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Joseph E. Mudd

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INDIAN JUVENILES AND LEGISLATIVE DELINQUENCY IN MONTANA
by Joseph E. Mudd

INTRODUCTION

In recent years, interest and concern for minority groups in this country has reached heights unsurpassed in any other era. Although Indian children have not been forgotten,¹ there is little or no documentation of actual Indian juvenile delinquency practice and procedure. The procedures, in fact, are often inadequate, not always due to the competence of the personnel within the tribal systems² but more often because facilities for treatment, care and rehabilitation of Indian juveniles are either inadequate or non-existent.

This comment will interrelate the results of research, both legal and empirical,³ in order to make a complete delineation of Indian juvenile procedures. The jurisdictional history and interrelation of tribal, state and federal criminal systems are surveyed so that tribal juvenile procedures can be placed into proper jurisdictional perspective. Six examples⁴ of the actual practices used from arrest to post-disposition

¹This is so, at least from a sociological point of view. There appear to be few publications dealing with the social deprivations of the American Indian, which do not dwell in varying degrees on the plight of Indian children. E.g. COHN, OUR BROTHER'S KEEPER (1969); BOOTHY and ABERLE, THE INDIAN, AMERICA'S UNFINISHED BUSINESS (1969).

²After visiting with many of the tribal judges, it has become obvious that the tribal courts are most often courts of equity. The judges are not faced with large volumes of reports, and precedent plays a very minor role in tribal court decisions. This is not an undesirable situation by all standards, but it does leave a great deal of discretion in the hands of the tribal judge, who is appointed by the tribal governing body. The appointment is, however, subject to the approval of the Superintendent of the Bureau of Indian Affairs on the reservation. Answer to question asked of James Cannon, Director of Bureau of Indian Affairs, Billings Region, February 23, 1972, during an Indian Law Seminar at University of Montana School of Law. The ability of the judge to reason through difficult situations, and a mind for essential fairness, will aid dramatically in the success of the tribal judicial process. Education is an indication of such ability, and is often the only real requirement that an Indian must face to qualify as a tribal judge. The educational requirements for tribal judges on Montana’s reservations are as follows: On the Blackfeet Reservation a tribal judge must be not less than 21 years of age, with a high school education. BLACKFEET TRIBAL CODE, Ch. 1, §2. The Crow tribal judges need only be members of the Tribe with no criminal convictions. 25 C.F.R. §11.3C (1968). The Fort Belknap tribal judges must be 30 years old and have completed 4 years of high school, or equivalent. FORT BELKNAP COMMUNITY CODE, Ch. 1, §3, 4. The Fort Peck tribal judges need not meet an age requirement but must possess an eighth grade education, or equivalent practical experience. FORT PECK TRIBAL CODE, Ch. 1, §3(d). The Northern Cheyenne tribal judges must be at least 25 years old and possess an eighth grade education. NORTHERN CHEYENNE TRIBAL CODE, Ch. 1, §3.

³Empirical research, which involved interviews with an array of tribal officials on each of six Montana Reservations, as well as with state and federal officials, required travel throughout the State of Montana. The MONTANA LAW REVIEW could not have engaged in this research without the aid of the Governor’s Crime Control Commission, which provided reimbursement for travel expenses.

⁴This figure excludes one of Montana’s Indian reservations. The Flathead Indian Reservation is not being considered in this study because the tribes on that reservation have assumed state jurisdiction in accordance with the provisions of Pub.L. No.
and rehabilitation of delinquent juveniles will then be placed into the total scheme in order to provide a means by which the situation may be evaluated.

This comment is not meant merely to take advantage of the rise in the social interest in Indians, as a minority group, nor is it intended in any way to suggest that Indians are incapable of running their own judicial systems. It is intended to point out a critical need for treatment and detention facilities, and to suggest immediate legislative measures that should be taken to provide such facilities in a manner that will not deny to the Indians any right of self-government.

The procedures used on the various reservations studied will probably surprise very few readers. However, here is a documentation of those procedures.

**HISTORICAL BACKGROUND OF INDIAN CRIMINAL JURISDICTION**

At the inception of this country, Indian tribes were treated as foreign sovereigns by the government of the United States. The president had the sole power to deal with the tribes in his treaty making capacity. The Senate, exclusive of the House, had the power to ratify the treaties. Apparently concerned with its lack of power in the total situation of dealing with the Indian tribes, Congress attempted to change the status which the Indians enjoyed in 1867, by removing the sovereign status. In effect the president lost his power to deal exclusively with the Indian tribes, without congressional action. That act was shortly repealed, but a similar provision was tacked to the Appropriation Act of 1871. This provision finally removed the sovereignty of the Indian nations and placed them into a unique legal status, best described as that of "Indian Tribes." The Indians, though citizens

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280, 67 Stat. 588 (1953). There are presently cases pending before the Montana Supreme Court questioning the validity of the assumption of jurisdiction by Montana, in view of a constitutional disclaimer of Indian jurisdiction. See Mont. Const. ord. 1, §2, 6. Presently the tribal courts on the Flathead Reservation handle no juvenile matters, a circumstance which makes that Reservation outside the scope of this study. Letter from Charles F. Sanders, Sr., Chief Judge Flathead Tribal Court, November 11, 1971.

*See, Cohen, HANDBOOK OF FEDERAL INDIAN LAW, 33 (1942), which states that the original treaties were given the same dignity as that placed upon treaties with foreign nations. See also, Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831). The case recognized the sovereignty of Indian nations, but only to the extent of self-government and relations with the United States. The tribes did not have power to deal with foreign nations. Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832), likewise recognized the sovereignty, but stated of the relationship at 535: "This relation was that of a nation claiming and receiving the protection of one more powerful; not that of individuals abandoning their national character, and submitting as subjects to the laws of a master."

*Act of March 29, 1867; 15 Stat. 7, 9. See also, Cohen, supra note 5 at 66, 67, n. 549.

*Act of July 20, 1867; 15 Stat. 18.


*The situation was summed up in Choctaw Nation v. United States, 119 U.S. 1, 27 (1886) when the Supreme Court reviewed the status of the Choctaw Nation: "On
of the United States, were considered as "wards" of the federal government, subject to its "care and protection." The Supreme Court of the United States soon held that by its action, Congress had acquired not only the power to deal with the Indians for their protection, but also the power to legislate in derogation of treaties previously entered into.

The wardship to which the Indians were subject was not of the same significance as that commonly applied to guardians and wards. It was to become a concept limited to Indian persons within a particular geographical area. The term "ward" as applied to Indians will have various meanings, depending upon whether reference is made to criminal or civil matters.

It was in 1875 that Congress first used its "new power" to apply the criminal jurisdiction of the United States to the Indian tribes. In that year Congress passed an act which provided that "... the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, ... shall extend to the Indian Country." There were, however, exceptions which directed that the act not apply in the case of offenses committed by one Indian against the person or property of another Indian, nor in the case of an Indian who had been punished by the local laws of the tribe. This act honored any treaty rights that required a contrary result.

The 1875 act was the full extent of federal criminal jurisdiction in 1883, when the case of Ex Parte Crow Dog came before the federal
The Supreme Court held that the courts of the United States did not have jurisdiction to try and convict an Indian who had morbidly murdered another Indian upon an Indian reservation. The court noted that the factual circumstances were directly exempted from federal jurisdiction by the act, for the murder was committed by one Indian against another. In order to remedy the situation, which had caused a great deal of consternation, the Major Crimes Act was passed in 1885. This act brought into federal jurisdiction seven specifically enumerated crimes which had been excluded by the previous legislation. The constitutionality of the act was soon challenged, and the act was upheld.

The exact status of federal, state and tribal jurisdictions remained unclear for several years, but litigation had remedied the situation considerably by the 1940's.

CRIMINAL JURISDICTION OF INDIANS TODAY

The present status of jurisdiction over Indians remains today much the same as it has developed historically. As a result, the jurisdictional limits of each legal system can be clearly outlined. This is not meant to imply that factual disputes can be eliminated. Litigation must often determine whether a person is an Indian, or whether a crime has been committed on Indian land.

17109 U.S. 556 (1888).
19Murder, manslaughter, rape, assault with intent to kill, arson, burglary and larceny were prohibited by the original act. In 1932, incest, robbery, and assault with a dangerous weapon were added to the list. Until 1966 the act was known to Indians as the "Ten Major Crimes Act." The act was held to apply specifically to the named crimes, so that the federal court did not have jurisdiction when the crime of statutory rape was committed by one Indian against another. United States v. Jacobs, 113 F.Supp. 203 (E.D. Wis. 1953); Case Note, 30 N.D. L. Rev. 54 (1954). The same was true of adultery. United States v. Quiver, 241 U.S. 602 (1915).
20By 1968 there had been added: carnal knowledge of any female, not the defendant's wife, who had not attained the age of sixteen years; assault with intent to commit rape; and assault resulting in serious bodily injury. Pub. L. 89-707 (1966); Pub. L. 90-284 (1968). The major crimes are all included in 18 U.S.C. §1153 (supp. 1970).

The act did not specifically create an area of exclusive federal jurisdiction, but such jurisdiction was indirectly held to be exclusive soon after the act's passage in United States v. Whaley, 37 Fed. 145 (9th Cir. 1888). That this is an area of exclusive federal jurisdiction is now generally accepted. See 18 U.S.C. §3242.
22See generally, Crosse, Criminal and Civil Jurisdiction in Indian Country, 4 ARIZ. L. Rev. 57 (1962); Davis, Criminal Jurisdiction Over Indian Country in Arizona, 1 ARIZ. L. Rev. 62 (1959); Rentig, The Delinquency of the American Indian, 36 J. of CRIM. LAW 75 (1945); Kane, Jurisdiction Over Indians and Indian Reservations, 6 ARIZ. L. Rev. 297 (1965); Richards, Federal Jurisdiction Over Criminal Matters Involving Indians, 2 S.D. L. Rev. 48 (1957); Note, Criminal Jurisdiction Over Indians, and Post-Conviction Remedies, 22 Mont. L. Rev. 165, 168 (1961); Comment, Indictment Under the "Major Crimes Act"—An Exercise in Unfairness and Unconstitutionality, 10 ARIZ. L. Rev. 691 (1968); Comment, Extent of Washington Criminal Jurisdiction Over Indians, 33 WASH. L. Rev. 289 (1958); Comment, Problems of State Jurisdiction Over Indian Reservations, 13 DE PAUL L. Rev. 74 (1963).
23It is beyond the scope of this comment to review in depth the legal ramifications.
STATE JURISDICTIONAL LIMITS

It is now well settled that states have no jurisdiction over Indians who commit crimes on Indian lands, unless such jurisdiction has been specifically granted to the state by Congress.\(^2\)\(^4\) However, even though Indian reservations historically retain a unique legal status, Indian lands, and Indians residing on those lands, are considered part of the state in which the lands are located.\(^2\)\(^5\) Consequently, when a crime involves Indian persons or Indian lands, state courts may have jurisdiction in three specific instances:

1. when crimes are committed on Indian land that do not involve an Indian either as defendant or victim;\(^2\)\(^6\)
2. when crimes are committed by Indians outside the boundaries of Indian land, but within the particular state;\(^2\)\(^7\)
3. when jurisdiction over crimes involving Indians or Indian land has been given to the state by Congress.\(^2\)\(^8\)

FEDERAL JURISDICTIONAL LIMITS

Federal jurisdiction of crimes committed on Indian land is that which has been specifically acquired by legislation. The federal courts therefore have:

involved in determining who is an Indian, or in determining what is Indian land. Both are important in determining the extent of federal wardship for purposes of criminal jurisdiction. It may be stated generally that one is an Indian who has some "Indian blood," and who has not severed relations with his tribe. See, Albert v. United States, 162 U.S. 499 (1896); United States v. Rogers, 45 U.S. 567 (1846); Ex parte Pero, 99 F.2d 28 (7th Cir. 1938); and State v. Phelps, 93 Mont. 277, 19 P.2d 319 (1933). See, generally, Richards, "Federal Jurisdiction Over Criminal Matters Involving Indians," supra note 22; Note, "Criminal Jurisdiction Over Indians and Post-Conviction Remedies," supra note 22.

What will be considered Indian land is stated generally in 18 U.S.C. §1151. For discussions of particular extensions of what is Indian land, see, Seymour v. Superintendent of Washington State Pen., 368 U.S. 351 (1962); United States v. Pelican, 232 U.S. 442 (1914); Smith v. United States, 230 F.2d 481 (9th Cir. 1956); Kills Plenty v. United States, 133 F.2d 292 (8th Cir. 1943); Richards, "Federal Jurisdiction Over Criminal Matters Involving Indians," supra note 22 at 150; "Criminal Jurisdiction Over Indians and Post-Conviction Remedies," supra note 22 at 166; Case note, 5 WASH. L. REV. 131 (1963); Case note, 26 MCGILL L. REV. 93 (1962).


\(^2\)E.g. Draper v. United States, 164 U.S. 240 (1896); State v. Youpee, 103 Mont. 86, 61 P.2d 832 (1936).

\(^2\)E.g. Robinson v. Sigler, 187 Neb. 144, 187 N.W.2d 756 (1971); Anderson v. Britton, 212 Ore. 1, 318 P.2d 291 (1957). Assumption of jurisdiction by the State of Montana over Indians on the Flathead Reservation did not allow state jurisdiction when an Indian from that reservation committed a crime on the Fort Peck Indian Reservation against a non-Indian. United States v. Burland, 441 F.2d 1199 (9th Cir. 1971). The assumption of jurisdiction by the state is therefore limited to the geographical boundaries of the Indian involved, and possibly to those Indians.
1. exclusive jurisdiction when one of the “Thirteen Major Crimes” is committed by an Indian against the person or property of another Indian;

2. jurisdiction concurrent with the Indian tribes over all crimes committed by an Indian against the person or property of a non-Indian, and of crimes committed by an Indian, involving no victim;

3. exclusive jurisdiction of all crimes committed by a non-Indian against the person or property of an Indian;

4. exclusive jurisdiction over all acts which are made criminal specifically by federal and no other law.

TRIBAL JURISDICTIONAL LIMITS

The Indian tribes themselves have exclusive jurisdiction over the remaining crimes, and concurrent jurisdiction with the federal government as provided above. Tribal jurisdiction is thus limited to two areas:

1. Exclusive jurisdiction over a crime involving an Indian defendant and victim, committed upon Indian lands, and which is not one of the thirteen major crimes.

2. Concurrent with the federal courts, over all crimes committed by an Indian, against the person or property of a non-Indian. This includes crimes committed by an Indian on Indian lands which involve no victim.

RELATIONSHIP OF STATE, FEDERAL AND TRIBAL JURISDICTIONS TO INDIAN JUVENILES

Since state jurisdiction will not apply to Indians on Indian lands,
and since there is, strictly speaking, no federal juvenile code, the jurisdictional relationship of the state, tribal and federal courts to Indian juveniles will be essentially the same as that found in other areas of criminal law.

There is a Federal Juvenile Delinquency Act, but its inadequate provisions remain dormant until such time as a juvenile commits an act violative of federal law. Although the act allows a procedure which will not technically result in a criminal prosecution, an Indian juvenile must usually commit a felony before the provisions of the federal act will be applied. Other than dates of passage, there is little or no legislative history about the federal act. Hopefully, Congress did not intend the act to remedy the Indian juvenile problem, for the act leaves much to be desired.

Under present law, unless an Indian juvenile commits one of the major crimes, or is a delinquent not residing on Indian land, he will fall under the sole jurisdiction of the tribe. The result to the Indian juvenile is generally a denial of the same quality of treatment, care and rehabilitation available to all other juveniles in this country.

**TRIBAL JUVENILE PROCEDURES—MONTANA'S SIX EXAMPLES**

The State of Montana provides an excellent opportunity for research of Indian juvenile procedures. The reservations involved vary geographically, from plains to mountains; in size, from 107,612 acres to 1,566,980 acres; in wealth, from an annual income of $42,000 to an annual income of $1,691,000; and in enrolled tribal populations, from 1,500 to 6,220.

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This statement assumes that most criminal acts by Indian juveniles will be against the person or property of another Indian, bringing the juvenile largely into an area of exclusive tribal jurisdiction.


The juvenile is required to give consent in writing to be proceeded against as a juvenile. The U.S. district judge is to appraise the juvenile of the consequences of his consent. Such consent constitutes a waiver of a right to trial by jury, 18 U.S.C. §5033. It is ludicrous to think that a small child could at any time validly come within the provisions of the act. Only one case, Nieves v. United States, 280 F.Supp. 994 (S.D. N.Y. 1968) has held the act unconstitutional. Since McKeiver v. Pennsylvania, holding that due process does not require a jury trial in juvenile proceedings, Nieves is of doubtful import.

It would appear that under 18 U.S.C. §1152, federal courts could have jurisdiction when an Indian commits a crime that does not involve another person. See discussion supra note 31. Williams v. United States, supra note 21, in 1946 recognized that the Assimilative Crimes Act of 1825, 18 U.S.C. §13, would allow the application of state law to Indian reservations. By applying state laws, the federal courts could have jurisdiction over juveniles who commit crimes such as liquor violations. It would be absurd to believe that the juvenile situation would be remedied by applying such limited jurisdiction.

According to U.S. Dept. of Commerce, Federal and State Indian Reservations,
Although there has been in the past a tendency to view all Indians as one, the cultures and traditions of each tribe are known to differ dramatically. The outlines of the juvenile procedures which follow offer six separate and distinct examples. The similarities that do exist are in no way planned or systematically related.

The discussion that follows amounts to the writer’s observations of particular juvenile procedures as they presently exist. The observations are the result of interviews and correspondence with involved personnel on each reservation. The procedures are stated as objectively as possible, but it must be kept in mind that insofar as the procedures are discretionary with each tribe there may be variations in addition to those set forth.

BLACKFEET RESERVATION, BROWNING, MONTANA

The Blackfeet Tribe has a Tribal Law and Order Code which contains a Juvenile Code. The Juvenile Code provides that the juvenile officer be notified upon the arrest of a juvenile, at which time

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AN E.D.A. HANDBOOK, (1971) the size, wealth and population of enrolled Indians on the six Montana Reservations are as follows:

<table>
<thead>
<tr>
<th>Reservation</th>
<th>Acreage</th>
<th>Annual Income</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Blackfeet</td>
<td>906,441</td>
<td>$500,000</td>
<td>6220</td>
</tr>
<tr>
<td>Crow</td>
<td>1,566,980</td>
<td>1,691,000</td>
<td>3842</td>
</tr>
<tr>
<td>Ft. Belknap</td>
<td>616,047</td>
<td>100,000</td>
<td>1688</td>
</tr>
<tr>
<td>Ft. Peck</td>
<td>964,564</td>
<td>500,000</td>
<td>6000</td>
</tr>
<tr>
<td>N. Cheyenne</td>
<td>433,394</td>
<td>300,000</td>
<td>2487</td>
</tr>
<tr>
<td>Rocky Boy</td>
<td>107,012</td>
<td>42,000</td>
<td>1510</td>
</tr>
</tbody>
</table>

R.I.A. estimates, before final count of the 1970 census show the following populations: Blackfeet, 5,069; Crow, 3,356; Ft. Belknap, 1,571; Ft. Peck, 3,441; N. Cheyenne, 2,439; and Rocky Boy, 1,297. Information received from the Montana Department of Indian Affairs on January 21, 1971 estimate Indian Populations as follows: Blackfeet, 6,539; Crow, 3,900; N. Cheyenne, 2,941; Rocky Boy, 1,350.

None of the above estimates indicate who is considered an Indian, nor exactly what area is considered to be Indian land for the purpose of determining Indian population on a reservation.

This became quite obvious after visiting each of the reservations. Very few persons had any idea what the juvenile procedures on neighboring reservations were. Similarities in some of the codes most likely result from copying by drafters. Only one judge of all the tribal judges interviewed was in favor of uniformity of tribal laws in any extent. Interview, Cranston Hawley, Chief Judge and Vice President of National American Indian Court Judges Association, Dec. 28, 1971.

The procedures described have been developed through the practices of the personnel involved. The descriptions are based upon personal interviews and responses to questionnaires sent to all tribal personnel involved. The Northern Cheyenne and the Crow Reservations were visited during the week of November 21, 1971. The Blackfeet Reservation was visited on December 20, 1971, and all others during the week of December 27, 1971.

It was solely the responsibility of the author to weigh each statement to determine and relate an accurate picture.

The procedure set forth is a result of personal interviews with John Sharp, Chief Tribal Judge; Orville Goss, Associate Judge; J. Howard Doore, Tribal Juvenile Officer; Robert Zeisler, Social Services; William Powell, Child Welfare; and William Haw, counselor Browning High School, on December 20, 1971. Answers to the questionnaire sent to the juvenile personnel, were received only from Harry W. Svella, Agency Special Officer on November 10, 1971.

Ch. 7, BLACKFEET TRIBAL CODE.
disposition of the juvenile is left to the officer's discretion. Proceedings must be initiated by a petition which in practice is a formal and uniform document. The code also requires that notice in the form of a summons be given to the parents if a petition is filed. The delinquency hearing is to be informal, and the judge has broad discretion in the final disposition upon a finding of delinquency. Records are to be kept of all proceedings, neither of which are open to the public. The code does not require destruction of the records, but this is customarily done when the juvenile reaches the age of eighteen.

Those who deal exclusively with juveniles are two tribal employees—a juvenile officer, and a juvenile judge. The procedure that follows has been developed through the practices of the these juvenile personnel:

**ARREST STAGE:**

1. A juvenile may be arrested by the tribal police, or by the juvenile officer, for a violation of a tribal law. The arresting officer has original discretion:
   a) to warn the juvenile and take him home, after which no prosecution will follow; or
   b) to issue a citation for the offense, which will order the juvenile to appear before the court; or
   c) to take the juvenile to the nearest tribal jail, usually to Browning, pending contact with the juvenile officer.

**PRELIMINARY STAGE:**

1. The arrested juvenile is contacted by the juvenile officer who will direct the disposition of the juvenile pending contact with the court. The juvenile may be kept in custody in his best interest. If a juvenile is to remain incarcerated, the parents should be notified, if feasible, by the arresting officer.

2. A petition is filed if a citation was issued, or if the juvenile was incarcerated.

3. Upon filing of the petition, notice in the form of a summons is sent to parents ordering their appearance at the hearing.
COURT STAGE:

1. An informal hearing is held in the office of the juvenile judge, which is shared by the juvenile officer on either of two days each week.\(^5\)

2. Upon a plea or finding of delinquency, the judge has available any of the following to use at his discretion:
   a) probation, which is supervised by the juvenile officer—this is used most often for first or minor offenders with rules of probation stated orally to the offenders;
   b) suspended sentence, with probationary conditions;
   c) placement of the juvenile in a boarding school located on the reservation a short distance from Browning;
   d) fine—usually for traffic violations;
   e) jail term—except overnight for drunkenness or pending juvenile hearing, this is generally used as a last resort;
   f) placement of the juvenile in a foster home, on or off the reservation, through the Bureau of Indian Affairs (B.I.A.) Social Services. To prevent run-aways, this is often made voluntary.\(^7\)

TREATMENT, COUNSELING AND REHABILITATION:

1. Counseling may be provided on the reservation by the mental health psychiatrist. This is often arranged by the high school counselor if he sees that a juvenile is in need of such help. Generally, however, such counseling is provided independently of the juvenile delinquency proceedings.\(^8\)

2. Counseling is often provided informally by the juvenile officer, who may also be the arresting officer, who is the probation officer.

3. Facilities for treatment and rehabilitation of juveniles are either non-existent or not available.\(^9\)

\(^{5}\) Juvenile court is in session on Thursday or Friday of each week. Interview John Sharp, Chief Tribal Judge, December 20, 1971.

\(^{7}\) There is a general lack of foster homes on the Reservation, which requires that placement off the Reservation be made. There was a consensus that run-aways were more likely off the Reservation, so generally the court required consent of the juvenile for such placement. Interview, John Sharp, Chief Tribal Judge; Robert Zeisler, B.I.A. Social Services, and William Powell, Child Welfare, December 20, 1971.

\(^{8}\) Interview, John Sharp, Chief Tribal Judge; Orville Goss, Associate Judge; and William Haw, counselor, Browning High School, December 20, 1971.

\(^{9}\) Since the case of Kennerly v. District Court of the Ninth Judicial District of Montana, 400 U.S. 423 (1971), all but one of the Montana judicial districts containing Indian reservations refused to continue the practice of taking jurisdiction of Indian juveniles for commitment purposes. In re Blackwolf, 29 St. Rep. 128, was decided by the Supreme Court of the State of Montana on Feb. 23, 1972. That case held that the one remaining judicial district (the sixteenth) that continued the practice of committing Indian juveniles after referral from the tribal court was in error. Montana's institutions for the care and treatment of juveniles are not available at this time to Indians who have become delinquent on a reservation.
CROW RESERVATION, CROW AGENCY, MONTANA.  

The Crow Tribe does not have a written code, and consequently no written form of juvenile procedure. The Tribe operates its court system in accordance with Title 25 of the Code of Federal Regulations. The court has jurisdiction only over certain enumerated crimes, all of which are misdemeanors. As far as special provisions for juveniles are concerned, the code provides only that special treatment may be given them in lieu of sentencing.

The procedures used by the Crow Tribe, then, are totally dependent upon the practices and customs of the law and order personnel. The B.I.A. juvenile officer is the only person within the system that deals exclusively with juveniles. The general probation officer and the chief judge handle juveniles as well as adults. The procedure developed through custom and usage is as follows:

ARREST STAGE:

A juvenile may be arrested by either the tribal police or the B.I.A. juvenile officer, who have original discretion to:

a) warn the juvenile and take him home without issuing a citation;

b) issue a citation to the juvenile requiring that he appear before the judge at a specified time;

c) place the juvenile in the tribal jail, or in the Hardin jail, if he feels that this is necessary. The parents are to be notified in such case by the arresting officer.

PRELIMINARY STAGE:

A juvenile who has been kept in jail will be released to his parents by the juvenile officer or the tribal judge upon the signature of the parents on a release form. By this form the parent or guardian promises to appear with the juvenile at a

60Interview with Frederick P. Knows Gun, Chief Tribal Judge; Glen Ankney, B.I.A. Juvenile Officer; Carl Venne, Tribal Probation Officer; Mr. Thomas Eaton, Principal, Lodge Grass High School; LaMar Beatty and Andy A. Russel, Mental Health, November 24, 1971. Questionnaire received from Charles B. Heinaman, Agency Social Services, November 29, 1971.

6125 C.F.R. part 11 (1971) provides for a court of Indian offenses. The court has jurisdiction only over crimes enumerated in the code, all of which are misdemeanors. The jurisdiction of the court is conferred upon the tribe by the federal government. The Crow Tribe failed to accept a relatively good code drafted for their benefit in 1968. The Tribal Council has passed several ordinances that are additions to what is contained in 25 C.F.R. Seminar Presentation, University of Montana, School of Law, James Cannon, B.I.A., Regional Director (Billings), Feb. 23, 1972.

6225 C.F.R. §§11.36, 11.36(c) provides that after a juvenile has committed one of the enumerated crimes, "the judge may in his discretion hear and determine the case in private and in an informal manner, and if the accused is found guilty, may in lieu of sentence, place such delinquent for a designated period under the supervision of a responsible person . . . or may take such other action as he may deem advisable in the circumstances."
hearing. Failure to appear will result in contempt charges against the parent or guardian.

COURT STAGE:

An informal hearing in court, before the chief judge may result in any of the following, generally at the recommendation of the juvenile officer:

a) continuance of the hearing for a period of time, after warning by the judge, followed by dismissal after the period of continuance, with no juvenile record;
b) probation, under oral rules read by the judge, which results in placement of the juvenile under the supervision of the tribal probation officer;
c) jail term—for violation of probation or for more serious violations. Extended jail terms are served in the Hardin jail.

TREATMENT, COUNSELING AND REHABILITATION:

1. Counseling is generally provided by the juvenile officer and by the probation officer.
2. Professional counseling is available at the mental health clinic but referrals by the juvenile court are few.
3. Facilities for treatment and rehabilitation are non-existent and have never been available.63

FORT BELKNAP RESERVATION, HARLEM, MONTANA.64

The Fort Belknap Indian Community has a Code of Laws and Procedures, revised in 1969, which contains a separate Juvenile Code.65 Similar to the juvenile provisions of the Blackfeet Tribal Code,66 the Fort Belknap Juvenile Code provides that the juvenile officer be notified upon the arrest of a juvenile, leaving the disposition of the juvenile to his discretion.67 This admittedly is not strictly followed.68 Juvenile proceedings are to be instigated by petition, which is not a formal document.69 Notice to parents which requires their appearance at the juvenile hearing is required if a petition is filed.70 A hearing is held in the office of the tribal judge, which is the only place avail-

63The Crow Tribal Court has not felt that it has the authority to refer juveniles to state courts for commitment. Interview Judge Frederick P. Knows Gun, November 24, 1971. See discussion supra note 59.
64Interviews with Cranston Hawley, Chief Tribal Judge and Vice President of the National American Indian Court Judges Association; Frances Griffen, B.I.A. Juvenile Officer; and Page Brown, B.I.A. Social Services Representative on December 28, 1971. Questionnaires were answered by the community police and received on November 23, 1971, and by the Social Services and received on November 2, 1971.
65Ch. 7, FORT BELKNAP COMMUNITY CODE.
66See, supra note 47.
67Ch. 7, FORT BELKNAP COMMUNITY CODE, §§.
68Interview, Frances Griffen, B.I.A. Juvenile Officer, December 28, 1971.
69Ch. 7, FORT BELKNAP COMMUNITY CODE, §§3-4.
70
ad for court proceedings. A record of proceedings is kept and at no
time destroyed. Only one employee works exclusively with juveniles—
the B.I.A. juvenile officer. The chief tribal judge handles all cases, 
juvenile and adult, unless for some reason he is disqualified.

The procedure used on the reservation is generally as follows:

ARREST STAGE:

Arrest is made only by the tribal police, who have original 
discretion:

a) to warn the juvenile and release him—no proceedings will follow;
b) to cite the juvenile for a violation of a tribal law—the cita-
tion requires that he appear before the tribal judge on a cer-
tain date;
c) to incarcerate the juvenile, overnight, or pending orders from
the juvenile officer. Juveniles are incarcerated at the jail in
Chinook, Montana, 25 miles from the Reservation. Parents
are to be notified if the juvenile is incarcerated, by the
arresting officer—a procedure not always possible.

PRELIMINARY STAGE:

1. Sometime after the incarceration of the juvenile, the juvenile
officer is notified. He has the discretion to release or detain
the juvenile pending hearing in the juvenile court.

2. Proceedings are initiated by an informal petition or by the use
of the original citation that was issued. Notice to appear is
served upon the parents. Failure to appear results in contempt
proceedings.

COURT STAGE:

1. An informal hearing is held in the office and court of the chief
judge, who handles juvenile matters. The judge does not pro-
ceed with the hearing unless parents or the juvenile officer are
present.

2. The court has available, and may sentence the juvenile upon
plea or finding of delinquency, to any of the following:
a) probation under oral rules laid down by the juvenile officer,
under whose supervision the juvenile will remain;
b) placement in foster care, on the Reservation, through B.I.A.

\textsuperscript{7}Id. at §6.

\textsuperscript{8}See discussion, supra note 55. It should be remembered that many of the Indians on
the reservations are without telephones. This will often make communication quite
difficult. The tribal judge recently ordered the police to follow this step of the
procedure closely. The tribal police, however, are not actually subject to his super-
vision. Interview, Cranston Hawley, Chief Judge, December 28, 1971.
Social Services—a disposition rarely used in delinquency proceedings; 73
c) Job Corps under a voluntary arrangement in lieu of an alternative disposition;
d) Jail term, to be served in Chinook, Montana. 74

TREATMENT, COUNSELING AND REHABILITATION:
1. Counseling is one of the principle functions of the B.I.A. juvenile officer in addition to probation supervision.
2. Counseling is offered through the mental health division of Public Health, but is seldom used by the juvenile court. 75
3. Facilities for treatment and rehabilitation are either non-existent, or not available. 76

FORT PECK RESERVATION, POPLAR, MONTANA. 77

The Fort Peck Reservation is governed by a Law and Order Code, which does contain a Juvenile Code. 78 The code provides that hearings be initiated by petition, 79 and that upon filing of a petition, notice be sent to parents, requiring their attendance. 80 Custody of the juvenile pending a hearing is at the discretion of the juvenile officer, who is notified immediately after an arrest is made. 81 The code provides for an informal hearing, 82 and for keeping of records of all of the proceedings. 83 The tribal code does not require the destruction of juvenile records, and consequently records are not destroyed. 84

The personnel available to deal exclusively with juveniles are the tribal associate judge and the B.I.A. juvenile officer.

The procedure developed through custom and practice is as follows:

ARREST STAGE:

Arrests may be made by the tribal police or the juvenile officer, who have original discretion:

73 Interview, Page Brown, Social Services Representative, December 28, 1971.
74 Interview, Frances Griffen, B.I.A. Juvenile Officer, December 28, 1971; Telephone Conversation, Blaine County Jail, Chinook, Montana, February 23, 1972.
75 Interview, Frances Griffen, B.I.A. Juvenile Officer, December 28, 1971.
76 See discussion, supra note 59.
77 Interviews with George Thompson, Sr. Juvenile Judge; Daniel Gillam, B.I.A. Juvenile Officer, and Robert Escarcega, B.I.A. Social Services, December 29, 1971.
78 Ch. 11, FORT PECK TRIBAL CODE.
79 Id. at §§3-4.
80 Id. at § 5.
81 Id. at § 9.
82 Id. at § 6.
83 Id. at § 8.
84 Interview, George Thompson, Sr. Juvenile Judge, December 29, 1971.
b) to issue a citation requiring the juvenile's appearance in court; or
c) to jail the juvenile overnight or pending directions from the juvenile officer.

PRELIMINARY STAGE:

1. The juvenile officer is supposed to be notified by the arresting officer, and the juvenile officer is to have discretion as to the disposition of the juvenile pending appearance before the court. Apparently the police exercise their discretion in this matter if the juvenile officer is not notified.

2. If a citation has not been issued, a petition is required to initiate juvenile proceedings. It is not a formal document in all instances.

COURT STAGE:

An informal hearing is conducted in the court. Upon a plea or finding of delinquency, the facilities for the following sentences are available, and generally used, usually at the recommendation of the juvenile officer:

a) probation, under oral rules by the judge or the juvenile officer;
b) placement in a foster home, through B.I.A. Social Services is an alternative seldom used for delinquent juveniles;
c) jail terms, given when all other alternatives have failed.

COUNSELING, TREATMENT AND REHABILITATION:

1. Counseling may be provided by the juvenile officer or by the matron at the tribal jail.

2. In lieu of alternative disposition, if the juvenile authorities feel that the juvenile is in danger of injuring himself or others, the juvenile may report voluntarily to the mental health clinic, adjacent to the jail.

3. Facilities for treatment and rehabilitation of delinquent juveniles are either non-existent or not available.

a) to warn the juvenile, after which no proceedings will follow;
NORTHERN CHEYENNE RESERVATION, LAME DEER, MONTANA.

The juveniles at the Northern Cheyenne Reservation are provided for in a section under “Sentencing” in the Northern Cheyenne Tribal Law and Order Ordinances. The code provides that all proceedings be initiated by a petition containing specified information. A citation is to be issued to parents who refuse to appear with their children at the informal hearing.

The personnel dealing exclusively with juveniles include a juvenile judge, probation officer, and a tribal youth director. There are no specific procedures provided for in the code, but the recently appointed juvenile judge has developed a well defined procedure as follows:

ARREST STAGE:

Juveniles are arrested by the tribal police, or by the B.I.A. special officer, who have original discretion to:

a) warn the juvenile and take him home, after which no proceedings will be initiated; or
b) issue a citation requiring that the juvenile appear before the court; or
c) incarcerate him, pending an immediate hearing or a hearing the following day before the court. Parents of the incarcerated juvenile are to be notified by the arresting officer.

PRELIMINARY STAGE:

1. The juvenile who is incarcerated may be visited by the probation officer who may conduct a type of preliminary investigation.
2. In all instances when more than a mere warning is issued, a petition is filed and proceedings initiated.

COURT STAGE:

An informal hearing is conducted in the court, or in the office of the juvenile judge. Upon a plea or finding of delinquency, any of the following dispositions could result:

a) probation, with written rules issued to the juvenile and his parents, under the supervision of the juvenile probation of-

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Interviews with Thomas Gardner, Juvenile Judge, Rudolph King Sr., Chief Tribal Judge; Bilford Curley and Adelaine Whitewolf, Tribal Juvenile Probation Officers; Thomas Rodwell, B.I.A. Social Services, Weaver HiWalker, B.I.A. Special Officer (past Juvenile Officer), and Father Raymond, St. Labre's Mission, Ashland, Montana, on November 23, 1971. Interview James Roland, Mental Health, November 26, 1971. Letter from Thomas Rodwell, Social Services, November 30, 1971.

Ch. 4, NORTHERN CHEYENNE TRIBAL CODE, §14.

Id. at §4(4).

Id. at §4(5).

Id. at §4(9).
a violation of probation usually carries work duty of varying degrees, according to the written rules of probation;

b) placement in a boarding school—the B.I.A. school in Busby or the St. Labre Mission School in Ashland—usually for a truancy violation;

c) placement in a foster home through B.I.A. Social Services, a disposition seldom used by the juvenile court;

d) placement in the tribal receiving home for girls in Lame Deer, which provides a supervised environment;

e) jail term in the tribal jail at Lame Deer when all else has failed.

COUNSELING, TREATMENT AND REHABILITATION:

1. Counseling is provided by the juvenile probation officer to juveniles under his supervision.

2. Some counseling is provided for juveniles placed at the boarding schools.

3. Formerly juveniles might have been referred to the Montana district court in the local district for commitment to one of the state reformatories. This option is no longer available.

ROCKY BOY'S RESERVATION, ROCKY BOY, MONTANA

The Rocky Boy's Reservation has a code which has not been changed since its date of approval in 1936. The tribal code does not contain a separate juvenile code. At the discretion of the judge, juveniles may be sentenced differently from adults. The recently appointed judge has not yet developed any procedure. The existing procedure on the reservation can be classified only as follows:

ARREST STAGE:

1. Arrest is made by the tribal police, who are B.I.A. employees. They have the usual discretion to:

*The attempts of the tribal court at a new procedure are quite progressive. The author was informed, however, that the probation officer was recently released from federal probation. Interview, Dave Vance, Federal Probation Officer, Billings, Montana, December 30, 1971.

**The Montana district court at Forsyth, Montana, Alfred B. Coate, District Judge, Sixteenth Judicial District, had not refused to take jurisdiction from the Northern Cheyenne Tribal Court for purposes of committing juveniles to State institutions. The Supreme Court of the State of Montana on February 23, 1972, dismissed a case which had been referred to that Montana district court from the Northern Cheyenne Tribe. See discussion supra note 59.

†Interview with Kenneth Belcourt, Tribal Judge; John Mitchell, B.I.A. Juvenile Officer; Frank Hayes, B.I.A. Social Services on December 27, 1971. Questionnaire received from Social Services, November 9, 1971; from Tribal Police, November 2, 1971, and from the Juvenile Officer on November 8, 1971.

‡The 1936 ROCKY BOY CODE, does contain a provision similar to that contained in 25 C.F.R. §11.36. See citation, supra note 62.
a) warn the juvenile, after which no proceedings will follow; or
b) place the juvenile into the Chinook jail which is 45 miles from
the Reservation.98

2. There are only two police officers on the Reservation. Conse-
quently, law enforcement officers are not on duty at all times.

There is no other procedure. Records of the proceedings against
a juvenile may or may not be kept and they may or may not be de-
stroyed. There is no counseling provided within the juvenile system,
although the B.I.A. social worker and the B.I.A. juvenile officer do
provide counseling voluntarily. Facilities for treatment and rehabili-
tation are either non-existent or are not available to the tribal court.

SOME OBSERVATIONS ON THE TRIBAL PROCEDURES

It is perhaps not surprising that the procedures of the several
reservations display many common characteristics, and that all of the
juvenile delinquency procedures are quite discretionary. Even where
tribal codes do exist, there are few definite guidelines to be followed.
Since none of the codes provides for appeal by a juvenile, nothing is
available to insure that the guidelines that are present will be followed
at any stage of the proceedings.

The lack of strict procedural guidelines is not as harmful as it may
originally appear. The law and order personnel on each reservation are
in a unique position to know the needs of each juvenile. Due to the size
and the population of the reservations, the personnel usually know the
juvenile's family and the family's background. Each juvenile in this
respect may be given the care and treatment—jail or warning—best
suited to his particular situation. Discretion in some degree is therefore
desirable. The real inadequacies in the procedures stem from a lack of
personnel, from general lack of facilities available to those who are
genuinely interested in the youth, or from lack of interest by the law
and order personnel.

Without doubt, some people express a great deal of interest in im-
proving present juvenile systems. Most of the reservations are planning
expansion or improvement of facilities for juvenile activities or of fa-
cilities for their care and treatment.99 Some are planning to implement
juvenile codes, or are revising present codes.100

98Neither the Blaine County Jail in Chinook, Montana nor the Hill County Jail in
Havre. have been used for at least a year for jailing of Rocky Boy Indians after
commitment and sentencing by the Tribal Court. Telephone conversation, Blaine
County Jail, Chinook, Montana, February 23, 1972; Telephone conversation, Hill
County Jail, Havre, Montana, February 23, 1972.
99The Blackfeet Reservation is planning immediate employment of three persons who
will act as "Big Brothers" and who will aid the personnel of the present juvenile
system. Interview, J. Howard Doore, Juvenile Officer, Blackfeet Reservation, De-
cember 20, 1971.
100The Crow Reservation is contemplating the addition of a juvenile judge to its
judicial staff. Interview, Frederick P. Knows Gun, Chief Tribal Judge, Crow Tribe,
Within each tribal structure, there is an obvious lack of personnel—trained or untrained. This is a problem that can be remedied under existing laws. More strikingly, there is an obvious lack of facilities available for treatment and rehabilitation of delinquent or incorrigible children. Such facilities can be made available only through state or federal legislation.

**THE LEGISLATIVE DELINQUENCY MUST END**

**STATE**

Recently the Montana Supreme Court dismissed a case against three Indian juveniles in the Rosebud County Juvenile Court.\(^{101}\) The juveniles had been referred to the state district court from the Northern Cheyenne Tribal Court for disposition and placement in the juvenile facilities of the State of Montana. The case eliminated the use of Montana juvenile facilities by Indian tribes in any manner, under present law.

There remains now only one way to make state facilities open to Indian juveniles who have committed crimes on a reservation: to provide a means through state legislation. The Montana legislature should immediately enact legislation which would allow the commitment of Indian juveniles to state institutions directly by tribal courts.\(^{102}\) State law should allow the State Board of Institutions to contract with individual Indian tribes for such commitment. This would not eliminate problems faced by Indians in a tri-jurisdictional arrangement, but it

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November 24, 1971. Plans are also being made on the Crow Reservation for renovation of a summer camp, for year-round use. It is hoped that juveniles may be committed to this facility and that counseling and schooling will be available there. Interview, Glen Ankney, Juvenile Officer, Crow Reservation, November 24, 1971.

The Fort Peck tribes are planning a large juvenile activity facility which may be an aid inremedying some of the juvenile problems. Interview, Joseph Beck, Federal Probation Officer, Billings, Montana, December 30, 1971. Anyone driving through towns on the Indian reservations will observe an obvious lack of facilities for juvenile activity.

The Northern Cheyenne Reservation has a committee working on a "Juvenile Service Center" which will be the nucleus of all juvenile functions, including the juvenile court program and juvenile probation. It would appear that the program is moving along somewhat slower than some of the persons involved in its planning would like. Interview, Father Raymond, St. Labre's Mission, Ashland, Montana, November 23, 1971.

Work is being done on a juvenile code at the Rocky Boy Reservation. So far attempts to pass a juvenile code have been to no avail. Interview, John Mitchell, B.I.A. Juvenile Officer, Rocky Boy Reservation, December 27, 1971.

The Northern Cheyenne Tribal Code is presently being revised to include a separate updated juvenile code. Interview, Thomas Gardner, Juvenile Judge, Northern Cheyenne Reservation, November 23, 1971.

\(^{101}\)See discussion, supra notes 59 and 95.

\(^{102}\)Such legislation should require that the State Board of Institutions contract with the tribe individually. The tribes should be willing to submit to the present legal requirements for commitment to the Pine Hills School in Miles City, or Mountain View School in Helena. See, Revised Codes of Montana, 1947, §10-612. It should be noted that the recent case of *In re Blackwolf*, supra note 59, raises some question as to whether the state can enact such legislation, or whether the state may enter into such contracts with the Indian tribes. See discussion infra.
would provide for care and treatment of Indian juveniles who are citizens of the State.

Payment by the Indians for the use of the facilities should not be required, for a number Indians do presently pay state income taxes.\textsuperscript{103} The interest that the State has in the care and protection of its juveniles should be sufficient consideration for the contract.

Admittedly, some tribal courts are presently incompetent, or may at some time be incompetent due to the selection of judges.\textsuperscript{104} It may be undesirable to have commitment directly by such courts. Legislation should therefore provide for some some sort of screening at the facilities.

There are two problems that will not be remedied by the use of state facilities. Tribal procedures and capabilities are not uniform and the need for treatment of juveniles committed will vary greatly between individual tribes; and continued use of state facilities by the Indians will perpetuate the problems of the tri-jurisdictional arrangements. Federal facilities will still be used after a juvenile commits one of the major crimes.

\textbf{FEDERAL}

The most desirable alternative for the provision of treatment and rehabilitative facilities lies in the creation and enactment of a \textit{Federal Indian Juvenile Code}. In fact, the \textit{In re Leland Blackwolf} case may mean that even state facilities may be provided to Indians only by an act of federal legislation:

\textit{At this point we emphasize that all matters concerning the exercise of jurisdiction by state courts over enrolled Indian citizens who reside within the exterior boundaries of an Indian reservation are controlled solely by federal law, as to acts or transactions within the exterior boundaries of the reservation.}\textsuperscript{105}

A Federal Juvenile Code for Indians need not mandatorily require the use of federal facilities, but should allow referral to the federal authorities by tribal courts when tribal personnel feel that tribal facilities have been used to their full extent. The juvenile would then be required to appear before a federal judge who would make a determination of delinquency.\textsuperscript{106} Upon a finding of delinquency all available federal facilities could be provided for the juvenile.

\textsuperscript{103} It appears that some tribal residents do pay state income taxes, but there is no definite authority requiring it. Comment, The Power of the State to Impose a Tax on Reservation Indians, 6 WILLAMETTE L. JOUR. 515 (1970).

\textsuperscript{104} See discussion \textit{supra} note 2. This should not imply that the tribal judges at the present time are at all incompetent. It does mean that there is a possibility that through the process of selection, incompetent tribal judges may at some time take office.

\textsuperscript{105} \textit{In re Blackwolf}, \textit{supra} note 59 at 130.

\textsuperscript{106} \textit{In re Winship}, requires that there be a finding of delinquency beyond a reasonable doubt. 397 U.S. 358 (1970).
Such an act would be acceptable to all tribes for it would not require change when tribal facilities are adequate, nor would such an arrangement affect those reservations already under state jurisdiction.\textsuperscript{107}

A Federal Juvenile Code would eliminate problems of commitment by incompetent courts, and would eliminate problems created by the complicated jurisdictional maze. It would also provide for the judgment of a qualified court in all instances before commitment would be made. It would thus eliminate the possibility of commitment by an incompetent tribal court.

This alternative would not be without its problems. Probationary personnel to follow-up on juveniles after release from facilities would have to be increased\textsuperscript{108} and court dockets would become slightly more crowded with the addition of this burden.\textsuperscript{109} Hopefully, treatment of an Indian juvenile at an early stage would eliminate some of the appearances now required after juveniles have committed felonies.

This alternative was met with much enthusiasm by those interviewed in preparation for this comment.\textsuperscript{110} However, as an extension to this proposal, it may be desirable to construct facilities which are centrally located in areas containing many Indian reservations. This would aid in providing for the unique problems faced by Indian youth in reservation surroundings.\textsuperscript{111}

CONCLUSION

It is not surprising to find that there are problems within tribal juvenile delinquency procedures. It is surprising, however, that Congress has not to date provided adequately for its “wards.” It is apparent that Indian populations are increasing and that Indian cultures, with the right to self-government, should be preserved.\textsuperscript{112} If this is to

\textsuperscript{107}By leaving the decision of referral in the tribal courts, those tribes that can presently independently provide adequate facilities need not make referrals. The proposed alternative could then easily fit into the procedures of all tribes.

\textsuperscript{108}The federal probation officers who would be most affected by such an act in Montana, are those in Billings. They indicate that they would welcome a federal juvenile code of such import. Interview, David Vance, Federal Probation Officer, Billings, Montana, and Joseph Boeck, Federal Probation Officer, Billings, Montana, December 30, 1971.

\textsuperscript{109}The Federal district judge in Billings, who presently handles most of the federal Indian juvenile problems in the State of Montana, feels that a federal juvenile code is necessary. Interview, Honorable James F. Battin, United States District Judge, Billings, Montana, November 24, 1971.

\textsuperscript{110}In all of the interviews made by this author, none of those interviewed, other than state officials, were adverse to this proposal. \textit{E.g.} Interview, John Thomas, Director of AfterCare in Montana, February 10, 1972.

\textsuperscript{111}This is not merely the suggestion of the author, but was suggested as well in response to a question directed to the United States Bureau of Prisons, Englewood, Colorado. Letter from Lewis R. Kinnear, Indian Offenders Program Coordinator, November 15, 1971.

\textsuperscript{112}\textit{E.g.} Cohn, supra note 1 at \textit{forward}. The Indians are not in fact diminishing in numbers as once predicted. In fact according to \textit{Special Report: The American Indian Beyond Survival}, Ford Foundation Letter, Dec. 1, 1971, "[I]t he 1970 Census reports that American Indians far from vanishing, are making a surprising comeback. Their numbers have more than doubled since 1950—from 343,410 to 792,730.”
be accomplished the Indian juvenile population must be cared for. With the juvenile population of the reservations in Montana approximating 50% of the total Indian population in the state,\textsuperscript{113} it would appear that immediate steps must be taken. Not only must those conditions be corrected which make reservations susceptible to delinquency, but the juvenile procedures must be upgraded. This necessarily includes making facilities available for treatment and rehabilitation of those Indian juveniles who need it.

It is not within the purview of this comment to judge or compare federal and state facilities for treatment and care of juveniles, nor should such judgment affect the outcome of future legislation. If Indian tribes could contract for the use of state facilities, and if Indian tribes had available the use of federal facilities, the ultimate decision as to which facilities are best suited to tribal needs would be left where it belongs—with the tribes themselves.\textsuperscript{114}

\textsuperscript{113}This figure is derived from the estimations of Indian populations from the Department of Indian Affairs, State of Montana. The estimates are that 48% of Montana's Indian population is age 15 or less. Fifty-seven per cent are under the age of 21. The information supplied by the B.I.A. based on estimates after the 1970 census, makes an age breakdown after age 14, and age 24. Generally speaking, according to the B.I.A. figures, at least 60% of the Indian population is under age 24.

\textsuperscript{114}With the decision in \textit{In re Blackwolf}, supra note 59, the standing of the Indians in Montana's institutions, to remain under continued care remains doubtful. In the past, Mountain View School has had about 50% Indian population. Letter from Donald P. Robel, Superintendent, Mountain View School, November 8, 1971. Pine Hills School for boys has had about 35-40% Indian population. Letter from Donald T. Holladay, Superintendent, Pine Hills School, November 12, 1971. The federal institution for boys, at Englewood, Colorado has maintained a 25% Indian population. Of the Indians, most are from Arizona and Montana. Letter from Lewis R. Kinneir, Indian Offenders Program Coordinator, November 15, 1971.