more.¹²⁹ All tribes included other drugs as pos-

¹²⁰ *Worcester v. Georgia*, 31 U.S. 515.

¹²¹ Wash. Traffic Safety Comm'n, *supra* note 4, at 27.

¹²² Washington Department of Health, Washington State Injury and Violence Prevention Guide, 22 (2013).

¹²³ Wash. Traffic Safety Comm'n, *supra* note 4, at 21.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Confederated Tribes of the Colville Indian Reservation Tribal Code, Title 3: Offenses at 3-3 Motor Vehicles.

¹²⁷ Swinomish Tribal Code STC 5-02.190.

¹²⁸ Colville Tribal Code CTC 3-3-70; Lummi Nation Code of Laws LNC 6A.01.060; Revised Spokane Law and Order Code RSLOC 15-5.10; Swinomish Tribal Code STC 5-02.210 - STC 5-02.220; Yakama Nation Code of Law YNC 50.21.03.

¹²⁹ Wash. Revised Code RCW 46.61.502 (1)(a); Colville Tribal Code CTC 3-3-1incorporating Wash. Revised Code RCW 46.61.502 (1)(a); Kalispel Tribal Code KTC 4-2.01

sible impairment-causing factors but only Colville and Kalispel included THC specifically.¹³⁰ Lummi was the only code which included the phrase “or other bodily substance” in addition to breath or blood testing substances.¹³¹

Table 3. Tribal law & order code comparison.¹³²

Impairment Codes Analysis												
Jurisdiction	Driving while under the influence of intoxicating liquor, marijuana, or any drug	Driver under twenty-one consuming alcohol or marijuana	Physical control of vehicle under the influence	Criminal Offense Y/N	Implied Consent	Alcohol Y/N	BAC	THC Y/N	Concentration	Other Drugs Y/N	Measure of other drugs Y/N	Substance tested: Breath, Blood, Other
Washington	RCW 46.61.502	RCW 46.61.503	RCW 46.61.504	N (Y repeat offenses)	RCW 46.20.308	Y	0.08 +	Y	5.00	Y	N	Breath and/or Blood
Colville	RCW 46.61.502	RCW 46.61.503	RCW 46.61.504	Y	CTC 3-3-70	Y	0.08 +	Y	5.00	Y	N	Breath and/or Blood
Kalispel	RCW 46.61.502	Not adopted	RCW 46.61.504	Y	N	Y	0.08 +	Y	5.00	Y	N	Breath and/or Blood
Lummi	LNC 6A.02.090		LNC 6A.02.100	Y	LNC 6A.01.060	Y	0.08 +	Silent	Silent	Y	N	Breath, blood, or other bodily substance
Spokane	RSLOC 15-13.01		RSLOC 15-13.02	Y	RSLOC 15-5.10	Y	0.08 +	Silent	Silent	Y	N	Breath and/or Blood
Swinomish	STC 5-02.180	STC 5-02.190	STC 5-02.200	Y	STC 5-02.210 and STC 5-02.220	Y	Adults 0.08+ Under 21 0.02+	Silent	Silent	Y	N	Breath and/or Blood
Yakama	YTC 50.21.03				LNC 50.21.03			Drug specific YTC 50.21.05		Y		

The most sophisticated penalty structure was the one published in the codes by the Swinomish.¹³³ Strikingly, the state fines far exceeded the adopting Washington Revised Code RCW 46.61.502 (1)(a); Lummi Nation Code of Laws 6A.02.090 (a) (1); Revised Spokane Law and Order Code RSLOC 15-11.04 (a); Swinomish Tribal Code STC 5-02.180 (A) (1); Yakama Nation Code of Law YNC 50.21.03.

¹³⁰ Wash. Revised Code RCW 46.61.502 (1)(b); Colville Tribal Code CTC 3-3-1 incorporating Wash. Revised Code RCW 46.61.502 (1)(b); Kalispel Tribal Code KTC 4-2.01 adopting Wash. Revised Code RCW 46.61.502 (1)(b); Lummi Nation Code of Laws LNC 5.09A.050 “Illegal Substance” defined as stated in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 Pub. L. No. 91-513, 84 Stat. 1236 (Oct. 27, 1970); Revised Spokane Law and Order Code RSLOC 15-13.07 (b) (4) defined as a “controlled substance under the Controlled Substances Act, Title 21 U.S.C. § 801 et seq.,” Swinomish Tribal Code STC 4-10.010 and 4-10.020; Yakama Nation Code of Law YNC 50.21.05.

¹³¹ Lummi Nation Code of Laws LNC 6A.02.090 (a) (2).

¹³² Native American Rights Fund, *Tribal Law Gateway: Find Tribal Law Materials by Tribe*, National Indian Law Library, <http://www.narf.org/nill/triballaw/index.html> (Feb. 2015).

¹³³ Swinomish Tribal Code STC 5-02.180; Swinomish Tribal Code STC 5-02.190;

tribal ones at the base level for the first offense and went into far greater detail in the fine schedule for subsequent violations than those of most of the tribal codes did.¹³⁴ The state penalty codes are far too detailed to include here, but the summaries for the tribal penalties are included in the table below.¹³⁵

Table 4. Tribal law & order code comparison: elements of penalties for driver impairment in the six tribe's codes.¹³⁶

Jurisdiction	Impairment-Related Driving Penalties
Colville	Imprisonment for a period not to exceed 360 days, or a fine not to exceed \$2,500, or both the imprisonment and the fine
Kalispel	Confinement not to exceed six months or ordered to pay a fine not to exceed \$500.00, or both, with costs.
Lummi	Driving while under the influence of alcohol and/or drugs is a class B offense- minimum 30 days and up to 90 days in jail; minimum fine of \$250, not to exceed a fine of \$1,250. Court, in its discretion, may suspend all or part of a sentence, including minimum sentences, upon the performance of conditions imposed on the defendant. Two or more convictions shall become a Class A offense, reported to the Washington State Department of Licensing. A person convicted under this section shall have his privilege to drive suspended for a minimum of 90 days and a maximum of one year in addition any penalties under repeat offender provision. Actual physical control , class B offense. If previously convicted two or more times under this section or LNC 6A.02.090 , the offense shall be a Class A offense as above.
Spokane	RSLOC 15-13.01 and 15-13.02 Incarceration of not less than 5 days nor more than 30 days; a fine of not less than \$100 and not more than \$300, or both such fine and imprisonment. Second or subsequent conviction within 5 years, incarceration of not less than 30 days and not more than 90 days; a fine of not less than \$300 and not more than \$500, or both such fine and imprisonment. RSLOC 15-5.10 Failure to Submit to Breath or Blood Test \$500, suspension or revocation of privilege to drive. RSLOC 15-13.23 Suspension or Revocation of Driving Privileges upon the Reservation. The Tribal Court may suspend the driving privileges of any person convicted of 15-13.01, 15-13.02, as follows: 15-13.01 Second offense within 3 years a 1-year suspension. 15-13.02 Third offense within 2 years, a 2-year suspension.

Swinomish Tribal Code STC 5-02.200; Swinomish Tribal Code STC 5-02.250.

¹³⁴ Wash. Revised Code RCW 46.61.502 – 46.61.504.

¹³⁵ *Id.*

¹³⁶ Wash. Revised Code RCW 46.61.502 (1)(b); Colville Tribal Code CTC 3-3-1 incorporating Wash. Revised Code RCW 46.61.502 (1)(b); Kalispel Tribal Code KTC 4-2.01 adopting Wash. Revised Code RCW 46.61.502 (1)(b); Lummi Nation Code of Laws LNC 5.09A.050 “Illegal Substance” defined as stated in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 Pub. L. No. 91-513, 84 Stat. 1236 (Oct. 27, 1970); Revised Spokane Law and Order Code RSLOC 15-13.07 (b) (4) defined as a “controlled substance under the Controlled Substances Act, Title 21 U.S.C. § 801 et seq.,” Swinomish Tribal Code STC 4-10.010 and 4-10.020; Yakama Nation Code of Law YNC 50.21.05.

Jurisdiction	Impairment-Related Driving Penalties
Swinomish	<p>STC 5-02.190 and 5-02.200 penalties under 5-02.250 Alcohol Violators - Penalty Schedule. Provided there is no prior offense in the last five years, BAC less than 0.15 or no test results for some reason then one day in jail up to one year. Fine no less than \$350 up to \$5,000. Possible suspension of license or permit within the reservation 90 days, possibility to notify WA. +0.15 or for refusing testing under 5-01.210, two days in jail upwards to one year. Fine no less than \$500 and no more than \$5,000. License revoked for one year. In the instance where a prior conviction of above and has a prior offense within five years, less than 0.15 BAC or no test due to refusal, from 30 days in jail up to one year. Fine \$500-\$5000, license or permit revoked for two years. BAC at least 0.15 and as above then 45 days in jail to one year, fines from \$750-\$5000, license revoked for 900 days. Two or more prior convictions of above charges, less than 0.15 or refusal of testing. Jail for 90 days up to one year. Fines of \$1000- \$5000, and revoke license for three years. Two or more and at least 0.15 BAC or refused testing, 120 days in jail up to one year, fines from \$1,500 up to \$5,000 and revoke license for four years. If a sentence is deferred court must explain why and there is an option for the tribe to report revocations to the state of WA. Court must consider if driving had implications to any injury or damage to others and convicted required to undergo alcohol assessment and treatment. Probation with various detailed conditions with further penalty schedules for violating probation. Provisions for "Habitual Traffic Offender." For STC 5-02-190 Driver Under Twenty-One Consuming Alcohol, conviction is classified as a Class C offense: No more than thirty (30) days in jail; or a fine not to exceed \$250.00; or both a fine and jail time.</p>
Yakama	<p>YTC 50.21.07 suspend and revoke license, etc.</p>

The results of the tribal law and order codes analysis showed that due to the complicated nature of intergovernmental relationships, tribal traffic safety was not just about the tribal laws themselves. How or if the laws are enforced and how the enforcement and subsequent consequences play out through the justice systems weighs heavily on the outcomes.¹³⁷ Future work should evaluate the effectiveness of tribal traffic safety policies, laws, and penalties through the tribal justice system by acquiring any intergovernmental agreements related to level of service standards including citations, arrests, prosecution, and sentencing data along with determining recidivism rates. By developing a data-driven methodology for evaluating their policies, tribes can analyze and adjust to reflect tribal customary norms like reconciliation.

E. Countermeasures can be Complicated

Increased (and publicized) enforcement of traffic safety laws can help to identify and reduce behavior patterns that lead to fatalities and serious injuries.¹³⁸ On reservations, this issue can be tricky to navigate due to the jurisdictional quagmire created by the checkerboard of land

¹³⁷ Due to the checker-boarded nature of reservations, tribal members may have traffic records in both the state and tribal justice systems, which may or may not be shared between the two authorities. Reservation communities are often automobile dependent due to the originally isolated nature of the reservation system and then the subsequent settlement patterns which were modeled off of scattered 160 acre homesteads in the Allotment Era of U.S. Indian Policy. Under these conditions, living without a vehicle is very difficult since tribal members must drive many miles in order to get to work, school, health care services, or even to buy basic supplies. Penalties and enforcement as well as related policies for housing and economic development on and off the reservation need to consider these factors.

¹³⁸ NHTSA, *Countermeasures that Work: A Highway Safety Countermeasure Guide For State Highway Safety Offices*, DOT HS 811 727, 1-1 (2013).

ownership, federal and state legislation, and case law at the state and federal level.¹³⁹ While each tribe in our demonstration project has a unique situation, tribes typically assert inherent jurisdiction over the territory within the exterior bounds of their reservation.¹⁴⁰

Within Washington State there are four categories of tribal law enforcement jurisdiction: Self-Governance, PL-638 contracted, jurisdiction reassumed by BIA, or state jurisdiction under PL-280 (Table 5).¹⁴¹ Law enforcement self-governance compacts are arrangements between the Department of the Interior and the tribe.¹⁴² Tribes contracted under PL-638 operate their own law enforcement under the provisions of Code of Federal Regulations (CFR) Title 25 INDIANS. Events sometimes lead to circumstances where the BIA may go through proceedings and revert to BIA operating a tribe's law enforcement functions.¹⁴³ Lastly, a PL-280 designation involves federal legislation that provided for the assumption of some limited jurisdictional authority by the State where a tribe consented to this authority.¹⁴⁴ In the case of PL-280, the tribe and the state would have concurrent jurisdiction over tribal members.¹⁴⁵

Table 5. Tribal law enforcement jurisdictions by type for the six tribes in the study. There were no tribes in the study with a reassumed BIA jurisdiction so that category is not listed below.¹⁴⁶

Tribe	Self-Governance	PL-638	PL-280
Colville		X	
Kalispel			X
Lummi	X		
Spokane		X	
Swinomish	X		
Yakama		X	

The most recent compilation of tribal jurisdictional relationships and authorities was reported by the Bureau of Justice Statistics (BJS) in 2002. Tribal police are frequently cross-deputized with other tribal law enforcement, the BIA, other federal law enforcement entities, local city police or sheriff departments, and state patrol. These agreements are crucial to tribal law enforcement's ability to cite or arrest a non-Indian person within their jurisdiction, protecting the health, safety, and welfare of reservation residents.

¹³⁹ FHWA, *supra* note 33.

¹⁴⁰ Kagama, 118 U.S. at 381-82..

¹⁴¹ Dave Rodriguez, Criminal Exploitation of Washington State Tribal Lands, NORTH-WEST HIGH INTENSITY DRUG TRAFFICKING AREA REPORT, 12 (2009).

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

Tribal police may have authority to arrest Indians or non-Indians either on or off reservations through these agreements.¹⁴⁷ In 2008, the Washington State legislature passed a law that authorized tribal police “to act as general authority Washington state police officers.”¹⁴⁸ This means that if a tribe meets certain criteria, then their tribal police are “recognized and authorized to” perform duties which “enforce state laws in Washington, including the power to make arrests for violations of state laws.”¹⁴⁹ A much anticipated updated report on Tribal Justice Systems from BJS was expected to be published sometime in 2015 but has not yet been released. The chart below shows the cross-deputization for each of the six tribes in our study, as of 2002 (Table 6).

Table 6. Tribal cross-deputization and authority recognition both on and off reservation (2002).¹⁵⁰

Cross-Deputization Agreements by Agency						Arrest Authority Over	
Tribe	BIA	Neighboring Tribes	Neighboring non-tribal authorities	Federal law enforcement other than BIA	Recognized by State to have peace officer authority	Tribal members off the reservation	Non-Indians on the reservation
Colville			X		X		
Kalispel	X	X		X	X		X
Lummi						X	
Spokane	X						X
Swinomish			X				X
Yakama							

i. Relationship Building can Improve Tribal Levels of Service

Intergovernmental relationships arise from jurisdictional complexities on Indian reservations. With the signing of the Centennial Accord on August 4, 1989, the Governor’s Office in Washington State committed itself and its administrative agencies to building a government-to-government relationship with American Indian tribal governments. The dynamics of these relationships play a role in tribal traffic safety and affect the overall level of services delivered to tribal communities and reservation residents. These services may include law enforcement and jail facilities, court systems, road construction and maintenance, Emergency Medical Services (EMS), and health and social services. Tribal governments have often forged these relationships in an attempt to “effectively manage political and bureaucratic competition” with the surrounding state

¹⁴⁷ *Id.*

¹⁴⁸ Wash. Rev. Code Ann. § 10.92.020 (West 2008).

¹⁴⁹ *Id.*

¹⁵⁰ U.S. DEP’T OF JUSTICE, NCJ 205332, *Census of Tribal Justice Agencies in Indian Country*, 90 (2005).

jurisdictions and to meet the needs of their people over time.¹⁵¹ The next logical level of this relationship is for tribal stakeholders to take ownership of their data and decision-making process.¹⁵²

The tribes in our study have developed relationships with local jurisdictions and within state agencies. Since the passage of ISTEA in 1991, states have been mandated to work on a government-to-government basis with tribal governments. This policy was reemphasized in SAFETEA-LU in 2005 when it was expanded to include the Metropolitan and Rural Transportation Planning Organizations for a statewide, long-term planning horizon.¹⁵³ For some services, tribes participate in the planning which affects their communities. The Colville, Kalispel, and Spokane tribes have representation on the Northeast Washington Rural Transportation Planning Organization (New RTPO) committees.¹⁵⁴ For other public services this may not be the case (Table 7).

Table 7. Jurisdictional relationships for the six tribes in the demonstration project.¹⁵⁵

Tribe	County or Counties	WSDOT Region(s)	RTPO	MPO	EMS	EMS Region	WSP Region Law Enforcement	Conservation District
Colville	Okanogan Ferry	North Central Eastern	Northeast Washington RTPO North Central RTPO		Tribal	North Central East	Districts 6 & 4	Central and Eastern Regions
Kalispel	Pend Oreille Spokane	Eastern	Northeast Washington RTPO	Spokane Regional Transportation Council	Contracted	East	District 4	Eastern Region
Lummi	Whatcom	Northwest		Whatcom Council of Governments	Contracted	North	District 7	Puget Sound Region
Spokane	Stevens Spokane	Eastern	Northeast Washington RTPO	Spokane Regional Transportation Council	Tribal	East	District 4	Eastern Region

¹⁵¹ Duane Champagne, *Renewing Tribal Governments: Uniting Political Theory and Sacred Communities*, 1 INDIGENOUS PEOPLES' J. L. CULTURE & RESISTANCE 24, 27 (2004).

¹⁵² *Id.*

¹⁵³ Transportation Research Board, *A Guidebook for Successful Communication, Cooperation, and Coordination Strategies Between Transportation Agencies and Tribal Communities*, REPORT 690, National Cooperative Highway Research Program, 9-10 (2011)..

¹⁵⁴ Tri County Economic Development District, *RTPO Committees*, <http://tricityeddd.com/new-rtpo/committees/> (last visited Dec. 19, 2015).

¹⁵⁵ GOVERNOR'S OFFICE OF INDIAN AFFAIRS, CENTENNIAL ACCORD AGENCY HIGHLIGHTS (2014); *Map of Washington State Conservation Districts*, <http://scc.wa.gov/maps/district-locator-map/> (last visited Dec. 31, 2015); WASH. STATE DEP'T OF HEALTH, *Emergency Medical Services (EMS) Systems for Health Care Providers*, <http://www.doh.wa.gov/ForPublicHealthandHealthcareProviders/EmergencyMedicalServicesEMSSystems> (last visited Dec. 31, 2015).

Tribe	County or Counties	WSDOT Region(s)	RTPO	MPO	EMS	EMS Region	WSP Region Law Enforcement	Conservation District
Swinomish	Skagit	Northwest	Skagit/ Island RTPO		Contracted	North	District 7	Puget Sound Region
Yakama	Yakima Klickitat	South Central Southwest	Southwest Washington Transportation Council	Yakima Valley Conference of Governments	Tribal	South Central South-west	District 3 & 5	Central Region

E. Tribal Cultural Best Practices in Traffic Safety

Through this process, the EWU research team identified a number of innovative projects which tribes are doing right now to create a culture of traffic safety on their reservations. One of the main project goals was to identify these and other appropriate best practices for tribes to create and implement in their own tribal transportation safety plans. These strategic plans include each tribe's prioritized actions to improve traffic safety, built in context upon the strengths of each tribe's culture and traditions.

Every tribe in the research project was doing something innovative to address the issues they face. The following provides a compilation of best practices found in the field. These practices fit nicely into the framework of the Four E's plus Leadership and provide a sampling of the many countermeasures being taken by tribal governments.

i. Leadership/Policy

Tribal leaders provide strategies that involve policy changes; formulating tribal codes; implementation in tribal programs; and set up evaluation measures through data collection, analysis, and reporting. Tribal leadership can include a number of stakeholders in the tribal community including Tribal Council as the formal leaders and informal leaders in the community like cultural and spiritual leaders.

In the study, Lummi Business Council took a strong policy stance, "[d]o what it takes to get drugs off the reservation."¹⁵⁶ They directed the tribal police and court to implement procedures with that goal in mind. One countermeasure used across the nation to curb drug trafficking in communities is the establishment of checkpoints on roads. While in Washington checkpoints are not legal¹⁵⁷, the Squaxin Island Tribal Council passed tribal legislation to legalize checkpoints on their reservation to prevent illegal drugs or harmful substances entering the community.¹⁵⁸ Unfortunately, this law has not been implemented because local county

¹⁵⁶ Personal Interview with Ralph Long, Lummi Nation Chief of Police (July 9, 2015).

¹⁵⁷ Governor's Highway Safety Association, *Sobriety Checkpoint Laws*, (April 2016), http://www.ghsa.org/html/stateinfo/laws/checkpoint_laws.html; *City of Seattle v. Mesiani*, 110 Wn.2d 454, 755 P.2d 775 (1988).

¹⁵⁸ Squaxin Island Border and Indian Country Security Act, Chapter 9.20 Squaxin Island Tribal Code (Res. 07-31; Res. 04-55 (part)).

prosecutors are reluctant to prosecute non-Indian offenders caught by checkpoints on the reservation due to the jurisdictional gray area.

ii. Education

There are significant numbers of tribal members that make a habit of driving impaired. Youth are getting into drugs and alcohol at very young ages, some as young as 12-13 years old. Education gives tribal community members, leaders and staff the information to make better choices. The education element intends to give tribal members better information so they can make good choices.

The Lummi Tribal Police received a countermeasure grant to educate high school students about impaired driving.¹⁵⁹ The students participate in a golf-cart obstacle course with “impairment goggles” in order to simulate the distorted reality impaired drivers experience. The level of education for staff is also important. The need for licensed Chemical Dependency Counselor Professionals and other personnel is crucial to reducing the number of tribal members making the choice to be impaired because they are getting quality treatment and developing healthy habits.

iii. Enforcement

The number of impaired driving offenses on reservation roads continues to be excessively high. This is complicated by the inconsistent application of laws or ineffective consequences. Lummi Tribal Police consistently arrest people driving under the influence of alcohol and drugs. After three offenses, violators are reported to the Washington State Department of Licensing (DOL).¹⁶⁰ The Swinomish tribe also has the policy option of reporting repeat offenses to the DOL.¹⁶¹ In addition, the Swinomish utilize the State’s sophisticated traffic data system to help tribal police identify locations where fatal crashes and injuries are happening and identify the causes of crashes (including any trends in driver impairment).

iv. Emergency Medical Services

All the existing tribal EMS services in this study were found to be well integrated into their Washington State EMS regional frameworks. For example, the Colville Tribal EMS operates under a medical director and adheres to protocols of the North Central Regional Care Council.¹⁶² This integration greatly improves service delivery for tribes, and often nearby rural communities, by creating regional standards of care

¹⁵⁹ Governor’s Highway Safety Association, *supra* note 157.

¹⁶⁰ *Id.*

¹⁶¹ Swinomish Tribal Code STC 5-02.250 (B)(1)(c).

¹⁶² Lower, Matthew, *Best Practices Towards Efficient Emergency Medical Service Delivery on Tribal Reservations* Northwest Tribal Technical Assistance Program, Unpublished Article (2015).

and establishes a culture of collaboration, in training and the sharing of resources.

v. *Engineering*

Most tribes have to contract engineering services on project basis or work with state engineers on collaborative projects. Where Tribal Traffic Safety Committees involve tribal members and leadership in problem-solving efforts for tribal traffic safety on reservation roads, they can be helpful in problem identification and assist in the development of a culture of traffic safety on or near the reservations. The Traffic Safety Committee members on the Colville reservation work with their engineer in the tribal roads department to encourage the completion of road safety audits and safety plans, the design of reservation roads, and develop cost effective and proven countermeasures as solutions to reduce collisions and fatalities.¹⁶³

VI. Conclusions

Traffic safety is a critical issue on reservations across the United States. Tribal leaders need more information to support decision-making and analysis of the complex issues related to traffic fatalities. Washington State and the tribes are actively working together in a government-to-government relationship to collect traffic safety data. Their partnerships are finding empowering ways to change future outcomes for everybody. The information collected and analyzed is used to inform traffic safety policies and programs, and guides implementation of tribal traffic safety planning measures.

Tribes in Washington are encouraged and supported in the development of staff, committees, and strategies to deal with the high rates of fatalities and injuries on reservation roads. Sometimes these efforts were yet not well identified or coordinated across tribal programs, but all of the demonstration project tribes had best practices and activities in traffic safety which were impressive. Traffic safety was recognized as important at a tribal level, but the full potential of traffic safety actions through data driven *Target Zero* planning and the 4 E's plus Leadership were not fully established. This is changing as tribal leaders become more informed about tribal-specific data and develop increased awareness of the disparities.

Through tribal leadership and community member engagement, reservation communities have begun to work with their tribal administration to develop their own database of knowledge for their decision-makers. Traffic safety data is being used to create plans for (1) education, (2) prevention, (3) law and order code changes, (4) enforcement measures, (5) policies for offenses and infractions, (6) programs for drug and alcohol treatment, and (7) information that helps when looking back at trends to evaluate if efforts are making an impact. Tribal governments

¹⁶³ Charley, *supra* note 79, at 12.

throughout Indian Country should use proven countermeasures and the best practices examples of other tribes to develop their own traffic safety policies and programs.