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Education, Jurisdiction, and Inadequate Facilities as Causes of Juvenile Delinquency among Indians

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EDUCATION, JURISDICTION, AND INADEQUATE FACILITIES AS CAUSES OF JUVENILE DELINQUENCY AMONG INDIANS

The purpose of this note is to examine the causes of juvenile delinquency within the Indian community. Hopefully, an analysis of current programs and recent proposals for change will be beneficial to the non-Indian in understanding the dimensions of this extensive problem.

The emphasis of this note will be placed upon four of the factors that contribute to Indian juvenile delinquency—the history of oscillating governmental intervention in Indian affairs, the failure of the educational system to adjust to Indian youth, jurisdictional problems, and the general effect of inadequate facilities. In the course of exploration of this topic Minnesota and North Dakota, as well as Federal involvement with Indian youth will be used for reference.

THE PROBLEM: ITS EXTENT

Indians have been involved negatively with the law in overwhelmingly disproportionate numbers since the imposition of the Anglo-American legal system upon them.[1] Juveniles and adults alike have higher crime rates than the general population.[2] One rural county (Cass) in northern Minnesota showed that while roughly

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1. Association of the Indian with delinquency was dramatically portrayed in the Boston Tea Party. Conflict with the Indian over territory perhaps first implanted this belief of excessive lawlessness within the Indian society. Delinquency at first was born in cultural pride and conflict. For example, it was noted that the Plains Indians taught their boys to steal cattle, a respected occupation due to its requisite skill and cunning. von Henting, *The Delinquency of the American Indian,* 36 J. CRIM. L. & C. 75, 79 (1946). *See generally* R. HASSRICK, THE SIOUX, LIFE AND CUSTOMS OF A WARRIOR SOCIETY 32-54 (1964). However, the Indian became negatively associated with the dominate culture's law to such a degree that the Times and Transcript of Sacramento noted in 1851 that most of the robbery in the area attributed to Indians in California was committed by whites dressed in Indian garb. von Hentig, *supra,* at 78, n. 25. The *Uniform Crime Reports* of 1937-41 show that anti-social activity continued. Male Indian arrests outnumbered male white arrests per capita by three to one, while prison admissions for Indians outnumbered their white counterparts by more than five to one. *Id.* at 76. The high rate of juvenile delinquency was noted in the most recent congressional inquiry into the matter, *Hearings on S. Res.* 62 *Before the Subcomm. To Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary,* 84th Cong., 2d Sess. (1956) [hereinafter referred to as *Hearings*].

2. For example, the Turtle Mountain Reservation in North Dakota has been plagued by both adult and juvenile criminality. Adult arrests in 1969 by the Bureau of Indian Affairs Branch on the reservation numbered one arrest for every two adults. Arrests of juveniles on the reservation between the ages of fifteen and sixteen numbered one for every four juveniles of that age group.

one out of ten persons in the county is Indian, eight out of ten persons involved with the County Probation Officer is Indian.[3] In 1967, the delinquency rate for Cass County was 4.7 per cent compared to the national average of 1.7 per cent.[4]

Migration from the local reservation has not alleviated the problem. The conflict with law enforcement agencies tends to be severe in large cities as well. For example, "[T]he proportion of Minneapolis workhouse population that is Indian ranges from about 10% to 38%. Based on a projection of six months of 1967, Indians accounted for 1/3 of the number of all referrals,"[5] while Indians number only 1.2 to 2% of the total Minneapolis population.[6]

The population of correctional-institutions reveals over-representation as well. As of June 30, 1969, 9 per cent of the youths in Minnesota's correctional institutions were Indian.[7] This is surprsing in view of the fact that Indians comprise only 1 per cent of Minnesota's population.[8] Probation failure has been noted to be excessive as well, and the rehabilitative process has seemingly by-passed the Indian.[9]

It appears that there is little distinction between those states which have assumed criminal jurisdiction pursuant to federal law over crimes committee on the reservation, and those which have not. In both the former (open reservations) and the more autonomous closed reservations, criminal activity is disproportionate to the general local and national averages.[10]

There is a dearth of reliable statistical information available as to the cause and extent of Indian crime—juvenile delinquency in particular. This is particularly true in North Dakota where state and federal funding has been limited to "seed spending" wherein each reservation has been given funds to research the problem in the hope of uncovering isolated causative factors. These research projects have been criticized as "unprofessional," lacking in comprehensiveness and continuity and are frequently buried in some forgot-

3. GOVERNOR'S COMM. ON CRIME PREVENTION AND CONTROL, THE MINNESOTA INDIAN, A SUPPLEMENT TO THE 1971 MINNESOTA PLAN (1971).

4. *Id.* at 6.

5. Committee For United Indians, the Group Home 6, on file at Training Center for Community Programs, University of Minnesota, Minneapolis, Minnesota, Jan. 1970 [hereinafter cited as Committee for United Indians].

6. A. HARKINS & R. WOODS, RURAL AND CITY INDIANS IN MINNESOTA PRISONS, n. 1 (1970).

7. Committee For United Indians, *supra* note 5, at 9.

8. GOVERNOR'S COMM. ON CRIME PREVENTION AND CONTROL, MINNESOTA'S 1971 COMPREHENSIVE PLAN FOR THE CRIMINAL JUSTICE SYSTEM II-14-131 (1971).

9. Recidivism has been noted as being extremely high among Indians. 81% of the Indians in one Minnesota Prison have been in juvenile correctional institutions; among Minneapolis Indians, probation is revoked approximately 50% of the time, whereas this occurs in one-fourth of the non-Indian cases. Committee For United Indians, *supra* note 5, at 8.

10. *See* notes 2 and 3 *supra*.

ten file.[11] Minnesota is somewhat advanced in that it has obtained broad and comprehensive statewide research, funded and directed by prestigious groups, with Indian guidance and professional administration.[12] This approach has produced an adequate overview of the problem, which has enabled funds and grants to be specifically targeted.[13] North Dakota has recognized its deficiency, and the state's Law Enforcement Council is now involved in a project to extensively analyze the extent and causes of Indian juvenile delinquency on a statewide basis.[14]

Federal investigation of the problem has been somewhat sparse as well.[15] The latest governmental excursion into the area involved the United States Senate Committee on the Judiciary whose Subcommittee to Investigate Juvenile Delinquency investigated the problem in 1956. It pointed out the problem of Indian delinquency on a national scale by noting that on most reservations at least 10% of the school age children were involved in some type of crime.[16] In fact, the report indicated that a 10 per cent crime rate was favorable among Indian juveniles, even though the national juvenile delinquency rate was approximately 2 per cent.[17]

FACTORS: INDIAN JUVENILE DELINQUENCY

The following factors which may help to explain the high juvenile delinquency rates will be discussed:

1. Governmental policy—assimilation or self-determination.
2. Education as a bi-cultural failure.
3. Confusing jurisdictional problems.
4. Inadequate facilities and intra-cultural programs.

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11. Interview with Ken Dawes, Director, Law Enforcement Council of North Dakota—at Law School, University of North Dakota, Grand Forks, N. D., on February 19, 1972.
12. *E.g.*, Governor's Commission on Crime Prevention and Control, the University of Minnesota, and the League of Women Voters.
13. GOVERNOR'S COMMISSION ON CRIME PREVENTION AND CONTROL, *supra* note 3. The Governor's Commission has prepared a detailed plan to combat juvenile delinquency among Indians including:
    1. Population studies and characteristics.
    2. Educational and Employment problems.
    3. Problems in policing Indian Communities.
    4. Adjudications: Disposition.
    5. Correction facilities.

An examination of available resources and existing programs has been presented, and the deficiencies have been noted, enabling the Governor's Commission to present a comprehensive program to combat the cause of juvenile delinquency entitled *The* 1971 *Comprehensive Plan for the Criminal Justice System.*
14. Interview with Oliver Thomas, Juvenile Delinquency Division, Law Enforcement Council, at Capitol Bldg., Bismarck, N. D. on December 28, 1971.
Statistics on crime for comparative purposes, while adequate in a black-white context, are non-existent for an Indian - white comparison. *See generally* DEPT. OF COMMERCE, STATISTICAL ABSTRACT (1971); FEDERAL BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS (1971).
15. *See* Note, *Tribal Injustice: The Red Lake Court of Indian Offenses,* 48 N.D. L. REV. 638 (1972).
16. *Hearings, supra* note 1.
17. *Id.* at 12.

Governmental policy—assimilation or self-determination.

The dilemma facing an Indian youth today is that he must adapt to a society with which his Indian identity often clashes.

> Indian youth are confronted with a situation which is both similar and dissimilar to the youth of other minority groups. They are a minority group but they are also our first Americans and not the first generation of Americans like other minority groups. The transition and assimilation of the Indian into the larger society has been very slow because of the many unique cultural patterns, customs, and laws which he has been permitted to retain, and because of the guardian-ward relationship governed under the Federal Government's changeable policy.[18]

The original policy followed by the Government was to isolate the tribes within territories in the West where the white man had no control and the Indian would be free to govern his own affairs.[19] During this period, the reservations were treated, in effect, as sovereign nations within the United States.[20] As foreign nations, the federal government used its treaty power to execute agreements with the Indians. But as the country expanded to the West, the policy of isolation became unrealistic and, in 1871, Congress prohibited the further making of treaties with the Indians.[21] The foreign nation concept lost support and the Government instituted a policy of assimilation of the Indians into the dominant culture. To this end, the General Allotment Act[22] was enacted in 1887 which allowed the allotment of reservation land to the individuals residing thereon. When it became apparent that the land so allotted and the proceeds received from its sale were being dissipated by the Indians, Congress moved to preserve the land that remained. Allotments were prohibited and the policy of assimilation was thus changed in 1934 by passage of the Indian Reorganization Act (IRA) for those tribes who

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18. *Id.* at 8. The guardian-ward concept comes from Chief Justice John Marshall's discussion in Worcester v. Ga., 31 U.S. (6 Pet.) 515 (1832).

19. MINNESOTA LEAGUE OF WOMEN'S VOTERS, INDIANS IN MINNESOTA 4 (1971).

20. The following two documents advance the sovereign nation concept:
Northwest Ordinance of 1787: The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights and liberty they shall never be invaded or disturbed unless in lawful wars authorized by Congress; but laws founded on justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.
U. S. CONST., art. 1, § 8 gives Congress the power to regulate commerce with the Indians, and art. II gives Congress the power to make treaties with the consent of the Senate. *See generally* Worcester v. Ga., 31 U.S. (6 Pet.) 515 (1832).

21. Act of Mar. 3, 1871, ch. 120, § 1, 16 Stat. 566, (codified at 25 U.S.C. § 71 (1970)).

22. 24 Stat. 388 (1887). This Act was a rider tacked on an appropriations bill to appease the demand of the House for more influence in Indian Affairs. F. COHEN, HAND BOOK OF FEDERAL INDIAN LAW (1945).

accepted its provisions.[23] This enactment allowed the reservation tribes to organize into federally chartered corporations, thus the tribes were given the power of self-government. They could make and adopt constitutions, and by such constitutions, the tribal courts were given broad powers.[24]

However, this Indian New Deal was short lived.[25] Pressure was applied toward "get[ting] the federal government out of the Indian business"[26] in favor of state responsibility over Indian affairs. This shift of responsibility was finally enacted into law in 1953, with the passage of Public Law 280, which transferred jurisdiction over law and order on certain reservations from federal to state authority without tribal approval.[27] House Concurrent Resolution 108 expressed the final solution as termination of all Indian reservations, wherein all federal services were to cease.[28]

The resolution never materialized and in the 1960's the pendulum swung back toward Indian control over their own affairs.[29]

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23. Wheeler Howard Act, Act of June 18, 1934, ch. 576, 48 Stat. 984, *as amended*, at 25 U.S.C. §§ 461-479 (1970); About three-fourths of the tribes accepted the provisions of the Act. V. DELORIA, CUSTER DIED FOR YOUR SINS 24 (1971).

24. F. COHEN, HANDBOOK OF FEDERAL INDIAN LAW 149 (1945).

25. LEAGUE OF WOMEN VOTERS OF MINNESOTA, INDIANS IN MINNESOTA 8 (1971).

26. *Id.*

27. 28 U.S.C. § 1360 (1970) as set out below:

(a) Each of the States or Territories listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over other civil causes of action, and those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian Country as they have elsewhere within the State or Territory:

State or Territory	*Indian Country Affected*
Alaska	All Indian country within the territory.
California	All Indian country within the State.
Minnesota	All Indian country within the State, except the Red Lake Reservation.
Nebraska	All Indian country within the State.
Oregon	All Indian country within the State, except the Warm Springs Reservation.
Wisconsin	All Indian country with the State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States, or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

18 U.S.C. § 1162 (1970) is essentially the same except that it deals with the states' assumption of criminal jurisdiction.

28. H. R. CON. RES. 108, 82nd Cong., 2d Sess. (1953).

29. One writer summed up the events of 1960 as follows:

It was the first time that Indians generally had been allowed to assume the full responsibility for the management of, and the use of funds for, programs on reservations; and, by and large, the Indians showed that they were able to carry out functions which up to then had been supervised for them by

In 1970, President Nixon asked Congress to renounce the policy expressed in HCR 108 in a special message to Congress.[30] He recommended that Indians control and operate federal Indian programs, and that there be Indian school boards and Indian control of federal funds going to schools serving Indian children. He asked that a tripling of loan funds be made available for reservation businesses, for facilitation of non-Indian investment in reservation-based business, as well as federal aid for urban Indian centers.[31] President Nixon's proposal was recently approved by the Senate in the form of Senate Concurrent Resolution 26.[32] However, the House had not taken any action concerning SCR 26 at the time of this writing.[33]

It may seem out of context to include this development of Indian history. The point to be stressed, however, is the effect upon juveniles that this changing policy exemplifies. In a very real sense it is at the heart of the dilemma facing Indian youth in adapting to society. Another consequence of changing governmental policy is the failure of federal officials to cope with the problem. In its bureaucratic oscillation, the federal government has attempted to place the burden of financing adequate services upon unwilling state jurisdictions, or has left the law enforcement problem to the Indian tribes, who are unable to cope with the complexities of white man's culture—complexities which have contributed to such high "crime" rates among Indians.

Education: A Bi-cultural Problem

The foregoing history sets the stage for a discussion of the problem facing Indian youth in the educational system of today. The problem is essentially one of the conflicting policies of assimilation or acculturation, on the one hand, and self-determination on the other hand. The first attempt at educating Indian youth was undertaken by mission schools,[34] which were soon replaced by boarding schools.[35] The latter, usually located far from the reservation, were dedicated to the ultimate re-orientation of the Indian through military discipline and the complete regimentation of the child's waking hours.[36] This was in keeping with the Congressional desire

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their agents. Part of the success, moreover, stemmed from the fact that the programs were ones which the Indians themselves wanted and planned according to the needs as they saw them. JOSEPHY, A., THE INDIAN HERITAGE OF AMERICA 32 (1968).

30. *President Nixon's Special Message to Congress on Indian Affairs* of July 8, 1970 in PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: RICHARD NIXON 564, 565 (1971).

31. *See generally, id.*

32. CONG. REC: S CON. RES. 26, 92nd Cong., 1st Sess., 117 CONG. REC. S21327 (daily ed. Dec. 11, 1971).

33. The House Bill is H. R. CON. RES 95, 92d Cong., 1st Sess. (1971).

34. L. MERIAM, THE PROBLEM OF INDIAN ADMINISTRATION (1928).

35. Id. at 402-409.

36 T Nelson, Efforts to Rehaibiltate the Standing Rock Sioux 36-38 (1965) (un-

"to promote civilization among the aborigines."[37] The Director of the Carlisle School for Indians in Oklahoma expressed the rationale behind these programs quite clearly: "We accept the watch-word. There is no good Indian but a dead Indian. Let us by education and patient effort kill the Indian in him, and save the man."[38]

In most states children were caught between the conflicting values of the dominant society and their own culture. One North Dakota agent ". . . raged about . . . dances and other Indian 'orgies' . . . memories of their past prowess untrammeled by the white man, which the young men of their tribe adopted in their disposition to 'run wild.' "[39] Hence, the battle of two cultures began:

> White Men drunk with the clang of railroads, devoid of reason, not wanting to hear the true outspoken words of Brave Heart. The war-bonneted, Brown Culture trapped in the quagmire of policy and commitment.
>
> A way of life annilated by the gripping forces of progress. Spiritual law and order left to bleach on an arid ant hill, Humaneness dying agonizingly.
>
> America may regret her modern hatred of the Dark people, the cowboy's insolence, our programmatic substitution for traditional values:
>
> We may weep for wind-swept sand, dawn-crowned mesas, the buffalo dances of Mandans and Arikaras.[40]

Although Minnesota has totally abandoned the Boarding School concept in favor of state and BIA day schools, North Dakota maintains one such school, and utilizes two schools in South Dakota for certain "problem children."[41] Although Boarding schools tend to have peculiar problems, the Indian youth in an integrated day school realizes that the policy of acculturation or assimilation has transcended structural changes. Therefore, the consequences in both Minnesota and North Dakota remain severe in the following contexts:

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published thesis in North Dakota State University Library); *See generally* Brightman, *Mental Genocide, Some Notes on Federal Boarding Schools for Indians,* HARV. CENT. L. & ED. NO. 7 (1971).

37. LEAGUE OF WOMEN VOTERS, *supra* note 19, at 55.

38. T. Nelson, *supra* note 36, at 38.

39. *Id.* at 32.

40. John Belindo, *Brave Heart,* SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE, SPECIAL SUBCOMMITTEE ON INDIAN EDUCATION, INDIAN EDUCATION: A NATIONAL TRAGEDY—A NATIONAL CHALLENGE, S REP. N. 501, 91st Cong., 1st Sess., dedication, (1969) [hereinafter referred to as S. REP. N. 501].

41. North Dakota, and Minnesota, (although minimally), utilize three boarding schools: at Wahpeton, North Dakota, and Pierre and Flandreau in South Dakota. *Id.* at 79 (map). 12,000 students attend the 19 off-reservation boarding schools operated by the BIA. *Id.* at 71. *See generally* Project: Turtle Mountain Juvenile Delinquency Commission, 1971, on file at Law Enforcement Council, Bismarck, N. D.
The desirability of day schools whether under state or federal auspices is noted in L. MERIAM, *supra* note 34, at 411-418. Presently, two thirds of the Indian children attending day schools are enrolled in state controlled institutions and the remainder are "educated" in BIA-controlled schools. Interview with Donald Bruce, Indian Services, Law Enforcement Council, at Capitol Bldg., Bismarck, N. D., on December 28, 1971.

1. Drop-out rates.
2. Educational achievement
3. Skill and employment
4. Juvenile delinquency

1. In both states the estimated Indian student drop-out rate ranges between 45 and 80 per cent.[42] This is shocking when one notes that Minnesota has the lowest state drop-out rate, overall, in the country—8 per cent.[43] A study in Minnesota of court commitments of male Indian youths (ages 18-21) during the fiscal year July 1, 1967 to June 30, 1968, supports the suggestion that drop-outs are more likely to be involved in crime. Only one in seventeen male Indian youths committed to a correctional institution in that period was a high-school graduate,[44] and only two of eleven adults (over 21) committed had completed high school.[45]

2. Indians are not getting an adequate education. In 1966 the United States Commissioner of Education found that Indians began school one point behind whites on non-verbal scores. By the twelfth grade, they were five points behind.[46] The Minnesota study referred to above reflects an intelligence correlation to juvenile delinquency above reflects an intelligence correlation to juvenile delinquency rates. Those estimated to have an "average," "dull normal" or lower, intelligence encompassed 90 per cent of a juvenile female study group—50 per cent having a "dull normal" (below average) intelligence.[47] 51.2 per cent of the Indian male youths studied had "average" intelligence, 39.5 per cent were rated as "low average," whereas only 4.7 per cent were found to be "above average."[48]

3. Indian youths are generally unskilled and unemployed. High unemployment, and consequent poverty among Indians, is well documented.[49] The poor educational experience adds to this problem in that it does not motivate or prepare the Indian child for employment. This is exemplified by the experiences of the South Dakota boarding schools at Pierre and Flandreau whose objectives are to provide a college preparatory academic program.[50] Only govern-

42. Interviews with Donald Bruce, Indian Services, Law Enforcement Council, at Capitol Bldg., Bismarck, N. D., on December 28, 1971, and John S. Paupart, Community Coordinator, Indian Rehabilitation Project, Minnesota Indian Affairs Commissioner, St. Paul, Minnesota, on January 4, 1972. *See generally* S. REP. No. 501, *supra* note 40, at 41, 61.

43. S. REP. N. 501, *supra* note 40, at 61

44. A. HARKINS & R. WOODS, RURAL AND CITY INDIANS IN MINNESOTA PRISONS, TRAINING CENTER FOR COMMUNITY PROGRAMS 10 (1970).

45. *Id.* at 13.

46. LEAGUE OF WOMEN VOTERS, *supra* note 19, at 56.

47. A. HARKINS & R. WOODS, *supra* note 44, at 4.

48. *Id.*, at 7. Intelligence tests do not necessarily reflect the "intelligence" of the youths, however. *See generally* J. BYRD, PSYCHOLOGY OF INDIAN YOUTH (1969).

49. *See generally* ARIZONA AFFILIATED TRIBES, INC., SELF-DETERMINATION (1971); U. S. DEPT. OF COMMERCE, FEDERAL AND STATE INDIAN RESERVATIONS (1971).

50. SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE, SUBCOMMITTEE ON INDIAN EDUCATION, A COMPENDIUM OF FEDERAL BOARDING SCHOOL EVALUATIONS, S. REP. 35-479, 330-331 [hereinafter referred to as S. REP. C5-479].

mental job opportunities are posted.[51] Academic pursuits (of little relevance to Indian children due to low achievement records and cultural problems) are favored over vocational training.[52] Few job counseling services are available and alumni follow-up was not implemented until 1969.[53] Of the 1968 graduates it was found that only 9.4 per cent were employed, 30.2 per cent were in college or vocational school, while 32.3 per cent were unemployed.[54] Only 37 per cent followed through with plans made at the end of their senior year.[55] The same problem is prevalent in public schools.[56]

A correlation between skill-levels, unemployment and criminal and delinquent activity among Indian juveniles is demonstrated by the Minnesota study:

Indians—New Court Commitments - 1967-1968

Males	Unskilled	Unemployed
Juveniles Males below 18[57]	100%	100%
Male Youth (18-21)[58]	100%	52.9%
Adult Males (21-26)[59]	100%	63.6%

These figures show that none of the Indians committed to institutions in Minnesota in 1967-68 were skilled, and that most were unemployed.

4. The educational system, especially within the boarding school context, fosters juvenile delinquency among Indian youth.[60] Federal boarding schools have been labeled a "dumping ground." This appears to be an appropriate label for such schools in that they are a disposal area for the special problem children of BIA and local administrators. The admissions criteria for these schools include Indian children for whom educational facilities are non-existent elsewhere, children who are in need of special courses necessary for gainful employment, those retarded scholastically, rejected and neglected children, those from large families where no suitable home exists, "[t]*hose whose behavior problems are too difficult for solution by their families or through existing community facilities,*" and finally, children subjected to the illness of other household members presenting health and care problems.[61]

Although such schools were intended to be conducive to improved

51. *Id.*
52. S. REP. N. 501, *supra* note 40, at 82.
53. S. REP. N. 35-479, *supra* note 50, at 331.
54. *Id.* at 335.
55. *Id.*
56. LEAGUE OF WOMEN VOTERS, *supra* note 19, at 83.
57. A. HARKINS & P. WOODS, *supra* note 44, at 7, 8.
58. *Id.* at 10.
59. *Id.* at 13.
60. *See generally* L. MERIAM, *supra* note 34, at 573-580, 402-409.
61. S. REP. N. 501, *supra* note 40, at 71, 72; Project: Turtle Mountain Juvenile Prevention Commission, *supra* note 41, at 11.

Indian education, and objectives still stress college preparation, the principal of the Flandreau school noted: "Students now come for social reasons, but the staffing hasn't changed one bit to meet the social reasons . . . we talk social problems yet respond in an academic manner."[62] One authority gave this example:

> At the Phoenix Indian School alone . . . out of an enrollment of approximately 1,000 students, over 200 came from broken homes. [580] are considered academically retarded. There are at least 60 students enrolled where there exists a serious family drinking problem. From September to December of 1967, there were 16 reported cases of serious glue sniffing. The school is often pressured into accepting students with a history of juvenile delinquency and overt emotional disturbance.[63]

At another school, a student teacher observed:

> The few delinquents at Chilacco give the whole school a reform school atmosphere. A small number of students are sent there because they can't get along anywhere else. These students force the administration to be very strict with rules and regulations. As a result, many teachers categorize all the students as delinquent cases and treat them as such. It is no wonder that the students have little to say in class when they are thought of as poor, ignorant, Indian juvenile delinquents.[64]

This commentary notes the problems associated with a social mixture in that the schools have no programs to handle, or segregate, children with different problems, and the adverse effect of intermingling the different groups is apparent. The typical boarding schools seem to be penal orphanages but even as custodial institutions they fail to serve their purpose.

> Several reports evaluating individual boarding schools point to examples of overcrowding in dormitories, or classrooms, or lack of privacy for the students, of inadequate areas for study and recreation, of unappealing meals, of rules which irritate older students by their rigid enforcement and inappropriateness to the students' age, and of punitive discipline.[65]

A strong argument can be made that such an atmosphere contributes to the mental health problems of these children. One ob-

62. S. REP. N. 501, *supra* note 40, at 73.
63. *Id.*
64. *Id.*
65. *Id.* at 76.

server noted a factor which is present to some degree among children in public school systems in concluding that the students'

> . . . frequency of movement and the necessity to conform to changing standards can only lead to confusion and disorganization of the child's personality. The frequency of movement further interferes with and discourages the development of lasting relations in which love and concern permit adequate maturation.[66]

Further frustration is caused by the negative image of Indians as presented through textbooks depicting Indians as inarticulate, backward, and destined to extinction.[67] Another factor present in both public and federal schools is the lack of knowledge of Indian culture by teachers and their consequent low expectation of Indian children.[68] The child himself sets lower standards of effort, achievement, and ambition, reflecting the teacher's conviction that he is inferior and incapable. It is important that white teachers develop a positive attitude toward Indian children.[69]

Minnesota's public day schools lack of sensitivity for training non-Indian teachers is noted, although attempts have been made to correct this. Since the availability of Indian teachers is disproportionate to the number of Indian children, the problem is acute—there are few teachers with which the Indian student can identify.[70]

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66. *Id.* at 77. Minnesota noted another inherent difficulty of the transient Indian youth:

> Poor attendance and great mobility affect Indian education. Reports from schools with large Indian enrollments indicate that 10% to 15% of the students are absent daily. Two schools reported an average daily attendance of Indian students at just a little over 70%. There is great mobility, especially between the reservations and the Twin Cities in Minnesota. A sixth-grade student in Minneapolis was known to have changed addresses thirteen times. As many as 35% will move during the school year. Many children enter school late in the fall, sometimes losing eight weeks of the thirty-eight required. Time lost from school not only adds to the problems of educating Indian children; it diminishes state aid to schools which is based on average daily attendance. LEAGUE OF WOMEN VOTERS, *supra* note 19, at 58.

67. S. REP. No. 501, *supra* note 40, at 22, 23. "Minnesota has for years been utilizing an elementary text which depicts Indians as lazy savages, incapable of doing little more than hunting, fishing, and harvesting wild rice." *Id.* at 23.

68. *Id.* at 77.

69. Jacobson, *Teacher Expectations For the Disadvantaged,* SCIENTIFIC AMERICAN, April, 1968.

70. LEAGUE OF WOMEN VOTERS, *supra* note 19, at 57.

> In schools with large Indian enrollment, Indian aides are employed, but it is primarily the teacher who has the role of authority. In the Minneapolis school system, which has the largest Indian enrollment in the state, there were 1,993 Indian children in 1970 (3% of the district's enrollment). Indians among the districts 5,680 employees, were an assistant principal, eight teachers, and thirty-three non-certificated staff, comprising 0.7% of the school personnel. *Id.*

Lack of teacher identification is but a part of the overall discrimination an Indian student encounters in the public school system. In many schools, placement systems automatically place Indians in the slow learner group without achievement testing. S. REP. No. 501, *supra* note 40, at 26. One principal was quoted as follows: "To tell the truth, our Indians are even worse than our coloreds and the best you can do is leave them alone." *Id.* However, such discriminatory practices towards negroes have been declared unconstitutional. *See* Hobson v. Hansen, 269 F. Supp. 401 (D.D.C. 1967).

Indian youth needs a positive self-image. "There are too many classroom values that Indian children can't accept . . . When our kids go to the white schools, they don't know who they are and they fail," claims one Minnesota Indian Educator.[71] This administrator blames the local day schools' failure for numerous suicide attempts, as well as a high school drop-out rate of 78 per cent, low daily attendance, and the fact that eighteen youths are incarcerated, and 27 are on probation in a community of 500.[72]

Guidance and counseling, particularly in the mental health area, seems to be lacking in both schools[73] and correctional institutions.[74] The latter deficiency prohibits any correlative analysis between juvenile delinquency and emotional disturbance. The estimate is that most juvenile delinquents are socially maladjusted, just as they are unskilled, unemployed, and uneducated.

Another cause of the educational institution's contribution to the high rate of juvenile delinquency is the lack of Indian participation and control over the administration of their schools. For example, Indian membership on school boards which have jurisdiction in districts educating Indians is rare and a strong feeling of powerlessness pervades Indian communities in their attempts to improve the education provided in public schools.[75] One author, commenting upon parental acceptance in the 19th century, noted:

> It is inconceivable that any parents would acquiesce to a program designed to indoctrinate their children with contempt for their parent's value system in its entirety. The frustrations of the children in the schools must have been equally great. By the time a child can walk he is a creature of his own culture. How is a child of eight going to accept a teaching that tells him that the individuals who cradled him from the dawn of his awareness to his seventh year are alien beings whose values are false?[76]

Such a situation is scarcely conducive to needed parental guidance. A lack of adequate funds is evident even in federal boarding schools, but a special problem of funding occurs in the public school system. In 1934, Congress passed the Johnson-O'Malley Act[77] to deal specifically with Indian education where Indians are so mixed with the general population that "it becomes advisable to

71. LEAGUE OF WOMEN VOTERS, *supra* note 19, at 56.
72. *Id.*
73. *See generally* the evaluation of the Pierre and Flandreau boarding schools in S. REP. 35-479, *supra* note 50, at 325-361. *See* S. REP. No. 501, *supra* note 40, at 64.
74. A. HARKINS & R. WOODS, *supra* note 44, at 8, 10, 13.
75. S. REP. N. 501, *supra* note 40, at 101, 102. An all Indian school board was elected in Shannon County S. D. in 1967, only to have the state legislature dissolve it.
76. T. Nelson, *supra* note 36, at 32, 33.
77. 25 U.S.C. § 452 (1970).

fit them into the general public school scheme rather than to provide separate schools for them."[78] Although the number of Indian students in public schools now numbers one-half to two-thirds of total Indian school enrollment,[79] the usage of these funds is severely curtailed. First, the Bureau of Indian Affairs (which distributes the funds) has restricted the use of such funds to serve Indian children "whose parents live on or near Indian reservations under the jurisdiction of the Bureau of Indian Affairs."[80] The BIA has thus construed the intent of Congress as being to assist Indians in states "in which the Indian tribal life is largely broken up and in which the Indians are to a considerable extent mixed with the general population."[81] The BIA's interpretation excludes the thousands of Indians who live in urban areas.[82] Second, the funds are used to supplement a school district's general operating budget,[83] thereby spreading the funds over all students, contrary to the expressed intent of the 1934 act to deal only with the needs of Indians.[84] Third, a 1958 amendment[85] to the Federally Impacted Areas Act[86] specifically provided funds for school districts to supplement budgets strained due to enrollment of Indian children from non-taxable federal lands.[87] This essentially duplicated the parameters of the BIA's criteria for compensation, under the Johnson-O'Malley Act, which have nevertheless been retained.[88] Another act specifically designed to aid native American children is Title I of the Elementary and Secondary Education Act.[89]

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78. S. REP. N. 501, *supra* note 40, at 38.
79. *Id.* at 47
80. INDIAN AFFAIRS MANUAL, 62 I.A.M. 3.5 (1960); *See generally* NAACP LEGAL DEFENSE AND EDUCATION FUND, INC., AN EVEN CHANCE 11, 12 (1971).
81. S. REP. N. 501, *supra* note 40, at 39.
82. As of 1971 Minneapolis was estimated to have from 12-15,000 Indians residing within its urban area. Committee for United Indians, *supra* note 5, at 3. The question of complete assimilation of the Indian, as well as the acuteness of the juvenile delinquency problem in Minneapolis, is raised by Richard G. Woods and Arthur M. Harkins, Directors of the Training Center for Community Development at the University of Minnesota, as they make the following observations about third generation urban Indians, born and raised in Minneapolis:

> This group may be the most confused of all urban Indians. They do not have the Indian or reservation background; they have little or no cultural acquisitions comparable to . . . older groups; they are unable to speak or understand the Indian language when spoken by others; they usually must attend public schools in which textbooks and teacher behavior either ignore the Indian heritage or misrepresent it; they come into daily contact with mass media which tend to stereotype Indians negatively, both past and present. *These young people experience the greatest cross-cultural pressures and identity crisis of all.* Some turn away from their families only to be confused further by rejections from white society. Their understanding of the marginal nature of their identity is incomplete and in some cases nonexistant [sic]. *Id.* at 7.

S. REP. N. 501, *supra* note 40, at 39.
83. *Id.* 20-25% of Johnson O'Malley funds are used for lunch money whereas only 3.8% of general education funds are used to provide lunches in public schools. *Id.*
84. 25 U.S.C. § 452 (1970).
85. PL 85-260; S. REP. No. 1929 in 1958 U.S. CODE CONG. AD. NEWS at 3414, 3415, 3433.
86. 25 U.S.C. § 236 *et. seq.* (1970).
87. NAACP LEGAL DEFENSE AND EDUCATION FUND, *supra* note 80, at 5, 6.
88. INDIAN AFFAIRS MANUAL, 62 IAM 3.25 (1960).
89. 20 U.S.C. § 241 (1970).

> Title I is the first and most significant Federal Aid Program recognizing that economically and educationally deprived school children may need compensatory educational services in order to perform well in school. . . . Applied to Indian children, this means that Title I funds should be spent on supplemental programs designed to meet their special and different needs.[90]

In contrast to other enactments, most Indian children are eligible for the benefits provided.[91] However, these funds are also utilized to benefit entire school populations despite manifestation of a contrary legislative intent. Numerous instances have been noted in which such funds have been spread so thinly over such a large number of children that the allocation per Indian child is minisclue.[92] "While school systems benefit enormously from this $1.5 billion dollar program—they can raise teacher's salaries, buy fancy equipment, carpet school administrators' offices—the educationally deprived school children whom the Act had in mind go largely forgotten."[93]

Solution to the Problem of Inadequate Indian Education

The answer to the boarding school dilemma was suggested some forty years ago, . . .

> [they] might well become special schools for distinctive groups of children [such as] . . . the mentally defective that are beyond the point of ordinary home and school care; for . . . extreme 'behavioral problem' cases, thereby relieving the general boarding schools from a number of their pupils whose record is that of delinquents, who complicate unnecessarily the discipline problem, and for whom special treatment is clearly indicated.[94]

However, the Indian educational system should also be considered on a state, as well as a federal level. It was this task which was undertaken by the special subcommittee on Indian Education of the Committee on Labor and Public Welfare in 1969. The following recommendations were formulated:

> 1. *The Subcommittee recommends—*
>
> [T]hat there be a set national policy committing the nation to achieving national excellence for American Indians; to maximum participation and control by Indians in estab-

90. NAACP LEGAL DEFENSE AND EDUCATION FUND, *supra* note 80, at 27.
91. *Id* at 27, 28.
92. *Id.* at 29-36.
93. *Id.* at 40.
94. L. MERIAM, *supra* note 34, at 405; The Special Subcommittee on Indian Education made similar recommendations; S. REP. No. 501, *supra* note 40, at 123.

lishing Indian education programs; and to insuring sufficient federal funds to carry these programs forward.[95]

6. That there be presented to Congress a comprehensive Indian education act to meet the special education needs of Indians both in the federal schools and in the public schools.

It seems that an education act specifically dealing with Indian Education is necessary to avoid duplication, poor accountability, and misuse of funds, as well as to help individual Indian students as intended by Congress.[96]

7. That the funds available for the education of American Indians be substantially increased, and that provisions be made for advance funding of BIA education programs to permit effective planning and recruitment of personnel.[97]

13. That the Bilingual Education Act . . . receive sufficient funding so as to enable expanded programs for Indian children, that the act be amended to include schools operated for Indians by non-profit institutions, and that BIA schools undertake expanded bilingual education programs of their own . . . to meet the needs of Indian pupils.

It is hoped that this Act would do more than enable a child to utilize his language to learn English. It should facilitate a cultural and historical learning process, and increase the usage of Indian aides and teachers.[98]

14. That a major effort be undertaken immediately to (a) develop culturally sensitive curriculum materials, (b) train native teachers, and (c) promote teaching as a career among Indian youth.[99]

16. That there be a National Indian Board of Indian Education with authority to set standards and criteria for the Federal schools.[100]

17. That Indian Boards of education be established at the local level for Federal Indian school districts.[101]

18. That Indian parental and community involvement be increased.[102]

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95. S. REP. No. 501, *supra* note 40, at 106: This recommendation was expressed in a special message to the Congress on Indian Affairs, *supra* note 30, at 569-571, by President Nixon. The Senate expressly approved this policy on December 11, 1971, CONG. REC. S. CON. RES. 26, 92nd Cong., 1st Sess., 117 CONG. REC. S 21327 (1971). The House is now considering S. CON. RES. 26 in the form of H. CON. RES. 95, 92nd Cong., 1st Sess. (1971).

96. S. REP. No. 501, *supra* note 40, at 110. A bill has been presented to authorize (the establishment of a National Indian Education Agency, S. 2416, 92nd Cong., 1st Sess. (1971). *See generally* 117 CONG. REC. S. 13059-13062 (daily ed., Aug. 4, 1971).

97. S. REP. No. 501, *supra* note 40, at 111. H. R. 11390 92nd Cong., 1st Sess. (1971).

98. *Id.* at 115, 116; 20 U.S.C. §§ 880b-880b6 (1970).

99. *Id.* at 116.

100. *Id.* at 118, S. 1401 92nd Cong., 1st Sess. (1971); *see generally* CONG. REC. S3991-3994 (daily ed. Mar. 29, 1971).

101. *Id.* at 119.

102. *Id.*

> 21. That the Federal Indian School System be developed into an exemplary system, which can play an important role in improving education for Indian children. Federal schools should develop exemplary programs in at least these three areas:
> 1. Outstanding innovative programs for the education of disadvantaged children.
> 2. Bi-lingual and bicultural education programs.
> 3. Therapeutic programs designed to deal with the emotional, social and identity problems of Indian youth.[103]

Recommendations 46-54 deal with correcting the present funding confusion between the 1934 Act and the 1958 Act through eliminating restrictions in the form of the tax-exempt, or federal reservation, land eligibility requirements.[104] Of most importance, however, is the recommendation that Public Law 815,[105] which was amended in 1953 for construction of educational facilities for Indians, be given the highest priority and that that Act be more fully funded:

> Public school districts located on reservations must depend upon Public Law 815 grants for such construction [because trust lands cannot be taxed.] It is essential that [such] funding be given the priority needed to provide adequate facilities for Indian students. Because of no funding in recent years, there are areas where the question is not of adequate facilities, but of no facilities for students at all.[106]

Hopefully, this would eventually enable the Indian to gain total control over the education of his children and eliminate the need for federal boarding schools as an alternative to non-existent facilities. Recommendations 55 and 56 facilitate this desire for control in that before transfer of Indians to public schools can take place: (1) such action must be approved by formal referendum of the Indian community; and, (2) it must be shown that the public schools are prepared for such transfer by developing necessary programs to meet the special needs of the Indian student.[107]

Essentially, three bills have been submitted in the senate encompassing the recommendations of the Special Subcommittee on Indian Education, Amendment No. 6 to the Higher Education Act of 1971,

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103. *Id.* at 121.
104. *Id.* at 133-134.
105. 20 U.S.C. § 640(c) (1971); Since 1967, no funds have gone toward construction of Indian schools due to (1) priority spending toward schools hit by natural disaster, and the (2) freeze on federal construction to prevent inflation. NAACP LEGAL DEFENSE AND EDUCATION FUND, *supra* note 80, at 6.
106. S. REP. No. 501, *supra* note 40, at 131.
107. *Id.* at 134. For an excellent discussion of present problems facing Indians in public school particiuation, *see* NAACP LEGAL DEFENSE AND EDUCATION FUND, INC., *supra* note 80, at 41-57.

S. 659, proposed by Senator Kennedy,[108] S. 1401 advanced by Senator Jackson,[109] and Senator Montoya's bill, S. 2416.[110] It is pertinent at this point to examine their major distinctions.

All three proposals recognize the special problems of Indian education and the need for a higher priority and a more comprehensive approach toward Indian education. However, there is a difference in the scope of the proposals as well as the provisions for the administrative structure. The Jackson proposal is narrower than the Kennedy and Montoya proposals in that it deals only with BIA programs in the educational field and remains silent on those responsibilities vested in the Office of Education in the Department of Health, Education and Welfare. The Kennedy proposal terminates programs presently administered by the Office of Education, and creates a separate Bureau of Education to handle all Indian Educational activities including BIA programs which would be taken from the control of the Commissioner of Indian Affairs. The Kennedy proposal would also staff the Independent Bureau of Indian Education entirely with Indians, whereas the Jackson bill calls for only a "substantial number" to populate his" Board of Regents on Indian Education."[111] Therefore, Jackson would maintain a dual source of Indian education funds, while Kennedy would give the Indian total control, under a separate, non-governmental structure.

Senator Montoya's bill, while sharing the comprehensiveness of Kennedy's bill, questions the wisdom of transferring educational programs out of the BIA. He found a significant opposition to such a move among Indians in view of the BIA's "new awareness of Indian capability to develop and manage programs."[112] He would transfer the responsibility of present programs within the Office of Education pertaining to Indians to the BIA and create a Bureau of Indian Education under the Commissioner of Indian Affairs. On the other hand, Jackson's bill aims directly at local control in emphasizing Indian participation on school boards and sees no need for a central agency.[113]

It is questionable whether maintenance of a dual source of educational funds is consistent with the need for a high funding priority in Indian Education, and the objective of self-determination.

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108. S. 659, 92d Cong., 1st Sess., Amm. 6 (1971) in 117 CONG. REC. (daily ed. Feb. 25, 1971).
109. S 1401 92d Cong., 1st Sess. (1971) in 117 CONG. REC. 3991 (daily ed. Mar. 29, 1971).
110. S 2416 92d Cong., 1st Sess. (1971) in 117 CONG. REC. S 13059 (daily ed. Aug. 4, 1971).
111. Comparison of Jackson and Kennedy bills, Memorandum on Indian Education, June 16, 1971, on file at Fried, Frank, Harris, Shriver & Kampelman, Suite 10000, The Watergate 600, 600 New Hampshire Ave., N.W., Wash., D.C.
112. 117 CONG. REC. S 13060 (daily ed. Aug. 4, 1971).
113. *Id.* at S 13059.

In this light the Kennedy and Montoya bills are favorable. If Indian sentiment lies with the BIA, then the Montoya proposal should prevail with this caveat: that the funds be allocated to *all* Indian children, urban and rural, and that local Indian participation, as in Senator Jackson's proposal, be emphasized.

On a state level, Minnesota has taken great strides in upgrading Indian education including the establishment of an Indian director for Indian education (the first state to do so), and creation of an all-Indian advisory committee to the State Department of Education.[114]

Pursuant to research of the Upper Midwest Regional Educational Laboratory, innovative programs at both a rural and an urban school in Minnesota have begun. "[The] approach involves ungraded, individualized instruction, using Indian aides, and increased parent involvement. The schools report that students seem more eager to come to school since the new program was begun, and marked increase in average daily attendance is noted."[115] Several programs, Indian run and Indian initiated with a minimum of funding from various public agencies, have been successful in raising educational productivity as well as increasing parental involvement.

Minnesota has found some degree of success in providing tutorial services.[116] Upward Bound projects in Bemidji and Minneapolis, as well as college initiated programs, have aimed at high school drop-outs in encouraging a return to education, utilizing Indian teachers and cultural education.[117] Although the drop-out rate remains high, Minnesota has experienced an upswing in educational productivity among Indians. In 1959-60, graduates numbered 105, in 1969-70, 250.[118]

On the other hand, North Dakota has made little progress in this area. Although the Fort Berthold Reservation Sioux in North Dakota have proposed a program to *bus parents* to school meetings in order to increase community interest in the schools,[119] and tutorial services have been proposed by the Turtle Mountain Sioux, neither program has been initiated in North Dakota.[120]

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114. LEAGUE OF WOMEN VOTERS, *supra* note 19, at 65.

115. *Id.*

116. LEAGUE OF WOMEN VOTERS, *supra* note 19, at 65, 66.

117. *Id.* at 66. The Training Center for Development of Community Programs at the University of Minnesota has developed educational material based on studies of specific school systems in Minnesota. Specific subjects include The Contribution of the Aztec Indian to the Field of Mathematics, and the Indian's Development of the Herbicide in Medicine.

118. LEAGUE OF WOMEN VOTERS, *supra* note 19, at 64.

119. Juvenile Study Commission, Fort Berthold Reservation, Juvenile Delinquency on the Fort Berthold Reservation, (1970), on file at Law Enforcement Council, Capitol Bldg., Bismarck, N. D. Busing, to be beneficial, would have to be put on a voluntary basis.

120. Project: Turtle Mountain, *supra* note 41.

Jurisdictional problems

An Indian youth who commits a crime is faced with a myriad of problems concerning the disposition of his case. One major question is whether his delinquent act has occurred on or off the reservation. Another, is determining whether the federal government is the sole authority, the state has assumed jurisdiction,[121] or the tribal government retains any sovereign power to dispose of the case. In large part, the difficulties facing the Indian in this area stem from alternating governmental policies, and the consequent lack of facilities in a great many instances.

A delineation of the federal role on Indian reservations is set out in the Federal Ten Major Crimes Act,[122] which reserves to federal jurisdiction the crimes of ". . . murder, manslaughter, rape, carnal knowledge of any female, not his wife, who has attained the age of sixteen years, assault with intent to commit rape, incest, assault with intent to kill, assault wih a dangerous weapon, arson, burglary, robbery, and larceny within the Indian country. . . ."[123] Such cases are disposed of in the federal courts and juveniles prosecuted therein are subject to incarceration in various federal reformatories, which are, for the most part, far removed from Indian reservations. The nature of the proceedings in federal court are not consistent with the idea that juveniles should not be subjected to the rigors of an adult trial.[124] Placing a child in a "hostile environment," far from his people, gives rise to problems that have both an educational and cultural context.[125] Nevertheless, in many cases the tribal courts, faced with no alternative rehabilitative facility, are forced to send Indian juveniles to these federal institutions.

Several areas of conflict have arisen pertaining to the question of whether the state should assume jurisdiction. Public Law 280

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121. Sonosky, *State Jurisdiction over Indians in Indian Country* 48 N.D. L. REV. 550 (1972).

122. 18 U.S.C. § 1153 (1970).

123. *Id.*

124. Interview with John S. Paupart, Community Co-ordinator, St. Paul, Minnesota on January 4, 1972. Assume that Johnny commits the crime of rape against a young Indian girl while on the reservation. Johnny has committed one of the "ten major crimes" and is subject to federal criminal prosecution. Since Johnny is a juvenile, he will be accorded treatment under the Federal Juvenile Delinquency Act. 18 U.S.C. §§ 5031-5037 (1970), and the Federal Youth Correction Act, 18 U.S.C. §§ 5005-5026 (1970). The federal provisions permit the surrender of the youth to state authorities who will and can provide treatment, 18 U.S.C. § 5001 (1970), but this option (at least in North Dakota) would not appear to be feasible in light of the state's lack of jurisdiction, attitude on reimbursement, and the present Administration's policy of self-determination.

If found delinquent under the federal act, Johnny could be committed to such institutions as the Federal Correctional Institution, Englewood, Colorado; National Training School for Boys, Washington, D. C., and various federal reformatories throughout the country. *Hearings, supra* note 1, at 209.

From the above discussion, the conclusion could be drawn that the Indian youth offender receives considerable assistance through the federal courts. However, the lack of adequate facilities hinders considerably the desirability and practicability of federal court interference.

125. *See* text, *supra* pp. 667-673.

as it affected tribal sovereignty was discussed in detail above. *Certain states*, under the assimilation policy, were granted jurisdiction over criminal and civil causes of action.[126] A general provision provided that:

> Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any state to amend, where necessary, their State constitution or existing statues, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act: *Provided*, that the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes as the case may be.[127]

One of the recommendations of the 1956 Senate Judiciary Subcommittee on Juvenile Delinquency in answer to the nonexistence of facilities was to "[p]rovide funds to administer law and order on the reservations if the states accept jurisdiction over such lands pursuant to Public Law 280 of the 83rd Congress."[128] The difficulties in implementing such a plan are illustrated by an examination of North Dakota History on the subject.

Fort Totten found itself in a unique position among North Dakota reservations (and those in other states as well) in that, in 1946, Congress gave the state the power to exercise criminal jurisdiction.[130] In 1954, however, the State Attorney General issued an opinion to the effect that the federal statute was ineffective in the absence of acceptance of such jurisdiction as manifested by an affirmative vote of the North Dakota electorate.[130] Within a few months, the North Dakota Supreme Court in *State v. Lohnes*,[131] affirmed the position taken by the Attorney General and held that the state constitution and the Enabling Act prohibited the state from exercising jurisdiction over Indian lands. Hence, the court found that the federal statute was not self-executing and the voters of the state would have to accept jurisdiction by an appropriate amendment to the constitution. A space of many months followed during which neither the state nor the federal government would accept jurisdiction over criminal matters on the Fort Totten Reservation. The vacuum was filled in March, 1955, by the Department of the Interior

126. *Supra*, note 27.
127. 18 U.S.C. § 1162 (1970). Tribal consent is now required under the 1968 Indian Civil Rights Act; 25 U.S.C. §§ 1321 (a), 1322 (a) (1970).
128. *Hearings, supra* note 1, at 17.
129. 60 Stat. 229 (1946).
130. *Hearings, supra* note 1, at 17.
131. State v. Lohnes, 69 N.W.2d 508 (N.D. 1955).

when they once again assumed responsibility for criminal matters concerning Indians on the reservation. The abortive attempt by the federal government to involve the state in the administration of justice over the Indian lands, on a piecemeal basis, thus became a dead letter.[132]

At the same time that the issue of jurisdiction was a subject of judicial controversy and Congressional action, it was being considered at the state administrative level. As early as 1950, the state, through the Indian Affairs Commission, decided to accept an assimilation policy,[133] and the Commission thereby recommended that jurisdiction be transferred from the federal to the state government as soon as possible.[134] In 1955, when the Senate Subcommittee was holding hearings in North Dakota on Indian juvenile delinquency, a number of nagging problems, which are prevalent today, were brought to the attention of the federal representatives. First, the state had taken no action to assume jurisdiction under Public Law 280 over the reservations because there was no assurance that the federal government would reimburse the state for its expense.[135]

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132. *Hearings, supra* note 1, at 17.

133. N.D. INDIAN AFFAIRS COMM. REP. 2110 (1953-1954).

134. *Id.* at 2111.

135. This problem is one of chief reasons why there are few facilities in Minnesota, which was given jurisdiction over Indian criminal matters pursuant to Public Law 280. The state of Washington presents a notable example of this problem. WASH. REV. CODE ANN. § 37.12.010 (1964) extended state jurisdiction over the reservations in the areas of compulsory school attendance, public assistance, domestic relations, mental illness, juvenile delinquency, adoption proceedings, and dependent children. This would have been commendable if the state wished to provide needed services in these areas. But Washington was probably partially motivated by articles such as the following taken from the Yakima Herald, January 12, 1962:

> INDIANS CLAIM JUVENILE LAW WIELDED AS CLUB OVER TRIBE:
>
> Yakima Indian children are being denied the use of State institutions—which they have a right to use as children of Washington taxpayers—as a club to force the tribe to accept complete jurisdiction.
>
> ACCEPT OR ELSE
>
> A quirk in Washington law concerning juveniles and truants is being "used to bring us under," declared Tribal Court Judge Orville Oleny.
>
> "We are being denied institutional facilities so the State can say 'This is it. Accept it (jurisdiction) or else.' "
>
> NO PLACE TO PUT
>
> The facilities referred to include detention and correctional institutions for juveniles and, in a broader sense, State hospitals for adults.
>
> Judge Olney cited the incidence of delinquency on the Yakima Indian Reservation and said he has no place to put youthful offenders when they do come before him for detention or punishment.
>
> "We are lost without a facility to make a correction. When a kid comes up before me, he sits there through my talk and looks back at me, as if to say, "You can't do a blooming thing to me, let's get this over with."
>
> "Then they are at it again, 5 minutes later," he declared. The judge contended that, as taxpayers through State levies on liquor, gasoline, and food, the Indian citizens are entitled to [the same facilities] as white men.
>
> Delinquency on the reservation is being made worse by the "bad apples in the barrel" who continue to mix with other youths, instead of being confined to proper institutions, the judge said.

Since 1963, the experience of the Indians under the eight areas of state jurisdiction has apparently not been satisfactory. Mr. Robert Jim, mentioned in the article above, stated that " . . . they (the state) want to assume law on our reservation and not give us the order."

Moreover, the following conversation was noted:

Senator Ervin: Mr. Jim, I want to ask you another question. Is

It was suggested that the federal government might solve this problem by allowing states to tax land on the reservations or by granting the money outright.[136] Second, state officials complained, and federal officials agreed, that payments under the Johnson-O'Malley Act were insufficient to cover the cost of educating the Indian students in public schools.[137] Third, the state officials (notably the Indian Affairs Commissioner), were displeased with the bureaucratic red tape required by the Bureau of Indian Affairs before any action could be taken.[138]

While the state had already pointed out its reluctance to assume jurisdiction over the reservations because of a lack of funds to do so, the federal officials stressed a very important reason why the Indians were also reluctant to have the state accept jurisdiction. If the Indians were under the state's criminal jurisdiction, a Bureau of Indian Affairs official explained, they would be subject to much harsher penalties under the state criminal statutes than under the tribal codes for the same offense.[139]

The observation has also been made that an Indian youth, arrested while away from the reservation for an incident made criminal under state law, but not constituting a crime if committed on the reservation under tribal law, is likely to be confused as to why he is being taken into custody. The child's impression of his experience with our system of law under such circumstances is indeed likely to be negative. To emphasize the disparity in maximum penalties the following comparison between state and tribal law was made:[140]

The primary source of Indian Tribal Codes appears to be the Code of Indian Offenses,[141] promulgated by the BIA for use by Courts

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> it your feeling and that of the other members of the Yakima Tribe that when the states assume jurisdiction they do not assume the responsibilities which go with the jurisdiction? In other words, they do not provide the services which they should provide.
>
> Mr. Jim: Yes.
>
> Senator Ervin: That has been your experience.
>
> Mr. Jim: Yes, sir. It has been a fact on our reservation. They (the state) only operate in the fields where they can collect fines, not the service field. This has been the experience.
>
> Senator Ervin: You feel that you had better law and order, better protection on the reservation, when this was furnished entirely by the tribe itself, before this State undertook to assume jurisdiction?
>
> Mr. Jim: Yes, sir. . . .

The article appeared in *Hearings, supra* note 1, at 61.

136. *See* objection raised to this alternative, *Id.*
137. *See* text, *supra,* pp. 671-673.
138. *Hearings, supra* note 1, at 54, 55.
139. *Id.* at 55. *See* Note, *supra* note 15.
140. *Id.* at 61. Definition of delinquency between tribes and states may also differ. Thus, statistical information of reservations using state definitions may be inaccurate; a child may be deemed delinquent for merely breaking truancy laws by reservation standards, but not under state standards.
141. 25 C.F.R. §§ 11.38 *et seq.* (1972).

of Indian Offenses, upon which the above comparison is based. The lesser penalties probably exemplify the Indian's philosophy in respect to criminal punishment. The Indian is not retributive toward convicted tribal members or their children, his primary concern is restitution and reparation to the victim, as well as rehabilitation through counsel with the offender.[142] In any event, the 1968 Civil Rights Act directs the Secretary of Interior to devise a new model code (not yet enacted) for the administration of justice in the Courts of Indian Offenses.[143] Remodeling the Code to reflect heavier penalties may have been desirable as removing an obstacle to state assumption of jurisdiction. However, the present view toward self-determination seems to refute remodeling for this purpose.

North Dakota moved to accept jurisdiction under Public Law 280, despite the problems noted above, Under the Act, existing state constitutional and statutory prohibitions had to be removed, however, and the state was specifically prohibited from taxing reservation lands.[144] Furthermore, no provision was made in the act to allow Indians a choice in accepting state jurisdiction.

In 1963, some 8 years after the hearings in North Dakota, the state acted, by constitutional amendment[145] and statutory measures,[146] to assume criminal and civil jurisdiction over the reservations within the State's boundaries. Assumption of jurisdiction was not self-executing, however, as the state statute required that state jurisdiction be first acceped by the Indians, either by petition of a majority of the enrolled reservation residents over 21 years of age, or by a vote of the majority (enrolled and over 21) at an election called and supervised by the North Dakota Indian Affairs Commission. Congress has since followed North Dakota in making tribal consent a prerequisite to the

142. Bohlman, *Worst of Two Worlds*, INTERNATIONAL SYMPOSIUM ON THE LEGAL RIGHTS OF INDIANS (1969), on file at the Law Library, University of North Dakota. The reliance upon the kinship system is perhaps the cause of the mistaken belief that Indian parents let their children run wild. It is a system whereby the child is raised by the entire clan; there seems to be no need for juvenile delinquency programs.

> The consequence of a "delinquent" act seems to be evident. The Indian child, then, is protected by the kinship system and is probably the chief beneficiary of the system. The system, however, has broader goals and purposes than merely protecting the child. It recognizes his participation in the life of the larger family; he has his work to do, and his contribution to the communal well-being is appreciated and rewarded, he is not babied. *Id.* at 27. It seems that a probable response to the dominant society's educational and rehabilitative system would logically be rebellion by the Indian child, and hence a "disciplinary" problem would develop. *See generally* R. HASSRICK, *supra* note 1, at 275-277, 292, and 293.

143. 25 U.S.C. §.§ 1311, 1312 (1970); No congressional action has taken place, but a bill has been submitted to revise penalties under the BIA's criminal code—H.R. 9745, 92nd Cong., 1st Sess. (1971). Although tribal codes have been revised somewhat since 1955, the criminal provisions continue to reflect less retribution than state codes. *E.g.*, REV. CODE OF THE OGLALA SIOUX TRIBE OF THE PINE RIDGE RESERVATION §§ 60 *et. seq.* (S.D. 1965); DEVILS LAKE SIOUX TRIBAL CODE OF JUSTICE §§ 9.1 *et seq.* (N.D. 1968); TURTLE MOUNTAIN TRIBAL CODE §§ 1:200001 *et. seq.* (N.D. 1968); *See* Note, *supra* note 15.

144. 28 U.S.C. § 1360 (b) (1970).

145. N.D. CONST., art. XVI, § 203 (1958).

146. N.D. CENT. CODE §§ 27-19 *et seq.* (1967).

imposition of state jurisdiction.[147] The statute also provided that any Indian within the tribe may accept state jurisdiction by simply making and filing a written statement to that effect.[148] It is doubtful whether one could consent to state jurisdiction over his trust lands as long as he is a member of the tribe.[149] The Indians, if dissatisfied with state jurisdiction, are permitted to terminate such jurisdiction by a petition of three-fourths of the enrolled Indians on the reservation over 21 years of age.[150] An individual Indian accepting jurisdiction withdraws his consent to be governed by state law merely by filing a statement declaring his withdrawal.[151]

To date, none of the reservations in North Dakota have accepted state jurisdiction and the prospects are, at present, non-existent. Considering the funding problem and the cultural conflict, it seems that state jurisdiction is not the answer in North Dakota.

Minnesota, on the other hand, was expressly given jurisdiction over Indian land (except the Red Lake Reservation) by Public Law 280, and no affirmative legislative action was necessary to implement this jurisdiction.[152] The State has assumed jurisdiction pursuant to Public Law 280,[153] but there has been no concomitant reduction in juvenile delinquency or criminal activity among state reservation Indian populations.[154] Unemployment and welfare problems remain prevalent,[155] and there appear to be no facilities to cope with these problems.[156]

Lack of Facilities and Intra-Cultural Programs

There is a dearth of comprehensive information as to the type of correctional facilities available, general commentary is the only light shed upon the needs of Indians in the area of juvenile delinquency. This deficiency can be attributed to three separate causes—a failure of federal and state jurisdictions to assume responsibility for sufficient law enforcement services,[157] cultural differences leading

147. N.D. CENT. CODE § 27-19-02 (1967).
148. N.D. CENT. CODE § 27-19-05 (1967).
149. 25 U.S.C. §§ 1321 (a), 1322 (a) (1970). An individual Indian can withdraw from tribal membership if he chooses, but as long as he remains a tribal member he is subject to tribal law. Further he cannot consent to state jurisdiction over his trust lands. This can be done only by a referendum vote of the tribe, *see* Kennerly v. District Court of Mont., 400 U.S. 423 (1971). Thus, the North Dakota statute may be invalid.
150. N.D. CENT. CODE § 27-19-13 (1967).
151. *Id.*
152. *See* Minnesota Attorney General's Opinion on Public Law 280, June 2, 1960, as set out in GOVERNOR'S HUMAN RIGHTS COMMISSION OF MINNESOTA, MINNESOTA'S INDIAN CITIZENS 131 (1965).
153. *Id.* at 53.
154. *See* text *supra* pp. 660-661.
155. U.S. DEPT. OF COMMERCE, FEDERAL AND STATE INDIAN RESERVATIONS 168-185 (1971); ARIZONA AFFILIATED TRIBES, INC., SELF-DETERMINATION 120-132 (1971).
156. *See* text *infra*, pp. 686-689.
157. GOVERNOR'S COMMISSION ON CRIME PREVENTION AND CONTROL, *supra* note 8, at II-A-141.

to a failure by Indian parents to provide necessary guidance,[158] and the inability of the Tribal government to provide on-reservation or intercommunity help.[159] The specific deficiencies can be categorized as follows:

1. Substitute parental care.
2. Alternatives to incarceration.
3. Counseling and probational services.
4. Misunderstanding, confusion, and mistrust of law enforcement agencies.
5. A comprehensive plan to combat juvenile delinquency.

1. The Turtle Mountain Indian Reservation serves as an example that existing facilities for children who need *substitute parental care* in both Minnesota and North Dakota are not adequate. Noting the responsibility of the parents for the care of their children, the Juvenile Delinquency Commission of that reservation has concluded that many Indian parents have fallen short in providing necessary guidance. Existing facilities for these children include family foster care, boarding schools and AFDC relatives.[160] A report showed that of 4,346 children on the Turtle Mountain Reservation, 391 are at boarding schools, 111 are in foster care and 42 are living with an AFDC relative. Rolette County (Turtle Mountain Reservation) has 13.2 per cent of the AFDC families and 12.4 per cent of the foster children in the state, while it has only 1.6 per cent of the total state population.[161] (There is strong evidence of a tendency among Indian children without parental guidance to come into conflict with the law.)[162] A summary of the type of substitute parental care available follows:

> a. Family Foster Care: A child welfare service which provides substitute family care for a planned period for a child when his own family cannot care for him for a tempor-

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158. *See* text *supra*.

159. One of the major factors contributing to Minnesota Indian problems has been the lack of sufficient economic base within or in the proximity of the reservation. Although Federal assistance programs have been somewhat effective, there have not been enough permanent or long range development plans created for community job development. Often, federal requirements of twenty percent to fifty percent local match pose too great a hurdle for these communities, and thus they cannot avail themselves of federal monies needed for economic development. To date, counties in which the Reservations are located have been characterized as basically economically deprived. GOVERNOR'S COMMISSION ON CRIME PREVENTION AND CONTROL, *supra* note 3, (1971 Supp.) at 2-3.

160. Turtle Mountain Juvenile Prevention Commission, Background of Delinquency in the Turtle Mountain Community, on file at Law Enforcement Council, Capitol Bldg., Bismarck, N. D.

161. Turtle Mountain Juvenile Protection Commission, *supra* note 41, at 5.

162. A. HARKINS & R. WOODS, *supra* note 6, at 7. The Minnesota study has noted that approximately half of the Indian juveniles admitted to Minnesota correctional institutions in 1967-1968 were from backgrounds where one or both parents were not involved with the youth. *Id.*

ary or extended period and when adoption is neither desirable nor possible.[163]

There are four reasons which may necessitate family foster care: *Deprived children* — a court determination indicating abuse, neglect, or exploitation by the parents constitutes the major cause of foster home care in Rolette County. Theoretically, the agency involved with the parent works toward reorientation of their attitude toward the child. There is not a high rate of success.[164] Too often when a child is removed from his home by court order for a "temporary" period of time it results in foster care until he reaches maturity. *Emotional* disturbances where a child cannot live with his own family, *marital discord* so severe that it may cause mental or emotional damage to the child, as well as *illness* of one or both parents, are other qualifications for foster care.[165] There is a very good reason for Indian foster care in that it allows the child to readjust on the reservation (in Rolette County, two-thirds of these foster parents are Indian).[166] Unfortunately, the applicant who indicates a willingness to care for a teenager is very rare due to the apprehension about added responsibilities and problems involved (especially with delinquents).[167]

b. Institutional care—A children's institution is defined as a group of unrelated children living together with a group of unrelated adults. It is a facility which offers total substitute care for the child who cannot or will not implement their parental roles.[168]

Among the various types of institutions serving different kinds of children in North Dakota, none are located on or adjacent to an Indian reservation, thus necessitating removal of adolescent Indian children from their native communities.[169]

c. Federal Boarding Schools — The limitations and possible uses of these institutions have been discussed in an educational context above.

d. AFDC relative: AFDC is defined as an income maintenance program to provide financial assistance to families, (as well as children under relatives care), who are left fatherless through desertion, separation, divorce, imprisonment or illegitimacy; and, the normal institutional arrangements of

163. CHILD WELFARE LEAGUE OF AMERICA, STANDARD FOR FOSTER FAMILY CARE (1959).
164. Project: Turtle Mountain Juvenile Commission, *supra* note 41, at 8.
165. *Id.* at 7, 8.
166. *Id.* at 8.
167. *Id.* at 9.
168. A. KADUSKIN, CHILD WELFARE SERVICES 367 (1967).
169. Project: Turtle Mountain Juvenile Commission, *supra* note 41, at 9.

> a family cannot provide the income to meet the needs of the child.[170]

An objection is raised that legal responsibilities are lacking, and that relatives may not have the initiative necessary to provide overall supervision and direction for the children under their care.

2. There is a need for *juvenile detention centers* and facilities to segregate the juvenile (especially the first offender) from a jail-like atmosphere. This lack of emphasis on alternative facilities at the local level is no doubt caused by reliance on off-reservation facilities, but it appears that if self-determination is now the policy, funds will have to be obtained for on-reservation facilities. This deficiency is most often noted in rural areas where facilities for handling children are grossly inadequate.

> [S]eparate detention facilities are not financially feasible where counties have meager funds and the number of juveniles who need to be held is small. Nevertheless, administrative shortcomings combined with inappropriate treatment can be very detrimental to individual children.[171]

To increase protection for juveniles, the Minnesota Legislature in 1969 passed a law requiring immediate notification of the State Commissioner of Corrections whenever a child is jailed. The Commissioner, however, has noted a difficulty in determining compliance by juvenile courts. This action was spurred by a 13 year old Indian who hanged himself in a rural Minnesota jail after six weeks of solitary confinement.[172]

> Several Indian boys at the Minnesota state training school in Red Wing told an interviewer that they had been jailed more than two weeks, and one knew an Indian boy who had been in the Cass Lake lock-up for three of four weeks. He described it as "the worst place," where there were no blankets or matresses; just a 'steel thing" to sleep on. It was unheated. (A lock-up is for holding prisoners for one or two days prior to their transfer to a jail. It has no facilities for meal preparation.) After Corrections Department Investigation, the lock-ups at Bemidji and Cass Lake were closed in 1969.[173]

Lack of alternatives to institutional placement, such as probation and foster homes have been noted in both rural and city areas.

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170. *Id.* at 12.
171. GOVERNOR'S COMMISSION ON CRIME PREVENTION AND CONTROL, *supra* note 8, at II-A-143.
172. LEAGUE OF WOMEN VOTERS, *supra* note 19, at 133.
173. *Id.* at 133, 134. *See* Note, *supra* note 15.

The Mille Lacs (Minnesota) juvenile judge stated that "judges have no alternative but to send the child who is homeless or has a bad home environment to the state institutions where they learn delinquent behavior from the tougher juveniles and acquire an undeserved record."[174]

3. Probational and counseling services are lacking. Closely related to the problem of adequate alternatives to incarceration is the absence of probation officers and counselors. It was noted on one North Dakota reservation that "[t]he rate of recidivism . . . was recently estimated at approximately 40 per cent; this rate is certainly affected by the lack of after care and follow-up to incarceration."[175]

Rural areas suffer because resources are sharply limited, professional and para-professional services are likewise limited. An example of this problem is the Pine-Point-Ponsford area in Minnesota, where retention of workers is a frequent problem in the county with a consequent "doubling-up" by remaining social workers. Obviously, in these circumstances where the rehabilitative function of such workers is reduced, the preventive function is nearly extinguished.[176]

A comparison can be made between the emphasis placed on correctional personnel at a tribal level, and state-wide, by comparing the 1970 budgets for corrections and police for each North Dakota reservation with that of employees engaged in police and corrections work in North Dakota and Minnesota.

1970 Figures[177]
North Dakota Indian Reservations

	Police Budget	Corrections Budget
Fort Totten	$ 49,317	No funds
Turtle Mountain	134,314	$ 790
Fort Berthold	40,000	No funds
Standing Rock	130,000	4,465

Law Enforcement - State and Local
Government Police and Correction
Employment: 1969

Employees[178]

	Police Protection	Corrections
Minnesota:	5,219	2,263
North Dakota:	817	216

174. *Id.* at 134.
175. Law Enforcement Council, Crime and Delinquency on North Dakota's Indian Reservations C-5 (unpublished statistics 1971).
176. GOVERNOR'S COMMISSION ON CRIME PREVENTION AND CONTROL, *supra* note 8, at II-A-142, 143.
177. Law Enforcement Council, *supra* note 175, at C-5.
178. U.S. DEPT. OF COMMERCE, STATISTICAL ABSTRACT 149 (1971).

It is evident that much more emphasis is placed on correction personnel at a state level in that no funds are provided for local on-reservation corrections personnel, whereas in Minnesota the corrections budget provides for one corrections employee for every two police-oriented employees. It is also noteworthy that local corrections personnel represent 40 per cent of the total law enforcement staff in Minnesota, and 17.1 per cent in North Dakota,[179] an indication that local areas, off the reservation, rely upon corrections personnel to a greater degree than do reservation areas.

Lack of reservation facilities and follow-up personnel contributes to the disproportionate share of Indian children placed in the "damaging situation" of institutional care.[180] An unusual number of Indian children incarcerated in Minnesota were "first offenders,"[181] and it is arguable that this is a consequence of minimal probational care. It is interesting to note that in North Dakota, Turtle Mountain is the only reservation to provide an on-reservation alternative to incarceration—an alcoholic center. It is also the only reservation in the state to show a recent decrease in man-hours spent in jail.[182]

4. Misunderstanding, distrust, and confusion among Indians toward law enforcement personnel and police policies and procedures contributes to the problem. Closely related to the need for adequate counseling services is the need for law enforcement education. Parental counseling is a possible avenue:

> Although substantial minorities of Indian juveniles were living in boarding or foster home situations when sentenced, few were living with relatives or friends (as one might have predicted from the culture), and most were living with one or both natural parents. The living situation then, would appear to lend itself to parentally-imposed controls, but it must be realized that serious impediments to such an approach exist in Indian parental attitudes of non-interference in child-rearing and in the frequently low self-esteem of Indian adults which may hamper the establishment of effective adult models. Working with groups of Indian parents about how to become effective modern Indian parents may be a fruitful long-range approach, and it has been suggested that one aspect of parental behavior—discipline—might be enhanced through Indian parent participation in the public school's authority structure.[183]

Confusion of legal issues in a jurisdictional context has been noted:

179. *Id.*
180. No reservation figures for Minnesota are available.
181. 55.8% of one juvenile court commitment study group had committed only one offense. A. HARKINS & R. WOODS, *supra* note 44, at 5.
182. Law Enforcement Council, *supra* note 175,, at C-3.
183. A. HARKINS & R. WOODS, *supra* note 44, at 19.

> Law enforcement and corrections personnel themselves have observed that Indians often appear to be ignorant of the law and their rights thereunder. What is legal seems to confuse many Indians: law enforcement on the reservation may differ substantially from law enforcement in the metropolitan area. It has also been observed that Indians are very likely arrested on drunk charges so frequently because they are drunk in locations more 'visible' to police. That is, Indian citizens tend to drink in neighborhood bars, often in poverty areas, rather than at home or in fashionable restaurants. The matter of differential law enforcement is thereby significant.[184]

Numerous complaints of police brutality have been submitted, sometimes leading to organized efforts to confront police within the Indian community to halt alleged police harassment. There is some evidence that Indians are subject to unjustified "arrest on suspicion," and double standards are said to exist.[185] In addition to a higher arrest rate for Indians, it is probable that Indians receive longer prison terms than whites.[186] It is of little wonder that mistrust of the law has grown within the Indian community.

5. *A Comprehensive Scheme is Needed*

Although much has been proposed that would change the Indian educational framework at a national level, there have been no congressional proposals for a specific program directed at juvenile delinquency. Minnesota, on a state level, has prepared a comprehensive plan of attack which recognizes the existence of the problem, and has begun to implement specific projects through the Governor's Crime Commission.[187] Various grants, funded primarily by the Law Enforcement Assistance Act,[188] have been awarded.

The Indian Affairs Commission of Minnesota was given funds to exchange information with corrections and law enforcement agencies concerning Indian Criminal justice problems. Seminars have been conducted to increase understanding between the Indian community and the police. Another grant was given to the Red Lake Reservation to train two juvenile officers in order to develop alternative methods in juvenile delinquency prevention.[189] Job training has

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184. Interview with Richard G. Woods, Director of the Training Center for Community Development, University of Minnesota, St. Paul, Minnesota, on February 11, 1972.
185. LEAGUE OF WOMEN VOTERS, *supra* note 19, at 130, 131.
186. VERN DRILLING, PROBLEMS WITH ALCOHOL AMONG URBAN INDIANS 18-21 (1970).
187. GOVERNOR'S COMMISSION ON CRIME PREVENTION AND CONTROL, *supra* note 8.
188. Act of Sept. 22, 1965, Pub. L. No. 89-197, 79 Stat. 828.
189. Letter from Mary Jo Berg, Planner, Governor's Commission on Crime Prevention and Control, to Jay R. Petterson, January 11, 1972.

been the subject of another grant aimed at Indian youth on probation or parole.[190]

Four grants have been awarded to "select and train four Indians to assist. . . county sheriffs in providing law enforcement services to the reservation as deputies. Other grants have aimed at problems akin to urban Indians."[191] Still other programs considered in Minnesota include all-Indian regional detention centers where services could be concentrated to meet the needs of juveniles.[192] Increased counseling and probational services have been implemented as well.[193]

North Dakota is far behind Minnesota in the implementation of such programs, although ambitious projects submitted to the Law Enforcement Council on behalf of individual reservations have included proposals similar to the Minnesota scheme.[194]

In particular, the *Group Home* has found support in both states. The North Dakota model, hopefully to become one of a series of group homes on the Turtle Mountain Reservation, aims at the lack of substitute parental care and is a project with high priority in the overall attempt to eradicate excessive delinquency.[195] It is hoped that these institutions will increase the chance of adjustment by keeping the child in a comfortable environment rather than sending him hundreds of miles away to a culturally hostile setting.

> It would particularly serve those adolescents in need of a family setting but who could not cope with the close and intimate relationship which a family provides. The group home would have much of the anatomy of a family home but the program would be controlled by professional personnel. The parental persons in charge of the home would be given preparation for their work and would participate in case conferences and in some form of continuing staff development. The staff would be employed and viewed as house parents rather than foster parents. In a family foster home, the child makes the adjustment to the home. By contrast, the group home is more able to adjust to the child's needs and in this setting the child is more free to choose the depth of his relationship with the parental persons.[196]

The house parents would be Indian and more adapted to Indian cultural problems although professional supervision of their actions would be maintained. Although the group homes would handle essentially the same children that are now sent to boarding schools

190. *Id.*
191. *Id.*
192. *Id.*
193. *Id.*
194. Interview with Oliver Thomas, Juvenile Delinquency Programs, Law Enforcement Council, Capitol Bldg., Bismarck, N. D. on December 28, 1971.
195. Project: Turtle Mountain Juvenile Prevention Commission, *supra* note 41.
196. *Id.* at 13.

and institutions,[197] hopefully group homes would be segregated to handle children with certain types of problems so that para-professional help could be concentrated on particular problem areas.

The Minnesota model, although in part similar to the North Dakota model, has broader aims. Not only does it attempt to provide direction to the youth in developing "his own personal capabilities as an Indian and as a member of a larger society," but also "to provide a base for study, evaluation and analysis in attempting to learn more about the problems of Indian urban youth."[198] The home is also to "provide a channel of communication and relationship between the Indian youth, his family and the local urban community."[199] Hopefully, children who experience this cultural gap in the educational system will adapt to a group home situation which will "foster a two-way communication between the Indian youth and society."[200] It would be unique in providing co-ordinated services to meet the educational, recreational, vocational and social needs of Indian juveniles within the area where the highest concentration of Indian families is found.[201]

The immediate goals of the home would include acquisition of temporary custody of those youths having legal difficulties; "to keep youth actively progressing towards goals previously set by the youth or by others close to her;"[202] to provide a service available regardless of emergencies such as problems in the home, police action, and court directives; and "to establish a situation where immediate and intensified help can be given in areas of education, vocation, social, physical and emotional problems."[203]

CONCLUSION:

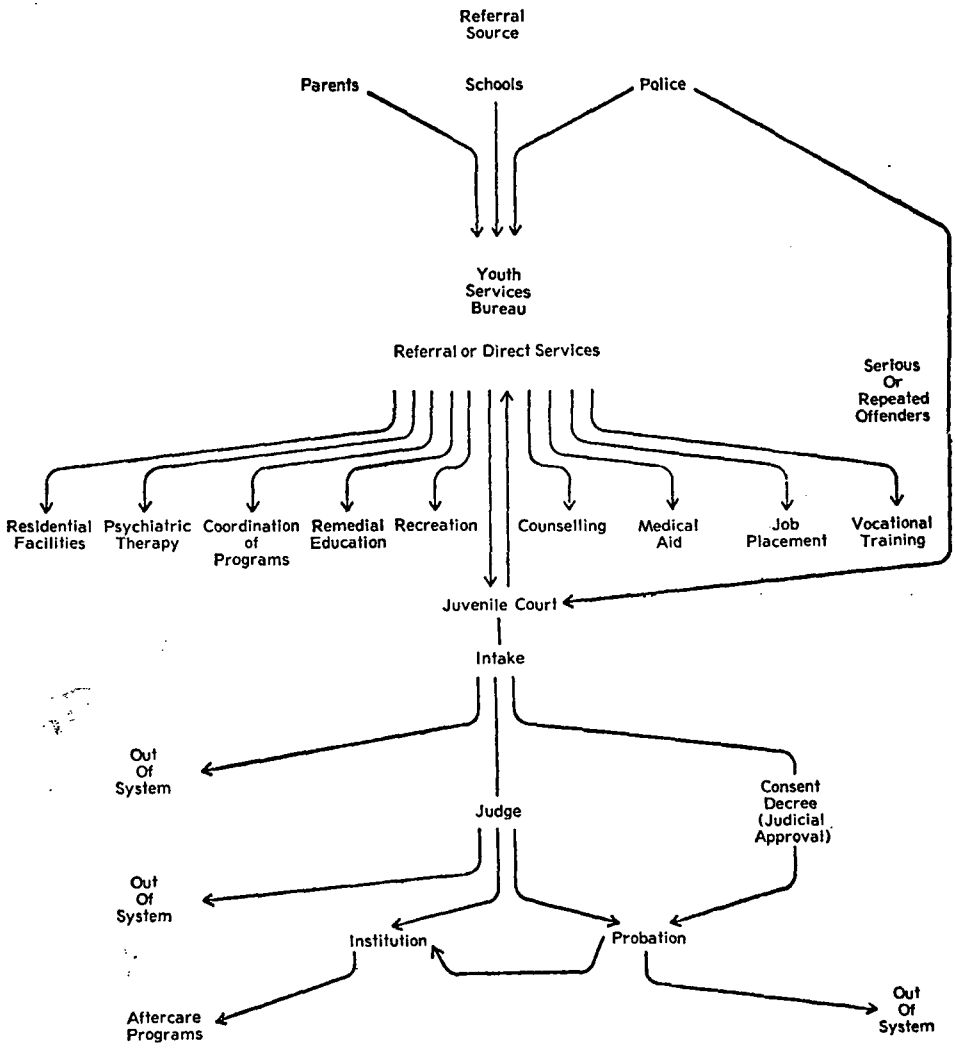
Since the current trend seems to be toward Indian self-destiny, it seems fitting that they should control the direction of their young people. This conclusion will therefor present an integrated tribal scheme proposed by the Standing Rock Sioux.[204] Funds were requested through the Law Enforcement Council to undertake an extensive analysis of the causes of juvenile delinquency including statistical information, as well as the interaction of the various factors discussed in this note. Emphasis was to be placed upon *Indian* community

197. *Id.* at 12.
198. THE COMMITTEE FOR UNITED INDIANS, *supra* note 8.
199. *Id.* at 14.
200. *Id.*
201. *Id.* at 13-15.
202. *Id.* at 17.
203. *Id.*
204. Office of Juvenile Delinquency & Youth Development, U. S. Department of Health, Education and Welfare, A Proposal For Youth Development Planning, Fort Standing Rock (1970).

DIAGRAM

Diagram Source: Office of Juvenile Delinquency & Youth Development, U.S. Department of Health, Education, and Welfare, A Proposal For Youth Development Planning For Standing Rock (1970).

PROPOSED JUVENILE JUSTICE SYSTEM



development, and adult participation in the rehabilitative and preventive strategies for coping with juvenile delinquency.[205]

A comprehensive planning process to build an adequate Juvenile Justice System (see diagram above) was the first priority. A planning Commission, Indian staffed and directly responsible to the Tribal Council was to be established.[206] A Youth Services Bureau would receive referrals of "problem children" from the community (parents, schools and police), and would determine the nature of the problem. The youth would then be channeled to the appropriate service. A juvenile court would be created to handle delinquents as referred from the Youth Services Bureau, as well as repeated or serious offenders delivered by the police. On-reservation facilities would be available to handle court dispositions in the form of institutional and probational care.

The reservation did not receive the requisite funding, thus the project never got off the ground. For this reason a comprehensive federal act should be proposed that would assure the funding of such programs in the future. History provides a fine example of successful Indian control. In the nineteenth century the Choctau, in Mississippi and Oklahoma, using bilingual teachers and Cherokee texts, attained nearly 100 per cent literacy.[207] They operated 200 schools and academies which produced numerous collegians, and published the first American Indian press, a bilingual newspaper.[208] Unfortunately this school system was abolished in 1906. Today, after 70 years of federal and state control of education, 40 per cent of the tribe is illiterate in English, dropout rates are as high as 75 per cent and the median level of education is 5.5 years.[209] The lesson of this and similar experiences seems to be that Indians can do a better job of successfully guiding their youth when given the opportunity and the resources to do so.

JAY R. PETTERSON

205. *Id.* at 10.
206. *Id.* at 14-16.
207. S. REP. N. 501, *supra* note 40, at 19-20.
208. *Id.*
209. *Id.*