

## **Acknowledgments**

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Appendix I: Witness List

## **EXECUTIVE SUMMARY**

### **Charge:**

The Committee shall examine the need and feasibility for establishing a state agency or commission for Native American affairs. The Committee should determine whether certain issues facing the Native American community are being adequately addressed by existing state agencies. The issues to be examined should include diabetes susceptibility, alcohol abuse prevention, educational opportunities, water rights, land ownership, burial ground disturbance, historical representation and tax administration.

### **Findings:**

The 2000 census reported that there 188,000 Native Americans living in Texas, giving Texas the fourth largest Indian population in the U.S., with only California, Oklahoma, and Arizona, ranking higher. The U.S. Census bureau also reported that on a 3-year average, American Indians were less likely to have health insurance than other groups and had a lower median income and higher poverty rate than Non-Hispanic Whites. While there are numerous public and private programs and resources specifically targeted to assist Native Americans, there is no coordinated state effort to identify these resources and capture them for the use of Native American Texans or to advocate for Native American Texans in National forums or at the federal level of government. Further, a number of these programs and resources are available only to tribes officially recognized by their respective states or by the federal government, potentially causing a disparity in the distribution of program and resource benefits to Native American Texans as a whole.

### **Senate Committee on State Affairs**

During the 2002 legislative interim, Lieutenant Governor Ratliff charged the Senate State Affairs Committee to examine the feasibility and need for reestablishing an Indian Commission. The full committee appointed the Senate Sub-Committee on Native American Affairs to undertake the work necessary to fulfill the charge.

The Sub-Committee held public hearings in Austin, El Paso, and San Antonio, Texas to review issues specified in the charge and to develop recommendations for the full committee. In consideration of the highly controversial nature of Indian gaming and the gravity of the other issues facing Native American Texans, the Subcommittee decided to exclude all discussion of Indian Gaming during the Sub-Committee's proceedings. This report summarizes the testimony received at those public hearings and contains the findings and recommendations of the committee.

The Committee heard testimony from representatives of both federally recognized and unrecognized tribes, as well as, from many members of various local and out-of-state Indian communities. The Committee also received written testimony from many interested parties that provided historical background regarding

issues faced by the Native American community.

## **Introduction**

Native Americans have been given a distinct status in our country since the writing of the U.S. Constitution. While Congress did not officially grant them citizenship and, thus, bestow upon them the rights and responsibilities of every citizen until 1924<sup>1</sup>, Article 1, section 8, paragraph three of the United States Constitution, adopted September 17, 1787 states that Congress has the power “To regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes”, thus giving Indian nations recognition. Unlike Hispanics, African-Americans, Irish Americans, and other population groups, Native Americans are recognized by the federal government as governmental sovereigns; and they have been referred to as quasi-sovereign domestic dependent nations by the courts<sup>2</sup>.

Although the Texas Constitution does not make, nor has ever made, any distinction between Native Americans and other people or between Native American peoples of different tribes;, their unique standing in our state and country as indigenous peoples has resulted in a variety of state statutory provisions and legal considerations which are and have been different from those imposed upon non-Native American Texans.

## **State Involvement**

Six years after Texas joined the United States in 1852, the 3rd Legislature, authorized the governor to begin negotiations with the federal government regarding territory for Indian reservations. Federal officials set aside land for three reservations which were supposed to be the Brazos and Comanche Reservations, in central Texas, and the Mescalero Apache and Lipan Apache who had land west of the Pecos River. The Western tribes never moved to the reservation and the land was joined with the Brazos Reservation. After five years, the land was reverted to Texas when the tribes living on that land were displaced to the Indian Territory in Oklahoma.

The 4th Texas Congress approved 9,288 acres for both the Alabama and the Coushatta tribes. However, white settlers never allowed the tribes to inherit the land and in 1854, the legislature decided to authorize new land in Polk County for the tribes to use jointly. This time the area purchased was only 1,280 acres. In 1968, the Tigua Indians of Ysleta del Sur Pueblo received federal recognition and were added to the jurisdiction of the Commission, followed by the Texas Band of Kickapoo who received their state recognition in 1977 and federal recognition in 1985.

From 1929 to 1989 the State of Texas regularly made appropriations for the supervision, management and control of Native American reservations and the lands that comprised them. Beginning in 1949, these funds

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<sup>1</sup> Act of June 2, 1924, ch. 234, 43 State. 253.

<sup>2</sup> §500.4, U.S. Geological Survey Manual, - Policy on Employee Responsibility Towards American Indians and Alaska Natives , 8/14/95

were appropriated to state agencies charged with those duties, specifically, the Board for Texas State Hospital and Special Schools (1949 - 1965); The Commission for Indian Affairs (1965-1975); and the Texas Indian Commission (1975-1989). Throughout the years, the roles of the agencies broadened

**1988 Texas Sunset Advisory Commission Recommendation 1:** The Texas Indian Commission should be abolished. The need for continuing administration of state trust responsibilities for the Alabama-Cassidy and Tigua Indian tribes no longer exists. Trust for these tribes is now the responsibility of the federal government. There have never been appropriations to the Indian commission for any purposes other than administering the state trust.

beyond simple land management and supervision to include housing; economic development; and health, education, and human resource advocacy.

The Texas Indian Commission was made up of three members appointed by the governor and charged with administering the state's trust responsibilities for the Alabama-Coushatta and Tigua Indian tribes. The Commission also had limited statutory authorization to assist the Texas Band of Kickapoo Indians. The Commission operated with a 14-person staff, with two of the staff members headquartered on the Alabama-Coushatta reservation in Livingston, Texas, 10 headquartered on the Tigua reservation in El Paso, Texas, and two working in the administration office located in Austin, Texas.

In 1987, the federal government took over trust responsibilities for the Alabama-Coushattas and the Tiguas. During the 70th Legislature, Senate Bill 610 authorized the governor to turn over all assets the state currently held in trust for the two tribes to be given to the Secretary of the Interior. The tribes requested that their trust responsibilities be managed federally rather than by the State and the transfer was completed in 1989.

The Sunset Advisory Commission reviewed the agency in 1988 and determined that there was no longer a need for an Indian Commission, based on the fact that the State no longer had to administer trust responsibilities for the federally recognized tribes. The Commission also felt that since the State offers so many services and programs, the non-reservation Indian population could go directly to state agencies for assistance. Prior to its closure 1988, the agency had an operating budget of \$450,418 for fiscal year 1988 and was appropriated \$451,571 for the following fiscal year.

On September 1, 1989, the Texas Indian Commission was abolished. Since that time, there has been a continuing interest by Native Americans and other interested parties to re-establish that Commission.

## Historical Representation

“The 2000 census indicated a Texas Indian population of 188,000. This does not include thousands more who are indigenous by birth, but who have been discouraged through fear from revealing their true heritage.”<sup>3</sup> In addition to the three federally recognized tribes, “there are a number of extant Indian communities in Texas, including the Lipan Apaches, the Chiricahua Apaches, the Coahuiltecan, the Cherokees, and the Mexica (Nahua)<sup>4</sup>.”

In order to grasp the diverse Indian culture in the State, one must first have a brief history of all the tribes that have, at one time or another, inhabited parts of Texas. Below is a list taken directly from the “Texas Indian Legal Needs Assessment” which was written for the Texas Indian Bar Review in June 1997 by Karen Bonney Beard, Michael R. Duke, Victoria Saxl, and Cynthia L. Spanhel. The document gives a brief history of Indian culture that has had a presence in Texas from the arrival of the Europeans to the present:

<p><b>Atakapan:</b> The Atakapans inhabited the upper Gulf Coast region of Texas at the time Europeans arrived. They lived as hunters, gathers, and fishers. Contact with the French and Spanish spread diseases through the population and they disappeared in the early 1800's.</p>	<p><b>Caddo:</b> The Caddo were farmers who inhabited upper East Texas. In the mid 1800's, the Caddo were forced into reservations in Texas, but were later relocated to Indian Territory in Oklahoma.</p>	<p><b>Coahuiltecan:</b> The Coahuiltecan were a nomadic hunting and gathering society of many small bands who lived in South Texas during the 1500's. After contact with the European's, many moved into missions where they were exposed to disease. The culture faded by the early 1800's.</p>
<p><b>Jumano:</b> The Jumano Indians inhabited West Texas and established trading ties with both the Spanish and other Indian tribes along the Texas-New Mexico border by acting as middlemen between the Indians and Spaniards. It is thought that their members merged with the Apache in the early 1700's.</p>	<p><b>Karankawa:</b> The Karankawa lived by hunting, fishing, and gathering in the lower Gulf Coast area of Texas. Due to fighting with the armies of Spain, Mexico, and the United States because they refused to be converted to Christianity, the tribe was decimated by 1860.</p>	<p><b>Patarabueye:</b> The Patarabueye were farmers who lived in small communities along the Rio Grande River. The Spanish forced them into slavery during the 1600's. By the early 1700's, the Patarabueye had abandoned their pueblos and assimilated into the culture of New Spain.</p>

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<sup>3</sup>Dr. Jonathon Hook, Written testimony submitted to the Senate Sub-Committee on Native American Affairs, El Paso, Texas (date).

<sup>4</sup>David Mauzy, Native Americans in Texas, Senate Research Center, Memo, June 4, 2002.

<p><b>Tonkawa:</b> The Tonkawa tribe of Central Texas lived as a hunting and gathering society. In 1859, the tribe was removed to Indian Territory in Oklahoma but returned to Texas in 1862. In 1884, they were removed again to an area in northern Oklahoma near the town of Tonkawa, known today as Fort Oakland.</p>	<p><b>Mescalero Apache:</b> The Mescalero Apache were living in the mountains of West Texas as hunters and gathers when the first Europeans arrived. Due to conflicts with the Spanish, Mexican, and Texan armies, the tribe was forced onto a reservation in New Mexico in the late 1800's.</p>	<p><b>Lipan Apache:</b> The Lipan Apache moved in the Panhandle and Central Texas and lived as migratory buffalo hunters. During the 1700 and 1800's, they were increasingly displaced from their territory by the Comanche and were reduced due to war with the Spanish. In the late 1800's, the surviving tribal members were removed to Indian Territory in Oklahoma.</p>
<p><b>Kiowa:</b> The Kiowa moved into the Texas Panhandle from the Wichita Mountains of Oklahoma in the 1800's and formed an alliance with the Comanche. The tribe, along with the Comanche and Kiowa Apache fought Mexican and Anglo-American until they were defeated by the U.S. Army in the late 1800's.</p>	<p><b>Kiowa Apache:</b> The Kiowa Apache were a hunting tribe that moved into the Texas Panhandle the same times as the Kiowa. Like the Kiowa they were defeated by the U.S. Army and removed to Oklahoma Indian Territory.</p>	<p><b>Comanche:</b> The Comanches were buffalo hunters that moved into the Texas Panhandle and Central Texas in the early 1700's, displacing the Lipan Apaches and ruling the Southern Plains for the next 150 years. The Comanche were defeated by the U.S. Army and removed to Oklahoma.</p>
<p><b>Wichita, Waco, and Tawakonis:</b> These three closely related tribes moved into Northern Texas in the mid-1700's. They were farmers and buffalo hunters. They suffered from diseases borne by the Europeans. By the mid-1800's, survivors were removed to Oklahoma Indian Country.</p>	<p><b>Delaware and Shawnee:</b> Both Delaware and Shawnee Indians moved into Northeast Texas in the early 1800's. The tribes had been displaced from their territory in Pennsylvania and Ohio by the encroachment of Euro-American settlers.</p>	<p><b>Cherokee:</b> The Cherokee were farmers from Tennessee and Georgia who migrated to East Texas in the early 1800's to escape encroachment by white settlers. They were later displaced to Oklahoma Indian Territory.</p>

## Pressing Issues

### Diabetes Susceptibility

Diabetes is a disease that affects the body's ability to produce or respond to insulin, a hormone that allows blood glucose (blood sugar) to enter the cells of the body and be used for energy. Diabetes falls into two main categories: type 1, which usually occurs during childhood or adolescence, and type 2, the most common form of the disease, usually occurring after age 45. Diabetes is a chronic disease that has no cures.<sup>5</sup>

The prevalence of diabetes among Native Americans is said to have reached epidemic proportions. Complications from diabetes are major causes of death and health problems in most Native American populations. Type 2 diabetes (the most common form) is developed by 12.2 percent of Native Americans in the United States above the age of 19, compared to 5.9 percent among the general population. Also of concern is that Type 2, or adult-onset diabetes, is increasingly being discovered in Native American youth. Diabetes is more common among Native American females, 10.1 percent of women vs. 7.7 percent of men<sup>6</sup>.

Research done by the Texas Department of Health suggests that one's diet is a main contributor of diabetes. Modern diets that focus on refined sugars and proteins are not compatible with digestive systems, especially between Native and Mexican Americans. According to the American Diabetes Association the best way to address diabetic problems is through patient education. Patients need to be educated about the disease, learn and practice the skills necessary to better control their blood glucose levels, and receive regular checkups from their health care providers.

The Texas Department of Health lists the following efforts for prevention and proper treatment of diabetes which could impact Native Americans:

- Diabetes projects funded by CDC in 1998 to promote prevention and control of diabetes in the Navajo Nation and Zuni Pueblo
- 2000 release of a statewide radio and television public service advertising campaign to alert Texans to the dangers of untreated diabetes

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<sup>5</sup> Native American and Diabetes-The Facts, Vtla Kaliseji-Native American Diabetes Resources. <http://vlakaliseji.tripod.com>

<sup>6</sup>Indian Health Service- Medical and Professional Programs, National Diabetes Program <http://ihs.gov>



- Targeted efforts among Texas tribes are the same as for the general population
- Prevention strategies that promote proper diet and exercise among high risk groups
- Control strategies that help victims achieve proper glycemic control and body care
- Prevention and control strategies will require intervention research, surveillance, program evaluation, training, and capacity building
- Education of at risk along with Health Care practitioners should be of utmost priority

Testimony given at the hearing on Native American Affairs from Dr. Miguel Escobedo, Texas Department of Health (TDH) Regional Director for El Paso, stated that TDH does not have specific programs that target Native Americans even though they have a higher rate of diabetes susceptibility. A study done by the Federal Center for Disease Control and Prevention found a 30 percent increase in diabetes between the Native American and Alaskan Natives between 1990 and 1997. Therefore, the Indian Health Service has a goal to assure that personal and public health services are available and accessible to Native Americans. They sponsor the IHS National Diabetes Program which has locations nationwide but not one of them is in Texas<sup>7</sup>. Our state lacks this service and falls under the Oklahoma City Area. Research from federal organizations as well as Texas-based studies suggest that there is a need to reach out to the Native Americans to help treat and prevent the future onset of diabetes amongst their communities.

### **Alcohol and Drug Abuse Prevention**

Native Americans have historically had the highest rate of alcohol consumption among all ethnic groups; however, alcohol use varies widely among individual tribes. The alcohol consumption pattern of Native Americans is an issue that has been ignored in the past. According to the 2000 National Household Survey on Drug Abuse, Native American ages 12 and older currently exhibited higher prevalence of illicit drug use, any tobacco use, cigarette smoking, binge alcohol use, heavy alcohol use, alcohol dependence, and need for drug abuse treatment<sup>8</sup>. In February of 1999, the National Diversity Forum conducted a study of more than 190,000 traffic fatalities. The study found that 73.2 percent of Native Americans that were involved in a traffic fatality were intoxicated compared to 45.8 percent in the general population. Although it is true

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<sup>7</sup> Written testimony from the Texas Department of Health given at the Senate Sub-Committee on Native American Affairs hearing in El Paso, Texas January 30,2002.

<sup>8</sup> Taken from the testimony of Dave Wanser, at the Senate Intergovernmental Relations Committee hearing on January 30, 2002

that many Native Americans refrain from alcohol together, the ones who do engage in heavy alcohol consumption are finding themselves in dangerous situations.

The Texas Commission on Alcohol and Drug Abuse provides funding for substance abuse treatment, prevention, and intervention across Texas. The TCADA provides treatments to roughly 300 Native American clients per year, which constitutes one percent of their total clients treated. Despite the loss of three Native American specific programs, the TCADA projects to serve more Native Americans this year than in the previous year. The Commission also states two important difficulties in addressing Native American substance abuse problems. First, Native Americans represent a small number of the populations in the state of Texas. Second, areas with larger Native American populations are primarily located in rural areas of the state where it is often difficult to establish and maintain services.

The TCADA, in testimony before the Senate Subcommittee on Native American Affairs, has identified strategies in five areas to better serve Texans including Native Americans. These include program quality, technology, the system structure, personnel, and collaboration.

The five strategy areas include:

- TCADA is committed to purchasing services that are research based and outcome driven. A continuum of care model is used in planning prevention, intervention and treatment services. This model must evolve to address the needs of a changing Texas population. Minimum service levels have not been achieved throughout the state, and this problem must be addressed.
- Technology is extremely important in improving quality. Accurate documentation and timely reporting of service delivery greatly improves their decision making capacities.
- Strategies to improve access to care and the capacity of the system must address the individual and their urgency, such as an any-willing provider structure combined with effective management tools.
- The agency has established a workgroup to examine strategies designed to increase the number of licensed chemical dependency counselors along with the proportion of minority counselors.
- Collaborative activities are essential to assist Texans in need. To meet multiple needs of the community, the agency plans on increasing efforts by partnering with agencies that focus on similar populations consistent with the cooperative approach delineated for the Drug Demand Reduction Advisory Committee created by SB 558 in 2001. The TCADA is instructed to take on the leadership role in developing statewide strategies through collective action to reduce drug demand in Texas.

## Burial Ground Disturbance

Due to the increasing concerns over looting of cultural resources, including burial sites that contain human remains, Texas enacted legislation to help protect unmarked burial sites. The Texas Antiquities Code was enacted in 1969 and amended in 1991.

Repatriation and reburial are not dealt within Texas state statutes. In July of 1997, a report titled “Update of Compilation of State Repatriation Reburial and Grave Protection Laws” was written for the Natural Resources Conservation Service in order to update the federal agency on all states that have enacted legislation assisting unmarked burial ground sites. According to the report, 38 states have specific laws addressing reburial of human remains, repatriation of human skeletal remains and grave goods and/or unmarked grave protection statutes. It is important to note that “reburial” means the legal requirement or act of placing human remains in a designated area such as a cemetery. While “reparation” means the legal process of turning over ownership and responsibility of human remains and items found in graves over to another group. While Texas uses the state Antiquities Code, there is a federal Native American Graves Protection and Repatriation Act (NAGPRA) that specifically breaks down areas that cover human remains, funerary objects, sacred objects, and material of cultural patrimony. A process is then established to assist federal agencies and museums in determining the appropriate Native American group responsible for disposition of the items. Texas is one of 14 states that do not have a law to protect unmarked graves located on private property whereas, all our neighbor states have some sort of legislation in place to protect unmarked graves. Since 90 percent of Texas land is privately owned, this leaves burial grounds or any artifacts found on private land almost completely unprotected from grave looting or pilferage.

**Citation:** Antiquities Code (Texas Code Ann. §191); Health and Safety (Texas Code Ann. §711.004). **Date Enacted:** 1969, most recently amended 1991

**Summary:** Texas does not have specific NAGPRA-type legislation to protect human remains in unmarked graves. It’s Antiquities Code incorporates all prehistoric and historic sites including American Indian or aboriginal campsites, dwellings and habitation sites. Responsibility for protecting sites is placed in the Texas Historical Commission which issues permits for excavations. §131 of the Antiquities Codes prohibits anyone from intentionally or knowingly defacing an American Indian or aboriginal site including burials. This section also requires owners permission for actions on private lands. The Health and Safety codes deal with general provisions pertaining to abuse of corpse. Penalties are misdemeanors with fines between \$25-\$1,000.

**Jurisdiction:** State lands and waters and private lands.

**Statute of Limitations:** Not specified. **Areas Covered Under Act:** Archaeological sites, including American Indian burials.

**Ownership:** State claims responsibility for state lands and waters.

**Review/Consultation Committee:** Not specified. **Liabile:** Anyone who violates the act and disturbs a site without a permit or permission from the private land owner.

**Penalties:** Penalties are misdemeanors with fines between \$25-\$1,000. **Exemptions:** Not specified. **Permitting:** The Texas Historic Commission issues permits.

\*Information taken from the : “Update of Compilation of State Repatriation, Reburial and

From the 70th Legislative session to the 77th Legislative session, there have been twelve bills introduced in both chambers that have never passed. The most recent is House Bill 2394 authored by Representative Norma Chavez. House Bill 2394 relates to the protection of certain unmarked burials and associated human remains or funerary objects; providing criminal penalties. This bill was referred to the House State, Federal, and International Relations Committee and never heard. The same version of the bill, Senate Bill 472 authored by Senator Barrientos was heard in the Senate but failed to get a hearing in the House. One of the reasons believed to be the cause of this legislation failing, is that private landowners while very respectful of the Native American community and their culture, are in fear of losing control of their property. In order to solve this problem for both the Native Americans and private land owners, very detailed and specific legislation must be constructed in order to achieve the goals of both parties.

The Native American community feels very strongly about this issue and will continue to pursue legislation that will help to protect their past. “Indian interest in the reburial issue will continue because of the nature of the dispute. Those Indians who see reparation as a religious issue have no choice but to continue the battle. Those who see it as a political issue are also unlikely to go away simply because the right of the people to bury their dead is so fundamental that the denial of the right amounts to dehumanization.”<sup>9</sup>

*“Should our dead deserve respect? Should the articles buried on their bodies and with them, laid there with love and reverence, in keeping with the customs of their times, be considered part of their burial and not ripped off of their bones for pillaged from their graves to be sold on an open market? Should those Indians-men, women and children- who were murdered and simply buried in mass graves or thrown into a ditch somewhere be denied respectful reburial and given the rites that their own people and people of good will and sympathy would like to bestow on them? No person with respect for his or her own family members and fellow humans would say No.”*

Quote taken from: Helen L. Harris and Ruth Soucy, ***Bridging the Gap: A***

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<sup>9</sup>Steve Russell, *Scared Ground: Unmarked Graves Protection in Texas Law*, Texas Forum on Civil Liberties & Civil Rights: Vol. 4 No. 1, 1998.

## Educational Opportunities

The future economic vitality of Texas will be effected due to the lack of programs attending to the education needs of the Indian population. The state's ability to educate all of its people and to help them develop the work and social skills needed to compete with workers of other nations and states is greatly depended on<sup>10</sup>. The achievement gap is one of the differences among the academic performance of different ethnic groups. Native Americans feel that even though schools are now desegregated, public education has failed to deliver the promise of a quality education to them.

According to the 2000 Census, Texas has a Indian population of more than 188,000, the fourth-largest among all states. Although, in Texas there is a lack of Native American educational programs in the 1st through 12th grade levels and only **one** post-secondary institution that offers a Native American Studies Program (University of the Incarnate Word).

Gifted and talented programs dramatically under-serve American Indians, partly because educators have difficulty recognizing the diversity and unique characteristics of these populations. According to the report, *Identifying Outstanding Talent in American Indian and Alaska Native Students*, for educators to identify talented Native students effectively, they must recognize the following diversity factors:

- ! geographic location;
- ! tribal differences, languages, and cultures;
- ! schools attended;
- ! school versus tribal giftedness;
- ! socioeconomic conditions;
- ! talent development by tribes, families, and elders; and
- ! individual student differences.

Under-represented students are provided less encouragement by teachers who may harbor doubts about their abilities thereby contributing to a self-fulfilling prophecy of underachievement. Today, Indian students continue to face daunting obstacles at school. This may include lack of understanding and respect for traditional practices and beliefs. Their annual dropout rate is 1.3 percent (Grades 7-12) with a majority leaving the classroom due to poor attendance and because of age<sup>11</sup>. Native Americans were also found to have the largest percentage of students (6.3 percent) receiving GED certificates. Native Americans are beginning to also consider home-schooling for their children because the public school system is neglecting them of the knowledge of their history and culture.

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<sup>10</sup> Texas Higher Education Coordinating Board, Access and Equity 2000.  
<http://www.thecb.state.tx.us/reports/HTML/0018/body.htm>

<sup>11</sup> 2001 Comprehensive Annual Report on Texas Public Schools

Native Americans students also have the highest retention rate among all ethnic groups in Kindergarten and the lowest in among their own ethnic group of 0.7 % in 4th grade. They do have a consistent grade-level retention rate of 4.8% which is the third highest among all ethnic groups<sup>12</sup>. (See Texas Secondary School Performance Report 2000-01)

**Post-secondary**

Data on Native Americans in post-secondary education can be hard to find. Part of the problem lies in the relatively small size of the Native American population, which leads to special difficulties in collecting and analyzing data. Colleges and universities must take positive, strong, and productive steps to systematically increase minority recruitment, enrollment, and retention programs to achieve and maintain relative parity in higher education among all of the state’s population groups. Overall, in order for American Indians to succeed in higher education they need to be provided the opportunities to enroll. (See Texas Higher Education Enrollment, Fall 2000)

Native Americans do show consistency in their percentage rates so their education did not worsen but then did not improve. Today, their education attainment has continued to lag behind that of the total population. Not having representation, there is lack of voice for accuracy in textbooks and action taken on state support for cultural-specific education and establishment. Tribes, including the Kickapoo Traditional Tribe of Texas, are beginning to establish their own school systems because the public schools have been unable to accommodate their ceremonial schedule. The mascot issue is only one example of how Native Americans feel disrespected by the education system but there is the entire issue of educational opportunities, or lack of, that have been brought to our attention. Putting the process in motion is action needed by the state to help the future of Native American children.

**Educational Statistics**

**Texas Secondary School Performance Report 2000-01**

	<i>State</i>	<i>African American</i>	<i>Hispanic</i>	<i>White</i>	<i>Native American</i>
<u>TAAS Cumulative</u>					
<u>Pass Rate - Exit</u>					
Class of 2001	93.1 %	89.0 %	88.8 %	96.9 %	93.0 %
Class of 2000	91.6 %	87.6 %	86.6 %	95.6 %	88.7 %

End-of-Course Exam

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<sup>12</sup> 2001 Comprehensive Annual Report on Texas Public Schools

**Algebra I**

% Passing 2001	49.2 %	31.3 %	37.5 %	63.1 %	55.7 %
2000	43.9 %	26.5 %	32.7 %	56.7 %	44.8 %

**Biology**

% Passing 2001	79.9 %	68.1 %	67.9 %	92.0 %	85.0 %
2000	80.3 %	69.0 %	69.4 %	91.2 %	84.8 %

**English II**

% Passing 2001	75.1 %	65.0 %	68.2 %	82.1 %	79.0 %
2000	77.7 %	68.4 %	71.1 %	84.4 %	79.2 %

**US History**

% Passing 2001	74.3 %	60.3 %	63.1 %	85.2 %	77.4 %
2000	72.1 %	58.1 %	58.3 %	84.0 %	77.1 %

\*Native Americans had a percentage **increase** in their TAAS cumulative pass rate (+4.43 %)

Largest increase of all ethnic groups

Increased passing rates in Algebra I, Biology, & US History. Slightly decreased in English II passing rates

	<b>State</b>	<b>African American</b>	<b>Hispanic</b>	<b>White</b>	<b>Native American</b>
<u>Attendance Rate</u>					
1999 to 2000	95.6 %	95.3 %	95.3 %	95.9 %	94.8 %
1998 to 1999	95.4 %	95.1 %	95.0 %	95.8 %	94.8 %

Slightly decreased in English II passing rate.

	<b>State</b>	<b>African American</b>	<b>Hispanic</b>	<b>White</b>	<b>Native American</b>

Annual Dropout Rate(Grade 7-12)

1999 to 2000	1.3 %	1.8 %	19. %	0.7 %	1.3 %
1998 to 1999	1.6 %	2.3 %	2.3 %	0.8 %	1.3 %

Completion Rate/Student Status Rate

Class of 2000

% Graduated	80.7 %	76.9 %	72.8 %	86.7 %	78.8 %
% Received GED	4.8 %	3.5 %	4.2 %	5.6 %	6.3 %

% Continued HS	7.3 %	9.7 %	11.8 %	3.6 %	6.9 %
% Dropped Out (4yr.)	7.2 %	9.9 %	11.2 %	4.0 %	7.9 %
Class of 1999					
% Graduated	79.5 %	74.7 %	70.6 %	86.2 %	81.4 %
% Received GED	4.0 %	3.1 %	3.5 %	4.6 %	5.2 %
% Continued HS	8.0 %	10.6 %	12.8 %	4.2 %	6.8 %
% Dropped Out (4yr.)	8.5 %	11.6 %	13.1 %	4.9 %	6.6 %

\* Native Americans show **consistent** percentage rates in attendance and also in annual dropout rate. Rates did not worsen but also did not improve.  
The percentage rate of graduates did drop by 2.6 % but the rate of GED recipients and continuing high school students increased.  
The percentage rate of dropouts (4- yr) increased by 1.3 %

	<b>State</b>	<b>African American</b>	<b>Hispanic</b>	<b>White</b>	<b>Native American</b>
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SAT/ACT Results

% At/Above Crit.

Class of 2000	27.3 %	7.8 %	11.1 %	36.4 %	26.7 %
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**% Tested**

Class of 2000	62.2 %	57.4 %	45.3 %	69.9 %	79.3 %
Class of 1999	61.8 %	58.6 %	44.5 %	68.9 %	83.8 %

(CONT.)

	<b>State</b>	<b>African American</b>	<b>Hispanic</b>	<b>White</b>	<b>Native American</b>
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**Mean SAT I Score**

Class of 2000	990	849	897	1047	985
Class of 1999	989	846	899	1043	981

**Mean ACT Score**

Class of 2000	20.3	17.2	18.1	21.7	20.2
Class of 1999	20.2	17.4	18.1	21.5	20.3

Native Americans have a **higher** at/above crit. % than African Americans and Hispanics \* Their percentage is really close to the state % and well above the previously mentioned ethnic groups Native Americans have the highest percentage of students from the listed ethnic groups taking SAT/ACT Their mean for the SAT and ACT is around the state mean,



	<b>African</b>	<b>Hispanic</b>	<b>White</b>	<b>Native American</b>
<u>Ethnic Distribution</u>	585, 609	1, 646, 508	1, 706, 989	12, 091
<u>Graduates</u>	27, 507	68, 314	109, 721	521
<u>Teachers by Ethnicity</u>	24, 277.70	46, 969.60	201, 144.60	699.8
	(8.80 %)	(17.10 %)	(73.20 %)	(0.30 %)

Majority of teachers are white (73.2%) and only 42% of the student population is of this same ethnicity  
 More Native American teachers are wanted but are not currently discriminated against due to the small Native American population \* Native American student/teacher ration is 17:1

\* Source: Texas Education Agency, 2000-01 State Performance Report  
<http://www.tea.state.tx.us/perfreport/aies/2001/state.html>

#### **TX Higher Education Enrollment Fall 2000**

	<b>Total</b>	<b>African American</b>	<b>Hispanic</b>	<b>White</b>	<b>Native American</b>
<u>Texas Public Universities (Undergraduate)</u>	414, 626	40, 763	81, 180	242, 024	2, 093
<u>Post Baccalaureate</u>	14, 472	1, 761	2, 103	8, 919	84
<u>Master's</u>	57, 144	4, 636	8, 648	31, 763	261
<u>Doctoral</u>	13, 605	561	851	7, 557	66
<u>Law</u>	3, 770	456	404	2, 376	25
<u>Professional Enrollments, Texas Health-Related Institutions</u>	5, 434	182	649	3, 391	23
<u>Professional Enrollments,</u>	675	56	77	337	6

Ind. Health-Related Institutions

	<b>Total</b>	<b>African American</b>	<b>Hispanic</b>	<b>White</b>	<b>Native American</b>
<u>Degrees Awarded</u>					
<u>Texas Public Universities</u> <u>(FY 2000)</u>	78,970	5,669	13,004	50,176	381
<u>Faculty Headcount</u>					
<u>Texas Public Universities</u> <u>Fall 2000</u>	26,758	1,247	1,919	20,474	136

## Land Issues

"Land is of tremendous spiritual and cultural value to Indian people. Many Indian tribes and communities throughout the nation still depend on the land for their survival through hunting, fishing, and agricultural purposes. What is more important, Indian land is essential for self-determination and self-governance of the Native peoples.<sup>13</sup>" According to the 2000 Census, the Navajo Indians are the second largest tribe in the United States and own one-third of all Indian land located in the United States, located in Arizona and New Mexico. Due to these very important issues, both neighboring states have active Indian Commissions because both states have a large population of Native Americans not only residing in these states but owning land.

Native American tribes have been fighting for their own land in Texas for hundreds of years. In 1852, the Texas state government finally recognized the need to establish reservation land for those Indians that remained in Texas. The historical background of this report shows that the three federally recognized tribes residing in Texas have very little Texas land to call their own. The Alabama-Coushatta's have approximately 4,766 acres, the Tigua reservation is approximately 97 acres located within the city of El Paso and Ysleta, and The Texas Band of Traditional Kickapoos has 125.4 acres of land near Eagle Pass. For the thousands of Indians that once lived in the vast state, they only own 4,726 total acres according to the 1990 Census.

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<sup>13</sup>Colton, Milo, Texas American Indian Land and Water Issues, Written testimony presented at the Sub-Committee on Native American Affairs, April 29, 2002, San Antonio, Texas.

## Water Issues

The historic *Winters v. US* in 1908 first defined the nature of Indian water rights. Arising from a situation on the Fort Peck reservation in Montana where non-Indian landowners were depriving the tribes' water supply, the Supreme Court stated that Indian water usage precedes other water usage<sup>14</sup>. The *Winters* doctrine has implicitly reserved Indian water rights. According to this case, the U.S. Supreme Court held that the Indians were entitled to a sufficient quantity of water for farming and ranching purposes on the reservations. The Supreme Court and federal courts have been consistently expanding the scope of reserved Indian water rights.<sup>15</sup>

The quantity and quality of water have recently become an issue for the courts. In 2000, the Tigua Indian tribe accused the U.S. Bureau of Reclamation and the El Paso County irrigation district of "illegally diverting" the Rio Grande's water to Hudspeth County farmers. According to the Indians, the defendants drained the Rio Grande, preventing the Tiguas from using a three-mile stretch of the river near their pueblo at Ysleta for religious ceremonies.<sup>16</sup>

Conflict over water is an issue Native Americans have been facing. Hunting and fishing rights remain a constant source of debate both on and off the reservation. Tribes that rely on hunting and fishing now have to compete with non-Indian demand for these natural resources. In conclusion, an Indian reservation is entitled to the water necessary to make their land habitable and productive.

## Findings:

While the testimony submitted did not show broad-based support for the re-creation of a free standing state agency to address issues confronting Native American Texans, it did illuminate the need for the creation of a liaison position within an existing state agency or executive office.

The key findings were considered relevant to the Committee's charge:

1. The 2000 census reported that there 188,000 Native Americans living in Texas, giving Texas the fourth largest Indian population in the U.S., with only California, Oklahoma, and Arizona, ranking higher. The U.S. Census bureau also reported that on a 3-year average, American Indians were less likely to have health insurance than other groups and had a lower median income and higher poverty rate than Non-Hispanic Whites.

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<sup>14</sup>Indian Law and The Environment

<http://www.indianz.com>

<sup>15</sup> Deloria, Vine Jr. *American Indian Policy In the Twentieth Century* 1992.

<sup>16</sup> San Antonio Express-News. July 24, 2000, p. 3B

2. Native Americans have a higher incidence of type 2 diabetes and a higher rate of alcohol consumption than the general population
3. There are a numerous public and private programs and resources specifically targeted to assist Native Americans, however, there is no coordinated state effort to identify these resources and capture them for the use of Native American Texans.
4. A number of the programs and resources are available only to tribes officially recognized by their respective states or by the federal government .
5. There is no coordinated effort to track, maintain, and distribute information about the funds that are drawn down from the federal government to the state of Texas.
6. There is no effective communication infrastructure throughout the State for the indigenous community. Information and technical assistance on available education, health care, housing, technology, and other resources are not being disseminated in an effective manner and many remain unused or underutilized.
7. There is no coordinated representation of Native American Texans in negotiations with federal agencies, meetings of the Governors' Interstate Indian Council, and among the Texas state agencies that receive federal funds targeted to Native American Texans.

The Governors' Interstate Indian Council (GIIC) is a permanent, official organization working to promote and enhance government-to-government relations between tribes and the states. There are currently 31 states in participation, representing over 300 tribes.

8. The protection of Native American burial grounds continues to be an issue of concern to Native Americans and non-Native American land owners

## **Recommendations:**

The Senate Sub-Committee on Native American Affairs recommends that:

1. the 78th Legislature create the position of Native American Liaison within an existing state agency or office;
2. every effort be made to fill the liaison position with an individual of Native American descent;
3. the liaison be knowledgeable about the various Native American tribes in Texas and the opportunities and challenges facing them;
4. the individual selected to fill the liaison position have first-hand experience working with Native Americans and be knowledgeable about the various Native American tribes in Texas and the opportunities and challenges facing them;
5. the liaison's office be provided with a toll-free telephone number and presence on a website that, at a minimum, provides the liaison's identification, local address, fax, phone, and email information;
6. the individual selected to fill the liaison position be selected from a pool of candidates submitted by a variety of sources including legislators and federally recognized tribes;
7. the individual selected to fill the liaison position carry out specific duties, including:
  - ! establishing and maintaining mutual understanding and cooperation between the tribal populations of Texas and Texas State government, the federal government, local governments, and other entities impacting the Texas Native American community;
  - ! identifying public and private resources available to Native American Texans and the development of recommendations and strategies to maximize the acquisition and use of those resources for those populations;
  - ! the collection of statistics and facts necessary to develop an accurate picture of the Native American community in Texas;
  - ! assisting Texas tribes in gaining federal recognition;
  - ! developing a recommendation to the 79th legislature regarding the feasibility and benefit of establishing a state recognition program;
  - ! conducting studies pertaining to the living conditions, employment, health, education, financial status, recreation, social adjustment, or other conditions affecting the welfare and culture of the Native American Texans;
  - ! fostering a greater awareness of and concern for Indian issues;
  - ! improving government-to-government relations on all levels within the framework of sovereignty;
  - ! facilitating the development of cooperative programs between tribes and state, federal, local governments, private entities, health organizations, educational agencies, and economic

development entities;

! facilitating the coordination of all state agency services for Native American Texans; and

! preparing and submitting a biannual report, with recommendations, to the legislature and to the governor.

**APPENDIX I**  
**Witness Lists**