

148217

NCJRS

AUG 4 1995

ACQUISITIONS

STUDY OF TRIBAL AND ALASKA NATIVE
JUVENILE JUSTICE SYSTEMS

FINAL REPORT

November 1992

FINAL DRAFT

PREPARED AND SUBMITTED BY
AMERICAN INDIAN LAW CENTER, INC.
AND
WALTER R. McDONALD & ASSOCIATES INC.

Prepared under the Auspices of a Cooperative Agreement between the
U. S. DEPARTMENT OF JUSTICE,
OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION;
THE AMERICAN INDIAN LAW CENTER, INC.; AND
WALTER R. McDONALD & ASSOCIATES, INC.
(Cooperative Agreement No. 90-JN-CX-K002)

148217

148217

U.S. Department of Justice
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this ~~copyrighted~~ material has been granted by

Public Domain/QJP/QJDP

U.S. Department of Justice

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the ~~copyright~~ owner.

STUDY OF TRIBAL AND ALASKA NATIVE JUVENILE JUSTICE SYSTEMS
TABLE OF CONTENTS

ACKNOWLEDGEMENTS	v
EXECUTIVE SUMMARY	ix
CHAPTER ONE – HISTORY	
Introduction	1
Historical Overview	1
The Nature of Governmental Power on Indian Reservations	5
The Policy Context	8
CHAPTER TWO – BACKGROUND AND METHODOLOGY	
Introduction – Origin of the Study	17
Summary of Data Collection Methods	19
Tribal and Village Participation	20
Data Analysis	24
Summary and Conclusions	24
Recommendations	25
CHAPTER THREE – TRIBAL COURTS	
Introduction – Tribal Courts and Jurisdiction Within Indian Country	27
Tribal Juvenile Court Process	28
Tribal Court Staffing	30
Training for Tribal Court Staff	35
Tribal Court Funding	36
Summary and Conclusions	40
Recommendations	42
CHAPTER FOUR – TRIBAL CODES	
Introduction	45
Methodology	45
Overview of Tribal Codes	45
Code Data Analysis	48
Review of Tribal Children's Codes	51
Summary and Conclusions	62
Recommendations	63
CHAPTER FIVE – YOUTH SERVICES AND TREATMENT ISSUES	
Introduction	65
Components of the Juvenile Justice System	66
Summary and Conclusions	76
Recommendations	78

CHAPTER SIX – JUVENILE OFFENSES AND THE TRIBAL RESPONSE	
Introduction	81
The Nature of Indian Juvenile Offenses	81
Secure Facilities and the JJDP Act Mandates	83
Summary and Conclusions	89
Recommendations	91
CHAPTER SEVEN – FEDERAL FISCAL AND PROGRAM RESOURCES	
Introduction	93
Bureau of Indian Affairs and Indian Health Service Programs	95
Federal Domestic Assistance Programs	102
Summary and Conclusions	109
Recommendations	110
CHAPTER EIGHT – PROMISING APPROACHES FOR INTERVENING WITH INDIAN AND ALASKA NATIVE JUVENILE OFFENDERS	
Introduction – The Need	113
Data Collection and Program Criteria	113
Findings	114
Promising Approaches for Intervening with Indian and Alaska Native Juvenile Offenders	114
Conclusions and Recommendations	124
CHAPTER NINE – ALASKA AND CALIFORNIA	
Introduction	125
Alaska	126
California	135
Recommendations	142
APPENDICES	145
APPENDIX A – SURVEY INSTRUMENTS	
APPENDIX B – BIBLIOGRAPHY	
APPENDIX C – ANALYSIS OF STATE ENABLING LEGISLATION	
APPENDIX D – TRIBAL-STATE INTERGOVERNMENTAL AGREEMENTS; JURISDICTIONAL STATUS ANALYSIS	

STUDY OF TRIBAL AND ALASKA NATIVE JUVENILE JUSTICE SYSTEMS

ACKNOWLEDGEMENTS

The American Indian Law Center, Inc., and Walter R. MacDonald & Associates, Inc., wish to thank the many governments, individuals, and institutions whose expertise, cooperation, and assistance were invaluable to the preparation of this report. In particular, we thank the many tribal governments, especially the judicial systems, who -- in a triumph of hope over experience for which we are eternally grateful -- participated in "another study." We hope this report meets some of your expectations. The tribal officials and members, the employees of the various agencies who are responsible for much of the information, are too numerous to name, but we thank you any way. We dedicate this report to the countless people, whose efforts are not sufficiently appreciated, working on reservations and in villages working to help the youth of Indian tribes and Alaska Native villages.

The Librarian of the University of New Mexico School of Law, Professor Anita Morse, and her staff contributed many hours of their time and talents to the bibliography and other research for the project. This help was coupled with their personal interest and devotion, attributes which are rare and deeply appreciated. To Lisa Gover, University of New Mexico law student, we owe a special debt of gratitude for her research and analysis of the jurisdictional status of tribes which is incorporated into this report. It was an enormous undertaking and she worked with good humor and great sympathy.

Irv Slott of the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, gave us great support and, by his example, reminded us of the dedication and experience of many career civil servants. Gene Contadori of the Justice Department was helpful and his easy going good humor served the project well. Brunetta Centner, also from the Department of Justice, is a woman of great patience and caring and provided the encouragement at the end of the project that helped spur the report's completion.

Following is a partial list of those who helped in the conduct of this study.

Juvenile Justice Advisory Committee

Honorable Elbridge Coochise, Northwest Intertribal
Court System
Honorable Joseph Delacruz, President, Quinault
Indian Nation
Dr. V. Eugene Flango, National Center for State
Courts
Honorable Robert E. Lewis, Governor, Pueblo of
Zuni
Mr. Michael Mail, Quinault Indian Nation
Honorable Ned Norris, Jr., Chief Judge, Tohono
O'odham Nation

Mr. Emil Notti, Alaska Native Foundation
Chief Edward Reina, Jr., Salt River Pima Maricopa
Indian Community Police Department
Dr. Ann Schneider, College of Public Programs,
Arizona State University
Honorable Marshall P. Young, South Dakota
Circuit Court
Honorable Tom Tso, Chief Justice, Navajo Nation

Juvenile Justice Resource Consultants

Mr. Jim Brown, Community Research Associates
Mr. Jack Calhoun, National Crime Prevention
Council
Dr. Barry Krisberg, National Council on Crime and
Delinquency

Mr. Robert Hunter, National Coalition Center for
Action Research
Mr. Hunter Hurst, National Center for Juvenile
Justice

Juvenile Justice Federal Designates

Mr. Philip Hogen, United States Attorney, South
Dakota
Ms. Tova Indritz, Federal Public Defender, New
Mexico

Ms. Hilda Manuel, Tribal Government Division,
Bureau of Indian Affairs
Mr. Ted Quasula, Law Enforcement Services
Division, Bureau of Indian Affairs

Contributing Organizations and Agencies

Department of the Interior, Bureau of Indian
Affairs, particularly the Office of Alcohol and
Substance Abuse Prevention, Facilities Manage-
ment and Construction Center, Division of
Social Services, and Branch of Judicial Services
Department of Health and Human Services, Indian
Health Service, particularly the Alcohol and
Substance Abuse Program and Mental Health
Programs, particularly Social Services Programs
and Program Evaluation and Research National
Center on Juvenile Justice

Rural Alaska Community Action Program, Inc.
Department of Commerce, Bureau of the Census,
Racial Statistics Branch
National Indian Justice Center
New Mexico Youth Authority
Indian Affairs Commission, State of Oklahoma
University of New Mexico Law Library, particularly
Anita Morse, Law Librarian and Professor of
Law

Participating Tribes, Pueblos and Alaska Native Communities

Absentee Shawnee Tribe of Oklahoma
Pueblo of Acoma
Akhiok Village
Akiachak Native Community
Agua Caliente Band of Cahuilla
Ak Chin Indian Community
Akutan Traditional Council
Alabama-Coushatta Tribe of Texas
Allakaket Village
Angoon IRA Council
Aniak Traditional Council
Anvik City
Atka Village
Auinagak Traditional Council
Bad River Band-Lake Superior Chippewa
Barona Band of Mission Indians
City of Barrow
Bay Mills Indian Community
Tyme Maidu Tribe Berry Creek Rancheria
Big Pine Paiute-Shoshone Tribe
City of Brevig Mission
Buckland IRA Council
Burns Paiute Tribe
Cabazon Band of Mission Indians
Cedarville Rancheria
Cherokee Nation of Oklahoma
Cheyenne River Sioux Tribe
Cheyenne-Arapaho Tribe of Oklahoma

Chickasaw Nation of Oklahoma
Chippewa Cree Tribe
Chitimacha Tribe of Louisiana
Choctaw Nation of Oklahoma
Chuathbaluk Traditional Council
Citizen Band of Potawatomi Indian Tribe
Cocopah Indian Tribe
Colorado River Indian Tribes
Colville Confederated Tribes
Comanche Indian Tribe
Confederated Salish & Kootenai Tribes
Confederated Tribes of Coos, Lower Umpqua,
Sinslaw Indians
Confederated Tribes of the Grand Rhonde
Community of Oregon
Copper Center Village Council
Cortina Band of Indians
Cow Creek Tribe of Umpqua Indians
Crow Tribe
Crow Creek Sioux Tribe
Devil's Lake Sioux Tribe
Native Village of Dot Lake
Eastern Shawnee Tribe of Oklahoma
Eastern Shoshone and Northern Arapahoe Tribes
Elk Valley Rancheria
Ely Shoshone Tribe
Evansville Village Council
Flandreau Santee Sioux Tribe

ACKNOWLEDGEMENTS

Study of Tribal and Alaska Native Juvenile Justice Systems

Three Affiliated Tribes of the Fort Berthold Reservation	Mississippi Band of Choctaw Indians
Fort Independence Reservation	Modoc Tribe of Oklahoma
Fort Mohave Tribe	City of Mountain Village
Fort Peck Tribes	Navajo Nation
Fort Sill Apache Tribe	City of New Stuyahok
Fort Yukon Native Village	Nez Perce Tribe
Goshute Indian Reservation	Ninilchik Traditional Council
Grand Portage-Minnesota Chippewa	Nisqually Indian Community
Grand Traverse Band of Ottawa and Chippewa Indians	Nooksack Indian Tribe
Gulkana Village	Northern Cheyenne Tribe
Hoh Indian Tribe	Northwestern Band of Shoshoni Nation
City of Hoonah	Oglala Sioux Tribe
Native Village of Hooper Bay	Old Harbor Village
Hopi Indian Tribe	Omaha Tribe of Nebraska
Houlton Band of Maliseet Indians	Oneida Nation of Wisconsin
Howonquet Indian Council of the Smith River Rancheria	Oneida Indian Nation
Hualapai Tribe	Paiute Indian Tribe of Utah
Iowa Tribe of Kansas and Nebraska	Pascua Yaqui Tribe
Iowa Tribe of Oklahoma	Passamaquoddy Tribe-Pleasant Point
Pueblo of Isleta	Pauma Band of Mission Indians
Jamestown Klallam Tribe	Pedro Bay Village Council
Jicarilla Apache Tribe	Peoria Tribe of Indians of Oklahoma
Organized Village of Kake	Native Village of Perryville
Kalskag Traditional Council	Port Gamble S'Klallam
Karuk Tribe of California	Pueblo of Picuris
Kashia Stewart's Point Rancheria	Pit River Tribe
Ketchikan Indian Council	Poarch Band of Creek Indians
Keweenaw Bay Indian Community	Pueblo of Pojoaque
Kialegee Tribal Town of Oklahoma	Puyallup Tribe of Indians
Kickapoo Traditional Tribe of Texas	Pyramid Lake Paiute Tribe
Kipnuk Traditional Council	Quapaw Tribe of Oklahoma
Kootenai Tribe of Idaho	Quartz Valley Indian Reservation
Kotlik Traditional Council	Quinault Indian Nation
Kotzebue IRA Council	Quinhagak Traditional Council
Native Village of Koyuk	Red Cliff Band of Lake Superior Chippewas
Koyukuk Traditional Council	Red Lake Band of Chippewa Indians
Lac du Flambeau Band of Lake Superior Chippewa	Redding Rancheria
Lummi Indian Nation	Redwood Valley Rancheria
Manchester/Point Arena Band of Pomo Indians	Coast Indian Community of the Resighini Rancheria
Manley Hot Springs Traditional Council	Rincon Band of Mission Indians-San Luiseno Band
Manokotak Village	Rosebud Sioux Tribe
Manzanita Band of Mission Indians	Sac & Fox Tribe of Missouri
Marshall Traditional Council	Sac and Fox Nation
Mashantucket Pequot Tribe	Saginaw Chippewa Indian Tribe of Michigan
Menominee Tribe of Wisconsin	City of Saint Mary's
Mescalero Apache Tribe	Salt River Pima-Maricopa Indian Community
Metlakatla Indian Community	San Carlos Apache Tribe
Miami Tribe of Oklahoma	Pueblo of San Juan
Miccosukee Tribe of Indians of Florida	San Juan Southern Paiute Tribe
Mille Lacs Band of Ojibwe Indians	Pueblo of Santa Clara
Minto IRA Council	Santa Ynez Band of Mission Indians
	Sauk-Suiattle Indian Tribe
	Sault Ste. Marie Tribe of Chippewa Indians
	Savoonga Native Village

ACKNOWLEDGEMENTS

Study of Tribal and Alaska Native Juvenile Justice Systems

Scammon Bay Traditional Council	Toksook Bay Native Community
Selawik	Tonto Apache Tribe
Seneca-Cayuga Tribe of Oklahoma	Torres-Martinez Band of Desert Cahuilla
Shingle Springs Rancheria	Tulalip Tribes of Washington
Shoalwater Bay	Tule River Indian Reservation
Shoshone-Paiute Tribes of Nevada	Turtle Mountain Band of Chippewa Indians
Confederated Tribe of Siletz Indians	Confederated Tribes of the Umatilla Reservation
Sisseton-Wahpeton Sioux Tribe	Upper Sioux of Minnesota
Sitka	Unitah and Ouray Indian Tribe
Southern Ute Tribe	City of Wainwright
Spokane Tribe of Indians	Walker River Paiute Tribe
Standing Rock Sioux Tribe	Wampanoag Tribe of Gay Head
Stebbins Community Association	Confederated Tribes of the Warm Springs Reservation
Stillaguamish Tribe of Indians	Washoe Tribe of Nevada & California
Suquamish Indian Tribe	White Mountain Apache Tribe
Swinomish Indian Tribal Community	White Mountain Native Village
Tanacross Village Council	Winnebago Tribe of Nebraska
Tanana IRA Native Council	City of Wrangell
Telida Village	Wyandotte Tribe of Oklahoma
Te-Moak Bands of Western Shoshone-Elko	Yakutat Traditional Council
Te-Moak Tribe of Western Shoshone-Battle Mountain	Yankton Sioux Tribe
Te-Moak Tribe of Western Shoshone-Wells Colony	Yavapai-Apache Tribe
Tenakee Springs	Yerington Paiute Tribe
Tlingit and Haida Indian Tribes of Alaska	Yupik Village Leaders
Tohono O'odham Nation	Pueblo of Zia
Tok Traditional Council	Pueblo of Zuni

ACKNOWLEDGEMENTS

Study of Tribal and Alaska Native Juvenile Justice Systems

STUDY OF TRIBAL AND ALASKA NATIVE JUVENILE JUSTICE SYSTEMS

EXECUTIVE SUMMARY

I. INTRODUCTION

This report is required by the Juvenile Justice & Delinquency Prevention (JJDP) Act of 1974, as amended. The requirements of the Juvenile Justice and Delinquency Prevention Amendments of 1988 include:

Sec. 248. (b)(1): Not later than 1 year after the date of the enactment of the Juvenile Justice and Delinquency Prevention Amendments of 1988, the Administrator shall begin to conduct a study to determine:

(A) how juveniles who are American Indians and Alaska Natives and who are accused of committing offenses on and near Indian reservations and Alaska Native villages, respectively, are treated by the systems of justice administered by Indian tribes and Alaska Native organizations, res-

pectively, that perform law enforcement functions;

(B) the amount of financial resources (including financial assistance provided by governmental entities) available to Indian tribes and Alaska Native organizations that perform law enforcement functions, to support community-based alternatives to incarcerating juveniles; and

(C) the extent to which such tribes and organizations comply with the requirements specified in paragraphs (12)(A), (13), and (14) of section 223(a), applicable to the detention and confinement of juveniles.

The Executive Summary presents a description and a summary of the results of that study.

II. BACKGROUND

In May of 1987, the National Coalition of State Juvenile Justice Advisory Groups noted that the JJDP Act did not include Indian reservations and Alaska Native villages in its provisions. The coalition organized a National Task Force on Juvenile Justice for Native Americans and Alaska Natives to study the situation and report to Congress with recommendations on this matter. A task force report was completed and transmitted to Congress in September 1987. The 1988 amendments to the JJDP Act incorporated many of the task force recommendations and required the OJJDP Administrator to conduct a study to determine:

- 1) how American Indian and Alaska Native juveniles are treated by their respective systems of justice;
- 2) what financial resources are available to support community-based alternatives to incarcerating juveniles; and

- 3) to what extent such tribes and organizations comply with the three major JJDP Act requirements: deinstitutionalization, separation, and jail removal.

In addition, the study aimed to identify promising approaches for intervening with American Indian and Alaska Native juvenile offenders; and, in consultation with American Indians and Alaska Natives, to prepare recommendations for improvements in tribal and Native juvenile justice systems.

The study reported is an examination of governmental functions administered by Indian tribes and Alaska Native villages with respect to juveniles under their jurisdiction. It is not a study of the treatment of all Indian juveniles who violate a law because a number of these youth are handled outside of tribal systems. Nor is it an evaluation of any individual tribe's or village's compliance with the mandates of the JJDP Act. Rather, it is a

review of the extent to which the concepts inherent in these mandates are, in general, applied within tribal juvenile justice systems. The study was con-

ducted by the American Indian Law Center, Inc., and Walter R. McDonald & Associates, Inc.

III. RESEARCH DESIGN AND METHODOLOGY

Achieving the goals of the study required collecting and analyzing data from tribes, pueblos, villages and other government agencies. Several methods were employed to collect data about tribal, pueblo and village juvenile justice systems. These included:

1. Existing data and other relevant information were collected and analyzed, such as U.S. Bureau of the Census data (1990), national juvenile justice data (1987), and other sources of information relevant to tribal juvenile justice. These sources included federal and state legislation pertinent to tribal jurisdiction and governments, federal authorizing statutes and rules related to a number of funding programs, analysis of a variety of budget and planning documents, and interviews with officials involved with justice or intervention service programs.
2. A mail questionnaire (All Tribe Survey) was sent to all federally recognized tribes, pueblos and villages with the objective of providing each the opportunity to participate in the study by reporting basic data regarding the scope of the juvenile justice systems of federally recognized tribes, pueblos and villages that were not

available in extant sources. The areas surveyed included components of their juvenile justice systems, intervention services, use of secure facilities, and numbers of juveniles involved in these systems. A total of 162 of 315 tribes (51%) participated in the study in some way; 48 of the 185 Alaska Native villages that received the survey participated (26%).

3. Individual and group interviews were conducted with key tribal, pueblo and village leaders on-site at a sample of tribes, pueblos and villages (site visits). The primary purpose of the site visit interviews was to elaborate on issues too complex to address in the survey. In Alaska, representatives of 23 villages were brought together at four sites to supplement the data collected through the survey and village site visits.

According to the 1990 U.S. Census data, there were 266,171 Indians under the age of 18 living on reservations or tribal trust lands in 1990. Seventy-four percent of these resided in tribes and villages participating in the study. Among the 19,242 Alaska Native juveniles, thirty-two percent lived in villages participating in the study.

IV. RESEARCH FINDINGS AND RECOMMENDATIONS

The inadequacy of data systems is a persistent problem in Indian government administration at all levels. As a practical matter, national data are necessary to support program planning, budgeting and evaluation, and to justify continued and increased federal funding support for tribal and Native juvenile justice systems. Neither the Bureau of Indian Affairs, the Indian Health Service, nor the Office of Juvenile Justice and Delinquency Prevention have the authority to require tribes to collect and report data suitable for national policy-making. For Congress to give them this authority tied, for

example, to the tribal receipt of federal funds, would run counter to the federal policy of tribal self-determination. But the Indian tribes should consider the development of a voluntary national data system to support their requests for additional funding.

Many tribes need assistance in the development of data systems for their own courts and youth-serving agencies. The development and improvement of existing tribal data systems will require technical assistance and federal funding. Such systems will

need to integrate data for the tribal planning and priority setting processes. To accomplish this, the information must provide data across the full

Recommendation: CONGRESS SHOULD PROVIDE MORE MONEY FOR TRIBAL COURTS.

Although there is wide debate about the appropriate delivery mechanism, virtual unanimous support was found for increased stable funding for tribal courts. In light of the importance given to court systems by Indian and non-Indian societies alike, Congress should earmark funds especially to support tribal court systems and functions in a way that does not further fragment the distribution of political power on each reservation.

Recommendation: BIA SHOULD IMPROVE ITS CAPACITY TO COLLECT AND PROCESS JUVENILE JUSTICE AND LAW ENFORCEMENT DATA.

BIA should improve its own capacity to collect and process justice system and law enforcement data within its own system and work with tribes to enhance their ability to support these systems. BIA should assess the deficiencies of the current system and reassume its responsibility to process data received from the tribes (and its own staff and agencies that serve tribes) and provide the tribes with timely feedback, analysis and summaries of the infor-

spectrum of justice and human service programs at a level of information appropriate to the service delivery systems of each tribe.

mation. BIA also should urge tribes to participate in national data-gathering efforts in support of federal funding.

Recommendation: OJJDP SHOULD PROVIDE TECHNICAL ASSISTANCE TO TRIBES IN THE PLANNING AND DEVELOPMENT OF JUVENILE COURT AUTOMATED AND MANUAL SYSTEMS.

OJJDP and other federal agencies with specific expertise in justice and social service information systems should provide technical assistance to tribes in the planning and development of automated or manual information systems related to court processing and youth services provision.

Recommendation: CONGRESS SHOULD INCREASE THE FUNDING OF TECHNICAL ASSISTANCE REGARDING INFORMATION SYSTEMS.

Congress should increase the funding of technical assistance to tribes in order to improve tribal information systems. The BIA should oversee the provision of technical assistance in developing human service and juvenile justice information systems.

TRIBAL COURTS

Tribal courts are an important part of the tribal juvenile justice system. Current courts vary in size, funding, and procedures. Given the range of tribal systems, it is difficult and inappropriate to recommend specific standards, funding formulas, or

minimal staffing patterns. The recommendations below address needs deemed by the study to be relatively common among tribes, and their implementation assumes that tribal decisions and priorities will determine their applicability.

Recommendation: THE BIA AND OJJDP SHOULD WORK TOGETHER TO IMPROVE JURISDICTIONAL UNDERSTANDING AMONG COURTS.

There needs to be a continued effort for training state and tribal courts to establish their

areas of separate jurisdiction and concurrent jurisdiction. This training should be overseen by OJJDP and the BIA. Joint custody and transfer of custody issues require further analysis and resolution in each State.

Recommendation: BIA AND IHS SHOULD DEFINE THE RESPONSIBILITY AND RELATIONSHIP OF THEIR DIRECT SERVICE PROVIDERS TO TRIBAL COURTS AND TRIBAL GOVERNMENTS.

As the federal agencies charged with providing services to Indian tribes and Alaska Native villages, and as primary direct service providers on many reservations, the BIA and IHS must formulate clear policy regarding the roles and responsibilities that their agencies must fulfill in support of tribal court orders and dispositions, consistent with the federal policy of tribal self-determination and with other applicable federal law. Where possible, the relationships of tribal courts and juvenile justice systems to BIA and IHS service providers should be analogous to those of state and federal courts with state and federal agencies providing the same services in off-reservation communities. If necessary, these responsibilities could be defined explicitly in federal-tribal intergovernmental agreements. The BIA and IHS should also establish procedures by which tribal courts may communicate coordination and service delivery issues and problems to the central administration of these federal agencies.

Recommendation: THE BIA SHOULD SUPPORT THE DEVELOPMENT OF INTER-TRIBAL AGREEMENTS WHICH IMPROVE JUDICIAL ACCESSIBILITY FOR JUVENILES.

As tribes assess their juvenile justice systems, some may wish to enter into inter-tribal arrangements for the shared use of staff for tribal courts. Inter-tribal arrangements are formulated with the premise that the integrity of each tribe's legal codes will be maintained. Where such arrangements are developed by the tribes themselves on a clearly voluntary basis, the BIA should support and facilitate their funding.

Recommendation: OJJDP AND THE BIA SHOULD COORDINATE THEIR TRAINING SUPPORT FOR TRIBES.

Both the BIA and OJJDP have training plans which fund tribes and organizations to develop sessions and curricula for members of the juvenile justice system. These plans should be reviewed with a direct focus on whether they are reaching tribes and meeting tribal needs. A balance between centralized training development and dispersement of training funds for local usage should be achieved, including the use of tribally-controlled colleges as a convenient delivery system.

CODES

Tribal legal codes guide the practice of courts in handling juvenile cases and determine the framework by which youth and family rights are protected. Although a number of current codes include many best practice standards, including provisions similar to the OJJDP mandates, a number do not. Tribal codes will likely continue to vary due to the

variety of circumstances among Indian tribes and Alaska Native villages. However, some tribal codes are incomplete or fall short of important juvenile provisions, not because of local needs, but simply because they have not been revised for many years. The following recommendations address the need for such revisions.

Recommendation: TRIBES SHOULD UNDERTAKE TO REVIEW THEIR CHILDREN'S CODES.

Tribes should review their children's codes and other codes pertinent to juveniles on a periodic

basis. Codes should be amended to address those standards and initiatives determined to be relevant to Indian youth and tribal justice systems. Existing model codes may be useful during this review process.

Recommendation: THE BIA SHOULD UNDERTAKE TO PROVIDE TECHNICAL ASSISTANCE REGARDING THE REVISION OF TRIBAL CODES.

Working with OJJDP and appropriate units of ACYF, the BIA should assist tribal councils and courts with review and revision of tribal codes affecting juveniles.

Recommendation: TRIBES SHOULD REVIEW THEIR CONSTITUTIONS TO FACILITATE THE MODIFICATION OF PERTINENT CODES.

Tribal constitutions that still include the provision that the Secretary of Interior must approve any revisions to tribal legal codes should eliminate this provision. Removing this requirement may expedite the process of updating existing tribal legal codes.

YOUTH SERVICES

This study has addressed many facets of tribal juvenile justice systems. However, as important as legal codes, courts, and other aspects of juvenile justice may be, no area is more important to address than services for youth and their families. The study has identified both the weaknesses of current services and the existing and potential strengths of tribal systems. Clearly, gaps in core services and the instability of funding from many service agencies are service delivery policy issues

that need to be addressed. To do so in the midst of varying tribal needs and priorities, and the lack of clarity over tribal, federal and state governmental responsibility, will require a long term effort. The recommendations below address some particularly important service priorities, but more importantly suggest a general process by which tribes can assess needs and plan for maintaining and improving their juvenile justice service delivery system.

Recommendation: THE DEPARTMENTS OF THE INTERIOR AND HEALTH AND HUMAN SERVICES SHOULD SIGN THE MEMORANDUM OF AGREEMENT MANDATED IN THE INDIAN ALCOHOL AND SUBSTANCE ABUSE PREVENTION AND TREATMENT ACT AND IMPLEMENT THE ACT AGGRESSIVELY.

The White House, the Office of Management and Budget, the Secretaries of Interior and Health and Human Services, the Assistant Secretary of Interior for Indian Affairs, and the Director of the Indian Health Service should place at the top of their priority list the development of a comprehensive and effective plan to assist Indian tribes and Native villages in their efforts to combat substance abuse.

The Memorandum of Agreement as mandated in the Indian Alcohol and Substance Abuse Prevention and Treatment Act, should be negotiated and signed between the Departments of Interior and Health and Human Services.

With this agreement as a basis, BIA and IHS should work to assure that reservation youth have improved access to detoxification, counseling, inpatient, and follow-up alcohol/substance abuse treatment services. (See the fifth recommendation under Federal Funding regarding funding of this initiative.)

Recommendation: THE BIA SHOULD ENCOURAGE THE DEVELOPMENT OF INTER-TRIBAL AGREEMENTS WHICH RESULT IN COORDINATED SERVICES.

Through its Area Offices, the BIA should undertake to assist tribes in identifying appropriate and feasible models of inter-tribal cooperation. Tribes that wish to share resources through programs operated under inter-tribal agreements should be recognized and encouraged. Shared resources for geographically proximate tribes could include placement services such as shelters, group homes, residential treatment and detention

centers. OJJDP should make known to the BIA models of rural juvenile justice services which might be of interest to tribal governments.

Recommendation: OJJDP AND THE BIA SHOULD ENCOURAGE THE DEVELOPMENT OF STATE-TRIBAL SERVICE PLANNING AND SERVICE AGREEMENTS.

OJJDP and the BIA should cooperate to establish models of joint state-tribal service planning processes. As part of the state planning process, OJJDP should encourage states to enter into joint planning agreements. The BIA should serve tribes by promulgating model agreements.

Recommendation: CONGRESS SHOULD ENCOURAGE THE DEVELOPMENT OF COMPREHENSIVE JUVENILE JUSTICE PLANS BY EACH TRIBE.

One of the difficulties for tribes is the categorical nature of program funding and program development. In times of scarce resources, cooperation and collaboration appear more imperative. Nevertheless, there are serious barriers to such collaboration and joint planning. The Congress should fund and support the development of model collaborative planning processes, which can be implemented and evaluated, leading to replication of successful efforts. Such plans could be the basis for evaluating tribal needs and for identifying the potential tribal, federal and state funding and service resources available to meet these needs.

Recommendation: IHS SHOULD REVIEW ITS PROGRAM OF RESIDENTIAL TREATMENT FACILITIES FOR SUBSTANCE ABUSING YOUTH.

The location of the IHS facilities for such youth continues to create problems of service provision and re-entry of Native American youth. The IHS should conduct a needs assessment to determine its long range plan for location of such facilities. Emphasis should be on reducing the need for out of state and distant placement of tribal youth requiring such facilities.

Recommendation: CONGRESS AND THE EXECUTIVE BRANCH SHOULD FACILITATE MULTI-AGENCY FUNDING OF COMPREHENSIVE JUVENILE JUSTICE SERVICES AT THE TRIBAL LEVEL.

In order to address the vast differences in tribal needs for agency services, efforts should be made to encourage all federal agencies to coordinate funding decisions related to each tribe. The juvenile justice planning process recommended above may provide the vehicle for such coordinated decision-making and can facilitate a focus on filling service gaps and stabilizing agency services at the tribal level.

Recommendation: IMMEDIATE ATTENTION SHOULD BE GIVEN TO BOARDING SCHOOLS, WITH PARTICULAR ATTENTION TO THEIR ROLE IN TRIBAL JUVENILE JUSTICE SYSTEMS.

Congress should assure that BIA and contract boarding schools are equipped and programmed to meet the actual needs of their student populations. The Executive branch should conduct a needs assessment to define the needs of the boarding school student populations and seek supplemental appropriations to upgrade boarding school programs to meet those needs. BIA and IHS should enter into and implement an interagency agreement concerning services at boarding schools. BIA should assign specific Central Office responsibility for boarding schools, operated by BIA and contract schools. Tribal and Native juvenile justice systems should ensure by written agreement that the use of boarding schools as resources in any part of the juvenile justice system is conducted with full knowledge of the institution and that the institution is equipped to meet the needs of the Indian young person. BIA, IHS and tribal social workers and other human services personnel must cooperate with tribal courts where juvenile proceedings are pending, particularly with respect to boarding school placement.

OFFENSES

Tribal juvenile justice systems operate in a most complex legal environment, defined by a mix of tribal, federal, and, in some cases, state statutes. The responsibilities of tribal, federal, and state justice agencies are not always clear. To an extent, jurisdiction over cases defines responsibility, but

often is itself either unclear or shared. The recommendations below suggest how efforts can be focused on reducing unnecessary overlap of responsibility and on enhancing coordination where shared roles remain.

Recommendation: THE BIA AND OJJDP SHOULD SEEK COUNSEL ON THE IMPLICATIONS OF THE MAJOR CRIMES ACT AND THE INDIAN CIVIL RIGHTS ACT WITH REGARDS TO JUVENILES.

The Major Crimes Act and the Indian Civil Rights Act establish parameters of the exercise of tribal jurisdiction. The development of these Acts did not take into consideration conditions regarding juveniles but, nevertheless, the implementation of juvenile justice is affected by both pieces of legislation. A serious review of these Acts should be undertaken with specific recommendations for Congressional action.

Recommendation: OJJDP SHOULD WORK WITH THE RELEVANT AGENCIES IN THE DEPARTMENT OF JUSTICE TO REVIEW THE GUIDELINES CONCERNING THE INTERFACE BETWEEN U.S. ATTORNEYS AND TRIBAL JUVENILE OFFENSES.

Complaints still are made regarding the effect on the administration of tribal justice of the

U.S. Attorneys' decision-making process regarding prosecution of reservation felonies. The Department of Justice should establish and implement guidelines requiring U.S. Attorneys to make prosecution and declination decisions in a timely manner and to communicate their determinations to the appropriate tribal prosecutors.

Recommendation: TRIBES SHOULD UNDERTAKE THE REVIEW OF THEIR DETENTION POLICIES AND PROCEDURES.

Tribes should review their existing procedures and facilities for detention and incarceration of juveniles. The focus should be on reducing the use of secure placement through the development of less restrictive alternatives and on separation of youth and adults in facilities that must be used for both populations. OJJDP should provide technical assistance in understanding how other jurisdictions have achieved these goals.

FEDERAL FUNDING

Because of the unique history of the federal-tribal relationship, the policy basis underlying federal assistance to Indian tribal governments is unclear in some respects. Many Indian tribes have specific treaty entitlements to services bargained for in exchange for land cessions or other valuable considerations; other tribes entered into the trust relationship with the federal government with the

understanding that they would be treated generally as Indian tribes are treated, i.e., that federal services and assistance were integral parts of the relationship. The following recommendations address changes required in current funding practices to expand and stabilize tribal juvenile justice systems and the services upon which they depend.

Recommendation: CONGRESS SHOULD MANDATE A COMPREHENSIVE REVIEW OF TRIBAL ELIGIBILITY FOR ALL FEDERAL DOMESTIC ASSISTANCE PROGRAMS, INCLUDING THOSE IMPACTING ON JUVENILE JUSTICE, AND AMEND THE AUTHORIZING STATUTES WHERE NECESSARY TO ENSURE APPROPRIATE TRIBAL PARTICIPATION.

The omission of tribes from federal programs is often the result of an oversight in the legislative process rather than a considered decision by Congress to exclude tribes or inappropriately to require them to seek federal assistance through state governments. Congress should work toward a more deliberate funding policy for domestic assistance for Indian tribes which tailors tribal participation to the needs of tribes and the overall policies of programs.

Recommendation: CONGRESS SHOULD AUTHORIZE FEDERAL DOMESTIC ASSISTANCE AGENCIES TO WAIVE PROGRAM GUIDELINES AND, UNDER APPROPRIATE CIRCUMSTANCES, STATUTORY REQUIREMENTS TO FACILITATE JOINT FUNDING OF TRIBAL PROJECTS, PARTICULARLY IN THE AREA OF JUVENILE JUSTICE.

One of the important barriers to effective community-based tribal juvenile justice systems is the problem of funding tribal programs on small reservations where the need for a particular categorical program is too small to justify a grant. Tribes should be assisted to create multi-service centers and programs funded from a variety of federal agencies, which would increase the number and effectiveness of comprehensive community programs and reduce the total cost of services by stressing in-home and community-based approaches.

Recommendation: THE FEDERAL AGENCIES SHOULD REVIEW RELEVANT REGULATIONS TO ASSURE THAT TRIBAL GOVERNMENTS ARE SPECIFICALLY ELIGIBLE FOR FEDERAL DOMESTIC ASSISTANCE PROGRAMS.

Tribal governments should be deemed eligible for all federal domestic assistance programs for which states and municipalities are eligible, unless tribal governments are specifically

excluded from eligibility in the authorizing statutes of these programs. Where tribes are excluded from program eligibility by regulation rather than by statute, federal agencies should amend the regulation to include tribal governments.

Recommendation: FEDERAL AGENCIES SHOULD REVIEW THEIR LEGISLATIVE MANDATE TO SERVE INDIAN YOUTH.

Federal agencies should clarify the eligibility of tribal youth and families to such services through addressing this eligibility in the pertinent federal regulations related to such programs and funding. The results of these analyses should be shared with the states.

Recommendation: THE BIA AND IHS SHOULD CONTINUE TO MINIMIZE CATEGORICAL FUNDING BARRIERS TO THE DEVELOPMENT OF APPROPRIATE SERVICES.

The BIA and IHS should increase their efforts to allocate funds in block grant fashion, thus minimizing categorical barriers to the development of multi-service agencies at the tribal level. However, provisions must be sought to ensure that juveniles do not receive decreased services through such funding mechanisms.

Recommendation: AN INTER-AGENCY TASK FORCE ON TRIBAL JUVENILE JUSTICE ISSUES SHOULD BE ESTABLISHED.

The role of the task force should be to specifically review the funding of juvenile services through the BIA and IHS, with the goal of collaborating and prioritizing program spending. Areas which will need legislative action should be identified. Such a task force should include specific provision for tribal consultation.

Recommendation: CONGRESS SHOULD APPROPRIATE THE AUTHORIZED FUNDING OF P.L. 99-570.

Congress should support, through the appropriation of adequate additional funding to

the BIA and the IHS, the implementation of all provisions of P.L. 99-570 for programs related to juvenile justice services.

Recommendation: THE DEPARTMENTS OF INTERIOR AND HEALTH AND HUMAN SERVICES, THE BUREAU OF INDIAN AFFAIRS AND THE INDIAN HEALTH SERVICE SHOULD CONTINUE TO PLACE THE HIGHEST PRIORITY ON THE IMPLEMENTATION OF P.L. 99-570 AND THEIR EFFORTS TO COORDINATE THE ACTIVITIES OF THE TWO AGENCIES ACROSS THE BOARD.

The memorandum of agreement between BIA and IHS has recently been signed, laying the

groundwork for interagency coordination on the vital topic of alcohol and substance abuse, the principal causative factor in Indian juvenile delinquency and a host of other problems. Implementation of this legislation and the memorandum of agreement must continue to be a high priority to make effective assistance available to Indian tribes and Alaska Native villages and to their members. In addition, broader-scale efforts to coordinate between BIA and IHS have only recently intensified as a result of the negotiation of the MOA; these efforts are long overdue nearly 40 years after the separation of functions between the two agencies. These efforts should continue.

PROMISING PROGRAMS

This study has identified some model programs operated for the benefit of tribal youth and their families. The potential exists for replication of such programs and of further program development. It

is crucial that tribes have a mechanism for sharing information about effective services for youth and families.

Recommendation: OJJDP SHOULD UTILIZE ITS CLEARINGHOUSE CAPABILITIES TO DISSEMINATE INFORMATION REGARDING TRIBAL SERVICES.

The clearinghouse should acquire information on effective tribal programs, potential funding sources, and organizations that are available to provide technical assistance to tribes wishing to develop new juvenile justice related programs. A periodic directory of such programs and resources should be published and disseminated to all tribes.

Recommendation: THE BIA AND OJJDP SHOULD CO-SPONSOR AN ANNUAL CONFERENCE ON TRIBAL JUVENILE JUSTICE ISSUES.

The BIA and OJJDP should sponsor an annual conference on juvenile justice related services. Tribal participation should be sought during the planning process and financial assistance should be provided to encourage the participation of the tribes and practitioners in the field of juvenile justice.

ALASKA AND CALIFORNIA

Tribal self-government which can include juvenile justice functions is a multi-faceted issue, partly mired in history and partly determined by social, political, and economic factors. Whether or not a tribe exercises concurrent jurisdiction over juveniles depends upon a number of conditions including a tribe's interest in handling its own juvenile problems

(which may be affected by their ability to acquire funds necessary to provide services) and their perception of services provided by the state. The recommendations below address the juvenile justice needs of the two states analyzed in detail on these issues.

Recommendation: OJJDP SHOULD ENCOURAGE THE STATE OF ALASKA TO IMPROVE COLLABORATION WITH NATIVE VILLAGES.

There is a recognized need to improve the coordination between state agencies/police/courts with Native villages in regard to placement of village youth. OJJDP should take the initiative of working with the State of Alaska to develop such procedures.

Recommendation: OJJDP SHOULD ENCOURAGE THE DEVELOPMENT OF VILLAGE LEVEL SERVICES FOR JUVENILES.

Although the State has developed a regional system of services for Native youth, there remains much to be accomplished in terms of local services. Due to the small size and relative isolation of many Native villages, regionally based services cannot meet all social service and justice related needs. Programs employing village residents as staff, such as those funded through Suicide Prevention funding, should be encouraged as supplements to the regional center services. Besides availability, such services offer the greatest potential to incorporate traditional and culturally-sensitive program components which

villagers typically state are keys to program effectiveness.

Recommendation: OJJDP SHOULD ENCOURAGE THE STATE OF CALIFORNIA TO IMPROVE ITS SERVICES TO NATIVE AMERICAN YOUTH.

The State of California provides virtually all law enforcement and court functions, and many other juvenile justice related services for Indians living on tribal lands in the state. It is most important that these juvenile justice service providers develop a focus on the needs of the Native American population they serve. OJJDP should encourage the State to increase its attention to the needs of, and service provision to, this population. OJJDP discretionary funds should be directed at this area of concern.

Recommendation: IHS SHOULD DEVELOP A PLAN FOR SERVING NATIVE AMERICAN YOUTH IN NEED OF SUBSTANCE ABUSE TREATMENT WITHIN THE STATE OF CALIFORNIA.

IHS should develop alternatives to the out-of-state residential treatment for youth requiring treatment for alcohol and substance abuse problems.

CHAPTER ONE HISTORY

I. INTRODUCTION

This is a study of juvenile justice systems operated by Indian tribes and Alaska Native villages, mandated by Congress to determine the status and conditions of these systems and to seek recommendations on how they can best be served by federal juvenile justice programs. The simple answer, especially that most consistent with the federal policy of tribal self-determination, is that tribal and Alaska Native village systems need more financial assistance and more control over policy and programs.

But virtually any problem area in or out of Indian affairs calls out for more money. This study, if it is

to be of maximum benefit to Congress and to the Indian tribes and Native villages, must help define the policy framework within which the tribal role in juvenile justice is defined.

This introductory chapter will briefly review the history of federal Indian policy; outline the status of governance of Indian reservations; and describe the basic architecture of Indian policy, identifying the balances which must be struck and the sources of the policy anomalies which make federal Indian policy difficult to manage.

II. HISTORICAL OVERVIEW

For present purposes, the history of federal Indian policy can be divided into six periods.¹ Two constants common to these eras are the recognition of tribal self-determination and the interest of the federal government, and the larger society, in assuring that tribal self-determination be consistent with larger social goals. The apparent inconsistency of federal policy can be explained in part by the differing historical conditions of each era as well as by different emphasis, affecting the degree to which tribal self-determination was allowed. In the absence of scholarship specifically on juvenile justice, one must infer how juvenile justice was administered in each era consistent with the prevailing policies.

A. PRE- AND EARLY CONTACT

Prior to contact with Europeans and Euro-Americans, Indian tribes were fully independent and self-governing according to their own cultures. The hundreds of Indian and Native societies living in the territory now comprising the United States had hundreds of distinct cultures, religions and languages.² They were generally tribal societies governed by religious and social mechanisms such as clan and kinship systems which defined the

mutual rights and obligations of individuals. Clans and extended families were the principle cohesive component of most Indian societies. The failure to understand the function of these organic cultural mechanisms often led the Europeans, not seeing the separate formal governmental institutions with which they were familiar, to conclude that the Indian tribes lacked both a government and the capacity for self-government. This classic ethnocentrism has affected much of the history of Indian law and policy and still affects some views of tribal government.

Nevertheless the inherent tribal right of self-government was implicitly recognized by the Europeans and their successor governments: tribes were viewed as entities with which treaties could be concluded. And explicitly, since the earliest days of Indian/non-Indian contact, the European powers, their colonies and the newly-formed United States recognized in the treaties both the political existence of tribes and some form of land rights.³

B. THE FORMATIVE PERIOD (1787-1871)

The era commonly called the Formative Period coincides with the use by the United States of

treaties as the vehicle for dealing with the tribes. The era saw perhaps the greatest change in the lives of Indian tribes themselves and in tribal-federal relations. The early treaties with the tribes maintained the peace; regulated Indian/non-Indian trade and other contacts; and provided for the cession of large tracts of land and the removal of tribes away from the tide of non-Indian settlement. Indian tribes were promised continuing self-government in their homelands or in territories to which the federal government sought to relocate them, and they were often promised that they would never be subject to the jurisdiction of the states. Later treaties, as federal power grew and the power of individual tribes waned, concentrated on the settlement of tribes on reservations and occasionally provided for the allotment of tribal land in severalty to tribal members. Treaty provisions explicitly promised aid to the tribes as part of the consideration for peace and for the tribal sale of vast tracts of land.

Despite relatively consistent treaty assurances of tribal self-government, the treaties do not reflect a consistent federal policy on jurisdiction, probably because of the differing historical, political and military conditions in which each treaty was negotiated. Some treaties and subsequent practices provided tribal jurisdiction over all wrongdoers, Indian and non-Indian; others provided tribal jurisdiction over Indians and federal jurisdiction over non-Indians; still others contained provisions whereby Indians accused of crimes (particularly against non-Indians) would be tried by the federal government.

The Congress also enacted a number of statutes on Indian affairs during this period, both to implement specific treaty provisions and to provide a federal administrative structure within which federal Indian policy could be administered. The Department of War, legislatively established within weeks of the start of the First Congress, was given the responsibility to deal with Indian affairs whenever assigned to do so by the President.⁴ The Act of May 19, 1796, was the first significant legislation to make Indians subject to federal criminal jurisdiction if the wrongdoer's tribe did not punish him within a specific time. Congress passed a series of so-

called Trade and Intercourse Acts to govern Indian/non-Indian relations, the last of which (passed in 1834) subjected non-Indians found in Indian territory to federal rather than tribal criminal jurisdiction.

The federal Indian Service was formally created within the Department of War as the Department of Indian Affairs in 1834. Congress intended to clarify the administrative organization of the Department because the authority of the Executive branch to appoint Indian agents and the authority of the agents to establish legal systems had been called into question. The Department of the Interior was created in 1849 and the authority over Indian affairs was transferred to it.

This period saw a shift in land policy brought about by changing historical conditions, from defining the boundaries of Indian country west of the settlement line, to removal of tribes to the west out of the expected range of settlement, to settlement of tribes on reservation homelands with defined boundaries within or near their aboriginal areas. A consistent theme insisted upon by the tribes was the preservation of tribal territorial and cultural integrity and the right of self-government. Other aspects of the federal-tribal relationship also changed. Notwithstanding specific treaty provisions, an overall package of goods and services evolved which was made available to tribes as consideration for their cooperation with federal policies. This package of goods and services was intended to help tribes adjust to the loss of their traditional economies and to the new way of life on reservations, but it also had the effect of making tribes increasingly dependent on the federal government.

By the end of this period most Indian tribes were settled on reservations and the federal government was trying to persuade the remaining tribes to accept reservations which had been designated for them. In 1871, Congress ended the treaty period by enacting a law which declared that henceforth Indian tribes would no longer be considered independent nations with whom the United States could contract by treaty (although existing treaties were left undisturbed). Although Congress subsequently dealt with Indian tribes strictly by

legislation, (which entails action by both Houses of Congress unlike treaties, which are ratified only by the Senate), the federal government maintained at least in theory the bilateral and consensual nature of the treaty relationship by negotiating agreements with tribes which merely avoided the use of the term "treaty". Notwithstanding the obvious paternalism overlaying much of the history of federal Indian law and policy, ironically the principle of consultation with the tribes, including conditioning the effectiveness of federal statutes on tribal consent, is still a cornerstone of federal Indian policy.

C. ALLOTMENT AND ASSIMILATION (1871-1928)

During the next period, the federal government attempted to inure tribes to reservation life, destroy the integrity of tribal cultures, and acculturate Indians to non-Indian ways. This period saw the institution of off-reservation boarding schools designed to remove Indian children from their families and, through education, change the Indian population from one culture to another in a single generation. During the Peace Policy of the Grant Administration, reservations were parceled out among the major Christian denominations as their exclusive preserves for proselytizing.

In 1882, the United States Supreme Court finally shattered the notion of the reservation as a federal-tribal territorial enclave removed from the reach of state power by deciding *United States v. McBratney*,⁵ a case with perhaps the most far-reaching impact on future reservation governance of any in history. *McBratney* involved the question of whether the state or federal government had jurisdiction over the murder by a non-Indian of another non-Indian within the boundaries of a reservation.⁶ The Court, after some rather involved reasoning, held that the state had jurisdiction where only non-Indians were involved, despite the federal government's obvious interest in preserving the peace of Indian communities to protect the Indians themselves and for the sake of the peace of the larger society. *McBratney* dealt a crushing blow to the notion of a territorial definition of jurisdiction for Indian reservations and recognized a state governmental interest within

Indian country. The combined scope of federal and tribal power, no longer free to fill the reservation territory, had in the future to be defined by legal abstractions concerning the reach of the federal Indian power which Congress had chosen to exercise and whether non-Indian activities on the reservation affected the federal interest in Indians sufficiently to bring such activities within the scope of federal power. *McBratney* has led directly to the vastly complicated tribal-federal-state jurisdictional maze of the present day in which highly theoretical definitions of sovereignty combine with such factors as land ownership and individual status to obscure and confuse governmental authority and responsibility.

As part of the effort to reduce the power of traditional Indian cultural institutions, Courts of Indian Offenses (CFR courts) were authorized in 1883 by the Commissioner of Indian Affairs.⁷ The BIA established rules and regulations for the CFR courts and operated them, including appointing the personnel. A simplified code published in the Code of Federal Regulations became law on many reservations. Despite the establishment of CFR courts, many tribes continued their traditional tribal sanctions and struggled to maintain their internal self-government.

In 1885, Congress formally ended exclusive tribal jurisdiction over crimes involving only Indians and vested jurisdiction in the federal courts over the so-called Seven Major Crimes⁸ in response to public outrage over the Supreme Court's *Crow Dog* decision,⁹ which held that federal courts lacked criminal jurisdiction over crimes among Indians on reservations. When Crow Dog killed Spotted Tail on the Rosebud Sioux Reservation, he was punished by the law of the tribe, which involved among other things restitution to the victim's family. The lack of capital punishment was considered by the American public to be such an uncivilized practice that Congress was forced to assume federal jurisdiction over certain felonies between Indians. Notwithstanding the Major Crimes Act, tribal courts apparently retain concurrent jurisdiction over certain felonies to try Indian people for those same acts enumerated in federal legislation.¹⁰

The Major Crimes Act was challenged in the *Kagama* case.¹¹ Although *Kagama* has come to stand for the power of Congress vis a vis the Indian tribes because of the intrusion of the Major Crimes Act into internal tribal affairs, tribal and federal powers were not the contenders in the actual case. *Kagama's* lawyers argued, not that he should be tried by the tribe on whose reservation the crime was committed (he was accused of the murder of another Indian on a reservation), but that the State of California had jurisdiction. The U.S. Supreme Court held that Congress has plenary power on the subject of Indian affairs, among other things for the purpose of protecting the Indians from their non-Indian neighbors and the states, whom the Court identified as the Indians' worst enemies. The Major Crimes Act laid the basis for federal jurisdiction over virtually all felonies on reservations other than those strictly between non-Indians.

The other major policy of this period culminated in the passage of the General Allotment Act,¹² which provided for the allotment in severalty of the tribal land estate among the members of the tribes and the sale of the "surplus" land on the reservation to non-Indians. Several earlier treaties had provided for the allotment of the tribal estate of particular tribes, but the General Allotment Act elevated this practice to a national policy aimed at the conversion of Indians into farmers and ranchers and the dissolution of the communally-held tribal land base. The sale of unallotted land to non-Indians fragmented the social and cultural integrity of the reservation. The non-Indian settlers also brought state jurisdiction with them, giving *McBratney* a much greater significance than it might have had in the days when it merely allowed the state to punish crimes among transient non-Indians who happened to be on an Indian reservation at the time their crimes were committed.

The aftermath of the Allotment Act on many reservations was a period in which individual Indians were allowed (and in some instances forced) by various devices to sell their land to non-Indians, greatly increasing the immigration of non-Indians and further fracturing the integrity of many tribes. On some reservations as much as 90% of the al-

lotted land passed out of Indian hands in a few years. During the period between the passage of the General Allotment Act and that of the Indian Reorganization Act, when the allotment of tribal land was halted, the total Indian land estate in the nation dropped from 138 million acres in 1887 to 48 million acres in 1934.¹³

D. INDIAN REORGANIZATION (1928-1945)

By the 1920's, federal Indian policy was widely perceived to be a failure, and following a major policy study during the Hoover Administration,¹⁴ Congress passed the Indian Reorganization Act in 1934.¹⁵ The IRA attempted to redress the paternalistic policies of the nineteenth and early twentieth centuries and allow Indian tribes to govern themselves, for the first time with the ungrudging support of the federal government. It sought to revitalize tribal governments by providing for the reorganization of Indian tribes into governmental institutions familiar to non-Indian America. Among its provisions, the IRA authorized tribes to adopt constitutions and bylaws, and to incorporate. A number of tribes adopted constitutions modeled after one prepared by the Bureau of Indian Affairs based on non-Indian constitutional theory and common law concepts rather than Indian customary law and institutions. The BIA model constitution also contained provisions requiring the approval of many tribal laws by the Secretary of the Interior. However, these provisions are not required by federal law and their presence in tribal constitutions unduly restricts tribes in their exercise of self-government. Some tribes established their own court systems and adopted law and order codes patterned on the law and order code set forth in the Code of Federal Regulations to govern CFR courts.

Despite its policy of Indian self-government, the IRA and its associated policies imposed on Indian tribes unfamiliar forms of government and codes of law, which proved to be difficult for tribes to integrate into their societies. Further, federal policies contemplated the continued delivery of services to Indian communities by the Bureau of Indian Affairs and the transfer of Indian education to the states.

E. TERMINATION (1945-1960)

The New Deal Policies supporting tribal independence and development fell out of favor during the Termination Era, replaced by policies seeking to end the special relationship between Indian tribes and the United States. Congress terminated the trust relationship with hundreds of tribes during this period, many of which have since been restored to federally-recognized status. Congress also passed P.L. 83-280,¹⁶ which granted civil and criminal jurisdiction over reservations to enumerated states and permitted others to assume jurisdiction at their discretion and without the consent of the affected tribes. The Termination Policy was abandoned late in the Eisenhower Administration due to the opposition of tribes and their supporters and the reluctance of states to assume the financial and other burdens that went with jurisdiction over reservations.

F. SELF-DETERMINATION (1960-PRESENT)

Since the early 1960's, federal policy has been fairly consistently in favor of tribal self-determination and

reservation development. During the 60's, general federal programs such as those of the War on Poverty were made available directly to tribes as governments rather than through the Bureau of Indian Affairs. The Indian Civil Rights Act¹⁷ required tribal consent to future assumptions of civil and criminal jurisdiction on reservations by state governments, and it limited tribal governmental power in accordance with a statutory Bill of Rights patterned generally after the Constitutional Bill of Rights.

The 1970's saw the passage of landmark legislation, including the Indian Self-Determination and Educational Assistance Act,¹⁸ the Indian Financing Act,¹⁹ and the Indian Child Welfare Act.²⁰

During the 1980's, tribes have continued to expand their governmental activities, their economic development efforts, and their plans to assume greater control over the Bureau of Indian Affairs. Despite the 1980's budget cutbacks, Indian tribal self-determination has continued.

III. THE NATURE OF GOVERNMENTAL POWER ON INDIAN RESERVATIONS

The history outlined above has produced a contemporary mix of governmental authority and responsibility on modern Indian reservations that is easily the most complicated in the nation and among the most complicated in the world. In theory, Indian reservations, as the homelands of Indian tribal societies, are governed by federally recognized Indian tribal governments under the general and quite limited supervision of the federal government. Modern federal Indian policy holds out to these tribal governments the promise of increasing self-determination and federal assistance toward development. In fact, Indian reservations are governed by a patchwork of federal, tribal, state and municipal governments, frequently contending for power but often reluctant to accept responsibility. Yet these governments, despite their often bitter competition, also often cooperate and coordinate with each other in areas of mutual interest.

A. TRIBAL GOVERNMENT

Indian tribal governments are political entities embodying the inherent sovereignty, the right of self-government, of the over 400 Indian tribes and Alaska Native groups in the United States. In terms of the American system, they are extraconstitutional. That is, their power is inherent rather than derived from, allocated or limited by the Constitution of the United States as are the powers of the federal and state governments which make up the federal system.²¹ In that sense, they are not a part of the federal system. But tribal governments are able to function as governments within their territories, and their governmental character and actions are recognized within the federal system, by virtue of the quasi-diplomatic recognition extended by the federal government. Thus in another, practical sense tribal governments are very much a part of the American system of governments despite their unique origin and sources of power.

Although some tribes still have traditional systems of government, most Indian tribes in the United States are governed under written constitutions adopted in the last 60 years. These constitutions, many of which were adopted pursuant to the Indian Reorganization Act, define the powers and limitations of the tribal government and prescribe its structure; tribes may also have agreed in treaties to limit their governmental power. Federal law may also effectively limit the exercise of tribal power.

The self-determination era has seen major developments in the role of tribal government. Prior to about 1965, most of the functions performed in non-Indian communities by state and local government were provided or controlled on Indian reservations and in Alaska Native villages by the Bureau of Indian Affairs and the Indian Health Service, to the extent that they were provided by formal governmental structures. Indian tribes lacked the tax base or other sources of income to support any but the most basic governmental services and institutions. Furthermore, it had been the historic policy of the federal government to discourage tribal self-government and encourage Indian tribes to rely on the federal government not only for services but for major policymaking. Although this policy was formally brought to an end in the Indian Reorganization Act of 1934, implementation of the new policy was inconsistent and the necessary funding was still lacking.

In the past 25 years, Indian tribes have begun to develop extensive executive branches and to administer local government services themselves, supported by tribal funds, BIA/IHS contract funds,²² or federal grant funds from federal domestic assistance agencies. With executive branches of government, tribes for the first time could begin to exercise jurisdiction which was previously only theoretically theirs. These important developments in tribal government furthered longstanding tribal desires for self-determination and were accelerated by supportive federal policies. They also provided a context from which new questions arose concerning the jurisdictional relationship between tribes and state governments.

These historical trends, particularly the tribal use of federal funds to support basic community services, have had several effects important to the present study. Since many basic tribal services are largely supported by federal funds, Indian tribes have less control than states and municipalities over the structure of their governments and over the allocation of funds. Instead, tribal delivery systems tend to mirror the federal funding patterns, often having a separate department, office or program administration for each funding source.²³ This inefficient organizing principle, the result of inflexible federal guidelines, makes program coordination or innovative programming difficult for Indian tribes. Long range planning is also difficult where basic tribal departments are funded with federal grant funds whose continued availability is often in doubt. Even where tribal executive branch agencies are funded by relatively stable BIA/IHS contract funds, they are still dependent on the federal budget process and the appropriation cycle. Periodically the Executive branch tries to work out a reliable and effective system to enable tribes to reprogram funds to meet needs not foreseen at the beginning of the budget cycle, giving them some of the flexibility enjoyed by other governments. To date these efforts have not been fully successful.

B. FEDERAL

The Constitution gives Congress the power to regulate commerce with the Indian tribes which, along with the Treaty Power and other miscellaneous federal powers, has been held by the federal courts to constitute plenary federal power on the subject of Indian affairs.²⁴ This often misunderstood plenary power of Congress means that, once the "Indian power" is properly invoked, Congress has the power it needs (particularly in relation to the states) without further reference to the Doctrine of Enumerated Powers.²⁵ The states are bound by the Supremacy Clause to accede to Congress' recognition of tribal governments and their actions, along with other exercises of Congress' plenary Indian power.

In relation to the tribes, since neither the Constitution nor the Congress is the source of tribal power, neither do they directly limit it.²⁶ But

since many acts of tribal governmental power must be implemented within or require some form of support or assistance from the American legal and governmental systems, Congress can affect the scope of tribal governmental power by adjusting the scope of tribal recognition within the American system, much as the aperture of a lens lets in more or less light.

In the governance of Indian reservations, the impact of federal power is felt as both burdens and benefits. The federal government, through the Bureau of Indian Affairs, still exercises supervisory power over some tribal government activities. It has the power to approve IRA constitutions and the power, granted in some constitutions, to approve many tribal codes including criminal codes. Federal power limits tribal control over tribal trust property.²⁷ It has been used to subject the Indian people to federal criminal jurisdiction²⁸ and to subject the Indian people of some reservations to state jurisdiction without their consent.²⁹

The federal government also provides direct services to many Indian reservations as a surrogate municipal government, including law enforcement and judicial services. The federal government, through the Bureau of Indian Affairs and the Indian Health Service, may also contract with tribal governments to provide funding to the tribes to administer these same services for themselves.³⁰ Some of these benefits are contractually owed by the United States to the tribes as the result of treaties in which land was sold by the tribes to the United States. Others are part of the more general package of services offered by the United States to tribes to persuade them to accept reservations and adapt their way of life to the demands of federal Indian policy.

Federal agencies in addition to the Bureau of Indian Affairs and the Indian Health Service have statutory Indian programs, such as the Office of Indian Education in the Department of Education and the Administration for Native Americans in the Department of Health and Human Services. Indian tribes may also be eligible for general categorical

assistance from federal agencies on the same basis as state and municipal governments.

Although the trend of federal policy since the early 1960's has been away from paternalism and toward tribal self-determination, the role of the federal government in the governance of Indian reservations is still prominent in the direct exercise of power, direct delivery of services and the control of federal funds administered by the tribes.

C. STATES AND MUNICIPALITIES

Understanding the governance of Indian reservations would be relatively simple if power were allocated strictly on a territorial basis: the federal and tribal governments alone would share power. But the *McBratney* case, holding that the state can govern on the reservation where only non-Indian interests are affected, has led to more than a century of litigation over the scope of the combined federal/tribal interest, leading to such vague judicial notions as a test to determine "interference with tribal self-government",³¹ a judicially-derived limitation on tribal powers "inconsistent with their status",³² and various other tests to balance competing federal, tribal and state interests in the abstract arena of a judicial opinion. As a practical matter, state and municipal power are in evidence in various ways on Indian reservations. States exercise both civil and criminal regulatory jurisdiction ranging from nearly total on some reservations to jurisdiction limited substantially to non-Indians on others.

As to services, the situation is even more complex. Given that Indians are citizens of the United States, they are entitled under the Equal Protection Clause to equal access to the public services offered by states and municipalities. Patterns of services on Indian reservations are highly irregular, having been affected by changing federal Indian policies (such as the gradual transfer of education from federal to state delivery in much of Indian country), the ability of the tribe to provide services (often dependent on the size of the tribe and its resources), and the willingness and ability of the states and municipalities to deliver services on the reservation to Indians as well as non-Indians.

IV. THE POLICY CONTEXT

Federal Indian policy is a complex undertaking. Within itself, it involves the balancing of policy goals that are fundamentally contradictory and inconsistent, the most notable of which are the policies of federal trusteeship and tribal self-determination. But beyond its internal anomalies, federal Indian policy is also difficult to integrate into the usual channels of national federal policy and administration. Federal Indian policy is horizontal in nature, cutting across virtually all aspects of national domestic policy. Because of this unique feature, Indian policy cannot be addressed in isolation but must be related to the larger policy issues; correspondingly, implementation of national policies must at some point address their impact on Indian affairs. This study of tribal and Alaska Native juvenile justice systems must be understood against the backdrop of several recurring implementation issues.

A. TRIBAL SELF-DETERMINATION AND NATIONAL POLICY

The federal-tribal relationship is modeled on the original diplomatic treaty relationship between the United States and the individual Indian tribe. Indeed, the Constitutional basis for all of federal Indian law and policy rests on this essentially political relationship.³³ Although the relative power between federal and tribal governments has shifted over the years, for most of the last sixty years federal Indian policy has acknowledged the centrality of Indian tribal government and has promised tribal self-determination. Such a policy framework can be remarkably sensitive to the unique needs of hundreds of small Indian and Native societies. But in practical terms, the individual tribal-federal relationship can also be cumbersome and inefficient. Congress, the Executive and the society at large tend to think in terms of problems and solutions at the national level. A policy which tries to achieve self-determination for each tribe, if consistently applied, cannot easily allow for central policy definition or for programs designed and implemented wholesale.

The problem of integration of Indian policy arises in three areas: federal regulatory policy; federal

domestic assistance programming policy; and federal appropriations policy. Due to the broad scope of Congress' legislative activity and the complexity of the congressional committee system, Congress often fails to consider the possible effect of general legislation on Indian tribes. When such legislation is silent on the issue, it is not clear whether Congress intended Indian tribes to be included and in what respect.

1. REGULATORY POLICY.

Within the scope of its Enumerated Powers, Congress has the power to impose general regulations on the nation as a whole and the Constitution provides that these federal actions are supreme over state and local laws. But Congress does not have the power to require the states to exercise their regulatory powers according to federal standards³⁴, and in such cases Congress encourages states to adopt federal standards by providing incentives in the form of federal assistance for those states who choose to comply. Federal regulatory statutes are often unclear as to whether they intend to apply to Indian reservations as well as the balance of the country and as to whether federal statutory mandates are intended to apply to Indian tribal governments.

The Juvenile Justice and Delinquency Prevention Act³⁵ provides an example of this practice. The JJDP Act is a statute of general application which seeks to establish national standards for juvenile justice administration and to provide financial assistance to aid states in complying with these standards and, having done so, otherwise to improve their juvenile justice systems. Up through the most recent reauthorization, Indian tribal governments have been deemed not to be subject to the statutory mandates, but eligible for assistance under the act through the governments of the states in which they are located.

Viewed as an exercise in federal Indian policy implementation, the problem of inclusion of tribal governments in such general regulatory schemes is two-edged. On one side, general regulatory standards are designed for larger governmental

units such as states, and often presume the existence of core state governmental infrastructures such as permanent governmental agencies and comprehensive legislative provisions providing substantive and structural frameworks for state and local government. Federal standards indiscriminately applied could work a hardship on tribal governments, imposing on them practices, procedures and facilities standards appropriate for urban areas, for larger units of government, and for the norms and expectations of non-Indian society. Imposition of such standards on tribes could unnecessarily complicate the functioning of small tribal governments and add drastically to their cost. On the other side, tribes pay a political cost when their regulatory power is not clearly recognized in a federal statute. The immediate effect is that the administering federal agency may assume that the omission of tribal government means that tribes are not eligible for the associated program assistance. Of equal importance, where tribal regulatory power is not mentioned in a statute, the appearance of a regulatory vacuum is created, sometimes leaving the impression that Congress intended state government to fill the vacuum.

2. PROGRAMMING POLICY.

The integration of Indian policy with national programs presents three types of problems: eligibility, delivery system, and program design. Congress frequently creates broad scale federal domestic assistance programs without specifying whether Indian tribal governments are eligible for assistance on the same basis as other governments. Some program eligibility statutes which do not mention tribal governments explicitly can be read to include tribes, as when "local governments" or "general units of government" or similar generic terms are used. Others cannot be read to include tribal governments when terms such as "states and their subdivisions" are used. It is not clear from an examination of the legislative history or an analysis of the purposes of such exclusionary statutory authorizations that Congress has in every case decided that tribes should not participate in the program. In some instances, tribes are unfairly deprived of the same federal assistance available to their neighboring governments.

Where tribal governments participate in federal domestic assistance programs, a variety of delivery systems are available to include them. They range from the statutory or administrative creation of a specialized funding office for Indian programs (an Indian Desk); a funding setaside in which funds are granted directly from the federal agency to applicant tribes; and a flowthrough arrangement in which funds are transmitted to tribes through state governments. Congress does not seem to have a consistent theory as to which delivery system is most suitable to which type of program. The state flowthrough model is subject to the most criticism. Tribes generally object to the state flowthrough on the ground that it forces them to deal with state governments, with which their relations may already be strained, often as supplicants notwithstanding that the tribal share may be specified in the statute. State governments also often object to the flowthrough on the ground that it makes them accountable for funds without the power to demand accountability.

Some version of direct funding is preferred by the tribes and many state governments. The experience of the past 25 years seems to show that whether direct funding should be accomplished through the existing federal administrative mechanism or through a special Indian Desk varies from program to program. Ideally, each federal domestic assistance program must be analyzed separately to determine the optimum delivery system to serve Indian tribal governments consistent with overall program goals.

Program design presents a problem when Indian tribes try to participate in a general federal program. Programs are often designed with the assumption that the federal funds will supplement or enrich an existing permanent program system supported by state and local tax revenue. In many cases, tribes cannot afford the core government service and rely on the federal funds to support that core set of programs rather than supplement it. Various program requirements may make it difficult for tribes to use the federal funds to meet their basic program needs rather than the supplementary activities intended by the federal program. A related problem is that federal programs are often

based on the needs of urban and suburban governments. Federal funds may be available to meet these comparatively elaborate needs, but not available to help provide basic support for tribal programs, or may unnecessarily complicate otherwise simple tribal governmental structures.

The overall trend of federal Indian policy of the past 30 years has been in favor of increasing tribal self-determination. In terms of programming, this would suggest a movement in the direction of making federal funds available to Indian tribes with the fewest programmatic strings attached, allowing the tribes the maximum discretion to design their own programs to meet local needs. This policy goal is reachable with respect to the core services available to tribes through the BIA/IHS programs simply by continuing the direction of recent years of making general contracts with tribes and allowing them great discretion in allocating funds. The threat to tribal interests in this approach is that broad categorical programs in the nature of block grants tend to lack a strong bureaucratic constituency in the federal government, making them vulnerable to budget cuts. In order to protect their budget base in the highly political and unstructured appropriations process, tribes will probably find themselves in the position of exchanging one form of accountability for another. Rather than being accountable for program quality and results within the confines of particular programs, they will have a broader and less structured political task of accounting to Congress for program quality and value in order to prevent budget cuts or justify increases (without the help of natural allies within the federal bureaucracy).

Unlike the Bureau of Indian Affairs and the Indian Health Service, other federal domestic assistance agencies are by their nature programmatically defined. If these agencies are to provide Indian tribal governments with a fair share of assistance to put them on at least an equal basis with state and local governments vis a vis a particular program, they will need to be given guidance by Congress as to their responsibility to implement federal policies of self-determination in the context of their categorical programs. It has proven to be difficult over the years for tribes to

make the argument that federal agencies should provide broadly-conceived assistance to tribes and allow great flexibility in program design consistent with tribal self-determination. Congress could, of course, authorize federal program agencies to fund tribes with broadly-defined categorical block grants to balance between tribal self-determination and the fundamental identity of each federal program.

Federal Indian programs could easily be targeted and coordinated to achieve specific results if an effective mechanism existed to define the relationships between the broadly-conceived programs of BIA/IHS and the categorical responsibilities of the more general categorical programs of other agencies. These agencies could then agree on responsibilities and coordinate their efforts to reduce the number of tribes and Villages falling between the cracks. They could also assure that successful tribal programs would be assured of continued funding rather than go out of existence because of a shift in national policies and priorities. It is most difficult, however, to conceive of a mechanism to achieve this vitally important interdepartmental coordination which is consistent with federal policies of tribal self-determination. Tribal self-determination rests on the individual relationship between the federal government and a single tribe. A federal coordination mechanism which included representatives of tribal governments would compromise the federal-tribal relationship; a coordination mechanism which honored the federal-tribal relationship by including each of the 500-odd units of tribal and village government would be tremendously expensive and unwieldy.

3. APPROPRIATIONS POLICY.

The fundamental issue regarding federal Indian appropriations policy involves the scope of the special services and programs offered to Indian tribal governments (and those offered to Indians because of their status as Indians), and the role they are intended to play, and the relationship of these programs to the programs and services available to the general public. In the society as a whole, the federal government provides some direct services at the local level (without assuming the fundamental role of state and local government) and provides, through a complex of categorical programs,

supplementary assistance to state and local government programs. But the fundamental responsibility for the core community services lies with state and local governments.

The structure of federal Indian policy provides no clear analogous responsibilities. Federal law and policy acknowledge the centrality of tribal government as the relevant local government of Indian reservations, but the basic responsibility to provide and pay for the necessary governmental infrastructure and core community services is not clear. Over the years the federal government has made promises to tribes in treaties to pay for certain services in exchange for valuable consideration. More generally, Congress has undertaken to provide certain services to Indian communities through such agencies as the Bureau of Indian Affairs and the Indian Health Service, either through direct services provided in the community by federal employees or through contracts with tribes to provide the same services with tribal employees. Insofar as these services are not benefits derived explicitly from treaty obligations, they are considered to be part of the larger trust relationship between the federal government and the Indian tribes. In part they are the historical survivors of early federal policy to make tribes dependent on the federal government as a means of control, and in part they are based on the recognition that reservation economic conditions do not provide sufficient tax base for tribes to pay for these necessary services for themselves.

Again, federal Indian policy presents a double-edged sword. Tribes clearly do not have the funds to assume responsibility to pay for basic community services, and every analysis of the federal trust responsibility recognizes that Congress has undertaken some kind of obligation to underwrite the cost of basic government on Indian reservations. But the scope of Congress' undertaking is not clear. In some sense, it appears that the combination of tribal and federal funds plays the role of state and local funds off the reservation, that is, to provide the basic governmental infrastructure and the core community services. But no guidelines exist to allocate responsibilities between tribal and federal funding responsibilities. Further, even in situations

where the tribe clearly lacks the resources to make a significant contribution to the cost of its own government, the historic pattern of services and appropriations does not suggest that Congress and the Executive branch operate on the assumption that the federal government sees itself as the ultimate guarantor of basic community services on Indian reservations.

Federal appropriations policy would be greatly simplified if Congress would address the scope of its undertaking. If Congress intends that Indian reservations should have a package of government services appropriate to meet the needs of the reservation and at minimum comparable to those available to similarly situated non-Indian communities (although few, if any, non-Indian communities face the economic and social problems faced by Indian reservations), appropriations strategies could be clearly guided to achieve these quantifiable goals within certain time limits. Tribes would then be able to negotiate responsibilities with the federal government to determine the relative mix of tribal and federal funds and the uses to which they would be put. If, on the other hand, Congress does not intend to assume these basic responsibilities, its trust obligation would seem to suggest that the federal government address the question of how these basic services should be met in Indian communities. Under the present system, Indian communities are often denied the basic services that are available to similarly situated non-Indian communities, but it is not clear who is responsible to correct this discriminatory and unfair result.

In the past 25 years, tribes have tried to ease the pressure on their own funds and on the BIA/IHS funds available to them by seeking as much support as possible from other domestic assistance programs available to state and local governments. But these funds are often used by tribes to create programs, that is, to fund basic infrastructures and core services out of programs that are designed to supplement core services in state and local government. This daring and innovative approach has several disadvantages. General federal program guidelines tend to discourage funding basic services (on the

assumption that federal money should not supplant the local efforts of state and local governments). These programs usually are not entitlement programs and do not undertake to fund all governments, but only those who survive a competitive grant process. Thus a federal grant administering agency may have an "Indian program" which funds 10-20 tribes out of the 500-odd tribes and Alaska Native villages needing the service. But the existence of such a limited program effort may result in the Bureau of Indian Affairs or the Indian Health Service scaling back its efforts in the same category on the theory that the need is being met or that the agency has assumed funding responsibility in this area, and Congress may come to the same erroneous result. Thus tribal participation in a general federal categorical program may have the ironic result of diminishing what might otherwise have been the level of federal support to tribes in the area. And finally, general federal categorical programs are generally conceived as temporary in nature. Thus an agency might underwrite a solid and vital program effort on a reservation for several years and then discontinue funding, leaving the tribe with no alternative resource and lacking an important community service.

Federal appropriations (and programming) policy could deal with this problem by recognizing that tribal participation in general federal categorical programs is of a different nature than state and local participation, requiring the federal agency to adopt funding strategies suited to the tribal situation, encouraging the agency to address its Indian program on a broader scale than 10-20 tribes, allowing tribes greater flexibility in the use of funds within the category and providing both for longer term funding and for a funding transition from the general federal program to BIA/IHS support where the program cannot allow for permanent funding for tribes. A larger Indian program effort on the part of categorical federal agencies would have a minimal impact on each agency's budget and would enable BIA/IHS funds to be targeted to needs not met by the complex of federal categorical programs. But unless Congress addresses the funding/appropriations question in a disciplined way, most tribes and Villages will continue to fall between the cracks, between federal

agencies with a token Indian program and the core BIA/IHS services.

Finally, Indian tribes and individuals are caught in a dilemma in appropriations policy. On the political level, it is in the interest of the tribes to consider their tribal-federal relationship as central and to see themselves as the relevant delivery system for community services on the reservation rather than to surrender their roles and responsibilities to state and municipal government. At the same time, on the fiscal level the tribes pay an enormous price if all reservation needs are to be met by tribal and federal "Indian" funds; Indian needs always compete with other Indian needs in the appropriations process, with the result that none of them are met adequately. Yet Indians as individuals are citizens, who should be entitled to a fair share of state and municipal services for which they are otherwise eligible and who certainly should be entitled to a fair share of those services which are administered by state government but funded largely by the federal government. Under the present unresolved policies, tribes must apparently choose between sacrificing their political independence from state government (a right bargained for and dearly paid for historically) or continuing to allow the states to deny services to reservation Indian people and avoid helping alleviate conditions on the reservations.

B. THE SIZE AND SCALE OF TRIBAL GOVERNMENTS

Indian tribes, in federal law, are domestic dependent nations.³⁶ This fundamental legal principle can be most misleading if uncritically applied to policy implementation, in that it suggests that the best model in all respects for tribal governments is simply that of a small nation structurally replicating state or federal governments. In implementing federal Indian policy, it must be remembered that 60% of Indian tribes serve 1000 people or fewer. The issues of size and scale affect Indian policies and programs in several ways.

First, small tribes may simply not be large enough to be able to adopt the government structures and techniques suitable for larger jurisdictions. For example, although maintaining an appropriate

judicial independence is difficult in all governments, a strict constitutional separation of powers containing all the protections offered the judicial branch in state and federal governments may not be appropriate in a small community. Too much judicial independence may give too much power to the courts in a community composed of a few large interrelated families, where virtually everyone has known everyone else all their lives. Separation of functions and institutions (such as some of the juvenile justice mandates) which are necessary and appropriate in larger governments may, if uncritically applied to small tribal governments, result in unnecessarily complicating government, diverting resources from basic needs to meet theoretical needs or provide what amounts to, in context, luxuries.

Second, the effect of federal program guidelines often results in tribes having to maintain separate programs according to funding sources, creating administrative duplication and waste. Small tribes may have sufficient need in a broad category (e.g., juvenile services) but be unable to justify grants from more narrowly-defined programs within the broad category. Even where they can obtain grants from more than one source in the broader category, their efforts to combine programs into a functional program effort appropriate to their needs is often frustrated by federal program guidelines.

C. SUMMARY

Implementation of federal Indian policy within the broader context of national policy presents problems that are complex but not unmanageable, particularly if it is understood that these problems by their nature are not solvable but can be managed effectively by a balancing process. The federal legislative process tends to be directed at specific issues and goals and at least in theory tries to reward results. The Executive branch also operates, as it should, according to policy and program goals and measures itself (and ensures its survival program by program) by the achievement of program goals. The Executive must also develop a manageable set of rules and guidelines that keep programs within statutory limits, try to ensure accountability and try to encourage allocation of funds to achieve their own program goals. It is

difficult in this large and complex but directed set of processes to implement a policy of true tribal self-determination. The reality of government is that at best it is easier for the federal government to assist Indian tribes the fewer special circumstances and problems they present.

The tribes themselves must strike balances. They must try to ensure that their people receive services to which they are entitled as citizens and to secure as much assistance as possible to help them deal with severe economic and social problems without unduly sacrificing their status as governments and jeopardizing the survival of their societies, which is generally believed to depend on their political independence from the surrounding state and local governments. The tribal interest in federal domestic assistance programs on the one hand is based on the unique relationship between the federal government and the Indian tribes and demands consideration appropriate to that relationship. At the same time, tribes have a political interest in being treated by the federal system as other governments are, with due recognition to their permanence both with respect to their role as deliverers of community services and to their police powers in the community.

The difficulty in conducting a study of tribal and Native juvenile justice systems, then, (and particularly in developing suitable recommendations) stems from the largely unarticulated balances that are in fact struck by federal, tribal and state governments. Recommending block grants to Indian tribes for juvenile justice (the ultimate self-determination within the category) does not address the role of the Bureau of Indian Affairs and the Indian Health Service relating to juvenile justice, or the question of whether agencies with related programs in the Departments of Justice, Health and Human Services, Labor and Education should be required to develop targeted Indian programs. Recommending greater individual federal program efforts raises the inescapable spectre of central program direction. Addressing the problems of scale implies the solution that tribes might be forced to participate in intertribal programs which dilute their basic self-government.

In summary, then, the following study should be read and understood against the backdrop of the history of federal Indian law and policy and the issues of federal policy implementation. The balance between national federal policies and tribal

self-determination can be achieved, but it must be attended to on a regular basis. Its achievement is a continuing process. It cannot be achieved once and for all.

CHAPTER ONE ENDNOTES

1. This would include pre-Constitutional Euro-American policy on which historical federal Indian policy is based.
2. Although modern scholars classify them into broad linguistic and other groupings, they were probably more distinct from each other than the European societies, which were related by a common religion, history and intellectual tradition.
3. See generally, *Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823); *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832). States could deal with Indian tribes under the Articles of Confederation and some continued to do so after the ratification of the Constitution, which gave the exclusive Indian powers to the federal government.
4. Ch. 7, 1 Stat. 49
5. *United States v. McBratney*, 104 U.S. 621 (1882).
6. Possible tribal jurisdiction was not an issue in the case. Several lower courts had already held that states had jurisdiction in these cases, but this was the first time the Supreme Court had ruled on the question.
7. See W. Hagan, *Indian Police and Judges* (New Haven: Yale University Press, 1966).
8. CFR courts, a much greater intrusion into tribal self-government, had been initiated several years before, but without specific statutory authority, only on some reservations, and with limited subject matter jurisdiction.
9. *Ex Parte Crow Dog*, 109 U.S. 556 (1883).
10. *U.S. v. Wheeler*, 435 U.S. 313 (1978); *Walker v. Rushing*, 898 F.2d 672 (1991).
11. *U.S. v. Kagama*, 118 U.S. 375 (1886).
12. Ch. 119, 24 Stat. 388 (codified in Title 25, United States Code).
13. F. Cohen, *Handbook of Federal Indian Law*, (1982 ed.), see, pp. 127-143.
14. Institute for Government Research, *The Problem of Indian Administration* (L. Meriam, ed.) (Baltimore: The Johns Hopkins Press, 1928). This study is referred to as the Meriam Report.
15. Ch. 576, 48 Stat. 984 (codified in Title 25 United States Code).
16. Act of Aug. 15, 1953, ch. 505, 67 Stat. 588, the so-called "Public Law 280."
17. P.L. 90-284, §§ 201-701, 82 Stat. 73, 77-81 (Codified at 25 U.S.C. §§ 1301-1341).
18. Indian Self-Determination and Educational Assistance Act, U.S. Code 1980 Title 25, § 450 et seq. Jan. 4, 1975, P.L. 93-638, 88 Stat. 2203.
19. Indian Financing Act of 1974, 25 U.S.C. § 1451 et seq.; P.L. 93-262 (April 12, 1974).
20. 25 U.S.C. § 1901 et seq.; P.L. 95-608 (Nov. 8, 1978).

21. *Talton v. Mayes*, 163 U.S. 376 (1896); *Menominee Tribe v. U.S.*, 391 U.S. 404 (1968).
22. Indian Self-Determination and Educational Assistance Act, 25 U.S.C. § 450 *et seq.*; P.L. 93-638 (Jan. 4, 1975).
23. State, county and municipal governments have a pre-existing delivery system of relatively long standing and sufficient size to give them stability to resist being radically reshaped by federal programs.
24. *U.S. v. Kagama*, 118 U.S. 375 (1886).
25. For example, Congress in exercising the "Indian power" has undertaken many governmental activities, regulatory and service delivery, which are normally considered part of the off-reservation local government responsibility and are not normally considered "commerce," e.g., health and education.
26. *Talton v. Mayes*; *Menominee Tribe v. U.S.*
27. See generally, Chapter Nine, Tribal Property, F. Cohen, *Handbook of Federal Indian Law* (1982 ed.), Michie Bobbs-Merrill, Charlottesville, Virginia.
28. Major Crimes Act, 18 U.S.C. § 1153.
29. Act of Aug. 15, 1953, ch. 505, 67 Stat. 588, the so-called "Public Law 280."
30. P.L. 96-638, 88 Stat. 2203 (codified at 25 U.S.C. §§ 450-450n, 455-458e).
31. *Williams v. Lee*, 358 U.S. 217 (1959).
32. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).
33. *Morton v. Mancari*, 417 U.S. 535 (1974).
34. *New York v. U.S.*, 112 S.Ct. 2408 (1992).
35. Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. § 5601 *et seq.*; P.L. 93-415 Sept. 7, 1974.
36. *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831).

CHAPTER TWO BACKGROUND AND METHODOLOGY

I. INTRODUCTION - ORIGIN OF THE STUDY

With the passage of the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDP Act), long-debated reforms to the ways juveniles were handled by the justice system became federal law. The JJDP Act included a procedure for distributing funds to states for improving their juvenile justice systems if they complied with the mandates derived from the three principles upon which the act was based:

1. Juveniles should never be locked up for behavior that would not bring them to the attention of the justice system if they were 18 years of age or older. This principle is the basis of the Deinstitutionalization of Status Offenders Mandate.
2. If there is no alternative to locking juveniles up in a building that also houses adult criminals, the juveniles and adults must be kept completely separate for the protection of the juveniles. This principle became identified as the Separation Mandate.
3. No juvenile, regardless of what he or she is alleged to have done, should be locked up in a building that is primarily designed to hold adult offenders. This principle evolved into the Jail Removal Mandate.

In May of 1987, the National Coalition of State Juvenile Justice Advisory Groups noted that the JJDP Act did not include Indian reservations or Alaska Native villages in its provisions. The conference organized a National Task Force on Juvenile Justice for Native Americans and Alaska Natives to study the situation and report to Congress with recommendations regarding the reauthorization of the JJDP Act. The task force report was completed and transmitted to Congress in September 1987. The report's executive summary states in part:

The intent of the Juvenile Justice and Delinquency Prevention Act is to ... address

nationwide inadequacies and injustices occurring in the juvenile justice system. The Act was also developed to increase the capacity of state and local rehabilitation and delinquency prevention programs. The Juvenile Justice and Delinquency Prevention Act has excluded tribal populations through various methods including: the absence of enabling legislative provisions, formula funds distribution for states, de minimis exceptions, exclusion of Indian concerns from state plans. The recommendations that are made in this report recognize the Native American juvenile justice needs. If these recommendations are adopted, tribes will be able to access needed resources and, most importantly, a process will be established which will encourage interaction at the tribal, state and federal levels in providing services to Native American/Alaska Native juveniles (Norris, et al., 1987).

The 1988 amendments to the JJDP Act incorporated many of the task force recommendations and required the OJJDP Administrator to conduct a study to determine:

1. how juveniles who are American Indians and Alaska Natives and who are accused of committing offenses on and near Indian reservations and Alaska Native villages, respectively, are treated by the systems of justice administered by Indian tribes and Alaska Native organizations, respectively, that perform law enforcement functions;
2. the amount of financial resources (including financial assistance provided by governmental entities) available to Indian tribes and Alaska Native organizations that perform law enforcement functions, to support community-based alternatives to incarcerating juveniles; and

3. the extent to which such tribes and organizations comply with the requirements specified in [the three mandates], applicable to the detention and confinement of juveniles. (42 U.S.C. 5662)

These amendments also required the Administrator to submit a report to Congress containing a description of the study and a summary of its results. The results of this study, conducted by the American Indian Law Center, Inc., and Walter R. McDonald & Associates, Inc., (AIRC/WRMA), are reported in this document for use by OJJDP in making the mandated report to Congress.

The language of the 1988 amendments to the JJDP Act limited the scope of the study to juveniles accused of committing offenses on or near Indian reservations or Alaska Native villages and to Indian tribes and Alaska Native organizations that perform law enforcement functions. For the purposes of this study, "tribes and villages that perform law enforcement functions" were defined to include all tribes, pueblos and Alaska Native villages that report performing any juvenile justice activities. If an Indian or Alaska Native juvenile was considered to have an ongoing relationship with the tribe or village, or received juvenile justice services from a tribe or village, regardless of where the alleged offense may have occurred, the juvenile was considered part of the target population of the study.

In short, the study reported in this document is an examination of governmental functions administered by Indian tribes and Alaska Native villages, with respect to juveniles under their jurisdiction. It is not a study of the treatment of all Indian juveniles who violate a law, because a number of these youth are handled outside of tribal systems. Nor is it an evaluation of any individual tribe's or village's compliance with the mandates of the JJDP Act, but rather a review of the extent to which the concepts

inherent in these mandates are applied, in general, within tribal juvenile justice systems. To assure that the study secured the most complete, candid, and up-to-date information on the status of tribal and village juvenile justice systems, participating tribes, pueblos and villages were assured of complete confidentiality.

The overarching purpose of this study, to provide Congress with comprehensive information about the status of juvenile justice as administered by Indian tribes and Alaska Native villages, is a complex undertaking in any setting. It has been made more complex by the variety of jurisdictional constraints affecting tribes, pueblos and villages. In order to meet the information needs giving rise to the study, the research was designed to achieve the following research goals:

1. Determine how juveniles are treated under Indian and Alaska Native justice systems, including the use of secure confinement for delinquent, status offender, and non-offender youth.
2. Determine the resources available to provide services for juveniles accused of or adjudicated for status and delinquency offenses.
3. Summarize the extent to which tribes and villages have been able to deinstitutionalize status offenders, separate juvenile offenders from adult offenders in jail, and remove juvenile offenders from adult jails.
4. Identify promising approaches for intervening with juvenile offenders.
5. Prepare, in consultation with American Indians and Alaska Natives, recommendations for improvements in tribal and Native juvenile justice systems.

II. SUMMARY OF DATA COLLECTION METHODS

Achieving the goals of the study required collecting and analyzing data from tribes, pueblos, villages and other government agencies.¹ An eclectic methodology was used that employed several methods to collect data about tribal and village juvenile justice. These included: A) the collection

and reanalysis of extant data; B) a mail questionnaire sent to all federally recognized tribes and villages (All Tribe Survey); and C) individual and group interviews with key tribal and village leaders on-site at a sample of tribes and villages (site visits). Each data collection process is outlined below.

A. EXTANT DATA

Extant data are those which were compiled for purposes other than for the present study. The most comprehensive national system of extant data is the data base of the U.S. Bureau of the Census. 1980 Census data were used initially to classify tribes and villages by size of juvenile population for sampling purposes. Limited reports from the 1990 Census have recently become available in draft form and are still subject to revision. The population reported for some tribes in the 1990 Census is substantially lower than the population recorded by tribal and BIA records, in part due to possible undercounts and in part due to redefinition of tribal boundaries for Census purposes. Possible modifications of Census data are under consideration by the U.S. Bureau of Census. In order to judge the relative frequency of Indian juvenile offenses in comparison to the nationwide occurrence of delinquency and status offenses, the most recent national juvenile justice data (1987) were used (Snyder, et al., 1990).

The study team reviewed a number of other sources of information relevant to tribal juvenile justice. These reviews included federal and state legislation pertinent to tribal jurisdiction and governments. Federal authorizing statutes and rules related to a number of funding programs were reviewed, and a variety of budget and planning documents were analyzed. Team members contacted, and/or met with, several officials involved with justice or intervention service programs to obtain information regarding their programs and to assess problem areas from the perspective of Indian and non-Indian program staff.

The Advisory Board for this study also provided substantial information for the report, as well as proposed a number of useful suggestions regarding the interpretation of data and overall conclusions of the study.

B. THE ALL TRIBE SURVEY

The All Tribe Survey (see Appendix A) was a mail questionnaire distributed to all federally recognized tribes on the current BIA mailing list. An abbreviated survey, modified for clarity and relevance to Alaska Native issues (see also Appendix A), was mailed to Alaska Native villages. The objective of the All Tribe Survey (ATS) was to provide each tribe and village the opportunity to

participate in the study by reporting basic data regarding the scope of the juvenile justice systems of federally recognized tribes and villages that were not available in extant sources. The areas surveyed included the components of their juvenile justice systems, intervention services, use of secure facilities, and numbers of juveniles involved in these systems.

C. THE SITE VISITS

The site visits involved the collection of data from a sample of tribes and villages through semi-structured individual and group interviews with key juvenile justice personnel, review of existing records, and observation. This data collection effort entailed making site visits of three to five days in length to a purposive sample of twenty tribes and three Alaska Native villages. The tribes and villages included in the sample were selected according to geographic location, size of juvenile population, and jurisdictional purview relative to P.L. 83-280.

The primary purpose of the on-site interviews was to elaborate on issues too complex to address in the ATS. The site visits had several objectives:

1. to collect in-depth information and anecdotal data on how the various tribal and village agencies handle juvenile offenders, and on issues affecting juvenile justice;
2. to expand and verify the database provided by the All Tribe Survey and extant data;

3. to determine the policies and practices guiding tribal and village government efforts to handle, care for, and rehabilitate juvenile offenders;
4. to identify federal assistance programs and resources available and employed in handling juvenile offenders;
5. to identify other programs and resources that are accessible and utilized for handling juvenile offenders; and
6. to describe, assess, and record information on promising programs and innovative practices developed and utilized to assist in handling juvenile offenders.

In Alaska, representatives of 23 villages were brought together at four sites to supplement the data collected through the survey and village site visits. Most of these villages have a very small population (less than 100) and are geographically isolated, thus both mail and telephone contact is sometimes difficult to establish.

III. TRIBAL AND VILLAGE PARTICIPATION

The extent to which the data reported in the study are representative of juvenile justice as administered by Indian tribes and Alaska Native villages is somewhat dependent upon the proportion of tribes and villages that participated, and the Indian juvenile population they represent. In order to avoid problems of interpretation, several methods were used to increase the response rate for the survey and other participation in the study. The field was alerted to the study by letter, newsletter articles, and additional publicity through members of national organizations who participated in the advisory group. Special arrangements were made to meet the needs of collecting data in Alaska, including modifications of the survey instrument and the convening of four focus groups. The mail survey was enhanced by intense telephone follow-up and interviewing. Each tribe or village was called to

ensure that it received the survey and to encourage response. These calls also served to answer questions and to clarify any confusion regarding the ATS. Tribes and villages believed to perform juvenile justice functions were targeted to assure an appropriate response rate from them. These techniques were successful in eliciting responses from a substantial number of tribes.

The ATS was mailed to every tribe on the most current list available from BIA in early 1991 when the study was initiated and to every Alaska Native village on the current list used by Rural Alaska Community Action Program (RurAL CAP), Anchorage, Alaska. Some combinations of tribes and villages responded jointly, so that it was necessary to eliminate duplications. When these duplications were eliminated, a total of 315

remained. Of these, a total of 162 tribes (51.4%) participated in the study in some way and 150 (47.6%) returned a completed ATS in time to be included in the analysis. Ninety-three (62%) of the tribes that responded indicated that they administer some juvenile justice activities and, for the purposes of the study, were deemed to provide law enforcement functions. Much of this report will focus on the responses from these ninety-three tribes.

Of the 185 Alaska Native villages that received the

survey, 34 replied to the survey and an additional 14 submitted their village data in the focus groups, so that a total of 48 villages (25.9%) participated in the study. Most do not administer juvenile justice activities as defined by this study.

The tribes that participated in the study are generally representative of all tribes in terms of the distribution of jurisdictional status, population size and geographical distribution.

A. JURISDICTION

As described in more detail in Chapter One, issues of jurisdiction relating to Indian tribes are complex. Many tribes exercise exclusive jurisdiction over Indian youth while on the reservation, except for offenses covered by the Major Crimes Act. For the balance of this report, these tribes are referred to as "exclusive jurisdiction tribes" and include 72 of the 93 tribes reporting on the ATS that they administer juvenile justice services. These tribes also include those that were previously under P.L. 83-280 jurisdiction, but have since reassumed jurisdiction. Some tribes, and all Alaska Native villages except Metlakatla, do not have exclusive jurisdiction because the state has jurisdiction over juvenile offenders by virtue of P.L. 83-280 or other federal statutes. However, some of these tribes exercise concurrent jurisdiction over juveniles, so that some juvenile justice services or functions are adminis-

tered by the tribe and others by the state(s) in which the reservation is located. These tribes are referred to subsequently as "concurrent jurisdiction tribes" and include 21 of the 93 tribes administering juvenile justice activities that responded to the ATS.

Of the 315 tribes included in the study, 148 (47.0%) have been identified as tribes that are not under state jurisdiction and 167 (53.0%) tribes that are. ATS responses included 56.8% of the former and 38.8% of the latter tribes. Since exclusive jurisdiction tribes generally have greater responsibility for juvenile justice functions, they were oversampled for the site visits. Site visits were made to 14 of the exclusive jurisdiction tribes (9.5%) and 6 tribes (3.5%) that are under state jurisdiction but may be exercising concurrent jurisdiction.

B. JUVENILE POPULATION

The population of Indian juveniles represented by the participating tribes and villages was determined using the 1990 Census data. According to the Census, there were 266,171 Indians under the age of 18 living on reservations or tribal trust lands in 1990. The 150 tribes responding to the ATS in time to be included in the quantitative analyses that follow in this report include 196,950 (74.0%) Indians under the age of 18. The 93 tribes that indicated they administered some juvenile justice functions

account for 29.5% of the total number of tribes, but 65.4% of the total Indian juveniles less than 18 years of age. These tribes formed the basic sample for the data analyses used in this report. An additional 57 (18.1%) tribes, representing 22,887 (8.6%) of the Indian juvenile population, completed the ATS but indicated that they administer no juvenile justice activities. Because these tribes have little involvement in the juvenile justice system, their responses have not been included in the major

analyses of this report. The Census also reported 19,242 Alaska Native juveniles aged 0-18 living in Alaska Native villages. The 48 villages that participated in the study included 6,212 (32.3%) of

the juveniles in this age range. Exhibit 2.1 shows the juveniles included in the study compared to all Indian and Alaska Native Juveniles.

Exhibit 2.1

POPULATION OF INDIAN and ALASKA NATIVE JUVENILES RESIDING IN TRIBES and VILLAGES INCLUDED IN THE STUDY			
	Total	Residing in Tribes & Villages in Study	% in Study
Indian Juveniles	266,171	196,950	74.0 %
Alaska Native Juveniles	19,242	6,212	32.3 %

As shown above, the study received responses from tribes that, taken as a whole, include a substantial portion of juveniles that reside on reservations. In addition, the responding tribes were typical of the variation in tribal size that exists across the country. Based upon the 1990 Census data, 158 tribes have fewer than 100 Indian juveniles under 18 years of age. Of these 44.3% responded with a completed ATS. An additional 105 tribes had a population of

100 - 999 Indians less than 18 years old, with 42.8% submitting a completed ATS. Only 52 tribes had a population of 1,000 or more Indian juveniles under 18 years of age; however, 67.3% of these tribes submitted an ATS. Site visits were made to tribes in each of these juvenile population categories, except for tribes with under 100 juveniles. Exhibit 2.2 presents tribes responding to the ATS by their juvenile population size.

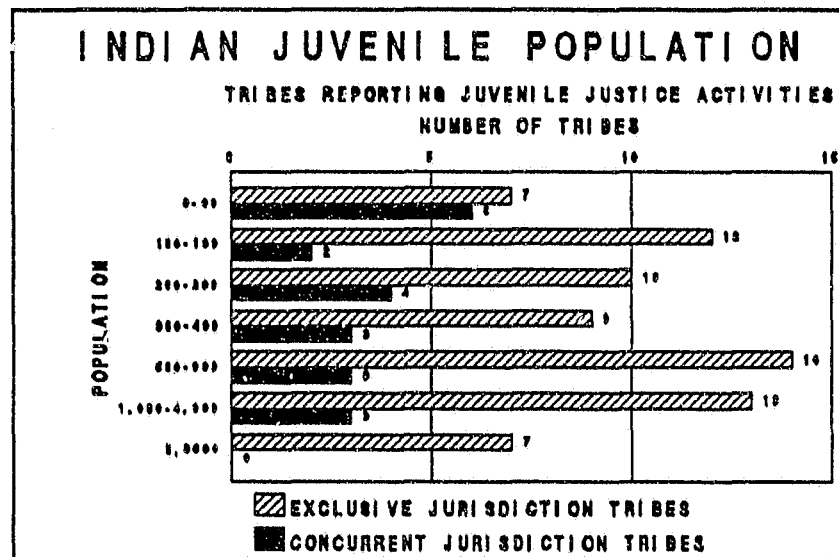
Exhibit 2.2

ALL U.S. TRIBES COMPARED TO TRIBES RESPONDING TO ALL TRIBE SURVEY			
# of Tribes by Size (Juvenile Pop. Ages 0-18)	All U.S. Tribes	Responding Tribes	% of Tribes Responding
00-99	158	70	44.3%
100-999	105	45	42.8%
1,000 +	52	35	67.3%
TOTAL	315	150	47.6%

The 93 tribes that reported on the ATS that they administer some juvenile justice activities include some of the smallest tribes as well as the largest. Overall, 14 percent of the 93 tribes reported a population of fewer than 100 youth aged 10 through 17. An additional 30 percent reported a population of 100-299 juveniles from 10 to 18 years of age. Only 7.5 percent reported a population of 5,000 or more juveniles in this age range. The smallest tribe administering juvenile justice activities reported a juvenile population of 18. The largest tribe re-

ported a population of 41,956 Indian juveniles in the 10 through 17 age range. The average juvenile population for the 93 tribes reporting that they administer some juvenile justice activities was 1,623 (1,184 with the largest tribe excluded). Exclusive jurisdiction tribes, with an average juvenile population of 1,966 (1,296 with the largest tribe excluded), are considerably larger than those operating under state jurisdiction, which have an average juvenile Indian population of 446. This difference is depicted graphically in Exhibit 2.3.

EXHIBIT 2.3



C. GEOGRAPHIC DISTRIBUTION OF TRIBES

The Indian tribes are dispersed fairly widely across the country, but can be grouped into roughly four areas: East, Northern Plains, Southwest, and Northwest. A total of 21 tribes are located in the East, of which 42.8% submitted an ATS. Of the 45 Northern Plains tribes, 57.8% submitted an ATS. The Southwest includes over 200 tribes. An ATS was received from 41.5% of the Southwest tribes. The Northwest includes 49 tribes, 65.3% of which responded with a completed ATS. Tribes from all of the above geographical areas were visited by the study team.

In addition to the Indian tribes located within the contiguous 48 states, the study included juvenile justice issues pertaining to Native Americans residing in Alaska. Non-urban Alaska Natives generally reside in villages which are widely dispersed across the state. As stated earlier, 185 Alaska villages received the ATS and 25.9% responded through the ATS itself or through focus group sessions conducted by the study team.

IV. DATA ANALYSIS

Upon receipt, completed ATS forms were logged and an initial screening was done to assure that the subset of key questions were answered by the tribe and that identifying information was included on the form. Conflicting responses were noted by the screener. As necessary, follow-up phone calls were made to respondent tribes in order to obtain critical data that were missing or to clarify discrepancies in responses.

Upon completion of this initial quality control screening, the data from the forms were entered into a specially designed automated information system. Turn-around documents which included all entered data were produced and checked for accuracy of data entry. Errors were corrected and new turn-around documents produced and checked.

Due to the fact that most of the data on the ATS were designed to be descriptive in nature, and

that many of the numerical data provided by the tribes were estimates, the data did not warrant elaborate statistical analysis. Totals, averages, percentages, and cross tabulations were used. Analytical reports were generated using spreadsheet software. Results related to all data supplied by the ATS's were reviewed and analyzed by the study team. Many of the most pertinent results are presented in tabular form in this report.

A number of tribes provided copies of their tribal codes related to juveniles. A sample of these codes received special analysis to study the OJJDP mandates more closely and to examine other issues related to the handling of juvenile offenders by tribal courts. Codes were reviewed, with the assistance of a tribal court judge, and results of this comparative analysis were recorded in a matrix of pertinent factors. These results are incorporated in Chapter Four.

V. SUMMARY AND CONCLUSIONS

The tribes participating in the study include a reasonable representation of most categories of tribes both in terms of the survey data acquired from the ATS and the more qualitative data gleaned from the site visits. The tribes responding to the ATS, and those to which site visits were made, represent a wide range of geographic and size variation and reflect the diversity of tribal demographics. Consequently, we believe that the results of this study accurately reflect the status of juvenile justice as administered by American Indian tribes and Alaska Native villages.

Although the level of participation of tribes in this study was positive, the difficulties of compiling complete, accurate and comparable data across all tribes became apparent. Tribes' abilities to supply

specific numbers of children involved in status and delinquent offenses varied among the responding tribes, with some tribes clearly unable to provide statistics from their court caseloads. Provision of budget and funding source data was equally varied among the responding tribes. The problem is further exacerbated by the lack of Indian-specific data in some federal and state government agencies.

Inability to obtain important caseload, services and budget data has implications far beyond juvenile justice services. The inability of some tribes to maintain and report accurate service, budget, and needs data is a substantial limitation in service planning, funds acquisition, and tribal advocacy endeavors as well.

VI. RECOMMENDATIONS

The inadequacy of data systems is a persistent problem in Indian government administration at all levels. As a practical matter, national data are necessary to support program planning, budgeting and evaluation, and to justify continued and increased federal funding support for tribal and Native juvenile justice systems. The Bureau of Indian Affairs, the Indian Health Service and the Office of Juvenile Justice and Delinquency Prevention do not have authority to require tribes to collect and report data suitable for national policymaking. For Congress to give them this authority tied, for example, to the tribal receipt of federal funds, would run counter to the federal policy of tribal self-determination. But the Indian tribes should consider the development of a voluntary national data system to support their requests for additional funding.

Many tribes need assistance in the development of data systems for their own courts and youth serving agencies. The development and improvement of existing tribal data systems will require technical assistance efforts and federal funding. Such systems will need to integrate data for tribal planning and priority setting processes. To accomplish this, the information must provide data across the full spectrum of justice and human services at a level of information appropriate to the service delivery system of each tribe.

2.1 BIA SHOULD IMPROVE ITS CAPACITY TO COLLECT AND PROCESS JUVENILE JUSTICE AND LAW ENFORCEMENT DATA.

BIA should improve its own capacity to collect and process justice system and law enforce-

ment data within its own system and work with tribes to enhance their ability to support these systems.² BIA should assess the deficiencies of the current system and reassume its responsibility to process data received from the tribes (and its own staff and agencies that serve tribes) and provide the tribes with timely feedback, analysis and summaries of the information. BIA also should urge tribes to participate in national data-gathering efforts in support of federal funding.

2.2 OJJDP SHOULD PROVIDE TECHNICAL ASSISTANCE TO TRIBES IN THE PLANNING AND DEVELOPMENT OF JUVENILE COURT AUTOMATED AND MANUAL SYSTEMS.

OJJDP and other federal agencies with specific expertise in justice system and social service information systems should provide technical assistance to tribes in the planning and development of automated and manual information systems related to court processing and youth services provision.

2.3 CONGRESS SHOULD INCREASE THE FUNDING OF TECHNICAL ASSISTANCE REGARDING INFORMATION SYSTEMS.

Congress should increase the funding of technical assistance to tribes in order to improve tribal human services and juvenile justice information systems.

CHAPTER TWO ENDNOTES

1. Hereafter, the report adopts the language used by Congress in requiring the study. Thus, the references made to tribes and villages should be read to include pueblos as well.
2. The Tribal and Bureau Law Enforcement Services Automated Data Report, an annual report on offenses and dispositions, has been in place for a number of years. However, the last official publication of this report (at the time of this study) was the 1985 report (1984 data).

CHAPTER THREE TRIBAL COURTS

I. INTRODUCTION - TRIBAL COURTS AND JURISDICTION WITHIN INDIAN COUNTRY

The exercise of tribal judicial power is as diverse as the tribes themselves. Three types of courts exercise jurisdiction within Indian country today in conjunction with tribal governments: traditional justice systems, Courts of Indian Offenses (referred to as CFR courts) and tribal courts. The majority of federally recognized tribes outside of Alaska and California have established courts of general jurisdiction.¹ That is to say, these tribes exercise civil and criminal jurisdiction comparable to that of the states, limited only by the tribal constitution itself or by federal action.² Many tribal governments have established combinations of tribal courts and traditional justice systems or recognize the operation of CFR courts as complementary to tribal courts and traditional justice systems.

A number of tribes employ traditional practices for dispute resolution, including counseling by extended family members or traditional leaders, intra-family and community-wide meetings, although few have retained solely traditional systems. Traditional justice systems provide informal and formal dispute resolution. Most traditional legal systems operate under customary law and procedure which, ordinarily, is not written. Traditional justice systems also recognize the authority of individuals or groups such as tribal leaders or tribal councils to resolve disputes. The authority of tribal leaders and councils in traditional systems, since it is not based on written law, derives from the continuing adherence of tribal members to long held beliefs and principles.

Courts of Indian Offenses (CFR Courts) exercise federal authority and thus are outside the scope of this study.³ They receive annual appropriations from Congress, although their establishment was never explicitly authorized by statute. Although as federal entities they would appear to be subject to constitutional restrictions, it is not clear whether and in what sense general federal statutory mandates apply to them. CFR Courts have been recognized by federal courts as possessing authority

similar to tribal courts.⁴ They may apply tribal ordinances designed to preserve the peace and welfare of the tribe if approved by the Secretary of the Interior.⁵ A few CFR courts appear to be operated to some extent by the tribes they serve.

In the last thirty years, tribal judicial functions increasingly have been carried out by systems and institutions similar to those of non-Indians rather than by legal systems based solely on traditional practices of the tribe. But even in non-traditional systems, tribal dispute resolution takes many forms and may be exercised by appointed or elected judges, tribal leaders designated by tradition or culture, or intertribal court systems by grant of tribal authority.

Tribal courts operate under codes developed by the tribes.⁶ These codes sometimes are patterned after the code governing the Courts of Indian Offenses found in the Code of Federal Regulations or prototypes developed by the BIA after the enactment of the Indian Reorganization Act. For the most part, the operation of tribal courts is similar to those of rural state or county courts even though the jurisdiction of tribal courts may be broader.

The All Tribe Survey was mailed to the federally recognized tribal governments listed in the Bureau of Indian Affairs records dated October, 1990. Ninety-three tribes with tribal courts responded to the ATS. In addition, seven tribes with traditional legal systems responded to the ATS.

In addition to tribes, federal and state governments may exercise jurisdiction over juveniles living within the boundaries of Indian reservations and in Indian country.⁷ Federal criminal jurisdiction may be exercised in one of two ways: in federal district court through the Major Crimes Act and the General Crimes Act,⁸ and in Courts of Indian Offenses (CFR Courts). Murder and lesser included offenses, such as manslaughter, are not

included in the jurisdiction of the Courts of Indian Offenses. When such crimes are committed, charges cannot be brought in CFR court, apparently because they are not enumerated offenses in the CFR and because the wrongdoer can be prosecuted in federal district court under the Major Crimes Act. If the U.S. Attorney declines prosecution nothing further can be done at the reservation level.

Federal jurisdiction over Indians also exists in tribes with tribal courts, but only for offenses defined in the Major Crimes Act. (This applies to both adults and juveniles.) Unlike tribes with CFR Courts, those with tribal courts may exercise jurisdiction concurrent to the federal system in cases involving major offenses. However, tribes will usually defer to federal jurisdiction in these cases because of the sentencing limitations imposed on tribal courts by the Indian Civil Rights Act. Even so, if federal jurisdiction is declined, the tribe may attempt to impose its rather limited sanctions and interventions to prevent the crime from going unpunished altogether.

II. TRIBAL JUVENILE COURT PROCESS

As indicated throughout this report, tribal courts patterned on non-Indian courts have been developed by some tribes, depending, to some degree, on each tribe's customs and needs. Courts patterned after English law principles originally developed as a result of outside pressures, the most notable being the enactment of the Indian Reorganization Act and the Indian Civil Rights Act. Separate children's courts are a relatively recent innovation for tribes and not all tribes have separate codes, courts, judges, or procedures for children. Although there are generally recognized juvenile court procedures, states have developed approaches that meet local needs and may differ from another state's court procedures. The same can be said for tribes. The following describes a generally-acknowledged process, but does not deal with specific tribal differences.

Custom or traditional tribal court practices were not examined during this study and we do not attempt

State jurisdiction over Indians on reservations occurs through Congressional authorization, most commonly P.L. 83-280 (PL 280).⁹ A grant of jurisdiction to states under PL 280 did not explicitly divest the tribes of civil or criminal jurisdiction.¹⁰ This study identified a number of tribes exercising delinquency jurisdiction under tribal law concurrent to that exercised by states. Tribes elected to exercise jurisdiction over their juveniles because of (1) the refusal of states and counties to provide law enforcement or services and/or (2) the reluctance of tribes to place their children in the custody of state courts and agencies. The study also identified many tribes within PL 280 states or similar jurisdictions which have established courts of special jurisdiction, primarily to review matters arising under the Indian Child Welfare Act, abuse and neglect, dependency, or to enforce other regulatory authority, such as hunting and fishing. State jurisdiction over Indian juveniles also occurs when crimes are committed outside reservation boundaries. In some cases the state may transfer the juvenile to tribal court, either before or after state actions are taken.

to describe any process used in such courts. However, the Navajo Peacemakers Court has a process manual available which sets up a uniform procedure throughout the Navajo Nation, but does not attempt to cover substantive issues.

A juvenile accused of committing a delinquent offense or a status offense ordinarily is brought into a tribal juvenile system in one of several ways: being apprehended at the time of the violation; as a result of being detained by an officer with reasonable suspicion to believe the juvenile has committed an offense; as a result of a complaint being filed with law enforcement; as a result of a custody order or warrant being issued; or, as a result of a petition being filed in tribal court. Being caught in the act is most likely to result in a minor being taken into custody only temporarily, until parents or family can be notified to retrieve the minor.

The majority of tribal juvenile law practice is patterned on the rehabilitative, rather than the punitive mode, which also reflects many tribes' traditional philosophy regarding children. Most tribes, thus, do not place a minor in a lockup facility unless no other alternative is available, and then only for very short periods. A number of tribes cannot hold a juvenile because they do not have access to any lockup facility. If a child is taken into custody and held for any period longer than needed for notification of family and pick up, the reason is either because the child needs to be detoxified (the most likely reason) or the child has committed a violent crime (least likely reason since the consensus in interviews is that violent juvenile crimes are rare).

Most codes provide some kind of mechanism to review detention of juveniles - i.e., requiring the scheduling of a court custody or detention hearing within a short period of time (24 to 72 hours) after a child is taken into custody to determine the propriety of the custody if the child has not been released earlier. A number of law enforcement officers stated during interviews that they often merely warn and send a minor home when they observe an infraction and some codes recognize this authority of police officers. (*See Model Children's Code*, 1981, AILC, Inc.; *Tribal Juvenile Justice Code*, 1987, NIJC, Inc.)

If a minor is not released immediately, certain tribes have authorized an official to review the detention and release the minor according to set criteria. The custody or detention hearing is held when detention is continued despite this review. This or some other kind of preliminary hearing is held also to test the sufficiency of probable cause, and to determine the necessity of continued detention. In many instances, if the juvenile and the parents admit the allegations and agree that disposition is appropriate, the court may immediately proceed to disposition, with or without a probation report, even if a petition has not been filed. The judicial personnel in the small communities are very likely to know the juvenile and not need a report. In addition, the overwhelming majority of dispositions involve ordering the juvenile to attend school regularly, to

attend some kind of treatment program or counselling (usually dealing with substance abuse), to do community service, or to refrain from the conduct which got the juvenile into trouble.

At some point, either before or immediately after a petition is filed, a number of tribes provide an informal procedure, by which a minor and the family can enter into a voluntary diversion program. If the program is completed successfully, the petition either is not filed or is dismissed. The majority of tribes tend to use the formal process, however, most likely because of a lack of personnel and resources forestalling use of voluntary diversion, plus the fact that juveniles are rarely incarcerated, even after they have been adjudicated as offenders.

When necessary, and depending upon the particular tribe's procedure, a petition will be initiated either by a law enforcement officer or by a prosecutor or presenting officer who has the discretion to file a petition with the court. Some tribes allow a private party to initiate a petition by filing a complaint with the court. If a petition is filed and none of the preliminary hearings has been held, a preliminary hearing may be held to test probable cause. This hearing also can become a dispositional hearing if the juvenile and parents admit the allegations and agree to disposition. Most tribal codes require that, before adjudication can be skipped, both the juvenile and parents must admit, voluntarily, the allegations and knowingly waive the right to an adjudicatory hearing.

An adjudicatory hearing is held to determine whether the evidence supports a finding that the juvenile committed the illegal acts charged. Although a number of tribes have provided that predispositional reports may be prepared, they may not be necessary, depending upon the circumstances. Being able to prepare such reports also presupposes that the resources and personnel are available to do them. This is not the case for many tribes. Post-adjudicatory dispositions are the same as those indicated above, plus fines may be ordered; some tribes do not allow parents or families to pay fines imposed on youth, but this is not always true. Ordinarily, as in state court, dispositional alternatives begin with treatment oriented, non-

placement options and escalate as the number of charges, rate of recidivism, and severity of the charges escalate.

Since all of the tribes interviewed or reporting indicated that the number of alcohol-related juvenile offenses ranged from 75 to 100%, the issue of treatment versus punishment is crucial. Similar to many non-Indian juvenile courts, tribal courts look to treatment as the first option for alcohol and substance abuse offenders. However, such treatment options for tribal courts are very limited for juveniles. Some courts, in desperation, use jail time to detoxify juveniles and keep them from continued abuse.

Although tribes with extensive children's codes allow some kind of appeal, the actuality is that appeals are rare. Some tribes utilize intertribal arrangements for appellate review. Others use their own tribal councils for this purpose. Although the overlap between judicial and legislative branches would seem to abridge common tenets of separation of powers, it must be remembered that tribal councils are not totally analogous to the legislative branch in the non-Indian world. In fact, as noted earlier, these councils may sometimes be the direct arbiters of legal disputes through a traditionally-derived role supported by the tribe.

A major problem for tribal courts is that Bureau of Indian Affairs employees, Indian Health Service employees, and state human service or juvenile detention employees may not honor tribal court orders to evaluate, service, or testify regarding alleged and adjudicated offenders. At best, for the

federal personnel, they may comply voluntarily. The lack of a clear mandate for BIA and IHS personnel to support tribal courts is a serious issue. These federal agencies are the sole service providers for some tribes and major providers for others. For tribal judges to have significant dispositional power, as is the case for state juvenile judges, the primary service arms in their communities must support the tribal court system.

Cooperation from state agencies is another issue related to tribal judges' ability to obtain needed services for their youth. Such cooperation usually occurs only if there is an intergovernmental agreement. Although the study found evidence of specific agreements related to children under tribal orders receiving services from state agencies, their existence is quite rare. This means that the majority of dispositional alternatives tribes need are not available. Some state institutions have agreed to accept joint custody of the juvenile, but a number of tribes are uneasy about joint custody arrangements because they tend to blur the boundaries and make it difficult to enforce orders when necessary.

Tribal judicial practice tends to mirror that of non-Indian court systems. Some processes tend to be somewhat informal due to the size of the communities involved and the use of traditional practices by tribal courts. Major problems found in the practice of tribal juvenile courts derive from the lack of recognition by federal and state agencies and from the serious shortage of dispositional alternatives for the youth who come before them.

III. TRIBAL COURT STAFFING

Tribal systems of government, with few exceptions, do not have the classic tripartite constitutional structure (legislative, executive and judicial) found in state and federal governments, both because of their historical background as relatively new forms of government imposed on tribal societies by the federal government, and because of the unique requirements of their small size and the small societies which they serve. For these reasons, tribal

court systems must be compared with other systems by analogy, and comparisons must recognize the combining for some purposes of judicial and executive functions within what is considered (e.g., for budget purposes) the court system.

Tribal courts perform the same basic adjudicatory and disposition/sentencing functions as non-Indian courts.¹¹ All systems of justice must include

judicial, prosecutorial, defense, and management and support functions and must be sufficiently staffed to handle the caseload burden of the particular court. The performance of these functions may involve judges, prosecutors, probation and parole officers, public defenders and defense attorneys or advocates, and support personnel such as administrators, bailiffs, clerks, court reporters, and secretaries. Whether or not a specific tribal court has all or only some of these staff positions may depend upon a number of factors. The size of the tribe and its court caseload are among the factors determining the staffing of the court. However, an equal, or sometimes greater, determining factor in the staffing of the court is the amount of funding available for these positions. This issue will be discussed later in this chapter.

Optimal court staffing cannot be totally predicated upon the size of the tribe or its caseload. Minimum requirements for separate staff (e.g., judicial and prosecutorial functions performed by different persons) exist for small courts as well as large. Courts are charged with the responsibility to balance the rights of defendants, victims, and the community, although they may differ in how these protections are implemented. Courts are structured to balance these interests and to arbitrate competing interests. In non-judicial settings, assuming that a staff person has the required skills and that the workload is low enough, efficiency may be increased by having one staff member perform several functions. To properly perform some roles in the court system, it sometimes is necessary to have separate persons involved to represent various interests.

Non-Indian courts characteristically have a strong commitment to the adversarial process. The ability to protect the rights of all parties in these courts is thought to depend upon a neutral judge and separate prosecution and defense personnel representing the respective interests of the government (and, in some sense, the victim) and the defendant. Prior to the court decisions of the last twenty or thirty years, juvenile proceedings in state courts tended to be exceptions to some aspects of this process. Juveniles were not given an absolute right to representation. Compared to adult proceedings, judges performed a broader, more active, and less neutral role in

determining the guilt or innocence of the juvenile. More recently court rulings have changed this so that juvenile delinquency proceedings in non-Indian courts have adopted many of the same procedures utilized in adult criminal courts. These changes have included the right to appointed counsel for juveniles when they are unable to afford private attorneys. Dependency and status offender proceedings have also followed this trend with the advent of guardian *ad litem* programs, volunteer advocates and other means of providing representation for the children involved.

Tribal court systems may depart from the formal adversarial system, in part to preserve traditional tribal concepts of justice within modern court systems and often because of the scarcity of resources. Both prosecutorial and defense functions may be affected. Tribal courts may differ from non-Indian courts in the means by which cases are prosecuted. Although many tribal courts employ prosecutors, and in juvenile proceedings some have specialized "presenting officers", some courts rely on police, probation officers, or social service personnel to present cases. In tribal courts where caseload size makes it difficult to justify or maintain a prosecutor position and/or where funding limitations make it impossible to do so, non-prosecutor staff must serve dual roles. In such circumstances, the judge may carry the added burden of assuring fair presentation of the prosecution case. The judge's task of assuring that rules of evidence and testimony are followed may be more difficult under these circumstances.

Presentation of the tribe's case is not the only departure from the adversarial process which is occasionally found in tribal court systems. The Indian Civil Rights Act specifically states that the right to appointed counsel is not required of tribal courts¹² (although many tribal court systems have mechanisms for the provision of defense attorneys or defense advocates). Occasional unrepresented defendants in some tribal courts place the additional burden upon the presiding judge of assuring that the defendant's rights are protected. Although having judges perform some prosecution and defense functions may be seen as a weakness of tribal justice systems, it can also be argued that the judge can use

this expanded role to reduce the adversarial nature of the proceeding. This may create a desirable environment, particularly in matters involving minors.

As can be seen from the above discussion, the impact of the variation in staffing among tribal courts is more than an issue of how many cases the court system can handle. The presence or absence of positions affects the conduct of court proceedings and the roles of the various staff involved. It is not possible to say dogmatically that the proceedings are inherently less fair to the parties simply because a court does not provide public defense or that it has non-prosecutors presenting cases. In fact, some would argue that such proceedings offer a better opportunity to resolve cases amicably and may help focus the proceeding on the needs of the defendant, the victim, and the community. This may be particularly relevant in small communities (which describes most tribes) where rigid procedural re-

quirements could frustrate justice (and consume a disproportionate share of very scarce resources). Reducing the adversarial nature of hearings is especially appropriate in juvenile proceedings which have a rehabilitative goal.

The All Tribe Survey was used to obtain a general picture of staffing in tribal courts across the country. Eighty-five tribes with tribal courts responded to the staffing-related questions in the ATS. The results are shown in Exhibit 3.1. The ATS requested that tribes indicate the number of personnel in a variety of court positions. Due to the burden involved, tribes were not asked to determine full-time and part-time equivalency of positions. In evaluating the numbers of personnel cited by the tribes, it is important to recognize that some staff positions may be part-time and that the same staff person may be counted more than once even though they were asked to count a person only in their primary position.

EXHIBIT 3.1
TRIBAL COURT STAFFING

POSITION	# OF TRIBES WITH POSITION (N=85)
Judges	84 (99%)
Juvenile Judges (hear only minors' cases)	18 (21%)
Prosecutors/Presenting Officers	66 (78%)
Public Defenders	31 (36%)
Court Administrators/Clerks	81 (95%)
Bailiffs	31 (36%)

A. JUDGES

Twenty-five of the 84 tribal courts with judges had only a single judge for both adult and juvenile cases.¹³ Seventy-three of the 84 tribal courts had four or fewer judges. In fact, six of the seven largest tribes (those with over 5,000 Indian juveniles) had four or fewer total tribal court judges. Ninety-four percent of the respondents completing the All Tribe Survey reported that court personnel

included a chief judge, 69% reported having associate judges but only 21% reported having specific juvenile judges. For the purpose of the study, juvenile court judges were defined as judges who hear only cases involving minors. Although the judges reported to be juvenile judges in the ATS may be part-time judges, in their role as judges they hear only juvenile cases. Only 18 tribes indicated

that they have at least one juvenile judge. Of these 18 tribes, eight were tribes that have less than 1,000 Indian juveniles. This suggests that the existence of specialized juvenile judges is not directly a function of the size of the tribe. It should be noted that a number of tribes that indicated their judges handle

both adult and juvenile cases, also stated that the juvenile court is held as a separate session of tribal court. Therefore, it is correct to state that these tribes have discrete juvenile courts, however without specialized juvenile court judges.

B. PROSECUTORS

Although most tribal courts have prosecutors (and/or presenting officers as they are sometimes referred to in dependency and delinquency cases) for juvenile cases, 19 tribes (22%) indicated that they do not. The presence of prosecutors was most common in the larger tribes. Only one of the 23 tribes with over 1,000 juveniles reported having no prosecutor staff. Smaller tribes may find it difficult to maintain a prosecutor, even on a part-time basis, due to low caseloads and lack of court funding. As suggested in the 1978 tribal court study by the National American Indian Court Judges Association¹⁴, lack of formal prosecutor staff is sometimes as detrimental to the defendant as it is for the prosecution. This conclusion is drawn from the fact that prosecutors often fulfill diversion and case screening functions as well as prosecuting cases. Having trained staff determine the presence or absence of adequate evidence can eliminate fruitless or inappropriate juvenile hearings. In addition many prosecutors, at least for first offenders and minor offenses, are strong advocates of diversion.

Perhaps the most desirable means of prosecuting juvenile cases is not only to have trained prosecutors, but to have specialized juvenile prosecutors. Only one-fourth of the respondents reported juvenile presenting officers.¹⁵ Although

tribes that have presenting officers indicate the benefits of their training to the court and to the youth and families involved, the lack of such staff was not raised as a major concern by those tribes that do not.

The major difference between tribal prosecutors and prosecutors who operate in non-Indian courts is that tribal prosecutors often must perform intake, investigation, and assessment functions. The reason for this is that over 50% of the tribes operate without probation officers. The role of probation officers in tribal courts is discussed in more detail in Chapter Five. Tribal courts that do not have prosecutors may fill this gap by using other personnel to process charges and present cases in court. Tribes reported using police officers, probation officers, and social service staff for presenting juvenile cases in court. Although a number of these tribes reported an interest in hiring prosecutors, many indicated that these alternative staff have received specialized training from the court or outside sources and do an adequate job in this role. Such arrangements may place additional burdens on the presiding judge to assure that proper evidentiary and other procedural rules are followed in the prosecution of the case.

C. PUBLIC DEFENDERS

Although the Indian Civil Rights Act does not require tribes to provide legal counsel for defendants, more than one-third (31 of the 85 tribal courts, or 36%) have specific staff for this function. A number of other tribes make representation available to defendants by other means. In contrast

to prosecutors, the ATS responses regarding the existence of public defender staff did not show a correlation with tribal size. Seventy-one percent (34 of 48) of the tribes with fewer than 500 juveniles have public defenders. Only 54% of the larger tribes (20 of 37 of the tribes with over 500 juvenile

population) have public defenders. Interviews indicated that many tribes that do not employ full or part-time public defenders do set aside funds to appoint lay advocates or attorneys to represent juveniles in delinquency proceedings. (The ATS did not directly query tribes regarding representation for juveniles involved in dependency, status offender, or child protection proceedings.)

Public defense functions (in both tribal and CFR courts) may be provided through a number of alternative mechanisms. Some courts may provide funding for the defendants to obtain private counsel in juvenile cases. One tribal court described a unique arrangement where 3rd year law students from a nearby university represent juveniles in tribal court supervised by a law professor. Other tribes

may have access to state or local public defender programs located near the reservation. Nineteen tribes reported in the ATS that public defense for juveniles is provided by state/county public defender agencies. Another commonly cited alternative to public defenders is the use of lay advocates to provide representation for juvenile defendants. Many of these advocate programs have staff trained by the tribal court or through other training programs. Some of these programs use volunteers exclusively; a few indicated that advocates are paid by the court. Of the 93 tribes that responded to the ATS and indicated that they perform some juvenile justice services, only 34 (37%) reported that there is no public defense function available for juveniles at all. Juveniles in these tribal courts do not have separate counsel unless they obtain it through their own resources.

D. SUPPORT PERSONNEL

Tribal courts, like their non-Indian counterparts, depend upon a variety of staff for assistance in processing cases, maintaining records, scheduling cases, and performing overall financial, planning, and management functions. Tribal courts vary in the number and type of support positions maintained by the court. The functions performed by various types of staff may differ from one court to another. As expected, larger courts tend to have more support personnel than smaller tribal courts. A large court may employ a court administrator, accountant, grant specialist, etc. A small court with one secretary or clerk may rely on this person for virtually all administrative tasks - from typing correspondence to managing finances and obtaining funding. Normally courts that rely on a single administrative support staff member have smaller caseloads and less cumbersome management pro-

cesses and therefore have less need for support staff. However, it is difficult for one staff member to acquire all the expertise required to perform record maintenance, manage court dockets, type orders and opinions, develop grant applications, and perform financial and personnel tasks for which they are often responsible. Interviews indicate judges, in the absence of court administrators, may need to assume management duties including intake, docketing and scheduling of cases, case flow and records management.

Most tribal courts (81 of the 85 responding) have at least one clerk or court administrator. Eighty-two percent of the tribes with courts completing the ATS have court clerks while only one-third have juvenile clerks. Less than half have court administrators.

E. INTER-TRIBAL AGREEMENTS FOR STAFFING TRIBAL COURTS

Some tribes have developed inter-tribal arrangements in which court staff are shared among their tribal courts. An individual judge may serve

several tribes as a circuit rider, designated by each tribe separately. An example is the Northwest Intertribal Court System (NICS). This organization

provides court personnel for approximately 15 tribes located in the northwestern part of the United States. Judges, prosecutors, and public defenders travel to the tribal court located on the reservation and operate under the individual tribe's legal codes and procedures. NICS also offers tribes assistance in development of tribal court codes and provides training of local court staff. NICS receives funding from BIA, from grants and other sources. Much of

the non-BIA funding is used for special programs such as tribal court code development and alternative dispute resolution programs. The individual tribes are responsible for funding support staff (e.g., clerks) and maintaining their own court facilities. NICS provides a cost effective means for tribes to acquire a full complement of court personnel without each tribe employing these staff directly.

IV. TRAINING FOR TRIBAL COURT STAFF

Staff training is a critical element which impacts the effectiveness of all court systems, tribal courts not excepted. Judges, prosecutors, defenders, and probation officers often receive much of their training after assuming their positions in the court system. Support personnel also require training to perform the varied administrative and secretarial tasks involved in maintaining the court. The ATS explored the training available to and received by tribal court personnel. In addition, tribes were queried about the problems encountered in accessing and attending training programs.

The ATS asked tribes to report training sessions that have been attended, the personnel attending and the providers of these training programs. 33 of the 93 tribes (35%) that perform some juvenile justice functions had no juvenile justice training within the last two years for any of their court related staff. The most commonly cited reason for not attending training was the lack of funds. Sixty-one of the 93 tribes (66%) indicated that there were sessions missed for this reason. A lack of leave time, scheduling conflicts, inconvenient locations, and failure to receive information about the training were cited as reasons for not attending training sessions by 20% to 30% of the tribes. Sixteen of the tribes (17%) stated that some training opportunities were missed because their tribal courts were not included in State Bar Association training.

Training for tribal court and ancillary personnel has been funded primarily by a single BIA contract,

which for the past several years had been awarded to the National Indian Justice Center (NIJC) located in Petaluma, California, with limited additional training supported through grants from BIA to individual tribes or courts. Although over half of the training attended by tribal staff was performed by the NIJC, nearly half was provided by other sources despite the BIA contract. NIJC was cited 146 times by the tribes as having provided training. (Tribes generally reported a training session multiple times if more than one court employee attended the session.) The next most frequently cited organization providing tribal court training is the Council Lodge Institute, which was cited 22 times on the ATS. Other Indian organizations providing training included the National American Indian Court Judges Association and the American Indian Law Center. All other Indian organizations combined, and the training programs provided by the tribes themselves, were cited 32 times. Non-Indian training providers were cited 78 times and included the National Council of Juvenile and Family Court Judges, the BIA and other federal agencies, state agencies and bar associations, and universities.

The study team requested additional information on the types of training available through the BIA contract, the number of tribes participating, and the types of staff attending NIJC programs. All statistics were provided by the NIJC and cover calendar year 1990. Twelve different training programs were provided by NIJC. These twelve sessions were:

Appellate Court Procedures
 Tribal Court Clerks Training
 Legal Writing/Opinion Writing
 Juvenile Justice
 Criminal Procedure
 Evidence and Objections
 Alternative Methods
 Tribal Court Probation
 Tribal Court Development
 Alcohol/Substance Abuse
 Housing
 Children/Families

Combined attendance for these sessions included 169 judges, 57 prosecutors, 59 defenders, and 141 court clerks. (Note: some attendees may have attended more than one session and are duplicated in the above counts.) Probation officers, social service personnel, government officials, and other tribal representatives not included in the above tabulations also attended many of the above listed sessions. NIJC training included tribes in the lower 48 states, as well as a variety of Alaska Native villages and organizations. Over 150 different tribes and Indian organizations were involved in training performed by NIJC during 1990.

V. TRIBAL COURT FUNDING

The data on tribal court funding generated by the study must be interpreted against the backdrop of two unique features of tribal governments. First, as pointed out above, tribal budgets are frequently structured to support functional systems which are not separated into legislative, judicial and executive branches as are non-Indian governments. A "tribal court" budget may in fact be included in a larger law enforcement budget, or it may itself include executive functions such as the prosecutor or the jail. Several judges stated in interviews that they must use court funds to pay for a convicted adult to serve time in an off-reservation city jail or to cover the treatment programs for both juveniles and adult offenders.

Second, federal funds play an unusual role in funding local government functions for tribal governments, due to treaty obligations and other

Without exception, tribes expressed the need for specialized training of tribal judges, court staff, prosecutors, intake and presenting officers, and law enforcement. Thirty-three tribes have had no juvenile justice-related training within the last two years. There is a reasonably high reliance on training after employment in tribal court systems and the lack of training related to juvenile justice in these tribes is noteworthy. Sixty-five percent of the tribes indicated specialized training had not been provided to all staff due to lack of funds. Tribal courts indicate training has been provided by national organizations, federal agencies and regional educational programs. Individual tribal courts and coalitions of tribal courts have begun working with Indian controlled colleges and state institutions to develop substantive training programs.

In fiscal year 1991, BIA changed its training strategy to allow tribes and organizations to compete for training funds in an effort to give tribes more self-determination as to training resources to be utilized and to attract a greater variety of training institutions into the field. This new arrangement has not been in effect long enough to evaluate.

features unique to the federal-tribal relationship and not found in the federal-state or -municipal relationship. The pattern of services funded in an Indian community by the federal government (particularly the Bureau of Indian Affairs) is based on historical circumstances unique to the individual tribe, as is the proportional relationship of federal and tribal funds supporting any one governmental function. Given the enormous needs for services across the board in Indian communities, it is difficult to draw conclusions concerning either tribal or federal priorities from a simple and out of context comparison of relative BIA and tribal support for tribal courts. Without a great deal of historical, economic, political and social background, one cannot safely draw conclusions as to why one tribe might support the court system largely with its own funds and another with BIA contract funds. Therefore, the study's funding analysis presented

below does provide a perspective on how federal and tribal funds are currently used to support tribal courts and the overall funding support available to these courts. Judgments as to how dollars might

better be distributed or balanced would require the analysis of total tribal budgets, a task beyond the scope of this study.

A. FUNDING SOURCES FOR TRIBAL COURTS

Tribal courts are typically funded through one or more of the following sources: BIA funds, tribal funds, fines and other court revenues, and grants from federal, state or private organizations. For most tribes, sources other than BIA and the tribe are a small portion of their overall court budget. Based upon budget data submitted by the tribes, the size of tribal court budgets and the proportional mix of funds from these sources differ widely among the tribes. Some courts rely heavily on BIA funding, while others rely only on tribal funds. The most typical funding arrangements involve a combination of BIA and tribal funds. BIA funds are made available to the tribe through so-called 638 contracts¹⁶ and Needy Courts grants.

The allocation of BIA contract or 638 monies is guided by a budget planning system termed the Indian Priority System (IPS). The IPS requires that tribal governments determine the relative priority for community services program budget requests covering a wide variety of tribal services. This determination automatically allocates the relative distribution of funds to those same programs; if tribal courts receive a low priority determination they receive less funds. Therefore, a tribal court in a relatively large tribe may receive less BIA funding than one in a smaller tribe, but this may be because the larger tribe is using more 638 money for other purposes. The amount of funding that is made available to an individual tribe's court is determined in the context of many other priorities. BIA 638 funds for tribal courts are determined by decisions made both within the BIA and within the individual tribe. Tribal courts and traditional justice systems

also reported receipt of Needy Courts funds from the Bureau of Indian Affairs. Needy Courts funds are one-time grants for the purpose of improving tribal court administration and may be used to purchase equipment, acquire training or provide services not otherwise available. Although tribes can receive additional Needy Courts grants in subsequent years, these funds do not become part of the tribe's permanent budget base.

In addition to BIA funds, tribal funding, usually supported by revenue generated by tribal enterprises and natural resources, has the greatest impact on tribal court and traditional justice system funding and staffing levels. Court fines and other revenues are occasionally retained by the court for court operations or may be returned to the tribal general funds to be reappropriated by the tribal council, thus indirectly supporting tribal court operations. Many traditional justice systems, the majority of which serve tribes with populations of less than 500, reported funding derived solely from tribal councils.¹⁷

Even those tribal courts which are among the tribes' top five priorities and/or receive funding in addition to BIA contract funds reported using federal training programs such as the Job Training Partnership Act to supplement court budgets and hire prosecutors, public defenders, process servers, bailiffs, probation officers or clerks. However, only direct tribal funding of tribal courts matches or surpasses the contribution of BIA funding in any of the tribal courts examined in this study.

B. TRIBAL COURT FUNDING: THE RESULTS OF THE ALL TRIBE SURVEY

The All Tribe Survey obtained tribal court funding data from a total of 62 tribes. The funding reported on the ATS was not limited to funding related to juvenile court operations. Although a very few tribes did separate juvenile court funding from general court funding, data were too limited to allow any special analysis of juvenile court funding. For the study's analysis, juvenile court amounts were not distinguishable from general court funding. Not all 62 tribes provided the amount of monies received from all sources supporting their court. Therefore, the data from these tribes can be used to examine the individual funding sources and their

contribution to the operation of tribal courts, but cannot be used to compare the relative contributions across funding sources. (As will be discussed later in this section, data from a subset of these tribes - those that did provide both tribal and BIA 638 funding - will be examined to compare the relative contributions of these two sources to tribal court funding.)

Exhibit 3.2 displays ATS results for the 57 tribes that reported the amount of BIA funds received and used for the operation of their tribal courts.

EXHIBIT 3.2
BIA TRIBAL COURT FUNDING BY JUVENILE POPULATION

Juvenile Population (# of tribes responding in parentheses)	Average BIA 638 Funds
00-99 (N=4)	\$ 2,875
100-199 (N=10)	\$ 68,388
200-299 (N=11)	\$ 52,586
300-499 (N=8)	\$148,853
500-999 (N=7)	\$ 87,323
1,000-4,999 (N=12)	\$147,086
5,000-29,999 (N=4)	\$264,825
30,000+ (N=1)	\$661,000
ALL TRIBES (N=57)	\$116,913

The average BIA 638 funding for tribal courts, as reported on the All Tribe Survey by 57 tribes, is \$116,913. Although there is some trend toward larger tribes receiving more BIA 638 monies for their courts, this is by no means a direct correlation. For example, tribes in the 100-199 Indian juvenile population category report larger BIA 638 amounts than do those in the 200-299 category. Similarly, tribes in the 300-499 range report higher BIA 638 funding than do tribes in either of the next two larger population categories (500-999 juveniles and 1,000-4,999 juveniles).

The number of tribes providing actual amounts of tribal funding and other non-BIA revenue sources for their tribal courts was insufficient to assure a representative sample for all juvenile population categories. However, the data obtained can be used to illustrate the degree to which funding levels from these sources vary among the tribal courts. The average funding by the tribe itself for tribal courts is \$312,134, based upon the responses from 19 tribes. The level to which tribes fund their own courts, like BIA funding, does not appear to be a

direct function of tribal population, although it may be related to tribal income or other factors. For example, one tribe in the 100-199 juvenile population category provides almost \$95,000 of tribal monies to its court. By comparison, one court in the 5,000-29,999 category reported \$733 of tribal funding for the tribal court. Although this example compares two extreme cases, there are a number of less extreme examples that illustrate the lack of relationship between tribal population and the allocation of tribal funds to the court. Reported funding of tribal courts by tribes ranged from no tribal funding to over \$3 million.

Court fines and other revenue sources (e.g., grants) used to support the operations of tribal courts were reported by a few tribes. Funding based upon

collection of fines was reported by nine of the 62 tribes and grants and other revenue sources were reported by 10 tribes. Although for a few tribes these are significant sources of revenue, most tribes obtain only small portions of their tribal court budgets directly from these sources.

Fifteen tribes reported both BIA 638 funding and tribal funds. Since both funding amounts are provided, this sample, although not assuredly representative of all tribes, can be used to illustrate the relative contributions of tribal and BIA 638 funds to the operation of tribal courts.

Exhibit 3.3 displays the BIA 638 and tribal funding for the 15 courts reporting amounts from both sources.

EXHIBIT 3.3
TRIBAL COURTS REPORTING BIA 638 AND TRIBAL FUNDS

JUVENILE POPULATION CATEGORY (N=15)	BIA 638	TRIBAL	TOTAL BIA & TRIBAL	PERCENT BIA
100-199 N=1	\$ 66,500	\$ 93,968	\$160,468	41%
200-299 N=2	\$ 46,000 \$ 21,300	\$ 30,000 \$ 6,000	\$ 76,000 \$ 27,300	61% 78%
300-499 N=1	\$147,700	\$275,755	\$423,455	35%
500-999 N=2	\$112,000 \$ 68,000	\$138,000 \$190,786	\$250,000 \$258,786	45% 26%
1,000-4,999 N=6	\$ 41,727 \$ 2,404 \$127,000 \$ 81,000 \$276,600 \$ 84,300	\$ 20,758 \$283,543 \$120,950 \$303,000 \$ 64,363 \$191,664	\$ 62,485 \$285,947 \$247,950 \$384,000 \$340,963 \$275,964	67% 1% 51% 21% 81% 31%
5,000-29,999 N=2	\$232,300 \$139,000	\$ 733 \$ 79,000	\$233,033 \$218,000	100% 64%
30,000 + N=1	\$661,000	\$3,696,000	\$4,357,000	15%

Tribal courts that reported both 638 and tribal funding differed widely in the proportions of each type of funding used to support court operations.

Many tribes are contributing significant funds to the operations of their tribal courts. However, it also is clear that, for some tribes, BIA funds are the

majority of funds used by the court. Eight courts had more tribal funding than BIA 638; seven had greater BIA 638 funding than tribal. Some courts had relatively balanced funding from the two sources; other tribal courts showed an extremely wide disparity between the two funding sources. As shown previously the amounts provided to the tribal courts by either the BIA or the tribe itself do not directly relate to tribal size. The lack of relationship between tribal size and the amounts received from either the tribe or the BIA illustrate the complexity of the methods used by tribal governments and the BIA in making allocation decisions.

Arriving at a basis for comparing tribal court funding is most difficult because of the wide variety of roles played by tribal judiciaries from tribe to tribe; overall tribal social policy and jurisprudential philosophy; the cultural role of the criminal process; the complexity of funding sources and the difference in tribal resources; and the differing practices among the tribes regarding including executive branch functions in the court budget. The 1978 report of the National American Indian Court Judges Association (NAICJA Report),¹⁸ attempted to suggest a standard by recommending court

staffing and funding based upon case load. Suggested personnel for small courts, those averaging less than 1,000 cases per year, included a judge, part-time associate judges, a clerk, a prosecutor, a part-time defender, and a half-time probation officer. Additional personnel were recommended for medium courts and large courts based upon the number of cases per year. The NAICJA Report suggested that staffing patterns reflect the types and numbers of cases handled, but overlooked the detrimental effect of case load funding on informal and formal diversion programs.

Basing court funding levels on annual case load discourages the continuation of informal disposition and diversion programs and does not reflect the number of incidents reported as opposed to cases filed. One tribe reported a severe reduction in annual court funding following the implementation of a successful diversion project which reduced the number of delinquency petitions filed. For another tribe, the number of incidents reported annually is three times the population of the reservation but is not reflected by case load statistics due to improved law enforcement training, diversion programs and prosecutorial discretion.

VI. SUMMARY AND CONCLUSIONS

Tribal court practice parallels recommended national standards. Dispositions are limited by the lack of resources, funding and appropriate facilities. Often the funds necessary for care, treatment and prevention of delinquency are not available. Funding of community-based youth and family aftercare whether it be for substance abuse, sexual abuse, or other behavioral counseling and treatment is crucial to the appropriate disposition of juvenile and family court matters. Support is needed to implement community-based recreation, youth literacy and school retention, youth employment, and family service centers, particularly funding for additional insurance, utilities and equipment. The need for community education regarding tribal laws and the role of tribal courts within tribal government is still indicated.¹⁹

The experience of tribal courts, particularly those serving smaller tribes, has not mirrored non-Indian, rural communities. Rural townships often hire local police yet receive services from county and state law enforcement; establish justice of the peace courts but also have access to review by county and state district courts; manage local detention facilities and transfer prisoners to county jails and state facilities; and enjoy the full range of services provided by county and state agencies. Unlike their state counterparts, tribal courts do not possess the power to compel the cooperation and compliance of on-reservation primary service providers, the Bureau of Indian Affairs, Indian Health Service and state health and human services programs. As a result, the health, human and social services which may be available to non-Indian citizens are not available to youth living on reservations.

Staffing issues in tribal courts have to do with both the numbers of staff and types of positions available. There is a discernable difference in both areas related to tribal courts serving small, medium, and large population tribes. It is difficult for tribes with limited resources to maintain sufficient and distinct judicial, prosecution, defense, and support staffs. However, it is also true that tribal size alone does not determine either the need for, or the existence of, various court staff. The nature of tribal court proceedings, and to an extent, the nature of problems of their youth and communities, suggest that tribal court staffing does not need to match staffing of non-Indian courts across the board. To some extent, tribal leaders suggest that diminishing the number of people involved and the adversarial nature of the proceedings can in fact benefit youth. However, many tribal courts do lack the needed

professional and support staff to maintain adequate case flow, administration, and timely and thorough handling of juvenile court cases. Unfortunately, obtaining funds to resolve staffing problems usually requires having sufficient staff to perform the complex funds acquisition procedures.

The authors recognize the difficulty of determining a formula for tribal court funding but funding based significantly upon the number of complaints or petitions filed inhibits the development of community-based programs. Tribal court funding must be sensitive to the needs of the community and encourage the development of informal disposition and diversion programs. It is clear that a baseline level of funding is needed if all tribal courts are to develop and maintain adequate staffing, procedures, training and services.

RECOMMENDATIONS

Tribal courts are an important part of the Tribal juvenile justice system. Current courts vary in size, funding, and procedures. Given the range of tribal systems, it is difficult and inappropriate to recommend specific standards, funding formulas, or minimal staffing patterns. The recommendations below address needs deemed by the study to be relatively common among tribes, and their implementation assumes that tribal decisions and priorities will determine their applicability.

3.1 CONGRESS SHOULD PROVIDE MORE MONEY FOR TRIBAL COURTS.

Although there is wide debate about the appropriate delivery mechanism, virtual unanimous support was found for increased stable funding for tribal courts. In light of the importance given to court systems by Indian and non-Indian societies alike, Congress should earmark funds especially to support tribal court systems and functions in a way that does not further fragment the distribution of political power on each reservation.

3.2 THE BIA AND OJJDP SHOULD WORK TOGETHER TO IMPROVE JURISDICTIONAL UNDERSTANDING AMONG COURTS.

A continued effort for training state and tribal courts to establish their areas of separate jurisdiction and concurrent jurisdiction should be supported by OJJDP and the BIA. Joint custody and transfer of custody issues require further analysis and resolution in each state.

3.3 THE BIA AND IHS SHOULD DEFINE THE RESPONSIBILITY AND RELATIONSHIP OF THEIR DIRECT SERVICE PROVIDERS TO TRIBAL COURTS AND TRIBAL GOVERNMENTS.

As the federal agencies charged with providing services to Indian tribes and Alaska Native villages and as primary direct service providers on many reservations, the BIA and IHS must formulate clear policy regarding the role and responsibility that their agencies must fulfill in

support of tribal court orders and dispositions, consistent with the federal policy of tribal self-determination and with other applicable federal law. Where possible, the relationships of tribal courts and juvenile justice systems to BIA and IHS service providers should be analogous to those of state and federal courts with state and federal agencies providing the same services in off-reservation communities. If necessary, these responsibilities could be defined explicitly in federal-tribal intergovernmental agreements. The BIA and IHS should also establish procedures by which tribal courts may communicate coordination and service delivery issues and problems to the central administration of these federal agencies.

3.4 THE BIA SHOULD SUPPORT THE DEVELOPMENT OF INTER-TRIBAL AGREEMENTS WHICH IMPROVE JUDICIAL ACCESSIBILITY FOR JUVENILES.

As tribes assess their juvenile justice systems, some may wish to enter into inter-tribal arrangements for the shared use of staff for tribal courts. Inter-tribal arrangements are formulated with the premise that the integrity of each tribe's legal codes is maintained. Where such arrangements are developed by the tribes themselves on a clearly voluntary basis, the BIA should support and facilitate their funding.

3.5 OJJDP AND THE BIA SHOULD COORDINATE THEIR TRAINING SUPPORT FOR TRIBES.

Both the BIA and OJJDP have training plans which fund tribes and organizations to develop sessions and curricula for members of the juvenile justice system. These plans should be reviewed with a direct focus on whether they are reaching tribes and meeting tribal needs. A balance between centralized training development and dispersment of training funds for local usage should be achieved, including the use of tribally-controlled colleges as a convenient delivery system.

CHAPTER THREE ENDNOTES

1. California and Alaska have very large numbers of federally recognized tribes and villages, many of which are very small; additionally, the legal status of Alaska Native villages has been contested since the passage of the Alaska Native Claims Settlement Act, making it difficult for the villages to organize politically. (See Chapter Nine)
2. Indian Civil Rights Act, the Major Crimes Act, and court decisions such as *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978) which limited tribal criminal jurisdiction to Indians.
3. The provisions governing CFR courts are found in volume 25, Code of Federal Regulations (CFR), part 11 of subchapter B of Chapter 1. Part 11 contains general grants of jurisdiction over juveniles accused of the forty-three offenses enumerated in 25 CFR §11.38 through §11.87H. 25 CFR §11.36 and 25 CFR §11.36C (1991).
4. *Tillet v. Lujan*, 931 F.2d 636 (10th Cir. 1991).
5. 25 CFR §11.74 (1991). It is unclear, however, whether sentencing or disposition requirements created by tribal ordinance take precedence over the CFR sentencing provision. 25 CFR §11.36 (1991).
6. See Chapter 4, Tribal Codes.
7. "Indian country" includes, in addition to reservations, the area occupied by trust allotments and tribally held trust lands which were not set aside as reservations, e.g., the state of Oklahoma with the exception of the Osage reservation.
8. These federal statutes apply only within Indian country. The Major Crimes Act, first enacted in 1885, subjects 14 serious crimes, including murder, manslaughter, assaults, arson, and burglary to federal court jurisdiction when those crimes are committed by an Indian in Indian country. 28 U.S.C. § 1153. The General Crimes Act, 28 U.S.C. § 1152 essentially incorporates state definitions of crimes not otherwise defined in federal law when those crimes are committed in federal enclaves, which include Indian country. This statute only applies if either the victim or the perpetrator is an Indian; it does not apply to crimes committed by an Indian against another Indian, leaving these crimes to the tribal courts. See Philip S. Deloria & Nell Jessup Newton, Criminal Jurisdiction over Nonmember Indians, 38 FED. BAR NEWS & J. NO. 2 (MARCH, 1991) (summarizing federal, state and tribal jurisdiction over crimes committed on Indian lands).
9. See Tribal Jurisdictional Status Analysis in the appendix to this report.
10. *Walker v. Rushing*, 898 F.2d 672 (8th Cir., 1990).
11. Tribal courts may differ from non-Indian courts in several respects, including the scope of jurisdiction, sentencing limitations, and in many cases the use of traditional mechanisms for dispute resolution.
12. No Indian tribe . . . shall . . . (6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense. 25 U.S.C. § 1302(6).
13. The single court reporting no judges employed uses a judge from the CFR court.

14. NAICJA, "Indian Courts and the Future", p 95, 1978
15. The officer of the court with the responsibility of charging and presenting juvenile petitions; in some tribal courts the prosecutor performs this function.
16. The common name of these contracts derives from the public law number of the legislation that authorized the Secretary of the Interior and the Secretary of Health and Human Services to contract with Indian tribes to provide a wide variety of services under federal programs, Indian Self-Determination and Education Assistance Act of 1975, Pub. L. No. 93-638, 88 Stat. 2203 (codified at 25 U.S.C. §450a and in scattered sections of titles 25, 42, and 50).
17. It also is not uncommon for parties participating in traditional dispute resolution to pay a small fee to the person acting as judge or mediator, and one tribe reported receiving a small state grant to support its traditional system.
18. *Indian Courts and the Future*, The National American Indian Court Judges Association Long Range Planning Project prepared under a contract with the Bureau of Indian Affairs (1978).
19. *Indian Courts and the Future* (NAICJA Report), *infra*.

CHAPTER FOUR TRIBAL CODES

I. INTRODUCTION

This chapter addresses tribal codes. The methodology undertaken to examine tribal codes is discussed, followed by an examination of the results from the All-Tribe Survey (ATS), and an analysis of 21 tribal codes. According to a profile of tribal courts published by BIA in 1985,¹ the most recent published source, 112 federally recognized tribes

had adopted their own courts and codes and 26 tribes were under the jurisdiction of CFR courts. By the latest BIA estimate, there are now 147 tribal courts². It is not clear how many of the tribal courts had separate children's or juvenile courts, but the majority had some provision in their codes dealing with juveniles, especially delinquents.

II. METHODOLOGY

To elicit information about tribal codes, the ATS contained eleven questions about children's or juvenile codes. The ATS included questions on the definition of delinquent, status offender and non-offender; age limits for juvenile jurisdiction; and the Juvenile Justice and Delinquency Prevention Act's mandates. If a tribe had no written juvenile or children's code, the section was not completed. The study did not attempt to cover unwritten custom or common law. Each responding tribe or Native village was asked to send a copy of its children's or juvenile code.

The study team reviewed the codes submitted in response to the ATS request. Twenty-one codes

out of the 32 submitted by tribes were analyzed manually according to a set of basic criteria concentrating on key definitions, jurisdiction, juveniles, detention and placement, hearings, and dispositions. These particular codes were selected because the tribes were project site visits or test sites. Tribal codes are not uniform, and variations in definitions and other issues required careful examination to determine if the variations were superficial or substantive. The examination was done by a lawyer who is a tribal judge. The results from both the ATS analysis and the manual examination are included in this chapter.

III. OVERVIEW OF TRIBAL CODES

A system of written laws governing the juvenile justice system can provide the infrastructure to protect children, make social and rehabilitative services accessible to children and their families, and also protect the community. A large number of tribes have written codes and many of these codes include laws pertaining to children. Some tribal codes cover only abuse and neglect of children and some cover delinquency in addition to abuse and neglect.

Tribal civil written law has developed largely during the last 30 years and, with a few exceptions, tends to be more basic than state laws dealing with the same issues. For the most part, the early written tribal codes contained only one, perhaps two, broad provisions on juvenile delinquency. Many of them were based on BIA-drafted prototypes developed in response to the Indian Reorganization Act (IRA) and patterned on state statutes. Other codes were

developed by tribal attorneys not knowledgeable about juvenile or children's law and also unfamiliar with the tribal culture. Gradually, many codes have been amended at least to reflect the requirements of the Indian Civil Rights Act of 1968 (ICRA), but they still tend to be quite basic and resemble state statutes of 20 years ago.

Out-of-date codes create a number of problems in addition to their possible constraining effect on the legal system. Tribes may be ineligible for certain federal programs because tribal codes do not contain language required for eligibility. For example, the Adoption Assistance and Child Welfare Act of 1980³ makes funds available to states and to tribes to provide services for foster care and adoption assistance to children. The availability of these funds is subject to specific standards and requirements set out in the legislation, but before tribes can access these funds, tribal governments must enact laws and adopt procedures incorporating the standards and requirements. Many tribes have not done so because they do not have the funds or the technical assistance available to draft the proper legislation.

During site visits, many tribes without written codes expressed the wish to develop them, and officials of tribes with codes almost universally were dissatisfied with their codes and wanted to update them; however, this is not a financial priority for most tribes. Ordinarily, the limited funds available for courts are allocated to provide services and infrastructure - paying for a judge, a clerk, sometimes a prosecutor and a probation officer, as well as for a courtroom and office. If a code is available, tribal members may not believe that developing an updated code should be a priority. The help that is available to tribes for code drafting is poorly funded or sporadic.⁴ One tribe received a one-time-only grant from a federal agency to computerize tribal laws, develop a formal system of codification, and codify laws. Once the grant ends, the tribe will attempt to maintain the system with its own funds, but this tribe is currently in the process of cutting its tribally-funded programs by as much as 25% because its income has dropped drastically the last few years.

Skilled legal drafters, ordinarily lawyers, are necessary for extensive legislative development, but the pool available to most tribes is limited compared to resources for state legislatures and the U.S. Congress. These bodies have legislative services providing research and drafting support on a continuing basis, although the scope of tribal legislation is sometimes comparable. Some tribes have retained law firms to draft legislation, but this is a costly service. A few tribes have in-house attorneys who provide such assistance as part of their job. Local Legal Services Corporation attorneys have assisted tribes on a volunteer basis, usually in an area of law of interest to Legal Service clients. But most tribes do not have access to any of these sources.

Some tribes have bound themselves unnecessarily to federal supervision over their legislative process. Language found in a number of tribal constitutions requires that laws adopted by the tribal government be approved by the Secretary of Interior, although federal law does not require Secretarial approval for tribal statutes or ordinances.⁵ By incorporating in its constitution a requirement necessitating Secretarial approval of tribal law, a tribe subjects its governmental process to unnecessary bureaucratic oversight.

Although tribal constitutional language requiring federal approval of tribal law can be deleted, amending a constitution is difficult. Federal law requires that tribal constitutions adopted under the Indian Reorganization Act be approved by the Secretary and be ratified by a majority of the adult tribal members at an election called by the Secretary. Until 1988, the IRA contained no express standards for or limits on bureaucratic review of proposed constitutions or their amendments. Arbitrary bureaucratic interference and inordinate review time (sometimes years and sometimes no response at all) were two of the obvious problems that occurred. As a result of these problems, Congress amended the IRA in 1988. Secretarial review of constitutional change is limited to determining if any provision of a proposed constitution or amendment is contrary to applicable law, and stringent time limits are set for the review process.⁶ However, until the Secretary's

review of individual tribal laws is removed from tribal constitutions, code revision for tribes with these provisions will remain burdensome.

Notwithstanding the difficulties, a number of tribes have amended their children's codes or developed new laws even without a legislative service in place or the availability of consistent legal assistance. But reviewing tribal law is not an ongoing or even periodic process for the majority of tribes, and the fortunate tribes who have been able to update their codes are usually the larger tribes or those with tribal resources. Codes that have been developed or amended in the last few years are longer, more comprehensive, and cover more complex issues. Language to meet federal law has been added, most notably in the area of protective service requirements such as those set out in the Adoption Assistance and Child Welfare Act of 1980, codified in the Social Security Act as titles IV B and E. The fact remains, however, that too many tribes are operating pursuant to codes which have not been updated in years. The interviews from the site visits plus the anecdotal evidence the staff of the American Indian Law Center, Inc., has gleaned over the years spent working with tribal governments reinforce this assessment.

There has been a growing interest on the part of tribal members throughout Indian country to incorporate what is often referred to simply as the "Indian way" more explicitly into tribal legal systems. But revised tribal codes, while procedurally more elaborate and of broader scope, have not changed appreciably for a number of reasons. First, as indicated above, the cost involved is high and most tribes simply do not have the resources to underwrite a comprehensive effort to have tribal law reflect customary law. Second, tribal members may not be able to reach a consensus about the tribe's customary law or how it can be integrated into the tribal code. Third, notions of due process are shaped by the ICRA which is based on concepts

alien for the most part to traditional Indian law, but which Congress has superimposed on tribal law. Fourth, the lawyers serving tribes, even if they are Indian, are trained in law schools whose curricula are based on state, federal, and English common law.

Tribes are not prevented from incorporating tribal custom or common law into tribal justice practices. Although procedural requirements and the language in substantive provisions of tribal laws may not reflect tribal concepts, tribal customary law can be brought into juvenile proceedings by several routes. If the judge is a member of the tribe or knowledgeable about tribal customary law, the judge's decision, especially when determining the disposition of a child's case, may be based to a certain extent on such law. Some codes explicitly allow dispositions based on tribal customary law. But, as far as the study has been able to determine, no published code is based solely on traditional law, with the exception of one prepared for a parallel traditional system that deals mainly with procedural matters rather than with substantive issues.

Model children's or juvenile codes are available. *The Model Children's Code* was prepared by the American Indian Law Center, Inc., (AILC) in 1978 and updated in 1982. It covers both delinquency and child protection. The National Indian Justice Center, Inc., developed two codes, the *Tribal Juvenile Justice Code* and the *Tribal Child/Family Protection Code*. Each model incorporates legal concepts and procedures that are not traditional tribal concepts and practices, but also includes some of these or indicates where traditional law may be inserted. The codes comply with ICRA requirements. The study has not determined the frequency or extent of usage of any model. And, while models are useful, they do not solve the problems unless they are adapted to the needs of the local situation.

IV. CODE DATA ANALYSIS

A. JURISDICTION - DEFINITIONS AND AGE LIMITS

Of the 93 tribes responding that they perform at least one juvenile justice function, 76 stated that they have juvenile or children's court codes. A major goal of the study was to determine the extent to which tribal juvenile justice systems have been able to implement the mandates of the JJDP Act, even though tribal compliance with the mandates is voluntary; the Act does not require tribes to comply with them. Sec. 223 (a) of the Act, relating to state plans, allows states "to provide funds for programs of Indian tribes that perform law enforcement functions . . . and that agree to attempt to comply [emphasis added] with the requirements specified in paragraphs (12)(A), (13), and (14), applicable to the detention and confinement of juveniles. . . ."⁷

For the purposes of this study, it was necessary first to define key concepts derived from those mandates. The definitions of the concepts used in the study have been compiled into a glossary that is presented in Appendix A. This glossary accompanied the ATS to assist respondents by providing consistent terminology and to ensure that respondents had the same understanding of the language used.

Once a respondent indicated on the ATS that the tribe had a children's code, the respondent was asked to compare the code's definitions for three key phrases with the master definitions used by the survey, and indicate whether the definition was basically the same, or the term was not defined, or, if a different definition or term was used, to supply that definition or term. The three key terms or phrases were: delinquent; status offender; and non-offender (abused or neglected child or minor in need of supervision or care, or dependent child).

The definitions of the key terms, where possible, mirror the definitions used by OJJDP in assessing compliance with the Act in non-Indian communities. For some concepts, however, Indian and Alaska Native practice, legal language, and justice system constraints were such that standard OJJDP definitions either did not apply or would not have

been clear. In those cases the definitions were modified to be more consistent with usage in tribal or Native communities while still maintaining the intent of the OJJDP definition.

1. **DELINQUENT** - The term *delinquent* has the same meaning for tribes and villages as it does in non-Indian communities: a minor who has been found by the Court to have committed an act which would be a crime if committed by an adult.

2. **STATUS OFFENDER; NON-OFFENDER** - The definitions of *status offender* and *non-offender* were modified to some extent to meet the unique circumstances of tribal and village law. While the core definition of *status offender* remained a *minor who is charged with an offense which would not be a crime if committed by an adult*, examples of such offenses were added. In most non-Indian communities, underage drinking or possession of alcoholic beverages is considered a status offense. On some reservations, however, it is a crime for an adult to possess alcoholic beverages, thus possession by a juvenile would be a delinquent offense rather than a status offense in this circumstance.

The term *non-offender* is used in most tribal juvenile or children's codes. Wherever feasible in requesting data regarding non-offenders, they were also, for the sake of clarity, referred to as abused or neglected children, or minors in need of supervision.

Data on the types of juvenile offenses with which tribal juvenile justice systems must cope are also complicated by some confusion over the term *status offender*. Although it was clear in our interviews that tribal juvenile justice officials understand that, from OJJDP's perspective, the term includes juveniles who commit offenses that would not be criminal if committed by an adult, many indicated that their tribal code did not contain any reference to this group of juveniles. Others indicated that their code referred to specific types of offenses, such as curfew violation or truancy, but not to the entire group of status offenses. This variation in ways of treating status offenders is similar to that

found in the states. Other terms used are *persons in need of supervision* or *children in need of super-*

vision or care and are defined to include status offenders.

EXHIBIT 4.1
DEFINITIONS OF DELINQUENT,
STATUS OFFENDER AND NON-OFFENDER

CODE & DEFINITION	TOTAL
Has Juvenile Code?	82% (N = 76)
Delinquent	
OJJDP Definition	74%
Different Def/Term	16%
Not Defined	11%
Status Offender	
OJJDP Definition	42%
Different Def/Term	20%
Not Defined	38%
Non-Offender ^a	
OJJDP Definition	87%
Different Def/Term	12%
Not Defined	1%

Defining jurisdiction over children ordinarily involves a tribal council or state legislature setting age limits. The majority of tribal juvenile or children's codes contain age limits but they vary. The ATS contained three questions about age limits.

English common law set certain age limits below which children were assumed not to have the capacity to distinguish between right and wrong. Following in this vein, many states have set minimum ages under which children cannot be considered delinquent. Others have set age ranges and courts are required to determine, on a case-by-case basis, if children within those ranges have the ability to understand the nature of their acts. If so determined, a child then is subject to juvenile court jurisdiction.

When asked whether their code set a minimum age below which a child could not be adjudicated as a status offender or a delinquent, 14 tribes required a child to be at least 10 years of age and 2 had

minimum ages lower than 10 years. The remainder either did not respond, did not know, or did not have a minimum age in their code.

The vast majority of respondents set the ages between 17 to 18 as the upper limit of juvenile court jurisdiction. The age above which a child could not be adjudicated as a status offender or delinquent was less than 16 years for 2 tribes, age 16 for 1 tribe, age 17 for 21 tribes, age 18 for 37 tribes and age 20 for 1 tribe. Some tribes indicated that no maximum age was set in their code. Since children's codes typically use age limits to determine children's court jurisdiction, these last responses may demonstrate a lack of knowledge about the code or a misunderstanding of the question.

Tribes may take jurisdiction for adjudication purposes up to a particular age, such as 18, but after adjudication retain continuing jurisdiction to a higher age, such as 20, for supervision or probation purposes. When asked if they retained such jurisdiction, by far the majority of respondents (38

^a Includes abused/neglected children and minors in need of supervision.

tribes) answered that they retained jurisdiction only until age 18, which corresponds very closely with the number of tribes (37) who set 18 as the maximum age for jurisdiction. A number of tribes responded that there was no maximum age set, demonstrating either a misunderstanding of the question or lack of knowledge of the code's terms. The remaining respondents showed a maximum age as follows: age 17 for 6 tribes; age 19 for 3 tribes; age 20 or older for 9 tribes.

B. TRIBAL JUVENILE CODES AND THEIR RELATIONSHIP TO THE JJDP ACT MANDATES

Four ATS questions asked whether or not the tribal juvenile code (if one existed) addressed any or all of

the mandates. The degree to which tribal codes address the JJDP Act mandates demonstrates the interest and effort of tribes to comply voluntarily with the mandates.

1. MANDATE 1 - STATUS OFFENDERS ARE NOT TO BE HELD IN SECURE FACILITIES

When asked if the code allowed status offenders or non-offenders to be placed in secure (locked) facilities, 19 tribes responded that they prohibit holding status offenders and non-offenders in secure facilities. Eight tribes restrict such holding to less than 24 hours. Other codes set a variety of other conditions (longer time periods or other stipulations).

EXHIBIT 4.2
STATUS OFFENDERS HELD IN SECURE FACILITIES

CODE REQUIREMENT	RESPONDING TRIBES
Prohibits	19 (25%)
Less than 24 hrs.	8 (11%)
More than 24 hrs.	19 (25%)
Without conditions	5 (6%)
No requirement in code	23 (30%)
Don't know/no response	2 (3%)

2. MANDATES 2 AND 3 - JUVENILES ARE NOT TO BE HELD IN ADULT FACILITIES OR, IF SO HELD, THEY ARE TO BE HELD OUT OF THE SIGHT AND SOUND OF ADULTS

When asked if their code allows juveniles to be held in any secure building or locked facility where accused or convicted adult offenders sometimes are held, 20 tribes indicated that their codes prohibit holding juveniles in secure facilities with adults. Nineteen tribes indicated youth can be held in such facilities, but only within specified time limits. Other tribes either reported that the issue was not

addressed in their code, or that conditions other than time were used to determine whether to hold juveniles in adult facilities. It should be noted, too, that several tribes indicated that court policy or other factors prohibited or limited holding juveniles in adult facilities. Twenty-two tribes responded that their codes require juveniles to be held out of sight and sound of adults. Comments made by respondents to this question also showed evidence that additional tribes have policies or procedures limiting the contact between juveniles and adults in these facilities, notwithstanding what the code allows.

EXHIBIT 4.3
JUVENILES ALLOWED TO BE HELD IN ADULT FACILITIES

CODE REQUIREMENT	RESPONDING TRIBES
Prohibits	20 (26%)
Up to 6 hours	2 (3%)
Up to X hours	17 (22%)
No time limit	17 (22%)
No requirement in code	19 (25%)
Don't know/no response	1 (1%)

3. SUMMARY – EVIDENCE OF COMPLIANCE WITH MANDATES

The ATS responses show significant evidence of voluntary tribal compliance with JJDP Act mandates in codes. Twenty of the 76 codes prohibit holding juveniles in adult jails and 22 of those allowing juveniles to be held with adults specify that they must be out of sight and sound of the adults. Nineteen codes prohibit holding status offenders or non-offenders in secure facilities. Even where youth are held, they do not languish in detention. Thirty require detention hearings within a 24-hour period and 33 others require it within a specified time limit.

Comments appended to the ATS suggest that tribal court policies and practices are even more rigorous in complying with the mandates than the codes themselves. The site visits certainly revealed a commitment to complying with them where possible and, indeed, several tribes recently had halted a previous practice of holding alleged delinquents in adult facilities which lacked the capacity to house juveniles separately from adult prisoners. This decision created certain problems for the tribes without juvenile facilities, but philosophically, the tribes viewed this as better practice.

V. REVIEW OF TRIBAL CHILDREN'S CODES

A more detailed review of 21 codes examined definitions, jurisdictional provisions, requirements for detention or placement before adjudication, hearing procedures, and disposition. Comparisons and conclusions must be carefully evaluated for several reasons: the ATS responses are somewhat subjective, requiring the judgment (often of non-law trained respondents) on the question of whether or not differences in wording are significant. In addition, respondents may read the ATS questions literally or broadly. For example, Question 7 presented a standard definition for *delinquent* and asked if the tribal code definition is basically the same. Some respondents answered that their tribal

code differed even though the definitions were similar, having only minor word differences. Other respondents agreed that the definition was the same under corresponding circumstances. When this occurred, the responses were accepted as is and the issue handled in the manual review.

Each code was analyzed in terms of definitions for delinquent or juvenile offender, delinquent act, status offender, non-offender. The jurisdiction review analyzed the extent of the tribe's juvenile or children's court jurisdiction. The codes were reviewed to determine where offenders and non-offenders could be placed before adjudication and

the criteria used for determining placement. Finally, procedural protections accorded juveniles were examined, as were dispositional alternatives after adjudication.

Throughout the following sections, the term "standard" is used. It may be a standard ordinarily used in juvenile practice, or it may be a definition used by a significant number of tribes. Whatever the standard used, it is defined.

A. DEFINITIONS

1. JUVENILE OFFENDER, DELINQUENT CHILD, CHILD OFFENDER

The terms *juvenile offender*, *delinquent child*, and *child offender* are used interchangeably, but the standard definition is the same for each: a youth who commits a delinquent act (or an act which would be criminal if committed by an adult) before reaching a certain age, usually 18 years old.

Twenty out of 21 codes use the standard in some form. A significant majority of these codes (17), contain a definition section where at least one of these terms is defined according to the standard, and three other codes define the term in some other section. One code fails to provide a definition for the term *juvenile offender*, but still uses the term.

One code uses the standard definition for *juvenile offender* for purposes of its offender provisions, but also includes the definition as an element in its *Child in Need of Care* provisions. This double coverage is confusing and its purpose is obscure, but it allows the child to be treated as a non-offender rather than as an offender. The code provides no guidelines for determining when to charge a child as an offender or treat the child as a non-offender, nor is it clear whether the child can be subjected to both provisions at the same time.

2. DELINQUENT ACT

A delinquent act is one which would be criminal if committed by an adult as defined by the tribe's criminal or law and order code.

Eighteen codes define the term *delinquent act* in the definition section, while three do so in their jurisdiction section. One code includes *status offender* in its definition of the term *delinquent act*. One code incorporates delinquent act as an element of the definition of *Child in Need of Care* as well as in its definition of *child offender*. This is an interesting overlap, but it allows the child who commits a delinquent act to be treated as a non-offender rather than as an offender and it is not clear what standards are used to determine when a child is to be treated as an offender or as a child in need of care. (See discussion in subsection 1, above.)

Thus, all codes examined meet the standard definition for a delinquent act, but the placement of the definition in the codes may differ.

3. STATUS OFFENDER

Of 21 codes reviewed, 13 incorporate the concept of status offenses, and 11 of those treat the status offender solely as a non-offender. Two treat a status offender as both an offender and a non-offender by including the definition in both sections. Two of the 13 use and define the word *status offender* similarly to the definition found in the JJDP Act. By removing status offenders or status offenses from the offender category, tribes are following the modern trend espoused by the JJDP Act. Eight (38%) do not use the term or its definition in any way.

The definition of status offender used for analysis was: a child charged with an offense which would not be a crime if committed by an adult. The usual status offenses covered under this definition include truancy, running away, curfew violations, incorrigibility or failing to obey the demands of parents, and alcohol possession in jurisdictions allowing adults to possess alcohol.

4. NON-OFFENDER

Non-Offender is a general term which distinguishes those who are subject to court jurisdiction for reasons other than delinquency from those who are considered delinquent. Codes ordinarily describe a non-offender by using *Minor in Need of Care*, *dependent child*, *neglected child*, or other similar

terminology. Some codes may use more than one term. The following exhibit sets out the various

descriptors and the number of codes using the identified language.

EXHIBIT 4.4
NON-OFFENDER TERMINOLOGY AND RATE OF USE

TERM USED	NUMBER OF TRIBES USING TERM
Minor in Need of Care (MINOC)	10
Dependent	9
Neglected	7
Abused	3
Child in Need of Care	2
Abused or Neglected	1
Neglected or Dependent or MINOC	1
Neglected or Dependent	1
Neglected Juvenile	1
Youth in Need of Care	1

B. JURISDICTION

Several criteria were used to examine tribal juvenile jurisdiction: the ages and races of persons subject to jurisdiction, the subject matter over which jurisdiction is exercised, whether codes allow continuing jurisdiction once a juvenile becomes an adult, and if transfer of children to adult court is allowed.

One code has no jurisdictional statement in its juvenile chapter and provides for criminal and civil jurisdiction in its tribal code without referring to juvenile jurisdiction.

1. DEFINITION OF MINOR OR CHILD

The age at which a tribe assumes jurisdiction over youth is established by either the jurisdiction section or the definition of *minor* or *child*. All codes examined defined a minor or a child as any person under the age of 18. However, this definition is not always dispositive of juvenile jurisdiction (see subsections B4 and B5 below).

2. INDIAN PERSONS SUBJECT TO TRIBAL JURISDICTION

All 21 tribes take jurisdiction over their enrolled children; 20 take jurisdiction over enrolled members of any tribe; 18 take jurisdiction over people eligible for membership in that tribe, and 17 of those also take jurisdiction over people eligible for membership in any tribe. Thirteen tribes take jurisdiction over any person recognized as an Indian. Only one tribe limits its jurisdiction solely to enrolled members.

3. NON-INDIAN PERSONS SUBJECT TO TRIBAL JURISDICTION

The language in 15 tribal codes can be construed as allowing jurisdiction over non-Indian juveniles. One tribe specifically declines to exercise such jurisdiction, but reserves the right to do so. The language of the remaining five tribes restricts them from jurisdiction over non-Indians.

The jurisdiction of tribal courts over non-Indian children committing illegal acts within tribal

boundaries is problematic. Most delinquency laws, tribal or otherwise, contain language declaring that delinquent acts are not criminal in nature. This is a practice followed almost universally in non-tribal law to forestall labeling any child alleged to have committed a delinquent act as a criminal. However, delinquency jurisdiction is recognized as "quasi-criminal." The civil-criminal distinction is critical for tribes because, while their civil jurisdiction over non-Indians is clear,⁸ they may not take criminal jurisdiction over non-Indians.⁹ It is likely that these provisions were adopted prior to the *Oliphant* decision; the study did not find evidence that tribes exercised juvenile jurisdiction over non-Indian youth, regardless of their codes.

4. MINIMUM AND MAXIMUM AGES

The minimum age refers to the youngest age at which a youth is subject to the jurisdiction of the court. The majority of codes do not provide for a minimum age. The maximum age is the oldest age at which a youth is subject to the jurisdiction of the court.

Sixteen codes allow jurisdiction over a youth at any age up until age 18 and three allow it up to age 21.

Three restrict juvenile court jurisdiction to ages 10 through 18. These figures do not include codes which allow for continuing juvenile jurisdiction once a youth is an adult.

5. CONTINUING JURISDICTION

Continuing jurisdiction refers to the upper age limit at which juvenile court jurisdiction ceases over a person who has been subject to such jurisdiction, usually for dispositional and probationary purposes.

As shown in the previous paragraph, 19 codes restrict court jurisdiction for illegal acts committed by youth under age 18; however, once court jurisdiction attaches, 10 permit jurisdiction for dispositional purposes past that age. Four of these allow jurisdiction to continue between 19 to 21 years of age, and six allow it to continue past age 18 without setting an upper limit. The remaining eleven do not have such jurisdiction.

6. TRANSFER

Transfer refers to a procedure by which the children's court can transfer a minor to be tried as an adult. The criteria for determining when to transfer were not examined.

EXHIBIT 4.5
TRANSFER PROVISIONS CONTAINED IN TRIBAL CODES

TRANSFER PROVISION IN CODE	RESPONDING TRIBES
Transfer at 14 years	8 (38%)
Transfer at 16 years	7 (33%)
Code allows transfer but provides no age limit	2 (10%)
Code fails to provide for transfer	4 (19%)

7. TYPES OF CASES/SUBJECT MATTER

This review identified the kinds of cases that may be heard in children's court as defined in tribal codes

and the number of codes employing the indicated language.

EXHIBIT 4.6
SUBJECT MATTER PROVISIONS CONTAINED IN TRIBAL CODES

SUBJECT MATTER PROVISION IN CODE	RESPONDING TRIBES
Delinquency	21 (100%)
Status Offenses	14 (67%)
Minor in Need of Care	21 (100%)
Indian Child Welfare Act	13 (62%)
Other (Termination of parental rights, adoption, judicial consent, mental commitment, emancipation)	21 (100%)

C. DETENTION OR OUT-OF-HOME PLACEMENT PENDING ADJUDICATION

1. DETENTION OF ALLEGED JUVENILE OFFENDERS

a. CRITERIA FOR DETENTION

Every code contains criteria for placing a child in detention prior to adjudication. The standard language used by the study for analysis purposes was:

The Court may order detention or shelter care or order it to continue if the Court finds probable cause exists to believe the minor committed the alleged act and:

- (1) The act is serious enough to warrant continued detention or shelter care; or
- (2) There is reasonable cause to believe the minor will run away so that he will be unavailable for further proceedings; or
- (3) There is reasonable cause to believe that the minor will commit a serious act causing damage to person or property.

Some codes contain additional language such as "the minor is in immediate danger of physical harm" or "the minor has previously failed to appear for interview or hearing before the Court" or "the minor's parent, guardian or custodian cannot be found and there are no relatives or shelter care facilities available to which the minor could be released." If the standard language is used and the code merely adds several conditions, the code was considered similar to the standard.

A number of codes contain language that differs from the standard language, but still result in the same outcome which is providing for the safety and welfare of both the child and the community while guarding against the failure to appear by the juvenile. Despite the similarity in outcome, these codes were grouped under a separate category because the language differs from the plain language of the standard.

EXHIBIT 4.7
CRITERIA FOR DETENTION CONTAINED IN TRIBAL CODES

CODE LANGUAGE:	RESPONDING TRIBES
Follows the Standard	6 (29%)
Is Similar to the Standard	5 (24%)
Is Different from the Standard	10 (48%)

h. PLACE OF DETENTION

Every code provides for placement in a detention facility or secure detention as well as for non-secure detention. The terminology used as the standard for review is the broadest language possible, allowing for placement not only in a detention facility on the reservation, but also in a foster care facility, a private home, or an off-reservation facility, all of which must be licensed or approved by some tribal agency or, in the case of the off-reservation facility,

by the state in which it is located. Those codes whose language was considered different offered fewer specific placement options or used very general language or did not require licensing or approval by any agency.

The majority of the codes also included language keeping detained minors separate from adults in some way.

EXHIBIT 4.8
CRITERIA FOR PLACE OF DETENTION
CONTAINED IN TRIBAL CODES

CODE LANGUAGE:	RESPONDING TRIBES
Follows the Standard	6 (29%)
Is Similar to the Standard	5 (24%)
Is Different from the Standard	10 (48%)

c. ADULT FACILITY

One of the major tasks of this study was to determine whether youth can be held in an adult facility and, if so, to identify the criteria for doing so. The analysis revealed that provisions for detention in adult facilities are far from uniform among the 21 codes reviewed. The standard criteria utilized once it was determined that a youth could be so held was:

- 1) a minor who is at least 16 years of age;

- 2) a juvenile facility is not available or cannot assure adequate supervision of the minor; and,
- 3) adequate supervision in detention is provided 24 hours a day.

The issue of separation from adult prisoners was difficult to assess from the language of the codes; however, site visit data indicated clearly that the practice of the overwhelming majority of tribes

having only adult facilities was either not to allow juveniles to be housed in them, or if this was

allowed, juveniles had to be segregated from the adult prisoners.

EXHIBIT 4.9
TRIBAL CODE CRITERIA FOR PLACEMENT OF
JUVENILE OFFENDERS IN ADULT FACILITIES

CODE LANGUAGE:	RESPONDING TRIBES
Follows the Standard (16 years old)	5 (24%)
Follows the Standard (14 years old)	1 (5%)
Follows the Standard with Sight/Sound Separation Mandatory	1 (5%)
Follows the Standard with Sight/Sound Separation, if Possible	1 (5%)
Follows the Standard and Minor is Checked in Person at Least Every 15 Minutes	2 (9%)
Prohibits Jail Detention of Youth	1 (5%)
Differs from Standard	3 (14%)
Does Not Address Jail Detention of Youth	7 (33%)

2. PLACEMENT OF NON-OFFENDERS

a. CRITERIA FOR PLACEMENT

Placement for non-offenders is typically in some type of shelter care or foster care. While all of the shelter care provisions reviewed have a common thread, that of the welfare of the child, the standard used for analysis was a detailed set of criteria while those provisions judged as not being standard were vague and broad. The standard is:

Criteria for Shelter Care

Need for shelter care exists if the Court finds probable cause exists to believe the minor is a minor-in-need-of-care and one or more of the following also exist:

1. The minor is suffering from an illness or injury, and no parent, guardian, custodian or other person is providing adequate care for him;
2. The minor is in immediate danger from his surroundings, and removal is necessary for his safety or well-being;
3. The minor will be subject to injury by others if not placed in the custody of the Court;
4. The minor has been abandoned by his parent, guardian or custodian;

5. No parent, guardian, custodian, or other person is able or willing to provide adequate supervision and care for the minor; or
6. The minor will run away and be unavailable for further proceedings.

A majority of the codes (13) either were the same or similar to the standard, while eight differed.

b. PLACEMENT IN SHELTER CARE

The standard language for shelter care provisions typically allows a choice as to the type of shelter care in which to place a non-offender who cannot remain at home. One tribe's provision represents the standard:

Place of Shelter Care - A minor alleged to be a minor-in-need-of-care may be placed, pending a Court hearing, in the following places:

1. An extended family home on the reservation approved by Tribal Social Services; or
2. A foster care family home on the reservation approved by Tribal Social Services; or

3. A shelter care facility off-reservation approved by Tribal Social Services.

Many codes use the term *shelter care* without defining the kinds of facilities which would be considered such care. By interpretation, the court may achieve the same outcomes without the need for the specific criteria, but the preferred practice is to be specific to insure proper care of a non-offender.

Two-thirds of the codes (14) are either the same as or similar to the standard, while seven differ.

c. PLACEMENT IN A JUVENILE FACILITY

Tribal practice as indicated from the majority of site visits is not to place non-offenders in detention, but, if necessary, to place them in some form of shelter care when available. Nine codes, however, allow non-offenders to be placed in juvenile detention facilities, only three explicitly prohibit such placement, and nine fail to address the issue. Of the nine codes allowing such placement, six direct that non-offenders be separated from offenders. However, most facilities are too small for this to be a practical solution.

Thus, practice apparently follows the preferred policy of not detaining non-offenders, but code language for a majority of tribes either allows such placement or does not address the issue.

d. ADULT FACILITY

Few codes allow placement of non-offenders in adult facilities or jails while over a third explicitly prohibit such placement. This is consistent with the practice of tribes not to place non-offenders in detention as discussed in the preceding paragraph.

Although tribes disapprove of the practice of using jails and agree that the practice should not be followed, many tribes do not have separate facilities to house juvenile offenders or delinquents. Site visits indicated that juveniles may be taken to the facility only when nothing else is available for tribal use. When this happens, the practice for the overwhelming majority of tribes is to hold the child in a waiting area, not a cell, until the parents can be called to retrieve them. In a few instances, a severely inebriated minor is placed in a cell by himself to detoxify if there is no separate detoxification center, and then released to parents or family.

EXHIBIT 4.10
CRITERIA FOR PLACEMENT OF JUVENILE NON-OFFENDERS
IN ADULT FACILITIES CONTAINED IN TRIBAL CODES

CODE LANGUAGE:	RESPONDING TRIBES
Allows Placement of Non-Offenders in Jail at Age 16	1 (5%)
Allows Placement of Non-Offenders in Jail at Age 14	1 (5%)
Allows Placement of Non-Offenders in Jail with No Age limit	3 (14%)
Prohibits Jailing of Non-Offenders	8 (38%)
Does Not Address Jail Detention of Non-Offenders	8 (38%)

D. HEARINGS

1. JUVENILE OFFENDERS

a. TRANSFER HEARING

Fifteen of the 21 codes allow transfer of a juvenile case to tribal¹⁰, state or federal court.

EXHIBIT 4.11

AGE CRITERIA FOR ALLOWING TRANSFER OF JUVENILE CASES TO TRIBAL, STATE, OR FEDERAL COURT IN TRIBAL CODES

CODE PROVIDES FOR TRANSFER HEARING:	RESPONDING TRIBES
At Age 14	5 (24%)
At Age 16	6 (29%)
At Age 18	1 (5%)
With No Age Limit	3 (14%)
Transfer Not Mentioned in Code	6 (29%)

Seven codes do not set time limits for holding transfer hearings. Although this could be construed to mean that a minor could be held indefinitely; the site visits revealed that minors are almost never held pending adjudication.

amount of time to determine whether a child should be detained, and those not setting specific time limits for the determination. Although, arguably, the omission of time limits could result in a minor being held for an inordinately long period, actual practice appears to be immediate release where possible.

b. DETENTION HEARING

Codes are divided into two categories: those requiring that a hearing be held within a specified

EXHIBIT 4.12

TIME CRITERIA FOR DETENTION HEARINGS IN TRIBAL CODES

CODE REQUIRES A DETENTION HEARING Within:	RESPONDING TRIBES
24 Hours Including Weekends/Holidays	3 (14%)
24 Hours Not Including Weekends/Holidays	4 (19%)
48 Hours Including Weekends/Holidays	4 (19%)
72 Hours Including Weekends/Holidays	4 (19%)
No Requirement; Left to Discretion of Judge	6 (29%)

c. ARRAIGNMENT

Arraignment is a term not ordinarily used in modern children's law and only one of the codes refers to it.

d. ADJUDICATORY HEARING

Nearly half of the codes set no time limit within which an adjudicatory hearing must be held. Site visits and other contact with tribal courts indicate

that adjudicatory hearings are almost always held within a short time after the alleged offenses take place. Thus, even though one code allows as much as 60 days to lapse between the filing of a petition and the hearing, this amount of time probably is not used. One code which does not provide for an adjudicatory hearing does allow for an informal hearing with dispositional alternatives.

EXHIBIT 4.13
TIME CRITERIA FOR HOLDING
ADJUDICATORY HEARINGS IN TRIBAL CODES

CODE REQUIRES AN ADJUDICATORY HEARING Within:	RESPONDING TRIBES
5 Days	2 (10%)
10 Days	7 (33%)
14 Days	1 (5%)
60 Days	1 (5%)
No Time Requirement	9 (43%)
No Adjudicatory Hearing Requirement	1 (5%)

e. DISPOSITIONAL HEARING

Eleven codes do not provide a time limit for holding a dispositional hearing. Arguably this could indicate inappropriately long periods between adjudication

and disposition; actual practice, however, is that in almost all instances such hearings are held either on the same day as the adjudication or within a few days thereafter.

EXHIBIT 4.14
TIME CRITERIA FOR HOLDING
DISPOSITIONAL HEARINGS IN TRIBAL CODES

CODE REQUIRES A DISPOSITIONAL HEARING WITHIN:	RESPONDING TRIBES
5 Days	1 (5%)
10 Days	7 (33%)
14 Days	1 (5%)
60 Days	1 (5%)
No Time Requirement	11 (52%)

2. NON-OFFENDERS

Hearing procedures and time limits are the same

for both offenders and non-offenders in all codes except one.

E. DISPOSITION AFTER ADJUDICATION

1. JUVENILE OFFENDERS

The review of dispositional alternatives shows a strong preference for probation, placement in an institution or with an agency, and restitution. The codes fail to define what they mean by institution or agency. The following language illustrates the provisions:

"Commit the child to an institution or facility for short-term confinement or for the purpose of study and evaluation."

"Commit the child to an authorized industrial school, state training school, or other training or

corrective institution authorized to receive Indian children."

Many codes fail to separate dispositions for offenders from those for non-offenders. Although a literal reading might justify the conclusion that non-offenders might be placed in juvenile secure facilities, the evidence from the site visits shows the opposite. However, the language is confusing and obviously should be clarified. Codes that separate disposition of offenders from non-offenders make it easier to determine where a youth will be placed upon adjudication.

EXHIBIT 4.15
DISPOSITIONAL ALTERNATIVES^b FOR JUVENILE
OFFENDERS IN TRIBAL CODES

DISPOSITIONAL ALTERNATIVES	RESPONDING TRIBES
Non-Offender Provisions in Addition to Specified Alternatives for Offenders (such as those listed below)	8 (38%)
Juvenile Detention	5 (23%)
Adult Facility (at 16 years of age)	3 (14%)
Probation	19 (90%)
Institution or Agency	18 (85%)
Industrial School	6 (28%)
Work Programs	7 (33%)
Counseling	4 (19%)
Restitution	12 (57%)
Traditional Remedy	2 (9%)
Other ^c	14 (66%)

^b Codes may include multiple alternatives.

2. NON-OFFENDERS

Five codes allow non-offenders to be treated in the same way as offenders. Again, if taken literally, this could be interpreted to mean that a non-offender could be committed to a secure facility, but the literal interpretation does not reflect real practices.

One code also allows placement in juvenile detention, while another prohibits it. It appears that most tribes follow what is considered standard placement of youth by placing them in non-secure facilities.

EXHIBIT 4.16
DISPOSITIONAL ALTERNATIVES FOR
NON-OFFENDERS IN TRIBAL CODES

DISPOSITIONAL ALTERNATIVES	RESPONDING TRIBES
Release to Relatives	20 (95%)
Foster Home	18 (85%)
Shelter Care	17 (80%)
Protective Supervision	12 (57%)
Legal Custody	10 (47%)
Juvenile Detention	1 (4%)
Juvenile Detention Prohibited	1 (4%)

VI. SUMMARY AND CONCLUSIONS

While tribes have a difficult time updating their written laws for a number of reasons, the overwhelming majority employ actual practices which comply with the mandates where resources allow. Where tribes do not have any facilities, children are not held at all or are held only for the time necessary to notify parents or family to pick up the child. This is true also for many of the tribes

which have only adult facilities that lack the capacity to separate juveniles from adult offenders. Other tribes with adult facilities only, hold youth, if at all, in cells separate from adult prisoners, and where possible out of their sight and sound. For the most part, tribal practices meet the spirit of the mandates, although some codes need to be amended to reflect these practices.

^c "Other" includes: placement in a hospital or other suitable facility; restraining a child from driving; taking possession of a child's driver's license; specific plan for the care and assistance to the minor or his parent(s), guardian, or custodian which is calculated to resolve the problems presented in the petition; and residential treatment

VII. RECOMMENDATIONS

Tribal legal codes guide the practice of courts in handling juvenile cases and determine the framework through which youth and family rights are protected. Although a number of current codes include many best practice standards, including provisions similar to the OJJDP mandates, a number do not. Tribal codes will likely continue to vary due to the variety of cultural and other circumstances among the tribes and villages. However, some tribal codes are incomplete or fall short of important juvenile provisions, not because of local needs, but simply because they have not been revised for many years. The following recommendations address the need for such revisions.

4.1 TRIBES SHOULD UNDERTAKE TO REVIEW THEIR CHILDREN'S CODES.

Tribes should review their children's codes and other codes pertinent to juveniles on a periodic basis. Codes should be amended to address those standards and initiatives determined to be relevant to Indian youth and tribal justice systems. Existing model codes may be useful during this review process.

4.2 THE BIA SHOULD UNDERTAKE TO PROVIDE TECHNICAL ASSISTANCE REGARDING THE REVISION OF TRIBAL CODES.

Working together with OJJDP and relevant units in ACYF, the BIA should include under its mandate to support tribal courts tribal review and revision of tribal codes affecting juveniles.

4.3 TRIBES SHOULD REVIEW THEIR CONSTITUTIONS TO FACILITATE THE MODIFICATION OF PERTINENT CODES.

Tribal constitutions that still include the provision that the Secretary of Interior must approve any revisions to tribal legal codes should eliminate this provision. Removing this requirement may expedite the process of updating existing tribal legal codes.

CHAPTER FOUR ENDNOTES

1. *Native American Tribal Court Profiles 1985: A Report by the Bureau of Indian Affairs, Branch of Judicial Services*. Updated *Profiles* have not been published since 1985 (which reported the status of tribal courts as of July, 1985), but it is our understanding that an effort to update is currently underway.
2. U.S. Department of the Interior, Bureau of Indian Affairs, Branch of Judicial Services, October 21, 1992.
3. P.L. 96-272.
4. Title II of the Indian Child Welfare Act (ICWA) (25 U.S.C. §1931) provides that Indian child welfare programs may receive grants for, among other purposes, employing professional and trained personnel to assist tribal courts in domestic relations and child welfare and providing training to tribal court judges and staff in family and child assistance and service programs. 25 C.F.R. § 23.22, part of the regulations implementing the above ICWA grant program, includes the preparation of child welfare codes in the third program priority, but delinquency codes are not synonymous with child welfare codes. The bulk of ICWA grant funds have funded and will continue to fund direct children's services. In addition, several private Indian organizations have been funded once or twice to assist tribes with legal drafting, mainly in the area of child welfare, a few times in the area of juvenile delinquency. The numbers helped are very small. A few tribes have been able to pay for code revisions either from tribal funds or from other funds made available from private or public sources. Unfortunately, the reality is that funds are not available on a uniform or consistent basis for tribal code drafting and tribes do not build such funds into their regular budgets.
5. 25 U.S.C. §476. Of course, a tribal law that directly infringed upon the federal trust responsibility would, under present law, be overridden by federal power. But there is no statutory basis for general federal supervision of tribal affairs.
6. According to Scott Keep, Assistant Solicitor of the Department of Interior, in a telephone interview on December 2, 1991, these amendments have rendered part 81 of 25 C.F.R. obsolete and the Department is in the process of drafting and adopting new regulations. Under the 1988 amendments, the Secretary is bound by §476 to call an election within 180 days after receiving a tribe's request to either ratify or revoke a constitution and bylaws and within 90 days after receiving a tribe's request to ratify an amendment to an existing constitution or set of by laws. The Secretary is then required to approve or disapprove the bylaws, or amendments, within 45 days after the election if they are adopted by the tribe. If the Secretary does not give approval or disapproval within that time, the Secretary's approval is considered to have been given.
7. Sec. 223 (a)(5)(C).
8. *National Farmers Union Ins. Cos. v. Crow Tribe*, 471 US 845 (1985).
9. *Oliphant v. Suquamish Indian Tribe*, 435 US 191 (1978).
10. Tribal court refers to the court with jurisdiction over adults, thus subjecting the youth to the adult criminal code and adult sentencing.

CHAPTER FIVE YOUTH SERVICES AND TREATMENT ISSUES

I. INTRODUCTION

Juvenile justice systems include law enforcement, court, and service functions. Intervention services aimed at ameliorating the problems presented by delinquent and status offender youth are wide ranging and include many systems - criminal justice, social services, health, mental health, education and vocational services. Many important decisions are made by personnel in law enforcement, court, and service areas throughout the course of handling a juvenile referral. These decisions determine whether or not the system will intervene at all and, if it does, what specific interventions will be employed. How a particular juvenile will be handled by the system is often determined not only by the evaluation of the needs of the juvenile and his family, but by the options and services available to the juvenile justice system. This chapter provides a description of the functions performed by tribal juvenile justice systems and examines the intervention services available for Indian juvenile offenders.

Youth enter the juvenile justice system for a variety of reasons, ranging from serious criminal acts to school and family problems. The likelihood that a child will engage in delinquent or status offense behavior is influenced by many factors. The present study was not designed to be a clinical study and therefore does not attempt to provide a definitive analysis of the causes of Indian youth problems. However, in order to evaluate service needs and priorities for Indian youth, previous research findings and data acquired through the course of the present study will be used to describe the most prevalent problems of this population. Three issues facing Indian adolescents are of particular relevance to juvenile justice services: the high incidence of alcohol and drug use, the difficult bicultural context in which tribal youth develop and define their identities, and severe economic problems that result in difficult education and career choices. At the same time, living in the community of the tribe offers some potentially powerful and positive youth influences. These factors must also be recognized in the examination of tribal juvenile justice issues.

The vast majority of contacts by Indian youth with tribal juvenile justice systems are attributed to alcohol and/or drug abuse. Juvenile justice personnel interviewed during the study, almost without exception, cited the high rate of alcohol and inhalant use among youth. Concerns were raised regarding the increasing use of dangerous inhalants and the decreasing ages of the children who have begun to experiment with alcohol and drugs.

In addition, alcoholism afflicts a large number of Indian adults. Adult alcohol abuse contributes to family dysfunction and poverty, and negatively affects the health and well-being of Indian children. Alcohol use by mothers during pregnancy (or by either parent prior to conception) can permanently influence the life of the unborn child. The direct physiological and behavioral effects of Fetal Alcohol Syndrome/Fetal Alcohol Effect (FAS/FAE) are affecting an increasing number of Indian youth.¹ The pervasiveness of substance abuse problems in both the adult and youth populations requires that service priorities aimed at prevention and treatment must be acknowledged system-wide.

Developing a positive and cohesive identity within the context of their tribal culture and the non-Indian culture to which they are exposed can be a difficult process for Indian youth. Previous studies have examined how these two, sometimes conflicting, cultures affect Indian youth. The need for youth to be comfortable in their native culture, but also in the non-Indian culture around them, has been noted in several studies. The inability to become reasonably comfortable with both Indian and non-Indian society has also been related to depression and suicide in the Indian population. A recent study of adolescent suicide among Indians noted identity confusion and culture conflict as significant causal factors.² Regardless of the root causes, the rate of suicide among young Indians is alarming. A recent report from the Indian Health Service noted that, in 1986, suicide rates for Indian children ages 10 to 14 were approximately four times higher than non-Indian children. For youth

between the ages of 15 and 19, the rates were two and a half times greater for Indians than for non-Indians.³

The extent of poverty on reservations also affects adolescent development and directly impacts juvenile justice systems. Although a few tribes report thriving economies due to significant natural resources and/or the ability to maintain strong business ventures, other tribes have few resources upon which their economies can be structured. One tribe visited by the study team estimated that unemployment on the reservation is as high as 85%. Other tribes indicated that their only major employers are tribal government, the schools, and IHS and BIA agencies. In these economic conditions, it is difficult for youth to set and achieve realistic career goals. As Indian adolescents become adults they must struggle with the difficult decision regarding remaining with the tribe and having limited employment options or seeking employment outside reservation boundaries.

It is equally important to understand the strengths inherent in tribal life. Tribes by their very nature

serve a strong extended family function for children. Although Indian families are a powerful influence on children, the tribe itself can play an integral part in the growth and development of tribal youth. The tribe provides an extended family support system. The tribe also represents a system of beliefs and sense of tradition that can help children gain positive values and direction for their lives. The role that tribal elders, in particular, fulfill in resolving family problems and providing guidance and education for young people was frequently cited during study interviews. The impact of the tribe on its members is quite unique and offers a potential service resource for children and their families.

Although Indian youth encounter some of the same problems and issues that non-Indian youth must cope with, as described above, there are differences. These differences have both positive and negative implications. Recognizing these differences not only helps us understand the problems with which tribal juvenile justice systems must cope, but also provides an understanding of the philosophy upon which tribal juvenile justice systems are based.

II. COMPONENTS OF THE JUVENILE JUSTICE SYSTEM

A number of status offender and delinquent Indian youth are handled by non-Indian systems, primarily state/county juvenile justice systems. These youth, either due to state jurisdiction on the reservation or because they have committed acts outside reservation boundaries, are not served through tribal juvenile justice systems. Examination of these non-tribal juvenile justice systems is beyond the scope of the present study.

The study's findings show that a substantial number of delinquent and status offender Indian youth are handled through Indian juvenile justice systems. Many services provided to these youth are delivered by tribal providers (although often with outside financial support). However, even when juvenile cases fall clearly within tribal jurisdiction, questions about service responsibility still remain. The complex service responsibilities within the Indian juvenile justice systems are discussed below through

the results of the All Tribe Survey (ATS) and the on-site interviews conducted during the study.

The study's findings related to processing juveniles through the formal tribal juvenile justice system are examined first. These functions include arrest and charging of juveniles, prosecution, adjudication, and disposition. The study's findings related to intervention services will be presented following the examination of processing functions.

The tables presented below are derived from ATS data supplied by 93 tribes that indicated they provide some juvenile justice services. The level of juvenile justice involvement of these tribes ranges from tribes that exercise almost exclusive juvenile jurisdiction and operate full scale juvenile justice systems to those who exercise very limited jurisdiction and provide a small number of juvenile justice related services. Seventy-two of the tribes

represented in the ATS findings are tribes that are not subject to state jurisdiction and therefore have exclusive jurisdiction for juvenile offenses committed by Indian youth within reservation boundaries (with the exception of Major Crimes). Twenty-one of the 93 tribes perform some juvenile justice activities, but their jurisdiction over juveniles is concurrent with state jurisdiction. These two groups of tribes are referred to in the study as "exclusive jurisdiction tribes" and "concurrent jurisdiction tribes."

It is important to note that the ATS questions were focused on determining what services are available to tribal juvenile justice systems and who performs or administers these services on the reservation. Questions were constructed to allow multiple responses when identifying the provider of a specific function or service component. Therefore, the reader will note that percentages in the tables frequently total more than 100%. Many times a tribe has multiple providers of a single service. The complex mix of roles and responsibilities is a key feature of tribal juvenile justice systems. Another caveat in interpreting the data from the ATS relates to the issue of provision of a service versus the

funding of that service. Since ATS questions asked *who performs or administers* a particular function, the provider identified for a function or service is not necessarily the funding source.

Exhibit 5.1 presented below shows the ATS results for all 93 tribes relative to juvenile justice processing functions. Exhibits 5.2 and 5.3 (which appear following the "all tribe" discussion) present the ATS results for exclusive jurisdiction tribes and concurrent jurisdiction tribes respectively.

A. JUVENILE JUSTICE PROCESSING COMPONENTS

Tribes may perform all or some of the basic law enforcement and court related functions for juveniles on the reservation. It is quite common that these functions are performed by more than one provider, either with clear jurisdictional distinctions or with less distinct, overlapping responsibilities. ATS results related to law enforcement functions (apprehension and charging) and court functions (prosecution and adjudication) are shown in the following tables.

EXHIBIT 5.1

TRIBES WITH JUVENILE JUSTICE PROCESSING COMPONENTS						
ALL TRIBES N=93						
	TRIBE	BIA	ST/CO	OTHER TRIBE	OTHER	NOT AVAIL
APPREHENSION	80%	31%	30%	2%	2%	0%
CHARGING	80%	14%	23%	2%	3%	1%
PROSECUTION	85%	4%	26%	1%	2%	0%
ADJUDICATION	90%	2%	26%	0%	3%	0%

Exhibit 5.1 shows that a large majority of the 93 tribes directly operate some or all of the tribes' law enforcement functions. According to recent BIA statistics there are 985 tribal police officers. Thirty-one percent of the tribes indicate that BIA provides all or some law enforcement functions for the tribe. BIA police officers number 400 across the country. State/county performance of law enforcement functions was reported by 30% of the 93 tribes. As evidenced by the fact that the percentages for apprehension and charging total more than 100%,

many tribes are served by combinations of tribal, BIA, and/or state/county police agencies.

Although there is substantial direct provision of law enforcement functions by the tribes, the visits to the tribes found that this is not without problems. Tribal and BIA law enforcement services are spread quite thin on many reservations. Police on one large reservation illustrated this point by relating an incident where response to a fatal traffic accident on the reservation took officers an hour and a half to

get to the scene. Many tribes experience the problem of large land areas covered by relatively small numbers of patrol officers. This makes it difficult to give priority to juvenile problems and to perform transportation and other functions frequently required in response to juvenile problems and offenses.

The percentage of tribes performing court functions is slightly higher than for those operating police functions. Eighty-five percent of the tribes prosecute juveniles and 90% directly adjudicate juveniles. One might expect prosecution and adjudication responses to be equal, since in non-Indian systems these functions are done via the same system. However, the disparity in these results is explained by a few tribes that reported that cases are presented to their tribal court by BIA or state social service or law enforcement personnel, not by tribal prosecutors.

Twenty-six percent of the tribes reported that the state/county courts are involved in prosecution and adjudication of youth. Some tribes reported both tribal and state provision of these functions. This reflects the presence of concurrent or "split" court jurisdiction in a number of these tribes. In some of these situations the cases heard by tribal court and those heard by state courts are determined by agreement between the courts. At other times this overlapping jurisdiction is not clearly defined.

There is only limited evidence of inter-tribal arrangements for law enforcement or court activities, as shown by the low percentage of responses for "Other Tribe" in the above table.

Exhibits 5.2 and 5.3 below show the differences between tribes which deal with juveniles through jurisdiction concurrent with the state, and tribes which have exclusive jurisdiction over juvenile offenders.

EXHIBIT 5.2

TRIBES WITH JUVENILE JUSTICE PROCESS COMPONENTS						
EXCLUSIVE JURISDICTION TRIBES N=72						
	TRIBE	BIA	ST/CO	OTHER TRIBE	OTHER	NOT AVAIL
APPREHENSION	82%	38%	25%	1%	1%	0%
CHARGING	93%	17%	15%	3%	1%	1%
PROSECUTION	90%	4%	19%	1%	0%	0%
ADJUDICATION	93%	3%	18%	0%	1%	0%

EXHIBIT 5.3

TRIBES WITH JUVENILE JUSTICE PROCESS COMPONENTS						
CONCURRENT JURISDICTION TRIBES N=21						
	TRIBE	BIA	ST/CO	OTHER TRIBE	OTHER	NOT AVAIL
APPREHENSION	71%	10%	48%	5%	5%	0%
CHARGING	71%	5%	43%	0%	10%	0%
PROSECUTION	67%	5%	48%	0%	10%	0%
ADJUDICATION	76%	0%	52%	0%	10%	0%

There is a notable difference between concurrent jurisdiction tribes and exclusive jurisdiction tribes both in regard to law enforcement and court functions. Direct provision of these functions is higher in the exclusive jurisdiction tribes. However, it is clear that some tribes operating in the concurrent jurisdiction environment consider it appropriate and/or necessary to perform law enforcement and court functions themselves. These concurrent jurisdiction tribes have developed their own law enforcement and court systems. Direct tribal provision of law enforcement and court functions ranges from two-thirds to three-quarters in these concurrent jurisdiction tribes.

BIA involvement in juvenile justice processing functions is largely related to law enforcement activities and is highly concentrated in exclusive jurisdiction tribes. A few of these tribes reported that tribal police and EIA officers share law enforcement responsibility on the reservation; most reported that these functions are provided by either BIA or tribal police.

B. JUVENILE JUSTICE SYSTEM SERVICE COMPONENTS

The roles of providers are even more complex in the area of intervention services than they are for law enforcement and court activities. A number of key issues apply to this discussion. The following brief discussion describes the basic roles of state, federal and tribal governments as they relate to tribal juvenile justice services.

States have general service responsibility for all citizens within their boundaries, including Indians. Not only do available services differ from state to state, but the perception of responsibility to serve Indian youth varies as well. State responsibility appears to be even more unclear when youth are under the authority of tribal courts. Provision of state services to youth who remain under tribal court jurisdiction varies greatly from state to state and depends upon interpretations of responsibility by, and agreements between, tribal and state governments. In some instances, states require that youth be placed in the custody of state or county courts in order to be eligible for state funded services.

Federal responsibilities for youth under tribal jurisdiction are equally unclear. Eligibility for general federal funding programs is covered in Chapter Seven of this report. However, the key roles in providing funds and/or services by the BIA and the IHS must be briefly described in this discussion of tribal juvenile justice services. For some tribes these two federal agencies are major direct service providers. For others they are primarily funding sources for tribally operated services. Although there is a broad range of services provided or funded through these two agencies, they do not, by policy or action, purport to be the ultimate guarantor of all juvenile justice services for reservation youth.

Tribal responsibility for services raises a dilemma between the desire for independent control of juvenile justice programs and the need for significant outside financial support. Many tribes have limited financial resources with which to fund human services programs. Although tribes perform many services directly, there is substantial variation from tribe to tribe relative to the availability and comprehensiveness of these services.

Because individual tribes must look to state and federal agencies, as well as to their own resources for needed services, and because identification of general service responsibility is sometimes unclear, there really is no one "model" that can be described for tribal juvenile justice systems. However, the study does identify priority services, strengths and weaknesses in the existing systems, and the degree to which various agencies and units of government are currently involved in tribal juvenile justice systems.

Exhibits 5.4, 5.5, and 5.6 present the findings from the ATS questions related to juvenile justice services. Tribes responding were from the population of 93 tribes described earlier in this chapter. In addition to describing the availability of services to these tribes, the ATS results illustrate the relative involvement of the key provider agencies for these services. However, the results do not identify the funding source of the services nor do they indicate the extent or capacity of the services. Information obtained through interviews

with tribal representatives and other key personnel will be used to address these issues.

1. PREVENTION SERVICES/DIVERSION PROGRAMS AND PROBATION/PAROLE

Prevention services include those services in the community that affect youth prior to commission of acts that formally bring them to the attention of tribal juvenile justice authorities. Some of these services focus on parents and families; others are provided directly to youth. Prevention occurs at a variety of levels, from programs that affect the general condition of tribal society and its economy to programs that focus on specific youth at risk. Tribal leaders interviewed during the study emphasized the importance of prevention programs.

Diversion programs were also considered critical. Formally charging a first offender or a juvenile who appears amenable to treatment services is often viewed as both counterproductive for the juvenile and inefficient for the juvenile justice system. On the other hand, failure to intervene at the earliest stages of a juvenile's contact with the system loses an important opportunity to prevent further problems. For this reason diversion programs are widely recognized as key components of juvenile

justice systems. Diversion programs typically require that charges be held in abeyance until some course of treatment and/or restitution occurs. This provides incentive for the juvenile to comply and provides the court with options if such compliance does not occur. To be effective, diversion programs usually require access to other community service options.

Probation and parole officers often perform a variety of functions for the court. In most tribal courts the functions of probation and parole are combined. Many courts operate with only a single officer or with limited staff. Therefore, the juvenile and adult functions are often combined. In some tribal courts the majority of probation and parole functions are handled by the Department of Social Services. Probation/parole officers typically perform the court intake functions, screen referrals, and provide or coordinate initial evaluations. These officers often determine which cases will be formally processed and which cases will be handled by diversion and community programs, or will be dismissed without formal charging. Operating as counselors and/or as case managers, probation officers may have responsibility for supervising or providing ongoing services.

EXHIBIT 5.4

TRIBES WITH PREVENTION/DIVERSION and PROBATION/PAROLE							
ALL TRIBES N=93							
	TRIBE	BIA	IHS	ST/CO	OTHER TRIBE	OTHER	NOT AVAIL
PREVENTION/DIVERSION	80%	20%	30%	29%	3%	6%	5%
PROB/PAROLE	77%	4%	3%	28%	3%	0%	6%

All but 5% of the 93 tribes responding to the ATS have some level of prevention and/or diversion services. Many tribes reported that the capacity of these programs was insufficient to serve all youth for whom these services are appropriate. Eighty percent of the tribes report that the tribe provides these services directly. There were no notable differences between the concurrent jurisdiction tribes and exclusive jurisdiction tribes regarding the

availability of these services. The involvement of non-tribal providers also was similar between these two groups of tribes, including the percentage of tribes which reported provision by state/county agencies.

Overall 94% of the tribes have probation and/or parole services available. Three-quarters of these tribes (77%) state that these services are provided

directly by the tribe. The only other provider cited by a substantial number of tribes is state/county government (28%). Direct tribal provision of these services is most common in exclusive jurisdiction tribes (85%). Concurrent jurisdiction tribes reported a more even split between tribal and state/county provision of probation/parole services (52% and 43% respectively).

2. NON-SECURE PLACEMENT SERVICES: FOSTER CARE, SHELTERS, GROUP HOMES AND RESIDENTIAL TREATMENT

Non-secure placement alternatives play a key role in the system for handling status offender and delinquent youth. Juveniles who must be placed outside the home usually exhibit severe behavior problems, significant treatment needs and/or have families who are unable or unwilling to continue to care for the child. Assuming that alternatives to secure facilities exist, the majority of youth can be

placed in non-secure environments. (See Chapter Six for discussion of secure facilities.) Some youth require immediate placement, based upon the offense, their condition, or the unavailability or unsuitability of the family. Regardless of the type of emergency placement setting, the relatively high incidence of alcohol use requires that emergency placement programs provide, or have available, options for detoxification.

There are many types of long term placement options which may be used for status offender or delinquent youth. These options are generally viewed on a continuum related to intensity of treatment. Youth with the most severe problems, including mental health or alcohol/substance abuse problems, are considered candidates for residential treatment. However, many youth, even with some evidence of these problems, may be amenable to less intensive treatment through foster care, group homes or boarding schools.

EXHIBIT 5.5

TRIBES WITH NON-SECURE PLACEMENT SERVICES							
ALL TRIBES N=93							
	TRIBE	BIA	IHS	ST/CO	OTHER TRIBE	OTHER	NOT AVAIL
FOSTER CARE	72%	23%	3%	45%	4%	5%	3%
SHELTER CARE	40%	12%	4%	46%	11%	6%	20%
GROUP HOME	28%	11%	5%	41%	8%	12%	23%
RESIDENTIAL	52%	13%	37%	44%	10%	13%	6%

a. FOSTER CARE

Exhibit 5.5 shows that most tribes have foster care services and, in 72% of these tribes, the services are provided directly by the tribe. Based upon interviews with court and social service personnel, virtually all foster care provision for status offender and delinquent youth is handled through social services, rather than court programs *per se*. These sources also indicated that the primary funding source for these placements is the BIA. A number of tribes appear to be moving toward qualification

for Title IV-E federal funds to cover placements and a few already are eligible. Based upon the substantial percentage of tribes indicating that foster care is provided by state/county agencies (45%) and by the BIA (23%), it can be assumed that a number of tribes use other foster care providers to augment their own services. Surprisingly, state/county provision of foster care is reported more often by exclusive jurisdiction tribes (47%) than by concurrent jurisdiction tribes (38%).

b. SHELTER CARE AND GROUP HOMES

Shelter care and group homes are the services cited most often as being unavailable to the tribe. Twenty percent reported that shelter care is unavailable; 23% indicated they have no group homes. This service gap was frequently echoed during the on-site visits. Some of the larger tribes that do have shelters and group homes indicate that there are either too few beds available or that a need remains for facilities for specific populations (e.g., group homes for adolescent girls). Results of the ATS show the gap in shelter and group home services to be relatively equal for concurrent and exclusive jurisdiction tribes. In addition to being the most commonly unavailable services, shelter care and group homes are the only services that are provided by state/county agencies (where they do exist) more often than by the tribes themselves. State/county agencies are reported to provide shelter care service by 46% and group home services by 41% of the 93 tribes.

Some shelter care and group home programs cited by tribal representatives during the study's on-site visits were collaborative efforts of tribal, state/county, BIA, and IHS agencies. One group home described to the study team is operated by the tribe, funded by the BIA, utilizes IHS for medical screening and treatment, and state/county resources for psychiatric and psychological evaluations. The effectiveness of this facility is further enhanced by its flexible admission criteria. This group home is used for shelter care and youth detoxification services as well as longer term placement.

c. RESIDENTIAL TREATMENT

Residential treatment facilities may be operated by the tribe, state/county agencies, or by the IHS as reported on the ATS. The most common referrals to residential treatment related to alcohol and drug treatment or treatment for depression and suicide risk. Almost all of the tribes reported some availability of residential care (94%). It should be noted that a response indicating that residential service is available may mean that the nearest program that will accept tribal youth is located hundreds of miles from the reservation.

Aftercare services were not specifically examined through the ATS. However, the importance of these services was emphasized during on-site contacts with individual tribes. Aftercare services focus on the youth's adjustment upon return to the family and can be an important extension of the treatment program itself. Aftercare services are most effective when coordinated and planned with the residential provider. These services are particularly critical because a number of youth leave the reservation for services (either to receive residential treatment or because of involvement with federal or state juvenile courts). As important as these services are for youth, the research team frequently received reports of insufficient aftercare staff and poor coordination between off-reservation providers and the existing aftercare programs.

Providing a full range of placement service options for Indian youth residing on the reservation raises several issues. It can be assumed that tribal size is related to the number of youth requiring the various placement options. However, to some degree, all tribes need access to the full range of placement settings even if certain needs arise only infrequently. Because of the number of juveniles involved, it would not be cost effective to operate all types of facilities on all reservations. On the other hand, tribes that only have access to facilities that are at a significant distance from the reservation must either accept sending their children far from the tribe and family or use less appropriate local options. This dilemma is most extreme when considering intensive treatment residential settings, but it is also relevant to less intensive settings, such as shelters and group homes.

d. BOARDING SCHOOLS

The youth of virtually every Indian reservation and Alaska Native village have access to a variety of boarding schools: on and off-reservation; completely boarding and combination boarding and day school; operated by BIA, tribes, community or private and religious groups. A total of 9252 Indian students attend 56 boarding schools at present, while another 1692 live in peripheral dormitories and attend public schools. In many respects, these institutions function as integral parts of the tribal/Native juvenile justice system, as prevention, diversion,

treatment, probation and even punishment services. (One boarding school principal reported the not-uncommon instance of an eighth-grader who had been "sentenced" to attend his school by a tribal court).

Boarding schools represent a potentially important source of resources for troubled youth, but they are not being used effectively at present. It might even be said that, because they are ill-equipped to fulfill their treatment/rehabilitation role with respect to tribal programs they present a certain danger to the students they serve.

As reported during the on-site interviews with tribal and school officials, several constraints exist. First, as a general rule boarding schools are completely unequipped to diagnose and treat special problems of incoming students. The limited counseling program once offered at BIA-operated boarding schools was recently discontinued because it was felt to be totally inadequate. Second, boarding schools have an incentive to fill their rolls to capacity for funding allocation purposes, often matching students with published admissions criteria regardless of the actual circumstances of the students; many of these students leave the schools after the date used by the Bureau to allocate funding based on student population, and school officials have no means of tracking them or assuring they are placed in programs or schools where they can be helped. Third, reservation-based social service and education officials (tribal, BIA and IHS) sometimes see off-reservation boarding schools as a way to help students escape dysfunctional situations at home. These officials will sometimes conceal or obscure the problems of the student in the application process with the result that boarding school officials do not become aware of the student's special problems and needs until after he or she has arrived and enrolled (and become entitled to due process protection to remain enrolled at the institution). Fourth, while tribal courts and service providers may accurately see boarding schools as diversion or alternative to incarceration resources, no procedures exist to involve school officials in these decisions or to ensure that the schools are equipped to provide

needed services to the students. Fifth, no procedure exists to address the issues arising out of mixing students with behavioral, psychological and substance abuse problems in the same institutional population with students who merely have no home or local school to attend but who are otherwise relatively free of special problems. Sixth, BIA boarding schools are caught in a bureaucratic limbo between the BIA Education Central Office and area and agency offices; with no clear policy direction, boarding schools are unable to develop special programs or to adapt to the needs of student populations as they would if they were able to define their missions in terms of special needs students more clearly. And Finally, the responsibility of the Indian Health Service to provide health, mental health and substance abuse treatment services to boarding schools is unclear; in BIA boarding schools in particular, interagency relations and responsibilities are undefined, resulting in services which are sporadic at best.

3. SOCIAL SERVICES, COUNSELING, AND SUBSTANCE ABUSE TREATMENT (DETOXIFICATION AND TREATMENT)

Although the social services, counseling, and alcohol/drug abuse programs to be discussed in this section may not be considered juvenile justice programs in the strictest sense, they are important intervention resources for delinquent and status offender youth. For a substantial number of youth, these services are a part of the tribal court's dispositional plan and, in some instances, it is the strength or weakness of these programs that determines whether a juvenile offender will be placed or will remain with the family. The availability of comprehensive in-home service options requires the participation of many service systems. The providers of these services are typically outside of the juvenile justice system and include schools, mental health, health, and social services.

Tribal systems depend upon a variety of community services and the ATS again found involvement by a number of providers in addition to tribally operated services.

EXHIBIT 5.6

TRIBES WITH SOCIAL SERVICES, COUNSELING, AND SUBSTANCE ABUSE TREATMENT							
ALL TRIBES N=93							
	TRIBE	BIA	IHS	ST/CO	OTHER TRIBE	OTHER	NOT AVAIL
SOCIAL SERV'S	77%	37%	22%	41%	3%	1%	1%
COUNSELING	80%	22%	55%	43%	5%	3%	0%
DETOX/TREAT	45%	6%	47%	40%	13%	14%	10%

Almost all tribes reported that social services and counseling services are available at some level to the tribe. However, these services were frequently stated to be severely understaffed and many programs have extensive waiting lists. Many tribes indicated that family counseling services were not available. As discussed in the above section on placement programs, aftercare counseling also was considered an unmet service priority of many tribes.

A number of tribes operate social service and counseling programs directly. Many of these programs are funded through a combination of BIA or IHS funding, augmented by tribal and other federal funds. The results also show that the BIA and the IHS are significant direct providers of these services among the tribes responding to the survey. BIA and IHS involvement in these services is somewhat more common in exclusive jurisdiction tribes than in concurrent jurisdiction tribes. It might be expected that concurrent jurisdiction tribes would report more involvement by state/county agencies in the areas of counseling and social services, but in fact the opposite is true. State/county provision is slightly higher for exclusive jurisdiction tribes.

As stated earlier in this chapter, substance abuse treatment is a major priority for Indian youth. Although 90% of the tribes indicate that detoxification and/or substance abuse treatment services are available, this does not reflect the extent or capacity of these services. Comments from the ATS and interviews suggest that only minimal service is available to many tribes which reported that detoxification or treatment services exist. A number of substance abuse programs lack the necessary number of staff and many existing staff do not have specialized training. Facilities that provide detoxi-

fication services are extremely rare according to the respondents in this study. Some tribes have incorporated detoxification services in shelter and group home programs. A few tribes reported that detoxification services are provided through local public hospitals or clinics off the reservation.

C. BARRIERS TO SERVICE EFFECTIVENESS

Simply having a service does not guarantee its effectiveness. The ATS data provided information about the existence of tribal juvenile justice services. The on-site visits provided a better understanding of the strengths and weaknesses of existing services. From these visits, a number of issues that affect program effectiveness were identified. Most of the following discussion is based upon information gathered during these tribal visits. These issues not only provide a deeper understanding of the current tribal juvenile justice systems, but they are particularly pertinent to efforts to develop policies and priorities aimed at improving these systems.

1. PROGRAM DESIGN

The above service components, where they exist, are provided through a variety of specific programs. The intervention techniques employed, and their appropriateness to the specific clientele served, are key to the effectiveness of the service.

Programs for Indian youth must address their special problems and relate to their cultural needs to be effective. Although the study identified non-tribal programs that incorporate cultural and traditional components into their programs, tribally-operated programs have a significant advantage in doing so. Since most tribal agencies hire Indian

staff, their ability to implement culturally-related activities is greatly enhanced.

2. CLIENT ACCESS

Barriers to client access can lessen the effect of even the most well-designed programs. Client access can be inhibited by eligibility requirements, lengthy waiting lists, and practical constraints (such as distance and clients who do not have personal transportation).

Some programs create their own barriers to client access such as strict admission criteria or cumbersome intake procedures. This was illustrated during one of the site visits to a reservation-based adolescent residential program. This program currently receives almost no referrals of youth residing on the reservation due to the perception that admission criteria are too rigid and that the screening process is ineffective and takes much too long.

It appears that, more often, barriers to program utilization are invoked from outside the program by funding sources or administrative authorities. These restrictions may prevent the flexible use of programs. This can be particularly damaging for programs that serve relatively small populations and where wide-ranging needs must, and in fact can, be met with limited resources. For example, a program that is required to serve only runaway youth cannot be maintained on a small reservation because the numbers of clients would not sustain such a specialized program. However, a program designed to deal with a variety of youth problems, and funded without severe categorical constraints, can be maintained in this same setting.

Another general barrier to utilizing available services involves state/county programs. It was frequently cited during interviews with tribal representatives that youth under tribal court jurisdiction often are not eligible for state/county services. Although there may be a number of legitimate reasons for this, the existing impediments to the use of these services are viewed as a serious problem by some tribes.

Distance and lack of transportation can be major barriers to program utilization. Programs on large reservations with isolated populations are frequently impacted by the fact that many of the clients most in need can not come in for service. Some tribes offer outreach programs, satellite offices, and mobile services in an attempt to remedy this problem. Since these service strategies are often not the core service provision methods, they tend to be susceptible to funding cuts.

Programs offered outside reservation boundaries have an even more difficult time providing convenient client access. This issue is clearly illustrated by the IHS program to develop regional treatment centers for drug and alcohol services. This initiative, mandated by PL 95-570 which includes the "Indian Alcohol and Substance Abuse Prevention and Treatment Act", has encountered significant delays in implementation. Although some of the delay is attributed to funding and planning issues, there are a number of critics of the concept itself. A major concern is that these programs will require some youth to be sent hundreds of miles from their homes to receive service. Many tribal representatives suggested that funds could be better used through reservation-based programs instead of regional centers.

3. PROGRAM STAFFING

Competent, well trained, and dedicated staff are required for effective service provision. Unstable funding makes it difficult for many tribal programs to acquire and maintain adequate staffing.

Although staff training and low turnover are important for all services, concerns in the area of substance abuse treatment are of particular note. Study interviews often raised concerns that these services are frequently provided by staff who do not have specialized training in this area. According to the Inspector General's review of IHS implementation of PL 95-570, two thirds of these counselors are not certified to provide substance abuse counseling.⁴ Again, the reasons for the failure to fulfill an initiative of this Act are many. The failure to implement this training is not solely the responsibility of the IHS. High turnover of counselors after

they are certified is a continual problem. However, the lack of certification standards from IHS has forced the reliance on state standards for this training. Comments from many tribes suggest that the initial emphasis on provision of this training has diminished in the last year with the result that fewer are being trained than in prior years.

4. PROGRAM STABILITY

Developing effective services must be accompanied by plans to maintain the programs over time. This study describes the services currently in place for Indian youth. There is substantial evidence that

many tribal programs are vulnerable to funding cuts. A number of tribal programs are started with "seed money" from federal, state, or private grant sources. Unless supplementary funding is located when grant funds are exhausted, many of these programs will be lost. In on-site interviews many examples were given of effective prevention, diversion, recreation, and counseling programs that have been lost in this way. Tribal governments do not have tax revenues with which programs identified as priorities could be maintained. Although time limited funding can be useful to tribes, too many core tribal services rely on these funds at present.

III. SUMMARY AND CONCLUSIONS

There is an extremely wide disparity among tribes regarding the services that they have, the capacity of these services, and the providers and funding sources of these services. Many tribes that report a seemingly wide array of services also state that the client capacities of these programs are so limited that their effectiveness is greatly impaired. Other tribes report major gaps in critical service areas.

problem places many Indian children in jeopardy on a daily basis.

Boarding schools, on and off-reservation, are controversial and justly-criticized institutions. The realities of the pattern of available resources are such that there are simply too many Indian and Native children with no alternatives, and it is likely that boarding schools will be a part of the service profile for some time to come. These schools are presently funded at minimal levels based on unrealistic assumptions concerning their educational and social missions. They are funded as if they were merely schools with attached dormitories, with little attention to the special needs of their student population. Their programs are rudimentary at best and it is not an overstatement to say that, at least in the case of BIA boarding schools, their programs for special needs students are inadequate. The role of boarding schools must be defined and they must be funded at the requisite level to fulfill that role. If they are to play a role in tribal juvenile justice systems, they must be equipped to do so and procedures must be in place to ensure that this role is defined and understood both by tribes and by the institutions. Continued failure to address this

Tribally operated services are a major part of the service system for youth served by tribal courts. Tribes have created services based upon the complex and restricted funding mechanisms in place at this time. However, not all tribes have this capability due to lack of training or lack of resources to perform the continual funds acquisition and replacement activities that must take place. Without increased training programs and assistance to tribes, and without changes to the basic philosophy of funding tribal services, the wide disparity of services among tribes will continue.

Tribal control over programs serving youth through tribal juvenile justice systems has been growing in recent years and tribes appear to view these changes positively. Taken as a whole, the findings of this study support the continuation of these efforts. This is not to say that tribal management and operation of juvenile justice related services are without problems. A number of tribal leaders and personnel acknowledged that instability of their own governments plays a part in the lack of service continuity. Many tribes experience frequent turnover of government officials. Priorities and programs can change with new administrations. Tribal governments in their present form are relatively new entities and, with experience and increased training of tribal officials, the ability to maintain stable services will likely improve.

In addition to tribal agencies as major providers of services, the study has described the current roles of a number of other key service providers. The BIA and the IHS are not only major funding sources for tribal services, but directly perform these services for a number of tribes. This was found to be true for both exclusive jurisdiction tribes and concurrent jurisdiction tribes. Although the direct service roles of these agencies may change over time, their importance to tribal juvenile justice at this time is clear.

State/county involvement in tribal juvenile justice is somewhat more difficult to characterize. There is a danger of understating the degree to which state services are provided to Indian youth, since the study's focus has been on those tribes that exercise some level of tribal jurisdiction over juveniles. However, the study's findings do illustrate that access to state services tends to be based upon individual state interpretations of responsibility and on specific tribal/state relationships and agreements.

Provider responsibilities notwithstanding, the study also determined specific service priorities and current gaps in service. Shelters and group homes are the most commonly unavailable services for tribal youth. As both cost effective alternatives to residential and secure care, and as programs that can provide multiple service functions, shelters and group homes should be considered high priority programs. The BIA efforts to implement shelter and half-way home provisions of PL 95-570 focus on these needs directly. However, these efforts are currently being made without the addition of new monies, and therefore only occur at the expense of other BIA programs.

Services which the study found to be available to most tribes, but at levels tribal representatives consider to be seriously insufficient, are substance abuse treatment, family counseling services, and aftercare services. Although there is no doubt that additional funds are required to meet these needs completely, development of flexible funding mechanisms, implementation of multi-purpose treatment agencies, and intergovernmental agreements to pool resources also can be helpful strategies for filling these service gaps.

Design, implementation, and funding of juvenile justice programs will continue to involve tribal, federal, state and local governments. It is critical that American Indians and Alaska Natives be directly involved in the planning for funding and service development. There is evidence that this perspective has been gaining recognition. The State of Michigan, through its Department of Social Services and with substantial input from Indian representatives, has developed a comprehensive plan for services to the Indian population.⁵ Comprehensive planning efforts such as this can serve as a model for other states with Native American populations.

This chapter has noted problems and identified some of the needed changes, related to all relevant units of governments which impact on juvenile justice services for Indian youth. Progress in this area will require acknowledgement of responsibilities, and coordinated planning and implementation, among federal agencies, state governments and the tribes themselves.

IV. RECOMMENDATIONS

This study has addressed many facets of tribal juvenile justice systems. However, as important as legal codes, courts, and other aspects of juvenile justice may be, no area is more important to address than services for youth and their families. The study has identified both the weaknesses of current services and the existing and potential strengths of tribal systems. Clearly gaps in core services and the instability of funding from many service agencies are service delivery policy issues that need to be addressed. To do so in the midst of varying tribal needs and priorities and the lack of clarity over tribal, federal and state governmental responsibility will require a long term effort. The recommendations below address some particularly important service priorities, but more importantly suggest a general process by which tribes can assess needs and plan for maintaining and improving their juvenile justice service delivery system.

5.1 THE DEPARTMENTS OF THE INTERIOR AND HEALTH AND HUMAN SERVICES SHOULD CONTINUE RECENT EFFORTS TO IMPLEMENT THE MEMORANDUM OF AGREEMENT MANDATED IN THE INDIAN ALCOHOL AND SUBSTANCE ABUSE PREVENTION AND TREATMENT ACT AND IMPLEMENT THE ACT AGGRESSIVELY.

The White House, the Office of Management and Budget, the Secretaries of Interior and Health and Human Services, the Assistant Secretary of Interior for Indian Affairs, and the Director of the Indian Health Service should place at the top of their priority list the development of a comprehensive and effective plan to assist Indian tribes and Native villages in their efforts to combat substance abuse.

The Memorandum of Agreement as mandated in the Indian Alcohol and Substance Abuse Prevention and Treatment Act, recently negotiated and signed between the Departments of Interior and Health and Human Services must be implemented through a focused interagency effort. With this agreement as a basis, BIA and IHS should work to assure that reservation youth have improved access to

detoxification, counseling, inpatient, and follow-up alcohol/substance abuse treatment services. (See Recommendation 7.5 regarding funding of this initiative.)

5.2 THE BIA SHOULD ENCOURAGE THE DEVELOPMENT OF INTER-TRIBAL AGREEMENTS WHICH RESULT IN COORDINATED SERVICES.

The BIA should through its Area Offices undertake to assist tribes in identifying appropriate and feasible models of inter-tribal cooperation. Tribes that wish to share resources through programs operated under inter-tribal agreements should be recognized and encouraged. Shared resources for geographically proximate tribes could include placement services such as shelters, group homes, residential treatment and detention centers. OJJDP should make known to the BIA models of rural juvenile justice services which might be of interest to tribal governments.

5.3 OJJDP AND THE BIA SHOULD ENCOURAGE THE DEVELOPMENT OF STATE-TRIBAL SERVICE PLANNING AND SERVICE AGREEMENTS.

The BIA and OJJDP should cooperate to establish models of joint state-tribal service planning processes. As part of the State planning process, OJJDP should encourage states to enter into joint planning agreements. The BIA should serve tribes by promulgating model agreements.

5.4 CONGRESS SHOULD ENCOURAGE THE DEVELOPMENT OF COMPREHENSIVE JUVENILE JUSTICE PLANS BY EACH TRIBE.

One of the difficulties for tribes is the categorical nature of program funding and program development. In times of scarce resources, cooperation and collaboration appear more imperative. Nevertheless, there are serious barriers to such collaboration and joint planning. The Congress should fund and support the development of model collaborative

planning processes, which can be implemented and evaluated, leading to replication of successful efforts. Such plans could be the basis for evaluating tribal needs and for identifying the potential tribal, federal and state funding and service resources available to meet these needs.

5.5 IHS SHOULD REVIEW ITS PROGRAM OF RESIDENTIAL TREATMENT FACILITIES FOR SUBSTANCE ABUSING YOUTH.

The location of the IHS facilities for such youth continues to create problems of service provision and re-entry of Native American youth. The IHS should conduct a needs assessment to determine its long range plan for location of such facilities. Emphasis should be on reducing the need for out of state and distant placement of tribal youth requiring such facilities.

5.6 CONGRESS AND THE EXECUTIVE BRANCH SHOULD FACILITATE MULTIAGENCY FUNDING OF COMPREHENSIVE JUVENILE JUSTICE SERVICES AT THE TRIBAL LEVEL.

In order to address the vast differences in tribal needs for agency services, efforts should be made to encourage all federal agencies to coordinate funding decisions related to each tribe. The juvenile justice planning process recommended above may provide the vehicle for such coordinated decision-making and can

facilitate a focus on filling service gaps and stabilizing agency services at the tribal level.

5.7 IMMEDIATE ATTENTION SHOULD BE GIVEN TO BOARDING SCHOOLS, WITH PARTICULAR ATTENTION TO THEIR ROLE IN TRIBAL JUVENILE JUSTICE SYSTEMS.

Congress should assure that BIA and contract boarding schools are equipped and programmed to meet the actual needs of their student populations. The Executive branch should conduct a needs assessment to define the needs of the boarding school student populations and seek supplemental appropriations to upgrade boarding school programs to meet those needs. BIA and IHS should enter into and implement an interagency agreement concerning services at boarding schools. BIA should assign specific Central Office responsibility for boarding schools, operated by BIA and contract schools. Tribal and Native juvenile justice systems should ensure by written agreement that the use of boarding schools as resources in any part of the juvenile justice system is conducted with full knowledge of the institution and that the institution is equipped to meet the needs of the Indian young person. BIA, IHS and tribal social workers and other human services personnel must cooperate with tribal courts where juvenile proceedings are pending, particularly with respect to boarding school placement.

CHAPTER FIVE ENDNOTES

1. Ten Bessel, Robert and Smith, Eva Marie, "Fetal Alcohol Syndrome", 18th National conference on Juvenile Justice, Albuquerque, NM, March 17-20, 1991.
2. Stonnington, Cynthia, et al., "Suicide In A Western American Indian Tribe, 1978-1988", undated manuscript, pp 11-12.
3. U.S.Congress, Office of Technology Assessment, "Indian Adolescent Mental Health", 1990
4. Office of the Inspector General, DHHS, "Indian Health Service Youth Alcohol and Substance Abuse Programs", April, 1991, p. 6.
5. Native American Task Force to the Department of Social Services, "Empowering Native People", 1990.

CHAPTER SIX

JUVENILE OFFENSES AND THE TRIBAL RESPONSE

I. INTRODUCTION

The purpose of this chapter is to discuss the type and amount of juvenile offenses and the response of the tribal juvenile justice system to such offenses, including an assessment of tribal adherence to the JJDP Act mandates. The discussion in this chapter is limited to tribes which administer juvenile justice functions such as law enforcement, courts, detention and/or corrections. Most of the discussion is based

on the responses to the All Tribe Survey (ATS) of the 93 tribes that administer some juvenile justice activities. This information is augmented through information collected during site visits to 20 selected tribes. The other 57 tribes that responded, but indicated that they do not administer juvenile justice activities, are not included in this discussion.

II. THE NATURE OF INDIAN JUVENILE OFFENSES

The types of juvenile cases over which tribes exercise jurisdiction vary from one tribe to the next, because of the complex legal histories unique to each tribe. Of the 93 tribes reporting on the ATS that they administer juvenile justice activities, 90% report they exercise jurisdiction over delinquents, 84% report jurisdiction over status offenders, and 95% report jurisdiction over abused or neglected children and minors in need of supervision or care (MINS). For all three types of cases, 10-20% fewer concurrent jurisdiction tribes than exclusive jurisdiction tribes exercise jurisdiction of each type. There is no category of juvenile cases over which all tribes exercise jurisdiction.

The nature of the juvenile offenses over which Indian tribes exercise jurisdiction is qualitatively different from that of non-Indian communities. This difference is due in part to the legal constraints imposed on tribal justice systems by federal legislation such as the Major Crimes Act (18 U.S.C. §1153), in part to the history of tribal relationships with federal and state government agencies, and in part to the economic and social situations facing many tribes and their members. Although the study labels tribes that are not impacted by P.L. 83-280 as "exclusive" jurisdiction tribes, their jurisdiction over major crimes is in reality only concurrent. Under the Major Crimes Act, an Indian who commits a crime as specified in this Act - such as murder, manslaughter, kidnapping, sexual crimes, assault with a dangerous weapon or resulting in serious

bodily injury, arson, robbery, or burglary - comes under the prosecutorial jurisdiction of the U.S. Attorney in federal court.¹ This assigns to the U.S. Attorney the responsibility to prosecute felony crimes committed by Indians within reservation boundaries. This requirement also places responsibility for investigation of these crimes upon the Federal Bureau of Investigation.

In practice, it is rare that a juvenile is turned over to the U.S. Attorney. Although the Major Crimes Act encompasses juvenile crimes when the alleged crime is one that is specified in the Act, the numbers of cases referred to federal prosecutors is small. For the 93 tribes administering juvenile justice activities, in 1990 an average of 3 delinquency cases per tribe were turned over to the U.S. Attorney for prosecution because the juvenile was alleged to have committed a major crime. This average is skewed by two tribes. One reported turning over 10-25 cases and another tribe with a severe delinquency problem and limited jurisdiction reported turning over at least 100 cases. At most, referrals for federal prosecution involve slightly over 1 percent of the delinquency petitions filed.

Reportedly, even fewer cases are actually prosecuted by U.S. Attorneys. Our interviews with tribal law enforcement officials indicated considerable frustration with this process, since prosecution is often declined. According to these officials, this often occurs after considerable time

has elapsed between the referral and the decision. While some declined cases may be prosecuted in tribal court, the dispositions tribal courts may impose are limited by the Indian Civil Rights Act. Many serious offenders are not prosecuted at all (or are prosecuted for lesser crimes in tribal court) and may remain in the community where they were alleged to have committed the offense. The declination problems, as reported to the study team, are further exacerbated by the perception of many tribes that communication from federal officials to the tribe, after cases are referred, is poor. Uncertainty about the prosecution or declination of cases, or lengthy delays in the decision process, make it difficult for tribes to invoke their own actions in a timely manner.

The Major Crimes Act does not affect concurrent jurisdiction tribes since state courts have jurisdiction over these matters and the Act has no bearing on state jurisdiction. Because concurrent jurisdiction tribes contend with state jurisdiction which potentially includes all delinquency cases, these tribes operate in an even more complex environment than do exclusive jurisdiction tribes. How these tribes define their own areas of jurisdiction, and to what degree they coordinate the involvement of tribal courts with state systems, varies greatly from tribe to tribe and state to state.

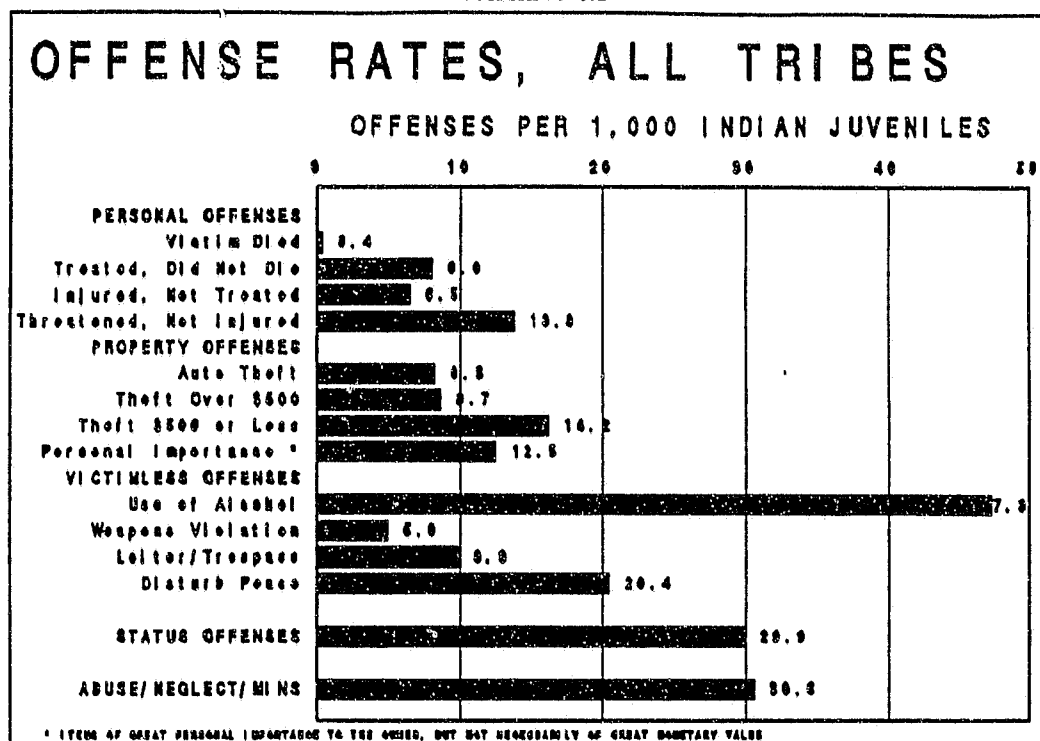
Because many tribes seek to maintain jurisdiction over their youth, it was not surprising that police officials reported in confidential interviews that they often exercise considerable discretion in deciding how to charge an alleged juvenile offender. That is, to assure that the alleged offender will be tried in tribal court, the offense with which the juvenile is actually charged is frequently less serious than the actual behavior would warrant under other circumstances. This process continues throughout the juvenile justice system, so that charges are further reduced. For example, tribes reported that approximately 23 percent of all delinquency petitions and 63 percent of all status offense petitions filed in FY 1990 were heard as Minors in Need of Supervision. As a result, it is more difficult to assess the extent of the problem of juvenile delinquency in Indian tribes.

In order to compare the magnitude of problems with juvenile delinquency and status offenses across communities, data are commonly presented as rates. For the remainder of this chapter, all rates are expressed as the number of incidents reported for every 1,000 Indians ages 10 through 17, who live within reservation boundaries or have an ongoing relationship with the tribe so that the tribe maintains juvenile jurisdiction.

While this procedure allows us to compare rates of delinquency and status offenses on Indian reservations with those in non-Indian communities, it is open to misinterpretation. *Rates only reflect the relative extent of juvenile offenses on reservations.* Since many tribes are small and the total population of Indian juveniles is small in comparison to the total juveniles nationally, it is easy to miss the fact that *a high rate per thousand may still reflect a small number of offenses.* To avoid seeming to overstate the problem of delinquency on some reservations, where feasible both the rates and numbers of incidents of juvenile behavior problems are reported.

Before examining delinquency rates in general and the various actions that occur subsequent to the filing of charges, it is important to understand the types of offenses and the frequency of their occurrence in the Indian juvenile population. Exhibit 6.1 examines the types of offenses seen by tribal courts. For the most part personal and serious property offenses alleged in petitions filed with tribal courts in FY 1990 were relatively low². By far, the highest delinquency rates were for offenses involving the use of alcohol and other controlled substances. It should also be noted that other offenses, particularly disturbing the peace/disorderly conduct, are clearly attributed by tribal justice personnel to juvenile alcohol and drug use. Exhibit 6.1 also illustrates that Indian status offense and abuse/neglect/MINS rates are quite high. These data, and the information gathered through interviews, support the very clear conclusion that most problems of juvenile misconduct facing tribal juvenile justice systems involve alcohol and other controlled substances.

EXHIBIT 6.1



III. SECURE FACILITIES AND THE JJDP ACT MANDATES

After a juvenile has been arrested for an alleged offense, but prior to adjudication in court, juvenile justice agencies must decide what to do with the alleged offender. The intent of the JJDP Act mandates is to maintain juveniles, especially status offenders and non-offenders, in community settings rather than secure facilities. If it does become necessary to hold a juvenile delinquent in a secure setting, it should be in a facility exclusively for juveniles or, minimally, with no sight or sound contact with adult offenders.

Although federal jurisdiction over major crimes may diminish the number of Indian youth requiring secure detention (pre-adjudication) and/or incarceration (post-adjudication), it does not negate this need altogether. Indian youth who are a danger to their own or others' safety, whether charged with major crimes or not, are still in need of secure care. However, the well documented frequency of alcoholism crises and suicide risks

among Indian youth suggests the need for detention and commitment facilities that address the underlying treatment concerns as well as providing security for the youth and the community.

The data collected in this study through interviews and survey responses indicate that tribes generally attempt to adhere to the standards of good juvenile justice practice embodied in the JJDP Act mandates. Where practice deviates from the general philosophy of keeping juveniles out of locked facilities, especially jails or other institutions housing adult offenders, it is generally because no appropriate and safe alternatives are available.

A. NUMBER OF INDIAN YOUTH HELD IN SECURE FACILITIES

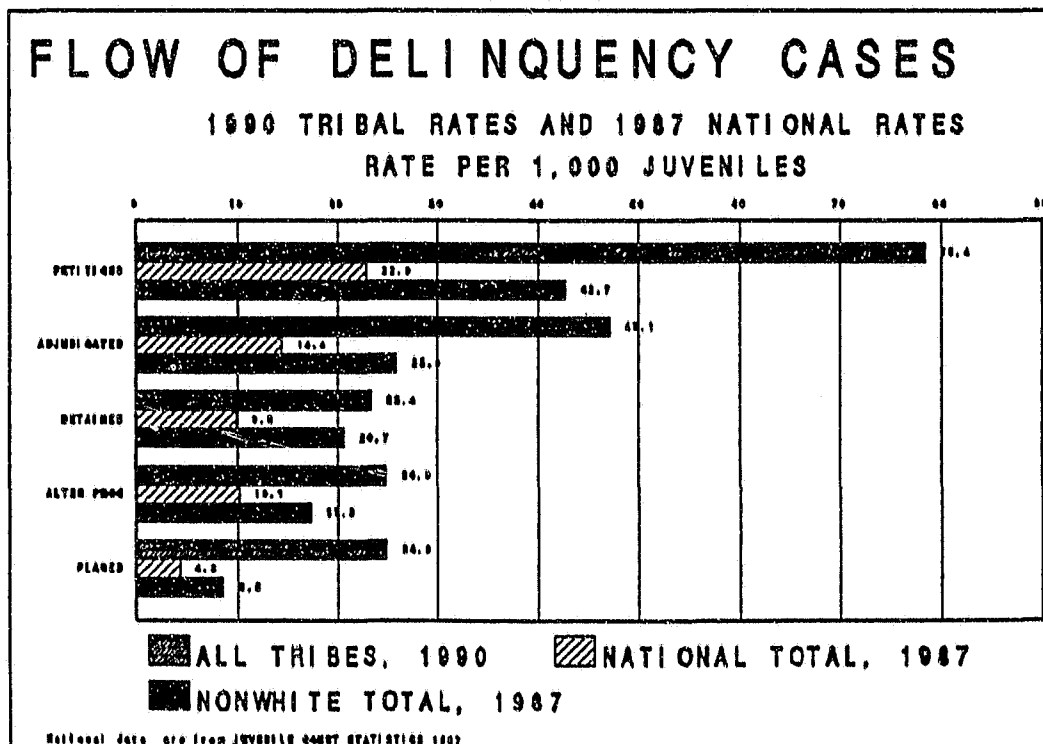
Tribes had some difficulty in providing the specific numbers of youth detained or committed to secure facilities in 1990, and there were many non-

responses to these questions on the ATS. Consequently, these data must be considered estimates of the scope of the problem and interpreted cautiously.

To get a sense of the extent to which Indian juveniles are detained in or committed to secure facilities compared to the use of community based alternative programs it is necessary to consider both the number of petitions filed and the number of youth adjudicated. Exhibit 6.2 (on the next page) reports the average rates of delinquency cases per 1,000 Indian juveniles aged 10 through 17 compared to 1987 national data, the most recent available.³ The earlier caution about interpretation of rates per thousand is most pertinent to the discussion of Indian delinquency petitions and their comparison to national delinquency rates. For example, two tribes with similar rates of delinquency petitions per 1,000 Indian juveniles represent substantial differences in the number of petitions involved. In 1990 one tribe had a rate of 150 reported delinquency petitions filed per 1,000 reported Indian

juveniles from age 10 through 17 and another tribe had a rate of 159 petitions per 1,000 reported during the same time period. The first tribe was a small tribe that reported an Indian population of 40 juveniles in the 10 through 17 age range, and a total of only 6 delinquency petitions filed in 1990. The second tribe reported a population of 843 Indian juveniles and 134 delinquency petitions filed. A third tribe also reported 6 delinquency petitions filed, but with a juvenile population of 540 the resulting rate was 11 per 1,000. Although relative to its population the first tribe seems to have a very serious problem with delinquency, in terms of absolute numbers the problem is less significant. When Indian rates are compared to national juvenile rates, it is just as important to keep in mind the population size differences and their effect on the interpretation of rates per thousand. Even so, such a comparison is important to the discussion of tribal juvenile justice systems and does reflect the relative size of the delinquency problem in the two groups. This comparison will be presented in Exhibit 6.2.

EXHIBIT 6.2



These data document the startling difference between the scope of juvenile justice problems in Indian and non-Indian communities. The study found that there are 78.4 delinquency petitions filed for every 1,000 Indians from age 10 through 17 in the 75 tribes that reported delinquency petition data. This compares to less than 22.9 per 1,000 nationally.⁴ When compared to all non-white youth, Indian juveniles show a rate of delinquency petitions almost twice as high as non-whites in general. Although this clearly illustrates the high rate of delinquency for Indian youth, it should also be noted that high recidivism rates for Indian juveniles contribute to these rates. The study found that delinquent juveniles reported in the study had an average of 6.5 petitions per youth.

Exhibit 6.2 illustrates that higher rates for Indian youth compared to juveniles nationally continue through the juvenile justice process following the petition phase. Indian youth have higher rates of adjudication, secure detention, alternatives to incarceration, and secure and non-secure out-of-home placements. The Indian rates for all of these actions are higher when compared to either the overall national rates or the rates for other non-white youth.

A closer examination of the data provides an important additional perspective on these results. The high rates of adjudication, detention, placement and use of alternative programs are clearly a function of the high incidence of petitions, not a more aggressive approach by tribal courts to dealing with these offenders. By viewing the simple rates as

a percentage of the petitions as opposed to simply rates per thousand population, a much different picture evolves. When viewed in this way, secure detention is actually used in a substantially lower percentage of Indian petitions filed (30%) than it is in either the national or the non-white juvenile categories. The overall national rate of detention represents 43% of the petitions and the rate for non-whites nationally is 48% of the petitions. *Tribes are actually less likely to place youth in secure detention facilities than non-Indian jurisdictions.* The rates for adjudication and for placement as shown in Exhibit 6.2 are also less extreme when viewed as the percentage of delinquency petitions. Adjudication occurs in 60% of the petitions; placement occurs in 32% of the petitions.

Based on the data shown in Exhibit 6.2 it can also be concluded that, for the most part, the only Indian juveniles who are securely detained prior to adjudication are those who ultimately will be placed. The national rates on the other hand show that many more juveniles are placed in secure detention (9.9 per thousand) than are subsequently placed in either secure or non-secure placement (4.3 per thousand).

The extent to which tribes reported using secure and non-secure placements (including both detention and commitment) and alternatives to them are reported in Exhibit 6.3. This table provides a comparison of usage by tribes responding to the ATS and provides a perspective on the degree of variation among tribal courts in their use of these options.

EXHIBIT 6.3
TRIBAL USAGE OF SECURE AND NON-SECURE PLACEMENTS
AND ALTERNATIVES

PLACEMENT ALTERNATIVE	Tribes Using	Avg # of Juveniles per Tribe	Tribes Not Using
Delinquents Ever Held Securely N=72	51 70.8%	32.1	21 29.2%
Delinquents Committed to a Secure Facility N=66	32 48.5%	17.2	34 51.5%
Delinquents Placed Non-Securely N=68	46 67.7%	15.7	22 32.3%
Delinquents in an Alternative Program N=72	60 83.3%	34.7	12 16.7%
Status Offenders Detained N=61	12 19.7%	2.0	49 80.3%
Status Offenders Ever Held Securely N=63	24 38.1%	2.9	39 61.9%
Status Offenders Committed to a Secure Facility N=56	12 21.4%	2.1	44 78.6%
Status Offenders Placed Non-Securely N=58	22 37.9%	3.8	36 62.1%
Non-Offenders Ever Held Securely N=67	16 23.9%	3.4	51 76.1%

B. FACTORS IN THE DECISION TO HOLD A JUVENILE SECURELY

When it is necessary to hold a juvenile in a secure facility, in most instances it appears to be for a short period of time. Two-thirds of the tribes report that they hold juveniles securely while they are awaiting release to their parents. Slightly over half the tribes report holding juveniles while awaiting detention or adjudication hearings and slightly less than half the tribes report holding juveniles awaiting disposition or transfer to another facility. It must be noted, however, that half the tribes also report using secure facilities as a commitment for adjudicated offenders. The reported usage of secure facilities did not differ between exclusive and concurrent jurisdiction tribes that administer juvenile justice functions.

1. Family Not Available (62.4%);
2. Intoxication (60.2%);
3. To Prevent Runaway (59.1%);

4. Shelter or Foster Home Not Available (47.3%); and
5. Treatment Facility Not Available (41.9%).

These results indicate that secure detention often occurs due to the lack of a more appropriate option. Many tribes cite as reasons for detention conditions that should lead to the use of other types of facilities. In the absence of such facilities, decisions to securely detain a juvenile may be based on the perception that such placement is better than no action at all. Reports during onsite interviews further support the finding that Indian youth are frequently detained due to intoxication or suicide risks and that this often occurs due to the absence of more appropriate facilities.

C. PROVIDERS OF DETENTION AND COMMITMENT SERVICES FOR TRIBAL JUVENILE JUSTICE SYSTEMS

Although almost a third of the tribes did not hold any delinquents securely in 1990 and three-quarters did not hold any status offenders or non-offenders securely during this period, all but two tribes report that they do have access to some sort of facility for holding juveniles securely if necessary. Tribal access to detention and commitment facilities occurs in a variety of ways. A few tribes have specialized juvenile detention centers on reservation. Others use a variety of less specialized facilities, often tribal or BIA adult jails. Other tribes, especially concurrent jurisdiction tribes, rely upon facilities off reservation lands provided by state or county governments. Although some of these services are provided by states or counties at no cost, many times tribes or the BIA are responsible for per diem costs.

The All Tribe Survey asked tribes to identify the agency or organization that performed detention and commitment or incarceration services. As may be seen in Exhibit 6.4, detention and incarceration are most commonly provided by the tribe itself in exclusive jurisdiction tribes. Concurrent jurisdiction tribes most often use state/county facilities; however, it is also clear that state/county provision, sometimes in addition to the tribe's own facility, is common for exclusive jurisdiction tribes as well. BIA is the third most common provider of these services, but much more often for exclusive jurisdiction tribes. Eight tribes receive these services from other tribes and a few report receiving them from IHS. A number of tribes receive these services from multiple providers (thus the percentages add to more than 100%).

EXHIBIT 6.4
PROVIDERS OF DETENTION AND INCARCERATION SERVICES

PROVIDER	Exclusive Jurisdiction Tribes (N=71)	Concurrent Jurisdiction Tribes (N=19)	All Tribes (N=90)
TRIBE			
Detention	54.9%	21.0%	47.8%
Commitment	54.9%	31.6%	50.0%
STATE/COUNTY			
Detention	43.7%	68.4%	48.9%
Commitment	40.8%	63.2%	45.6%
BIA			
Detention	23.9%	5.3%	20.0%
Commitment	23.9%	5.3%	20.0%
OTHER TRIBE			
Detention	8.4%	10.5%	8.9%
Commitment	7.0%	15.8%	8.9%
IHS			
Detention	0.0%	5.3%	1.1%
Commitment	8.4%	15.8%	10.0%
NONE AVAILABLE			
Detention	1.4%	5.3%	2.2%
Commitment	11.3%	0.0%	8.9%

A total of 114 secure facilities were identified through the ATS as being used by tribes for detention or commitment purposes, with a few duplicates since some tribes use regional facilities. Facilities tribes use for juvenile detention or incarceration include county, city, BIA, or tribal jails. Of the 114 facilities, 51 (45%) house both youth and adults. Although the data do not provide estimates of how often or how many youth are placed in facilities with adults, many facilities have both populations. Since many of these facilities are identified as jails *per se*, the degree of separation of adults and juveniles probably varies greatly.

The issue of housing juveniles and adults in the same facility reflects on all systems - tribal, BIA, and state/county. The majority of tribal facilities serve this dual purpose, as do many of the BIA and state/county facilities. If tribal systems must continue to use state/county facilities, the movement toward voluntary adherence to the JJDP Act mandates will depend on actions by their resource providers as well as by tribal staff who make the placement decisions. Movement in the direction of the mandates cannot rely solely on tribal and BIA facilities, but also must take into account the use of state and county facilities for Indian youth.

D. CURRENT INITIATIVES AND FACILITY PLANNING

The ATS explored tribal plans for new secure or non-secure facilities. Although this information provides a perspective on intentions regarding new facilities, it does not show the specific phase of the individual tribal plans or the status and origin of funding for the planned facility.

Most facility planning is being done by exclusive jurisdiction tribes. Seventeen of 60 tribes responding from this group (28.3%) are planning a new facility. Only two concurrent jurisdiction tribes (14.3% of those responding) are planning a new facility. Generally the tribes planning new facilities were the larger tribes included in this study. Fifteen of these tribes have juvenile populations of over 500 and 10 of these have over 1,000 youth on the reservation. The planned facilities include seven detention centers, four shelters, and one combination shelter and alcohol treatment center. Seven tribes did not specify the type of facility being planned.

Two recent initiatives are pertinent to the issues of secure facilities for tribal juvenile justice systems. The first involves the detention center provisions of

P.L. 99-570, subtitled the "Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986." The second initiative is the recent development of secure facility standards by the Bureau of Indian Affairs.

The detention center provisions of P.L. 99-570 originally authorized ten million dollars for construction of detention centers for Indian juveniles and five million for their operation. A number of planning projects have been completed, reviewed, and prioritized for construction. However, to date, no detention centers have been completed. These POINI (Planning of New Institutions) projects have been slow in evolving for a number of reasons. The authorization of funds notwithstanding, no new funds have been provided to BIA for the construction or operation of these facilities. The funding of these projects to this point has required that funds be transferred from other BIA activities to progress toward the detention center objectives of the Act. Movement of funds from other BIA service areas has its critics both within and outside the Indian community. In addition, the planning and input processes for these centers are quite complex. The determination of needs for secure facilities relative to specific tribes, the proper and most effective location for these centers and, where necessary, agreements among various tribes which may share the use of a facility, are not easy tasks.

The Bureau of Indian Affairs, Division of Law Enforcement Services, recently developed standards for Adult and Juvenile detention facilities. These standards are based upon the American Correctional Association Standards for Adult and Juvenile Detention Facilities. The BIA Standards modified those from the ACA to reflect the unique circumstances of Indian facilities. In particular, the BIA Standards take into account that most facilities in question are small and serve very rural populations. Among the numerous "good practice" issues covered by the BIA Juvenile Detention Standards, it is required that juveniles be separated by sight and sound from adults in any facility that houses both populations concurrently. In addition the Standards specify that a juvenile must be brought before a court within 48 hours of being taken into custody.⁵

The BIA Standards offer a basis upon which existing facilities can be evaluated and improved and upon which planned facilities can be appropriately designed and constructed. Their implementation will require a commitment of the BIA and tribes to

work toward adherence to the standards for both existing and new facilities. It must be recognized

that noncompliance cannot always be resolved through efforts of the tribes alone.

IV. SUMMARY AND CONCLUSIONS

The data presented in this chapter indicate that the extent of juvenile behavior problems is relatively greater on Indian reservations than in non-Indian communities. However, it is more difficult to assess the severity of juvenile offenses on Indian reservations. The majority of Indian juvenile offenses appear to be related to alcohol and other substance abuse. Since tribes often do not exercise jurisdiction over major offenses, the data appear to indicate that it is relatively common for offenses charged and/or prosecuted to be less severe than the behavior involved might warrant.

The Major Crimes Act creates a difficult operational environment for the exclusive jurisdiction tribes and their courts. The problems reported during this study of frequent declination of prosecution by federal prosecutors and of the lack of adequate communication between federal and tribal officials need to be addressed to avoid serious offenders "falling through the cracks" and continuing to be a threat to the tribal community. Tribal courts are currently restricted from meting out sentences that fit the commission of serious offenses. Therefore, even when prosecution occurs at the tribal level, the sentencing restrictions may prevent employing appropriate resolutions in these cases. Efforts to rectify these problems may require legislative changes. Resolution will certainly require the involvement of tribal courts, law enforcement agencies who investigate and refer cases, and federal prosecutors who make the final prosecution and declination decisions.

Concurrent jurisdiction tribes must cope with the outside jurisdiction of their states in all areas of juvenile delinquency. Although some tribes have good working relationships with state courts, and therefore have reasonably clear definitions of those cases which will be handled in tribal court and those heard by state courts, this is far from the norm.

Although this chapter examines secure facilities and their use in tribal juvenile justice systems, this is not meant to give the impression that secure facilities are the highest priority for Indian youth. The preceding chapter which examined the overall service

needs of tribal systems illustrated that a number of services are considered higher priorities for tribal juvenile justice. In fact, in many instances non-secure services (e.g., shelters and group homes) have significant impact on both the need for, and the potential for "overuse" of, detention and incarceration facilities. Too often Indian youth are detained when detention is not the best approach. Many of these youth should be placed in shelters or group homes (for status offenders, non-offenders and nonviolent delinquent youth) or in medical/mental health programs (for drug and alcohol-involved youth). However, there is a severe scarcity of these services on the reservation or within reasonable proximity of the reservation.

Relatively small numbers of Indian juveniles are incarcerated in secure settings for either long or short periods. However, lack of Major Crime jurisdiction notwithstanding, tribal juvenile justice systems need and utilize secure detention and correctional facilities. Although in general tribes appear to be adhering to the JJDP Act mandate regarding the deinstitutionalization of status offenders and non-offenders, and usually utilize the least restrictive alternative for a juvenile in conflict with tribal law, the available alternatives are very limited in many tribes. At present, youth requiring secure placements, if placed at all, are frequently placed in adult facilities or inadequate juvenile centers.

There are very few on-reservation specialized juvenile detention facilities. With a few notable exceptions, juvenile detention facilities are often inadequately staffed, lack basic services, and are located prohibitive distances from many sites on the reservation. Except for these few juvenile detention centers, on-reservation youth are detained in jails (tribal, BIA, county or municipal), in county facilities made available by agreement (usually at cost), or are housed in various ad hoc arrangements (e.g., a locked room in a tribal government office). The initiatives of P.L. 99-570 described earlier have as yet had no practical impact on the availability of detention facilities.

Providing sufficient, appropriate secure detention for Indian youth will be difficult. Secure placement must be a highly centralized service due to the cost of facilities and their operation; however, detention centers are of little use if they are more than an hour or two from where the juvenile is taken into custody. If transportation is available to take the youth to a distant center, access to families, courts, and service providers become additional problems.

Provision of secure detention services to the typically rural Indian youth population presents serious problems and must include a multifaceted approach. It is fiscally and practically impossible (and simply unnecessary) to provide the same secure facility solutions to large and small tribes; to tribes that are geographically isolated and those that are proximate to potentially available off-reservation resources. In addition, approaches must take into account the limited funds available from most tribal

governments. Staff-intensive shelters and group homes, in-home detention options, and intensive probation supervision may be cost-effective options to the construction of physically secure facilities.

There is little doubt some alleged or adjudicated delinquent Indian youth will be incarcerated in adult facilities if juvenile facilities and/or appropriate alternatives do not exist. Status offenders, and likely non-offenders as well, will be held in secure settings if alternative services do not exist or cannot be accessed by Indian juvenile justice systems. In addition to the unavailability of juvenile facilities, the use of such facilities may be dictated by the extreme distance between the juvenile facility and the place a juvenile is taken into custody. All of these factors impact the detention and commitment of Indian youth and must be considered in efforts to improve the system of secure care for Indian youth.

V. RECOMMENDATIONS

Tribal juvenile justice systems operate in a most complex legal environment, defined by a mix of tribal, federal, and, in some cases, state statutes. The responsibilities of tribal, federal, and state justice agencies are not always clear. To an extent, jurisdiction over cases defines responsibility, but often is itself either unclear or shared. The recommendations below suggest how efforts can be focused on reducing unnecessary overlap of responsibility and on enhancing coordination where shared roles remain.

- 6.1 THE BIA AND OJJDP SHOULD SEEK COUNSEL ON THE IMPLICATIONS OF THE MAJOR CRIMES ACT AND THE INDIAN CIVIL RIGHTS ACT WITH REGARD TO JUVENILES.

The Major Crimes Act and the Indian Civil Rights Act establish parameters of the exercise of tribal jurisdiction. The development of these Acts did not take into consideration conditions regarding juveniles but, nevertheless, the implementation of juvenile justice is affected by both pieces of legislation. A serious review of these Acts should be undertaken with specific recommendations for Congressional action.

- 6.2 OJJDP SHOULD WORK WITH THE RELEVANT AGENCIES IN THE DEPARTMENT OF JUSTICE TO REVIEW THE GUIDELINES CONCERNING THE INTERFACE BETWEEN U.S. ATTORNEYS AND TRIBAL JUVENILE OFFENSES.

Complaints still are registered about the effect on the administration of tribal justice of U.S. Attorneys' decision-making process regarding prosecution of reservation felonies. The Department of Justice should establish and implement guidelines requiring U.S. Attorneys to make prosecution and declination decisions in a timely manner and to communicate their determinations to the appropriate tribal prosecutors.

- 6.3 TRIBES SHOULD UNDERTAKE THE REVIEW OF THEIR DETENTION POLICIES AND PROCEDURES.

Tribes should review their procedures and facilities for detention and incarceration of juveniles. The focus should be on reducing secure placement use through the development of less restrictive alternatives and separation of youth and adults in facilities that must be used for both populations. OJJDP should provide technical assistance in understanding how other jurisdictions have achieved these goals.

CHAPTER SIX ENDNOTES

1. *American Indian Law in a Nutshell*, William C. Canby, Jr. (1988), pp.128-9.
2. "Relatively low" means less than 20 offenses per 1,000 Indian juveniles from age 10 through 17. For tribes with fewer than 100 juveniles, this is less than 2 offenses per year.
3. Snyder, et al., (1990).
4. National delinquency rates are based upon number of petitions, as opposed to the more commonly reported number of offense reports, in order to be comparable with the Indian rates obtained from All Tribe Survey data. Snyder, et al., (1990).
5. U.S. Department of Interior, Bureau of Indian Affairs, Law Enforcement Division, "Adult and Juvenile Detention Standards", June 16, 1988.

CHAPTER SEVEN

FEDERAL FISCAL AND PROGRAM RESOURCES

I. INTRODUCTION

This chapter provides information on the availability of federal resources to assist tribal governments in providing juvenile justice services. It provides a picture of the scope of federal resources available to tribes nationally, and evaluates tribal eligibility and access to those resources.

Because of the unique history of the federal-tribal relationship, the policy basis underlying federal financial assistance to Indian tribal governments is unclear in some respects. Many Indian tribes have specific treaty entitlements to services bargained for in exchange for land cessions or other valuable consideration; other tribes entered into the trust relationship with the federal government on the understanding that they would be treated generally as Indian tribes are treated, i.e., that federal services and assistance were integral parts of the relationship. In addition, all federally-recognized Indian tribes are implicitly included in the general principles of federal law which recognize tribal governments as governments in all respects, albeit with unique characteristics, powers and limitations.¹ As federally-recognized governments, then, the question arises whether they are included in programs of general applicability (those for which states and/or municipalities are eligible) without explicit mention in the authorizing statutes. These considerations are relevant to the measurement of the scope of the federal obligation to assist tribal governments and they affect the relationship of tribal and federal funds in support of local services on Indian reservations.

In this segment of the study, we analyze the resources available as part of federal trust and treaty obligations which are primarily programmed and managed by the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS), two agencies whose exclusive purpose is to serve Indians. Next, we explore the resources available through general federal domestic assistance programs. The Coordinating Council of Juvenile Justice and Delinquency Prevention and the Indian Alcohol and Substance Abuse Prevention and Treatment Act of

1986 (PL 99-570, as amended) are given special attention due to their direct relationship to juvenile justice services for Indian youth.

The study of funding related to Indian juvenile justice is complicated by the fact that many tribes receive funds from federal programs established as programs of general applicability not earmarked for Indian tribes. Although some of these programs have Indian set-asides or other designated funding arrangements for Indian tribes and organizations, tribal participation in most is competitive with other eligible entities, where tribes are allowed to participate at all. In addition, many programs, agencies, and funding streams that impact juvenile justice are not exclusively directed to services for juveniles nor are they necessarily defined as juvenile justice programs. This chapter examines this broad assortment of programs and funding sources which impact Indian juvenile justice and identifies the primary and ancillary resources available to Indian tribes.

A. DATA SOURCES

Primary data were collected through on-site visits to 23 tribes and Alaska Native villages. On-site visits lasted three to four days and entailed structured interviews with up to 20 tribal officials. These interviews were designed to collect qualitative data depicting problems, experiences, successes, and the processes employed by tribes to handle juvenile offenders. Program information was collected on the specific federal assistance programs relevant to handling juvenile offenders which currently were awarded to and being administered by the tribal governments. Interviews were conducted with federal agency officials as well.

Secondary data sources, the *Federal Register*, *Code of Federal Regulations*, and *Catalog of Federal Domestic Assistance*, the *FY 1990 and 1991 U.S. Government Budgets*, and the *Department of Interior FY 1991 Budget Estimates* were the principal published sources used to collect information on

what federal resources exist and which of these resources might be available to tribes.

B. FEDERAL FINANCIAL RESOURCES

There are three general classifications of federal funding to Indian tribes. The first is embodied in the federal Indian programs administered by the two agencies responsible for performing the federal government's trust duties and discharging treaty obligations -- the Bureau of Indian Affairs and the Indian Health Service. These agencies provide services directly on Indian reservations and also fund tribally operated services through contract. Their roles as service providers and as funding conduits vary from tribe to tribe. As tribes have moved more and more into the role of administering their own services, the proportion of contract funding, especially in BIA, has increased substantially.

The second major source of federal funding for Indian tribes is the group of federal offices and programs created by statute to deal specifically with Indian tribes and organizations in other than the core federal relationship. Examples of these entities are the Administration for Native Americans in the Department of Health and Human Services, and the Office of Indian Education in the Department of Education. Some of these offices and programs have the flexibility to fund tribal programs supporting the juvenile justice system or ancillary services.

The third source of federal funding includes domestic assistance programs of general applicability charged with bringing federal resources to bear upon domestic needs at the local level. Much as state and local governments augment local tax-supported services with federal grants and categorical assistance, a number of tribes augment tribal, BIA and IHS funds through participation in general federal programs. In fact, it is a major premise of this report that tribes can and should be encouraged to participate in these programs, and that barriers to their participation should be reduced. The following review of federal resources utilized by the tribes to perform juvenile justice services explores both the direct Indian programs

and the general federal programs that are relevant to services for delinquent and status offender youth.

The ability of a tribe to fund its own services tends to be determined by the tribe's overall needs and its economic capacity (taxes and other tribal revenues). Virtually all tribes -- like all other governments in the nation -- utilize outside resources, primarily federal, to operate or to receive necessary services. But in some tribes, due to severely depressed economic conditions the majority of services are supported by non-tribal funding. This financial dependence conflicts with the self determination and autonomy to which many tribes aspire and has certain practical effects for tribal policy and programming.

It is important to understand the differences between state/local government service funding and the funding of tribal services. Some of the most important attributes of tribal funding are described below:

1. Although BIA and IHS funding levels are relatively stable from year to year, program funding is still dependent upon the yearly federal budget process. BIA and IHS budgets, therefore, are affected by an extremely wide array of federal budget priorities, in which Indian issues are a very small consideration. The ebb and flow of federal funding also affects state and local government services, but the impact upon tribes is even more significant. Lacking the alternative resources that most state and local governments can access, tribal governments often cannot replace diminishing federal revenues and therefore cannot maintain critical programs. Where federal funding is typically only a part of the funding for juvenile justice programs in states and localities, for tribes it is often the only source of such funds.
2. Even when Indian priorities are acknowledged in federal legislation, such legislation is not always accompanied by funding provisions to support the efforts. BIA and IHS have limited resources to implement new programs that have been authorized but not funded. In essence the

legislative intent is negated by the lack of resources to develop the programs, or equally as detrimental, programs are only implemented at the expense of other preexisting programs.

3. Because of the major part played by outside funding sources, some tribes rely heavily on grants and other time-limited funding sources, often for core programs. Site visits during this study found a large number of programs which originated through such funding, proved their effectiveness over a short time, and were then lost as the funding program was terminated or as subsequent applications were rejected. The instability of program funding is seen by tribes as one of the major weaknesses of their juvenile justice systems.
4. Categorical funding, whether through BIA/IHS programs or through other federal assistance

programs, has resulted in fragmented and inefficient service systems for most tribes. Small tribes especially require flexible funding and service delivery systems to accommodate the dis-economies of scale resulting from the size of their governments and service populations. When unnecessarily rigid restrictions on the use of funds limit this flexibility, these tribes tend to have many service gaps and imbalanced delivery systems.

Tribal governments must cope with some of the same financial difficulties that state and local governments face in maintaining juvenile justice services, but the key difference between them is that many tribal programs rely on significant federal funding to support their basic governmental infrastructure. Tribes are left with few options when these outside resources are diminished or terminated.

II. BUREAU OF INDIAN AFFAIRS AND INDIAN HEALTH SERVICE PROGRAMS

The Bureau of Indian Affairs (BIA) and Indian Health Service (IHS) are charged with performing the federal government's trustee functions and discharging its treaty obligations to Indian people and tribes. The Snyder Act², passed in 1921, is an open-ended authorization for appropriations to implement the federal government's Indian programs in these two agencies. Any program activity within the federal government's power over Indian affairs can be supported merely by Congress appropriating the funds, without need for new program authority or authorization for appropriations.

The Bureau of Indian Affairs and the Indian Health Service do not have specific programs or budget line items specifically denoted for juvenile justice or any similar category, but they could create juvenile justice and related programs by seeking appropriations to support these activities specifically. Resources and programs from these agencies which can be used to support tribal juvenile justice and ancillary systems must be found in other programs and budget items which are broader in scope and which, as a result, compete for resources with strictly juvenile justice needs.

The passage of P.L. 93-638 (the Indian Self-Determination Act)³ in 1975 reshaped the federal process for delivering services to Indian people through the BIA and IHS. P.L. 93-638 encouraged a shift from direct delivery of service by the BIA and IHS to administration of services by the tribes. Although the study's examination of service delivery indicates that the BIA and IHS continue to have substantial involvement in direct provision of services, a number of tribes have taken over operational responsibility of all or some of these services on the reservation. This movement places more and more emphasis on the contract management responsibilities of the BIA and IHS.

Prior to analyzing the BIA and IHS budgets for responsiveness to juvenile justice needs, some comments on the nature of these budgets are in order. Both the BIA and IHS budgets for FY 1991 were about a billion dollars (\$1.06 billion for BIA and \$1.3 billion for IHS). There has been no lack of initiatives, problem identification, nor programs to address the problems identified by either BIA or IHS. Neither agency administers entitlement funding. Therefore Indian program support is dependent upon fixed allocations each fiscal year.

Further, it is extremely important to recognize that *authorizations for new programs do not always mean new money*; in some cases the result of specific authorizations is that the BIA and the IHS must take the funds away from existing programs to fund

new initiatives. An example of the problem in implementing authorized programs without new funding can be seen in the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 to be discussed later in this chapter.

A. BUREAU OF INDIAN AFFAIRS

The Bureau of Indian Affairs, in the Department of the Interior, serves Indian tribes in a broad range of areas either directly or through contracts with tribes or other organizations. BIA responsibilities include economic development, land and natural resource conservation and development, protection of tribal rights, cultural development, education, welfare assistance, housing programs, tribal government operations, law enforcement, courts, and other community services. The BIA budget also covers the administrative costs necessary for the operation of the BIA central and area offices.

The BIA provides a substantial portion of the funds currently available to tribes for community services, including juvenile justice activities.

In general, allocations of BIA funds to tribes are affected by the history of allocations to these tribes, more so than by current priorities among tribes. As tribes have moved more and more into the direct operation of services, and the BIA has become a contract funding agency in these instances, tribal allocations remain tied to earlier formulas and decisions made regarding the funding of individual tribes. The roots of current funding levels lie in the funding that the BIA received when it was the direct service provider for these tribes. As 638 contracting came into being, the prior allocations used by the BIA for service provision were shifted to contract dollars provided to the tribes for tribal operation of these services.

Since that time, the BIA has instituted the Indian Priority System which allows tribes to determine program priorities within their 638 allocation and also has made available special needs funding for specific programs. However, the majority of tribal funding is still grounded in the levels of funding

determined many years ago and under different service provision structures. Drastic changes to the existing allocations among tribes are difficult due to the burden that such changes would place on tribes whose funds would decrease. Although there is no easy answer to this dilemma, the fact remains that the lack of flexibility to address current priorities among tribes hampers a legitimate goal of needs based budgeting. Major overhaul of the system for determining the funding levels for individual tribes will likely not be addressed until available BIA monies approach the level where all tribes' basic service needs can be accommodated.

The BIA budget is divided into two major categories: General and Special Funds; and Public Enterprise Funds. The latter category does not involve funding related to juvenile justice services. The former category includes direct Indian programs administered by the BIA, contracts and grants for tribally operated programs, operation of facilities, and administration of the BIA. Those subcategories of General and Special Funds which are related to juvenile justice are examined next.

1. CURRENT BIA JUVENILE JUSTICE RELATED PROGRAMS

Exhibit 7.1, BIA FY 1991 Budget Summary - Juvenile Justice Related Program Budget Requests on the following page, presents a composite reference of currently available resources programmed by BIA which are potentially available for use by tribal governments in handling juvenile offenders. No accurate estimate of the funds devoted expressly to juvenile justice can be obtained, since most court and law enforcement services are not specialized as juvenile services.

**Exhibit 7.1 BIA FY 1991 Juvenile Justice Related
Program Budget Funding Levels - \$149,322,000**
(Note: Budget categories shown are not exclusively juvenile justice)

BUDGET ACTIVITY	PROGRAM	FUNDING
Tribal Services/Law Enforcement	Program Management	\$ 5,322,000
Tribal Services/Law2 Enforcement	Operations - Agency/Tribal	\$52,821,000
Tribal Services/Tribal Courts	Special Judicial Services Needs	\$ 2,225,000
Tribal Services/Tribal Courts - Tribe/Agency OPS	Court Operations (130 tribal courts; 18 Courts of Indian Offenses)	\$ 9,591,000
Tribal Services Social Services - Agency/Tribe OPS	Emergency Shelter/Halfway Houses Operations	\$ 4,500,000
Tribal Services Social Services - Agency/Tribe OPS	Foster care, family, general assistance, referral, limited counseling, child protection	\$25,178,000
Tribal Services Social Services - Program OPS	ICWA Title II grants for family development and services	\$10,000,000
Tribal Services Social Services - Program OPS	Child welfare assistance foster care - tribal group home care	\$15,800,000
Education - school operations	Substance/Alcohol abuse counseling - prevention	\$ 1,913,000
Education - Johnson O'Malley	Special Education Needs	\$20,472,000
Tribal Services Employment Development	Tribal Work Experience Program - training/public works	\$ 1,500,000

In FY 1991, \$70 million of the Tribal Services budget went to Law Enforcement and Tribal Courts. These two programs include funding for Program Management, Agency Operations, and Tribal Operations (Law Enforcement); and Special Judicial Services Needs and Court Operations for 130 tribal courts and 18 Courts of Indian Offenses (Tribal Courts). To date, these are the only funds being provided directly to tribes for tribal justice systems, juvenile or otherwise. In addition to law enforcement and court operations, the budget activity "Tribal Services" funds a number of social service and treatment programs that are relevant to treatment and support services for juvenile offenders: Alcohol and Substance Abuse Counseling; operation of emergency shelters and half-way houses; child welfare assistance foster home and group home care; and family services programs and counseling. These programs total approximately \$55.5 million. Since these are broad scope programs, they do not have as their sole aim the treatment of status offenders and delinquents and in fact many of these programs are directly focused on child welfare services. However, some

portion of this funding supports the juvenile justice system through the treatment and rehabilitation services in which some juvenile justice youth participate.

Another BIA program area that may impact juvenile justice is Education. Education programs include funding for counseling under "school operations" and special education, cultural, and remedial training programs covered under Johnson-O'Malley Education Assistance. The FY 1991 request for "school operations" substance/alcohol abuse counseling services is \$1.9 million dollars; Johnson O'Malley FY 91 requests total \$20.5 million dollars for special educational assistance.

Employment Development programs in which youth participate is another relevant budget area and include another \$1.5 million of funds for all programs, adult and youth. Services funded from vocational programs may be utilized by the court for dispositional purposes or may serve a preventive function related to status offenses and juvenile delinquency.

Not included in the above table is the BIA funding for construction and renovation of facilities. Detention centers and shelters and halfway houses may be funded from this budget category, although these funds are also used for a wide array of building projects unrelated to juvenile justice.

2. SUMMARY OF BIA JUVENILE JUSTICE PROGRAMS

The BIA budget supports tribal courts, law enforcement, placement and in home services, and various social services which serve as enforcement, treatment, and prevention agencies in the tribal juvenile justice system. In some tribes these services are provided directly by BIA personnel; in others all or some services are tribally operated. Programs operated by the tribes are often funded, in whole or in part, by BIA funds via 638 contracts.

As is more fully discussed in the Youth Services Chapter, BIA funding and service provision do not guarantee a basic core of juvenile justice related programs for all tribes. General allocation levels are not based upon a generic or national needs assessment, although the Indian Priority system addresses the need in relation to other priorities within each individual tribe. Specific core programs such as probation services, shelter and group home care, and diversion programs are weak or nonexistent in some tribes. The BIA budget does not identify these programs as minimal requirements for all tribes. In fact, juvenile justice services are not a delineated program area (unlike child welfare and education services) in the BIA budget. This not only makes it difficult to assess the degree to which BIA efforts address the juvenile justice needs of tribes, but it also prevents this area of service from getting the visibility and attention that are important during budget and planning processes.

B. INDIAN HEALTH SERVICE

The Indian Health Service operates under the U.S. Department of Health and Human Services. The IHS is responsible for providing primary health care for qualified American Indian and Alaska Native people. IHS provides direct services to Indians through a network of hospitals and clinics operated by IHS personnel. IHS funds, through contracts, tribally-operated hospitals, clinics, and medical services. IHS dollars are also used to contract with other medical service providers when IHS or tribal services are not available for the specific medical need. About two-thirds of the IHS budget is programmed to operate federal IHS treatment activities, with the remaining one third programmed to support tribally-controlled and regional activities. Its orientation is toward acute care, the basic threshold of health care. IHS services include mental health and substance abuse treatment services, as well as physical health care.

1. CURRENT IHS PROGRAMS RELATED TO TRIBAL JUVENILE JUSTICE

The total Indian Health Service budget for FY 1991 is approximately \$1.3 billion. Of this amount,

\$877.6 million was programmed to operate federal Indian Health Service treatment activities, and \$404.3 million was programmed to support tribally operated treatment and prevention activities. IHS provides, or funds, some programs that are relevant to treatment and prevention needs of youth who are at risk or who are involved in the juvenile justice system. These services include alcohol and substance abuse prevention and treatment, mental health evaluation and treatment, and residential care. As appears to be typical of all agencies supporting the tribal service system, the degree to which IHS programs and funding meet the needs of individual tribes varies considerably.

The following discussion outlines the programs and funding levels of IHS and identifies those service areas that impact youth in general and juvenile justice youth specifically.

**Exhibit 7.2 Recap of Indian Health Service FY 1991
Highlights Relevant to Juvenile Care**

BUDGET ACTIVITY	PROGRAM	FUNDING
Federal Health Service (Total Program)	Hospitals/Clinics	\$ 877,600,000
Tribal Health Administration (Total Program)	Clinics, Community Health, Alcohol/Substance Abuse Counseling	\$ 404,300,000
RELEVANT BUDGET SUBCATEGORIES:		
Alcohol/Substance Abuse	Aftercare for RTC clients	\$ 7,250,000
Alcohol/Substance Abuse	Detoxification services	\$ 1,500,000
Alcohol/Substance Abuse	Rehabilitation Center Operations	\$ 31,000,000
Alcohol/Substance Abuse	Urban Programs	\$ 2,600,000
Mental Health	Mental Health Services	\$ 16,500,000
Mental Health	Psychiatric/Psychological Inpatient Care	\$ 8,900,000

The major thrust of IHS activities and funds are focused on primary acute health care. However, troubled Indian and Alaska Native juveniles are in need of other kinds of care - psychiatric evaluations and testing, individual and family counseling, detoxification and substance/alcohol abuse treatment, and residential and group home programs.

The IHS programs most directly related to juvenile justice are alcohol/substance abuse treatment programs and mental health services. The following comments address the status and relationship of these areas to youth services.

The Alcohol/Substance Abuse Program budget is funded at the level of \$70 million. (This amount includes those specific line items identified in the above table plus additional funds for alcohol and substance abuse services in other IHS program areas not included in the table.) About 45% was allocated for tribal and regional treatment center (RTCs) operations. \$2.6 million financed urban programs; \$1.6 financed RTC facilities. The balance was factored into hospital and clinic operations for health, counseling and prevention activities. Although funds from this source appear to cover detoxification services, it was frequently stated during site visits that such services are rarely available on the reservation, either through tribal facilities or IHS operated clinics or hospitals.

Aftercare services are funded at the level of \$7 million for FY 1991. These dollars were allocated in anticipation of youth returning from Residential Treatment Centers, but the implementation of these centers has progressed slowly with the result that the numbers of youth treated, and therefore requiring aftercare, is less than expected. Tribes indicated the desire to have these funds made available for local safe homes, family services and counseling, and other community based programs.

Mental health services are funded at approximately \$25 million for FY 1991. About 33.0% (at the most \$8.9 million) of the total mental health budget is spent on in-patient professional psychiatric/psychological activities. The balance, about 67% of the mental health budget, approximately \$16.5 million, is expended on programs ranging from crisis oriented outpatient services to referral and counseling services. Only 17 of the total IHS mental health providers have been trained to treat and work with adolescents and juveniles. There are 132 major IHS health centers and clinics; 17 trained providers hardly can extend needed coverage in this specialty area of mental health.⁴ Further, the current mental health program is extremely limited in the provision of juvenile residential services including transitional facilities and therapeutic group homes. Many vital needs are not being addressed.

2. SUMMARY OF IHS JUVENILE JUSTICE RELATED PROGRAMS

Of the \$1.3 billion IHS budget, about one-third was programmed for 638 tribally-contracted treatment and prevention activities which includes all administrative and overhead costs for these programs. Most of the balance financed federally-operated treatment activities.

The IHS has a major role in providing alcohol and substance abuse services for Indians, both adults and juveniles. The extremely high proportion of youth who become involved with the juvenile justice system due to alcohol or drugs as causal or contributory problems suggests that these services are critical resources for tribal juvenile justice systems. A complete array of services must include physical health, rehabilitation and prevention programs. However, evidence from site visits and

the All Tribe Survey suggests that there are serious weaknesses, particularly related to counseling, detoxification services, and residential programs. In addition most tribes visited stated that obtaining physical examinations for youth requiring placement in detention centers is extremely difficult. This is true even though federal policy requires that the examinations be done prior to admission and that the IHS has responsibility to perform such services.

Several initiatives over the last ten years, including the Indian Alcohol and Substance Abuse Prevention and Treatment Act (see next section) have focused on these concerns. However, without adequate funding, and without clear delineation of IHS responsibility for assuring that all tribes have access to core services, these initiatives cannot effectively address these problems to the extent intended.

C. THE INDIAN ALCOHOL AND SUBSTANCE ABUSE PREVENTION AND TREATMENT ACT OF 1986 - P.L. 99-570 AS AMENDED

1. SUMMARY OF PROVISIONS

The implementation of this Act is the responsibility of both the BIA and IHS. This Act includes specific authorizations for juvenile justice and related juvenile programs. Primary programs addressed in the Act are juvenile detention centers, shelters and halfway houses, regional alcohol and drug treatment centers, aftercare services, and alcohol and drug counseling services. Although specific funding levels for these programs are identified in the Act, the allocation of funds for these programs occurs within the BIA and IHS general budgets. Therefore, without increases in these budgets, no new money can be made available for the initiatives prescribed in the Act. For the most part the BIA and the IHS implementation of the programs has necessitated reductions in other program areas.

The Secretary of the Interior (through BIA) and the Secretary of Health and Human Services (through IHS) are committed by this legislation and subsequent statutory codes to provide a full range of intervention, prevention, treatment, rehabilitation, and aftercare services for Indian juveniles at risk of becoming or who have become alcohol or substance abusers. According to the legislation, the agencies

are to be guided and coordinated by a memorandum of agreement, but this memorandum was never effectively consummated⁵. This agreement would have the potential to help identify Indian priorities, to increase coordination of inter-departmental efforts which address these needs, and to mobilize existing resources.

2. PROGRAM AUTHORIZATIONS RELATED TO THE ACT

A table follows which summarizes the Congressional intent to provide services and care for Indian juvenile substance abusers. Again, however, it is vital that the reader appreciate that these are statutory authorizations which set upper limits on tax dollars that can be expended for these programs, not the final appropriations which make available actual program funds. Implementation of new initiatives typically required reduction of on-going programs. Thus, BIA and IHS progress in implementing the provisions of this Act has been difficult and generally incomplete. All amounts shown in the following table are also reflected in the previously presented individual budgets of the BIA and the IHS to the extent that these authorizations actually have become appropriated monies.

Exhibit 7.3
 RECAP of PL 99-570 (as amended)
 Alcohol/Drug Abuse Authorizations

Function/Activity	FY 1989	FY 1990	FY 1991	FY 1992	COMMENT
1. Emergency shelter and Halfway Houses - BIA	\$ 5.0 M	\$ 3.0 M	\$ 3.0 M	\$ 3.0 M	Renovation/construction - no budget detail
2. BIA shelter/home staffing/operations		3.0 M	3.0 M	3.0 M	No budget detail
3. Detention Centers - BIA	10.0 M	5.0 M	5.0 M	5.0 M	2 starts; 14 planned
4. IHS - Youth Regional Treatment Centers	6.0 M	3.0 M	3.0 M		
5. Rehab and Aftercare Services - IHS	9.0 M	10.0 M	12.0 M	13.0 M	IHS requested \$9.5 M for FY 1991
6. Training and community education IHS/BIA	4.0 M	4.0 M	4.0 M	4.0 M	No clear budget details IHS requested \$2.3 M FY 1991
7. Urban Indian IHS Prevention/Treatment		5.0 M	5.0 M	5.0 M	IHS requested \$2.9 in FY 1991
8. Contract Health (IHS) Care - Private provider	10.0 M	10.0 M	10.0 M	10.0 M	IHS programs 5.3 M for FY 1991
Total Authorization	\$44.0 M	\$43.0 M	\$45.0 M	\$43.0 M	

The results of the specific initiatives of the Act have not been impressive. In addition to funding limitations, other considerations have prevented full implementation of the Act's requirements. Programs such as regional alcohol and drug treatment centers and detention centers involve negotiations with tribes, determination of priorities and location of facilities, and contract bid processes. In some cases basic questions about the program approaches (e.g., distant regional treatment centers versus local alcohol and drug programs) have surfaced and are still being debated. The numerous reasons for the lack of implementation aside, the following summarizes the status of the Act's various program initiatives at the time of this study.

1. Only six of the 11 regional treatment centers are operational at the time of this study; no new detention centers have been built.
2. Limited aftercare to monitor the few juveniles treated at RTC's upon return to the reservation and inability to use these funds for other

alcohol and drug treatment. Aftercare services are not only affected by the amount of funds, but on the timing of their distribution. One tribe cited the example of significant alcohol treatment dollars being granted to them at the end of a fiscal year. They immediately sent a number of youth for treatment services. However, since the fiscal year had ended before their return, there were no monies available for aftercare. The inability to maintain a continuity of funding, which allows the continuity of treatment, greatly lessens the effectiveness of the funds which are available.

3. Few emergency shelters, halfway homes, youth homes on reservation for use to provide substitute family care and supervision for troubled, abandoned Indian youths coping with dysfunctional family environment and no home base. Of the 20 tribes visited five have youth group homes or shelters. By mid-1991, the Act has resulted in only nine shelters becoming operational of 32 planned facilities.

4. Since the inception of the Act, only one third of the total IHS and tribal alcohol and substance abuse counselors have been certified to provide such treatment.

The Indian Alcohol and Substance Abuse Prevention and Treatment Act is an important initiative dealing with one of the most serious problems facing Indian youth. Its provisions for prevention and treatment of substance abuse, and the specific juvenile justice programs such as detention centers and shelters included in the Act, address important needs of Indian youth and of tribal juvenile justice systems in general. Although

debate continues between the regionalization of services (i.e., regional treatment centers) versus local programs, the general lack of progress related to the Act's initiatives cannot be attributed to this. The lack of new monies to implement the programs specified in the Act appears to be the significant obstacle to the full implementation.

Many of the complaints voiced by tribes would be addressed by the consummation of the memorandum of agreement called for in the Act, coupled with the financial resources for BIA and IHS to implement them without dismantling important on-going programs.

III. FEDERAL DOMESTIC ASSISTANCE PROGRAMS

The purpose of federal domestic assistance is to focus resources on domestic needs at the local level.⁶ Legislation authorizes the design and financing of specific programs to meet community needs. Once authorized, federal agencies develop procedures which specify the programs' designs and eligibility requirements for potential recipients. These, then, are published in the *Federal Register* and codified in the *Code of Federal Regulations*, and determine who gets what and when.

Federal domestic assistance programs employ three basic funding and management systems. The primary system, the PASS THROUGH, passes resources through states to local levels. Federal regulations prescribe minimum eligibility requirements which states may expand or tailor to their local social and economic conditions.

The second delivery system is DIRECT FUNDING to eligible general purpose units of government which may include states, tribes, counties, cities, and other local governmental units. Some non-profit organizations are also eligible for direct funding in some cases. All eligibility requirements are established at the federal agency level, and typically are competitively bid.

The third delivery system is the SET-ASIDE of a specific amount of funding for a distinct, well-defined group, such as tribal governments or Alaska Native villages. This system typically is employed to address a unique need or aggravated condition which needs special attention.

A. SCOPE OF AVAILABLE FEDERAL ASSISTANCE

According to the *Catalog of Federal Domestic Assistance -1991* (CFDA) there is a total of 1,226 current federal domestic assistance programs and services. However, this includes the entire array of programs which, quite naturally, are not available to every state, every county, nor to every tribe. In addition the majority of these programs are either unrelated to, or only tangentially related to juvenile justice services.

There is a wide range of Federal Domestic Assistance Programs with the potential to enhance

the juvenile justice services available to tribes. The Departments of Justice, Health and Human Services, Education and Labor all have programs that impact, or potentially impact, juvenile justice services, either as prevention programs or as services for status offender and delinquent youth. This study identified 25 such programs - seven in the Department of Justice, fourteen in the Department of Health and Human Services, three in the Department of Education, and one in the Department of Labor. Not all of the programs addressed in this section are juvenile justice

programs *per se*. In fact, many target much broader areas such as mental health, child welfare, and general education and vocation areas. However, they are included because of their direct relationship to juvenile justice or because they are major programs aimed at treating or preventing youth problems.

In examining these programs, the issues of tribal eligibility and access which surround each program are ever present. Some appropriation language specifically includes tribes as eligible to compete; some does not. Some language sets aside funds available only to tribes; some effectively excludes tribes by language which could not be read to include them (e.g., "states and their subdivisions"). While none of the programs examined is totally precluded from assisting tribes with juvenile justice activities and services (some through state pass-through funds), there are real difficulties evaluating tribal access to federal funding programs.

The difficulties arise when eligibility is compared to access and levels of funding. That is, if tribes are eligible - either through specific appropriation language or through their inherent rights as units of government - but are not successful in competing for the funds, they have effectively been denied access. The reasons may range from the agency administration being unaware that tribes are eligible, to tribes being unaware they are eligible. But the fact remains that they do not gain access, even though they are eligible.

A number of federal programs are offered through competitive proposal processes. Although tribes are defined as "eligible to compete", many tribes are not in a strong position to do so. Even when tribes overcome the ambiguity of regulatory language which often does not clearly define their eligibility, they are often competing with governmental and

private organizations that have greater resources available to support their funding acquisition efforts. Without the identification of Indian needs as priorities, through special emphasis or set-aside designations in these programs, it is difficult for tribes to compete successfully with major cities and states.

On the other hand there are programs which tribes have accessed, but which have been insufficient to meet the need. Here, the problems may range from all available funds going to only a few tribes, or limited resources being spread so thinly across many tribes that they are rendered meaningless. If only a few tribes were funded, did the agency intend to fund only a few tribes, or was its intention thwarted by only a few tribes applying? Or, were the criteria so restrictive that only a few tribes qualified? If so, was that an intentional result of the criteria? An extensive evaluation of existing programs would be required to address these questions relative to specific programs. Although such an analysis is beyond the scope of the present study, it is sufficient to acknowledge that these issues do impact tribal participation in the full array of federal programs for which they are at least technically eligible.

Finally, the issue of tribal infrastructure must be addressed. Tribal governments, for the most part, lack the core service and support programs for troubled juveniles or juvenile offenders, just as they lack the tax base from which such programs could be funded. Tribal acquisition of federal funds is often aimed at developing or maintaining core programs (e.g., probation services), not expanding or strengthening these programs. The typical lack of tribal or other non-federal funding forces a greater dependence on these programs than is generally seen in non-Indian juvenile justice systems.

B. MAJOR FEDERAL DEPARTMENT ASSISTANCE PROGRAMS

The federal domestic assistance grants evaluated in this section are grouped by department. A summary including the number of programs and FY 1990 budget for the programs evaluated in each department is presented in Table 7.4. This table presents total dollars available through these programs, not the amount of funds utilized by tribes. The table depicts the total federal funds in programs that relate to juvenile justice services in

general. Virtually all programs are vastly broader in scope than status and delinquent offender youth and their families. In addition, the portions of these funds used for tribal youth and their families composes only a small fraction of the total funds. The discussions regarding each program which follow the table will identify particular issues related to tribal access to these programs, and, where possible, the extent of current tribal participation.

Exhibit 7.4
Departmental Budgets Relevant to Juvenile Justice
FY 1990 in Millions

Department	FY 1990 Budget	Number of Programs
Justice	\$ 53,000,000	7
Health & Human Services	3,210,000,000	14
Education	66,000,000	3
Labor	58,000,000	1
TOTALS	3,886,000,000	25

C. DEPARTMENT OF JUSTICE

The programs examined in this section directly relate to tribal juvenile justice systems, either because they are currently significant funding sources for these systems or because they have potential to become major supports for tribal services. The Department of Justice sponsors seven programs directly related to tribal juvenile justice. Funding for these programs was allocated at \$ 553 million in 1990.

1. JUVENILE JUSTICE RELATED PROGRAMS:

Juvenile Justice and Delinquency Prevention

- State Allocations:

FY 1990 funding level was \$48 million (excluding State Technical Assistance funds). States receive a minimum of \$350,000 and territories receive \$75,000 minimum. As of FY 89 there is a mandatory pass through to Native Americans based on a population formula. The study team was unable to determine the exact amount received by tribes. An evaluation of the projected allocations to tribes for FY 1990 from the Indian set-aside indicated that all tribes combined would receive approximately \$65,000 (or .1%) of the total \$48 million. In fact only three states (Arizona, New Mexico, and South Dakota) would pass through more than ten thousand dollars to all of the tribes in their states. Based on the formula, it is obvious that the total amount potentially available to tribes is insufficient. The average amount per tribe is only a few hundred dollars (based upon the allocation formula and calculating the average for the tribes that BIA indicates do provide judicial functions). Although

the intent of the set-aside focusing on Indian tribes is noteworthy, the actual impact has been negligible.

Crime Victim Assistance and Crime Assistance Discretionary Grants:

These two programs were funded at a combined level of \$58 million in FY 1990. A number of tribes indicated that Crime Victim Assistance programs are in operation on their reservations. The Crimes Victim Assistance program has demonstrated the flexibility of Department of Justice regulations to accommodate the needs of tribes. Programs funded by this source appear to be quite varied in nature. This program awarded \$2.4 million to states to set up "on-reservation services." It has successfully involved 15 states with 52 tribes and Indian organizations receiving subgrants.

Juvenile Gangs and Drug Abuse and Drug Trafficking:

These funds, totalling approximately \$2 million in FY 1990, can be obtained by public and private organizations through a competitive proposal process administered by the Office of Juvenile Justice and Delinquency Prevention. Although potentially able to impact tribal juvenile justice, this is a new initiative and tribal participation is unknown at this point.

Drug Control and System Improvement - Formula Grants:

These funds are available to state and local governments and tribes for court and law enforcement programs related to efforts to enforce

laws regarding controlled substances. FY 1990 funding level was \$395 million. An exception to the matching funds requirement is specifically made for Indian tribes. This is a new initiative and data regarding tribal participation and program impact is not available.

Drug Control and System Improvement

- Discretionary Grants:

Funded at approximately \$49 million for FY 1990 (almost double the previous year's funding), this program is open to states, local governments, tribes, and other entities to develop special programs. Funding is based upon receipt of a qualified proposal, and since funds are limited, the process is considered competitive. Programs funded through these monies will likely need to transition to other sources as funds are time-limited. As a new initiative impact on, and participation by, tribes is not determined.

Childrens Justice Act for Native Americans:

This program focuses on sexual abuse investigation and prosecution. Tribes are eligible for funding along with states and local governments. The FY 1990 budget was slightly more than \$1 million. At least 20 tribes were identified as receiving grants from this program.

D. DEPARTMENT OF HEALTH AND HUMAN SERVICES

The Department of Health and Human Services has several major programs that can impact status offenders and delinquent youth. To the extent that tribes can and do participate in these programs, they can provide appreciable support to tribal juvenile justice systems. There are many DHHS programs that are prevention programs when seen from the perspective of the juvenile justice system. From Headstart programs to health services to public assistance almost all DHHS programs impact youth and families in some way. In this section of the report the DHHS programs examined are those that support juvenile justice services. The first group of programs target troubled adolescents specifically and programs funded by these resources clearly include status offender and delinquent youth. Five programs were placed in this category with total funding of \$108 million. The second group of programs address alcohol and drug problems which have been identified as key problems of Indian youth. There were five programs in this group with funding of \$102 million. The third category of

2. SUMMARY OF JUSTICE PROGRAMS

The Department of Justice has funded a number of programs and made them available to tribes for use in dealing with the problems of juvenile justice at the tribal level. Crime Victim Assistance funds, in particular, appear to have reached the tribal level and have been used for programs deemed effective by the tribes. Prior Justice programs such as Law Enforcement Assistance Administration grants also were identified by tribes as effective resources for creating and developing useful juvenile justice programs. Unfortunately, few of the LEAA programs were able to be continued through tribal or other funding.

An important current juvenile justice program - the JJDP formula grants - has not had this same impact, even with recent changes aimed at addressing Indian issues. The allocation formula, which is essentially a ratio of Indian juvenile population to total state juvenile population, results in limited funds earmarked for Indian tribes. Insignificant amounts reach individual Indian tribes.

programs examined are much broader in nature and although some funds are used for status offender and delinquent youth, a majority of the monies from these programs focus on a wider context of clients (e.g., child welfare and mental health). Four programs were examined in this group with funding of \$3 billion dollars.

1. DHHS ADOLESCENT TARGETED PROGRAMS:

Runaway and Homeless Youth:

Total funding for this program in FY 1990 was \$29 million. Funds are available to public or private agencies operating shelters that house no more than 20 youth. In FY 1990 10 tribes or Native American organizations received funds totalling \$518,713 (1.8% of the total).

Transitional Living:

Funded at \$10 million in FY 1990 this program funds shelter and other services aimed at helping youth gain self sufficiency. Tribes are directly

eligible to apply for funds. This is a new program and the level of tribal participation could not be determined during the present study.

Independent Living:

Funded at \$50 million for FY 1990, this program is only available to tribes through the state in which they are located. No information is available regarding any Indian participation.

Community Youth Activity Demonstration Grants:

This program is also only available to tribes through their respective states. The program is funded at the level of \$14 million for FY 1990. This resource supports recreation, education, and training efforts for youth at risk for substance abuse problems. Tribes are only eligible through their states. Tribes received approximately \$250,000 in FY 1990 or 1.8% of the total funds.

Community Youth Activity Block Grants:

These funds are targeted similar to the above program. Funds are available to states and territories. Although money appropriated to states is divided equally among the states, territories receive funds based upon need. Tribes are only eligible through their states. Funding for FY 1990 totaled \$5 million. No data are available regarding tribal participation in this program.

2. DHHS ALCOHOL AND DRUG ABUSE PROGRAMS:

Drug and Alcohol Abuse Prevention - High Risk Youth:

This program has shown high participation by Indian tribes and Native American organizations. Public governmental bodies or agencies and private agencies are eligible to apply for these funds. Tribal agencies can apply for these funds. In FY 1990 funding totaled \$33 million. According to the Office of Substance Abuse Prevention, 9% of clients served by these funds were American Indian or Alaska Native. Approximately \$5 million was received by tribes and Indian organizations which accounts for 16% of the total funding from this program.

Drug Abuse Prevention and Education Relating to Runaway and Homeless Youth:

This program funds counseling, education, and support services related to drug use by homeless and runaway youth. FY 1990 total funding was \$15

million. Tribes are directly eligible for these grants. Native American youth organizations received 10 grants totalling \$697,250 (5% of the total funds) in 1990. Funds for this program are contingent on the Runaway and Homeless Youth Act program receiving at least the same funding as the previous year.

Drug Abuse Treatment Waiting List Reduction: Public or non-profit agencies may apply for these one time grants. The program was funded at the level of \$26 million in FY 1990. Tribal, local, and state governments may apply for an "umbrella" grant which allows them to use 2% of these funds for administrative costs. The extent of tribal participation was not determined.

3. DRUG ABUSE PREVENTION AND EDUCATION RELATING TO YOUTH:

Gangs:

This program is operated under DHHS but by legislative mandate must be coordinated with the Office of Juvenile Justice and Delinquency Prevention. Funded at the level of \$15 million in FY 1990, only one Native American organization received a grant (\$150,000). This grant involves only 1% of the total funds available from this program.

Community Demonstration Grant Projects for Alcohol and Drug Abuse Treatment of Homeless Individuals:

Tribes are eligible through non-profit entities for these funds. FY 1990 funds totaled \$13 million in FY 1990. No information is available regarding tribal participation.

4. DHHS MAJOR PROGRAMS RELEVANT TO JUVENILE JUSTICE:

Alcohol, Drug Abuse, and Mental Health Services Block Grant:

This program covers a wide range of mental health services for both adults and children. Tribes are directly eligible for this funding which supports mental health centers, clinics and substance abuse programs. State allocations are reduced by the amount received by tribes in their state. Funding for FY 1990 was \$1.1 billion. No information was obtained regarding tribal participation in this program.

Child Welfare Services State Grants

- Title IVB:

Tribes are directly eligible to receive grants and did receive \$455,570 of the \$253 million total funds in FY 1990. For a number of Indian tribes child welfare services also serve the majority of the status offender and delinquent youth. However, only minimal amounts of the overall tribal child welfare funding are derived from this program. Only .2% of the total funds in this program went to tribes in FY 1990. Tribes that did receive funds from this program indicated that these monies were a small portion of their overall child welfare services budget.

Foster Care - Title IV E:

These funds cover some placement costs of status offender and delinquent youth for tribes that are eligible. To be eligible tribes must enter into agreements with their state and must adhere to several federal requirements regarding services and legal processes. Funding for FY 1990 totaled \$1.2 billion. Although based upon site visit reports, a few tribes have qualified for these funds, a number of tribes have difficulty in doing so. Problems are either due to the inability to obtain the required agreements with the state or the difficulty of implementing the many federal requirements necessary for eligibility.

Job Opportunities and Basic Skills Training:

Although much broader than juvenile justice alone, this program addresses key concerns of tribes re-

garding their adolescent populations. Lack of employment is considered contributory to status and delinquent offenses. Tribes are directly eligible and have clearly had major participation in this program. FY 1990 funds totaled \$459 million, of which tribes received \$3.4 million (less than 1% of the total JOBS monies). 49 different tribes received funds in FY 1990.

5. SUMMARY OF HEALTH AND HUMAN SERVICES PROGRAMS

The majority of DHHS monies which impact juvenile justice do so only as a small part of their basic focus. The last programs examined above, although having substantial impact on youth, are not core juvenile justice programs.

Tribal eligibility for programs is not always obvious. A number of the above programs are only available to tribes through state government and obviously their participation is balanced against other state needs and is greatly affected by the degree to which Indians are considered a priority in the state.

Tribal participation is also hampered for some programs because of matching fund and categorical requirements. Equally as important is that many of the above programs are time-limited funding sources and cannot act as the base funding for core programs.

E. DEPARTMENT OF EDUCATION

The study examined education funds that were considered to be related to juvenile justice services (such as counseling, drop out prevention, and substance abuse education and counseling). Although they clearly have an impact on youth and their adjustment in the community, programs that concentrate on instructional functions are not included in the following discussion. However, at the same time many education programs overlap - supporting both educational and non-instructional services for students. It should be kept in mind that amounts of funding identified in this section generally are not focused solely on counseling and other juvenile justice related services.

This section does not include programs from which tribes receive monies only through the BIA. The

programs covered here are those for which tribes can receive direct funding from the U.S. Department of Education.

1. CURRENT DEPT. OF EDUCATION PROGRAMS RELATED TO JUVENILE JUSTICE

Indian Education Formula Grants to Local Education Agencies and Tribal Schools:

Funded at the level of \$51 million in FY 1990, all funds are received by tribal or BIA operated schools. (58 tribal schools and 81 BIA schools received funds during 1989.) Although primarily used for instructional programs, some funds can be used for counseling, cultural heritage programs, and extra curricular activities.

**Indian Education Special Programs and
Projects to Improve Opportunities for
Indian Students:**

This \$12 million program (FY 1990) can be used partially for drop out prevention and other ancillary education services. Tribes receive monies directly and only schools with Indian students may receive funds.

**Indian Education - Indian Controlled
Schools Enrichment:**

As the name implies, only Indian operated schools are eligible for funds from this program. Approximately \$3 million was available in FY 1990.

The program is a competitive grant program with funds available for one or two year periods. Drop-out prevention and substance abuse counseling are two examples of programs that qualify for funding.

F. DEPARTMENT OF LABOR

One specific program from the Department of Labor is worth noting in the study of tribal juvenile justice funding - the Indian and Native American Employment and Training Program. Although more in support of (rather than an integral part of) the juvenile justice system, services funded by this program were clearly in evidence on a number of reservations visited during the study.

Funds can be provided directly to tribes and to non-profit organizations. Both youth and adult programs can be funded. 182 tribes and native organizations were funded in FY 1990 with grants ranging from \$100,000 to \$350,000.

Tribes may also compete for other employment and training programs available through the Department of Labor.

G. COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION

Although the Coordinating Council is not a funding program, it is included here due to its potential to serve a central role in the coordination of interdepartmental efforts to address the needs of Indian status offender and delinquent youth. The Coordinating Council was established to focus on federal juvenile programs by the Juvenile Justice and Delinquency Prevention Act of 1974 as amended.⁷ It designates the Attorney General as the chairman, and includes the following statutory members:

- The Secretaries of Health and Human Services, Labor, Education, and Housing and Urban Development;
- The Directors of the Office of Community Services, Office of Drug Abuse Policy, the Action Agency, Bureau of Prisons, Office of Special Education and Rehabilitation Services, Youth Development Bureau, Bureau of Justice Assistance, and National Institute of Justice;
- The Commissioners of the Bureau of Indian Affairs, and Administration for Children, Youth and Families;

- The Assistant Attorney General, Office of Juvenile Justice;
- The Administrator of the Office of Juvenile Justice and Delinquency Prevention; and
- Representatives of such other agencies as the President shall designate.

Legislative provisions stipulate that Council members may designate a representative to serve on the principal's behalf, but the designee must exercise significant decision-making authority in the federal agency involved.

The Administrator of the Office of Juvenile Justice and Delinquency Prevention provides staff support for Council operations, and historically has served as the vice-chairman of the Coordinating Council. The Coordinating Council's operation is funded by an authorization of \$200,000. The Council meets every quarter and submits annual recommendations to the Attorney General and the President on overall policy and development objectives.

Because the council includes all key departments that are involved with Indian programs, and because

of its central focus on juvenile justice issues, the Coordinating Council is the one existing entity that can provide focus to the federal government's

interdepartmental efforts related to tribal juvenile justice programs. This potential will be addressed in the recommendations of the study.

H. SUMMARY OF MAJOR FEDERAL DEPARTMENT ASSISTANCE PROGRAMS

The 25 programs examined in this section show that federal support for tribal juvenile justice services does come from a number of general and Indian-specific programs outside the major funding sources of the BIA and the IHS. However, for many of these programs, the funding received at the tribal level is quite small. In addition, the funds are often either dispersed across a large number of tribes, resulting in small individual allotments or larger amounts of funds are acquired by only a few tribes. There are problems with either result.

Another issue highlighted by these 25 programs is the number of programs that provide time-limited funding (e.g., demonstration grant programs) and/or that require tribes to compete with each other and with non-Indian governmental bodies. When such programs are used for the development of exemplary and demonstration programs, this

competitive mechanism is acceptable, and in fact, may be beneficial. However, tribes that have no choice but to use these monies to maintain ongoing programs face a never ending, and impossible, challenge to maintain a stable juvenile justice system.

The answer to developing and stabilizing adequate tribal juvenile justice services is not likely to come through the myriad of Justice, Health and Human Service, Education, or Labor programs, but rather through tribal funding levels provided through the BIA and the IHS. However, tribes do deserve special consideration in these other federal programs as well. Clarification of eligibility for grant programs is important. Where tribes can only access monies from certain programs through states, the federal government must specify the Indian portion that is to be distributed.

IV. SUMMARY AND CONCLUSIONS

The nature of funding for tribal juvenile justice programs is quite different from the funding of their non-Indian counterparts. Non-Indian court systems generally rely on state and local funding, augmented by federal program funding. The service systems they rely on for treatment and prevention usually are anchored by local, state, and federal funds of a reasonably stable nature. Few tribal systems have a solid base of local (tribal) funds, although there are a few notable exceptions. Most tribes must depend heavily on BIA and IHS funding and/or services to serve their youth. However, neither the BIA nor the IHS assumes the role of guarantor of core services for the tribes. Therefore, many tribes attempt to parlay funding from a number of different sources. Tribes are successful only to the extent that they can identify these resources and concentrate sufficient staff on the complex acquisition process. Successfully maintaining a stable system from year to year becomes a major problem. The result is that, both within individual tribes, and across all tribes, tribal juvenile justice becomes an ever changing patchwork of programs

and funding sources. This affects even the most basic services such as probation, counseling, and placement services.

Tribes present a unique challenge to the federal programs on which they must depend for financial and service support. Indian populations are not only dispersed widely across the United States (often living in relatively small groups), but they present a degree of individuality and independence distinctly different from non-Indian rural populations. Funding and service provision, to small tribes in particular, are not easy even if relatively adequate funds are available. To address the need to support tribal self determination, while at the same time attempting to maintain cost effectiveness for the dollars and services provided, it is important to consider two general principles. First, rigid categorical restrictions on programs should be reduced to allow tribes the flexibility to utilize funds for multi-service agencies, rather than requiring them to create categorically specialized services. Second, tribes should be encouraged to consider the

potential of obtaining funds and services through intertribal arrangements where possible. Certain services, such as court staffing, appear amenable to this approach and do not necessarily abridge tribal individuality or control. Other services which are high cost and require centralized resources (e.g., residential treatment) may be candidates for intertribal programs where the tribes are geographically proximate enough that distance is not a severe burden on the families requiring these services.

Regardless of the mechanisms and approaches to funding and service delivery, it is incumbent upon all parties to make necessary changes to expand and stabilize tribal juvenile justice systems and the services upon which they depend. At the same time

it is important not to lose sight of the fact that the federal government has clear obligations and responsibilities to the tribes as part of the trust relationship. The tribes' ability to be totally self sufficient and to act as the ultimate guarantor of their own core services is limited. At the most basic level it should be acknowledged that tribes only have those resources upon which to depend that the federal government in its decisions through history have allowed. From decisions regarding the location of reservations to the decisions regarding tribal power to self govern, the federal government has determined the basic resources available to the tribes. In exchange it is only reasonable to expect that the federal government will fulfill its obligations to the tribes and support the requisite level of basic services for Indian youth and their families.

IV. RECOMMENDATIONS

Because of the unique history of the federal-tribal relationship, the policy basis underlying federal assistance to Indian tribal governments is unclear in some respects. Many Indian tribes have specific treaty entitlements to services bargained for in exchange for land cessions or other valuable considerations; other tribes entered into the trust relationship with the federal government with the understanding that they would be treated generally as Indian tribes are treated, i.e., that federal services and assistance were integral parts of the relationship. The following recommendations address changes required in current funding practices to expand and stabilize tribal juvenile justice systems and the services upon which they depend.

7.1 CONGRESS SHOULD MANDATE A COMPREHENSIVE REVIEW OF TRIBAL ELIGIBILITY FOR ALL FEDERAL DOMESTIC ASSISTANCE PROGRAMS, INCLUDING THOSE IMPACTING ON JUVENILE JUSTICE, AND AMEND THE AUTHORIZING STATUTES WHERE NECESSARY TO ENSURE APPROPRIATE TRIBAL PARTICIPATION.

The omission of tribes from federal programs is often the result of an oversight in the legislative process rather than a considered decision by Congress to exclude tribes or inap-

propriately to require them to seek federal assistance through state governments. Congress should work toward a more deliberate funding policy for domestic assistance for Indian tribes which tailors tribal participation to the needs of tribes and the overall policies of programs.

7.2 CONGRESS SHOULD AUTHORIZE FEDERAL DOMESTIC ASSISTANCE AGENCIES TO WAIVE PROGRAM GUIDELINES AND, UNDER APPROPRIATE CIRCUMSTANCES, STATUTORY REQUIREMENTS TO FACILITATE JOINT FUNDING OF TRIBAL PROJECTS, PARTICULARLY IN THE AREA OF JUVENILE JUSTICE.

One of the important barriers to effective community-based tribal juvenile justice systems is the problem of funding tribal programs on small reservations where the need for a particular categorical program is too small to justify a grant. Tribes should be assisted to create multi-service centers and programs funded from a variety of federal agencies, which would increase the number and effectiveness of comprehensive community programs and reduce the total cost of services by stressing in-home and community-based approaches.

7.3 THE FEDERAL AGENCIES SHOULD REVIEW RELEVANT REGULATIONS TO ASSURE THAT TRIBAL GOVERNMENTS ARE SPECIFICALLY ELIGIBLE FOR FEDERAL DOMESTIC ASSISTANCE PROGRAMS.

Tribal governments should be deemed eligible for all federal domestic assistance programs for which states and municipalities are eligible, unless tribal governments are specifically excluded from eligibility in the authorizing statutes of these programs. Where tribes are excluded from program eligibility by regulation rather than by statute, federal agencies should amend the regulation to include tribal governments.

7.4 FEDERAL AGENCIES SHOULD REVIEW THEIR LEGISLATIVE MANDATE TO SERVE INDIAN YOUTH.

Federal agencies should clarify the eligibility of tribal youth and families to such services through addressing this eligibility in the pertinent federal regulations related to such programs and funding. The results of these analyses should be shared with the states.

7.5 THE BIA AND IHS SHOULD CONTINUE TO MINIMIZE CATEGORICAL FUNDING BARRIERS TO THE DEVELOPMENT OF APPROPRIATE SERVICES.

The BIA and IHS should increase their efforts to allocate funds in block grant fashion, thus minimizing categorical barriers to the development of multi-service agencies at the tribal level. However, provisions must be sought to ensure that juveniles do not receive decreased services through such funding mechanisms.

7.6 AN INTER-AGENCY TASK FORCE ON TRIBAL JUVENILE JUSTICE ISSUES SHOULD BE ESTABLISHED.

The role of the task force should be to specifically review the funding of juvenile ser-

vices through the BIA and IHS, with the goal of collaborating and prioritizing program spending. Areas which will need legislative action should be identified. Such a task force should include specific provision for tribal consultation.

7.7 CONGRESS SHOULD APPROPRIATE THE AUTHORIZED FUNDING OF P.L. 99-570.

Congress should support, through the appropriation of adequate additional funding to the BIA and the IHS, the implementation of all provisions of P.L. 99-570 for programs related to juvenile justice services.

7.8 THE DEPARTMENTS OF INTERIOR AND HEALTH AND HUMAN SERVICES, THE BUREAU OF INDIAN AFFAIRS AND THE INDIAN HEALTH SERVICE SHOULD CONTINUE TO PLACE THE HIGHEST PRIORITY ON THE IMPLEMENTATION OF P.L. 99-570 AND THEIR EFFORTS TO COORDINATE THE ACTIVITIES OF THE TWO AGENCIES ACROSS THE BOARD.

The memorandum of agreement between BIA and IHS has recently been signed, laying the groundwork for interagency coordination on the vital topic of alcohol and substance abuse, the principal causative factor in Indian juvenile delinquency and a host of other problems. Implementation of this legislation and the memorandum of agreement must continue to be a high priority to make effective assistance available to Indian tribes and Alaska Native villages and to their members. In addition, broader-scale efforts to coordinate between BIA and IHS have only recently intensified as a result of the negotiation of the MOA; these efforts are long overdue nearly 40 years after the separation of functions between the two agencies. These efforts should continue.

CHAPTER SEVEN ENDNOTES

1. *See, e.g., Worcester v. Georgia*, 51 U.S. (6 Pet.) 515 (1832) (recognizing the sovereign status of Indian tribes); *Talton v. Mayes*, 163 U.S. 376 (1896) (noting that tribes as sovereign governments pre-dated the Constitution); *United States v. Wheeler*, 435 U.S. 313 (1978) (upholding tribal power to punish tribal criminal offenders). Limitations imposed by federal law have primarily focused on nonconsensual relationships between outsiders and the tribe. *See, e.g., Montana v. United States*, 450 U.S. 544 (1981) (invalidating tribal regulation of hunting and fishing by non-Indians on land not owned by the tribe within the boundaries of a reservation); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978) (federal law does not recognize tribal court authority over non-Indian criminal defendants).
2. 25 U.S.C. § 13.
3. Pub. L. No. 93-638, 88 Stat. 2203 (codified at 25 U.S.C. §450a and in scattered sections of titles 25, 42, and 50).
4. U.S. Congress, Office of Technology Assessment, Indian Adolescent Mental Health, OTA-H-446 (Washington, D.C.; U.S. Government Printing Office, January, 1990).
5. The memorandum of agreement was signed in October 1992, as the final editing of this report was being completed. Sustained implementation of the memorandum and the policies and programs of the Act will require close attention from Congress and the leadership of the Departments and agencies.
6. Program support can be provided through four different types of assistance. They are: LOANS (e.g., housing, student, business); DIRECT PAYMENT ENTITLEMENTS (e.g., pensions, Medicare); IN-KIND SERVICES (e.g., surplus property, professional services); and GRANTS. Grant assistance was the focal point of this portion of the study, because it is the form of federal assistance which targets national problems and political priorities such as those facing tribes in the area of juvenile justice.
7. 91 Stat. 1050; 94 Stat. 2753; 98 Stat. 2110; 102 Stat. 4435; 42 USCA 5616.

CHAPTER EIGHT
PROMISING APPROACHES
FOR INTERVENING WITH INDIAN AND ALASKA NATIVE JUVENILE OFFENDERS
INCLUDING COMMUNITY-BASED ALTERNATIVES TO INCARCERATION

An important aspect of this study was to identify promising approaches taken by tribes for intervening with Indian and Alaska Native juvenile offenders. While the rest of the study focused on

the needs of juvenile offenders and the justice systems in place to deal with them, this portion focused on programs which successfully met the challenge of addressing some facet of their need.

I. INTRODUCTION - THE NEED

Without exception, communities identified the lack of funding for community-based programs as having a particularly detrimental impact on youth and their families. Site interviews were replete with remembrances of community-based residential programs, recreation programs and community development projects which met many needs of the communities but which disappeared along with initiatives such as LEAA and OEO.

We discovered that program design and development, not unlike state and local programs, are influenced by federal funding initiatives. Sustainability of community programs is dependent upon adept proposal writing, a sophisticated understanding of ever-changing federal initiatives, and the availability of tribal revenues. Unfortunately, few tribes command the resources to underwrite the continuing support of services and programs once federal funding for them disappears.

Community recreation programs which received significant federal and private funding a decade ago, now are heavily dependent upon local or private funding and volunteerism. Some courts have gone so far as to solicit and set aside operational funds for the payment of services such as treatment,

detention and counseling, which are provided ordinarily by human service agencies or corrections departments. Unfortunately, their budgets have not been increased to meet the increased demands from court-referred juveniles. Volunteer teachers and parents conduct after school tutorials and extracurricular activities, but worry about the longevity of these programs when funds are not available for additional insurance or utilities. Limited resources have precluded the implementation of community-based treatment and aftercare for substance, physical, emotional and sexual abuse, as well as a broad range of behavioral disorders.

Tribes are often frustrated in their attempts to use existing local resources. We found only one tribe which was successful in renovating one of many vacant federal facilities dotting reservations. Following transfer of the building from the Bureau of Indian Affairs and BIA renovation funding, the tribe received state certification to operate an on-reservation emergency shelter. Interviews indicate tribal plans to renovate vacant buildings are now discouraged in favor of new construction. As a result, many tribal communities resemble inner cities with their decaying and unsafe buildings.

II. DATA COLLECTION AND PROGRAM CRITERIA

Initial data collection concentrated on the communities where site visits were conducted. Each person interviewed was queried about programs for youth

conducted or utilized by the tribe or available to tribal youth. Paralleling this effort were the All Tribe Survey and the Alaska Survey, each of which

included questions regarding effective programs used by the tribes and villages or about which they were aware.

As programs were identified, information was collected from program staff members, court staff, referral agencies, and others knowledgeable about the program, by phone and from available written materials. Seventy-three programs were reviewed.

When the data from this broad sweep of programs were compiled, and their services and requirements verified by both phone and in writing, study staff evaluated the 73 programs according to a fairly narrow set of criteria, including that the selected programs must:

1. demonstrate the successful, innovative use of community resources;

III. FINDINGS

Despite the many trends in federal programs which redirect spending and terminate initiatives, some tribal and Alaska Native governments and communities have demonstrated remarkable resilience and, by innovative management, have maintained many community-based services. However, this is not always possible and some excellent programs have closed down. One closed program is included in the selected group.

A common thread running through most programs selected is the creative use of multiple funding sources. Although a few are funded entirely by federal or private funding, most utilize some combination of federal, tribal, state, and private funding. One is supported wholly by its members.

IV. PROMISING APPROACHES FOR INTERVENING WITH INDIAN AND ALASKA NATIVE JUVENILE OFFENDERS

The following list of promising approaches is by no means complete but reflects the efforts of community members and leaders who have developed and maintained programs responsive to the needs of the local communities and aimed at

2. reflect a locally appropriate response to identified community needs;
3. hold the potential for sustainability by local and federal resources; and
4. have a programmatic structure which could be replicated by other communities given comparable resources.

A total of 16 programs were identified according to these criteria.

It was beyond the scope of this study to visit and examine the programs. Therefore, those selected meet the criteria and appear to have the attributes of a successful program which can be replicated. They certainly are worth further investigation.

Another common element found in many of these programs is educational support for juveniles and, occasionally, for their families. Education has been shown to be crucial to prevention and rehabilitation, to both the juvenile who has never been in contact with the juvenile justice system and to the treatment of those who have. Approximately two-thirds of the programs have education/prevention components.

Finally, the programs listed reflect multiple intervention strategies which include schools, parents, communities and peer approaches, as well as teaching communication, decision-making and self-assertion skills.

improving the lives of children and their families. Programs range from school educational programs to self-help groups to in-patient treatment to substance abuse and sexual offender treatment to youth shelters.

Hopi Guidance Center
P.O. Box 68
Second Mesa, Az 86043
(602) 737-2586
Jim Hahn--Program Director

The Hopi Guidance Center is an integrated organization comprised of four separate programs which provide group, individual and family counseling, therapy groups and prevention programs. The Center has been in operation since 1981. Guidance Center services include the Special Child Sexual Abuse Project which furnishes therapeutic services for sexually abused children and their families, a community liaison for victims of sexual abuse and education services for the prevention of child sexual abuse. The Guidance Center also administers the Mental Health and Alcohol Program offering emergency and therapeutic intervention for both mental health and alcohol related problems as well as educational and preventive services throughout the reservation. General assistance and social and child welfare services are available at the Center. Shelter services also are available to victims of domestic violence who are community residents. Teens receive medical and counseling services through the Adolescent Health Center/Teen Center which is located at the Hopi Junior and Senior High School.

Several attributes of the Center help make its programs effective. The majority of the staff are Hopi, including a large number of the professional staff. This, in turn, makes the tribal membership more comfortable when using the resources and receptive to services. The resulting cultural sensitivity is crucial. Finally, all of the behavioral health services are under one roof, facilitating cross-staffing, simplifying referrals, controlling turf issues, and reducing repetition and redundancy.

The staff is made up of administrators, other professional staff and support staff. Twenty professionals include psychologists (Ph.D), counselors, social workers, foster care workers, general assistance workers, and a physician. Thirteen support staff include clerical workers, community educators, and community services liaisons. The budget for all programs in 1991 was

\$2,600,000. The Hopi Guidance Center is administered by the Hopi Tribe and receives federal, state, and tribal funding.

Each of the programs serves adolescents referred by various sources to them. Referral sources include tribal and off-reservation courts, and public and private agencies. An encouraging sign to the staff is the increasing number of self-referrals for both alcohol and mental health services.

Follow up on clients depends upon the program completed. The Alcohol program uses the IHS computerized system which flags clients for follow up at six month intervals. The Social Services program keeps a file active for at least three months after an adjudicated case is closed and continues contacts with the client as necessary. Community Services Liaisons follow up with clients in the Special Child Sexual Abuse Project at six month intervals.

Juvenile recidivism was tracked for three years in the diversion program for first time offenders referred by the Hopi Tribal Courts. The program involved parents as well as their children. Seventy percent of those completing the program did not re-enter the court system as a juvenile.

Medicine Wheel Program
Salt River Pima-Maricopa Tribal Education
Scottsdale, Arizona
Bo Colbert--Program Director

The Medicine Wheel program provides high risk students with an educational program and counseling services in a familiar surrounding. This program helps students apply cognitive skills and learn to be physically, mentally and spiritually balanced individuals. The goal of the Medicine Wheel Program is to mainstream high-risk children into a regular school system. Although the program is administered by the tribe, it receives both state and federal funding. The two teachers are paid by the Mesa Public Schools which also provides a small amount of money to buy supplies, and a van to transport the students for field trips. The tribe provides the physical support such as the classroom.

While special education classes have existed on the reservation for some time, the Medicine Wheel philosophy was adopted in September, 1991 and a curriculum is used based on that philosophy, one of wholeness, self-esteem, and tradition. Students also are introduced to activities such as bowling, basketball games off the reservation, museum visits, activities the students have never experienced before. They recently designed a teshirt to be sold to raise funds for field trips.

The youth suffer from severe problems such as emotional dysfunction, learning disabilities, and substance abuse, often in combination. Some of the students may suffer from fetal alcohol syndrome or effect. Although the program is a mid-school level, students range in age from 13 to 18. At the time the program began, two students were enrolled; by January, 1992, enrollment had risen to 15. Every student is on tribal court probation. In fall, 1992, the tribe will fund the full program, including paying the teachers.

**Gila River Indian Community Juvenile
Detention and Rehabilitation Center**
Sacaton, Arizona
Laura Yergan, Executive Director

The Juvenile Detention and Rehabilitation Center (JDRC) is comprised of two components: the in-house (detention and rehabilitation) component; and the community-based (prevention and after-care) component. It is the only program of its kind fully operated by a tribe. Located on the Gila River Indian Reservation, the Center is administered by the Gila River Indian Community tribal government under the Indian Self-Determination Act and receives federal funding along with a state grant for delinquency prevention. The JDRC has been in existence since October, 1988, when the tribe took over the operation of the Center from the B.I.A. and added the rehabilitation component. It served 501 youth in 1991.

The Center is a secure residential facility for Indian youth ages 10 to 17, providing educational, recreational and counseling services including individual, group, family, as well as traditional

services. A case monitor assesses incoming youth, monitors them and refers where necessary. Youth enter the system via the police department after being formally charged with either being an offender (delinquent) or a non-offender (child in need of care). The usual sources of complaints to the police include parents/guardians, tribal social services or tribal court.

The community-based component of the center which follows a youth after detention is completed includes the juvenile delinquency prevention program directed at the very young and first or second-time offenders, court-ordered probation, and aftercare for youth not in the first two categories. Delinquency prevention and education play a significant role in this component as shown by the first offenders' program for court ordered and referred juveniles and their families, and, with the assistance of local schools, the identification of at-risk or high-risk youth for whom counseling and family services are provided. Victim's restitution, community service and court-ordered monitoring such as in-home visits are part of probation. The JDRC staff work with existing child care programs and juvenile justice systems in the community to coordinate service delivery and upgrade services.

In addition to the director and assistant director, the Center employs 28, including a traditional counselor, a chemical dependency counselor two juvenile delinquency prevention specialists, an after care specialist, and a probation officer. The Center's budget for 1991 was approximately \$875,000.

Sunrise Youth Shelter
Ute Mountain Ute Tribe
Towaoc, Colorado
Rita Arnett--Program Director

The Sunrise Youth Shelter is a group center providing long term and emergency care for runaways, homeless youth and delinquents, and protective care for victims of abuse. The Ute Mountain Ute Tribe runs the shelter, which is located on the reservation. The shelter, started in December, 1983, takes Indian children referred by

the Ute Mountain Ute, Southern Ute, and Navajo tribes, as well as Indian and non-Indian children referred by the surrounding counties. It is the only youth shelter for the entire southwest region of the state. One hundred and one children, of whom 55 were Indian (45 Ute, 10 Navajo) were housed in the shelter during the last fiscal year (7/1/90 - 6/30/91). These statistics do not include repeated placements. All children, except for self-referrals, have contact with a court because the shelter cannot take placements without a court order, except for self-referrals. Self-referrals are treated free of charge because the shelter receives federal funds mandating this policy.

Individual, family, and group counseling, child victim groups, outward bound courses, education, and referral services are available through the shelter. Staff may provide aftercare only for Ute Mountain Ute children. Follow-up outpatient care consists of counseling, transportation, work experience, a challenge program, family planning, and substance abuse treatment. Home visits are made where necessary.

A transitional living program funded by a federal grant teaches independent living skills to older homeless youth, so that they can become successful independent adults. The shelter was the sole tribal program funded by this new federal program during its first year, and only one other tribal program is funded this year.

The shelter faces an immense challenge because it is the only children's shelter in the southwest part of Colorado, a vast area. As a result, the staff deals with every problem faced by children, both Indian and non-Indian, ranging in age from newborn to 17. It may be the only shelter of its kind, being tribally owned and the majority of staff being Indian, yet much of its population being non-Indian. As a result of its multi-racial integration, it has substantial positive impact on the local communities, broadening the perspective of non-Indians about Indian people.

The shelter staff, full and part time, consists of the director and assistant director, six teachers and counselors, 10 house parents, and one peer

counselor, plus counselors from other programs who provide services to the residents. The budget for 1991 was \$473,646.

Fort Hall Solvent Abuse Group
Shoshone-Bannock Tribes
Fort Hall, Idaho
Marina Fast Horse--Facilitator

The Fort Hall Solvent Abuse Group was formed as a self-help group and was supported solely by its members. Under the direction of a lay counselor, members conducted medical research and interviews with physicians, counselors and prosecutors to develop study guides, educational materials and coloring books detailing the effects of alcohol and solvent abuse. The Solvent Abuse Group provided speakers for local schools and national conferences, articles and a cartoon series for the tribal newspaper.

Since the leadership of the group was shared and voluntary, the group had no budget, although, through voluntary contributions, members were able to travel to attend meetings and workshops. The group concentrated on adults, believing that as role models, they needed to change behaviors, especially where dealing with solvent abuse. The group found that solvent abuse is a problem separate from alcoholism or drug abuse or other addictions, and needed to be treated differently than the treatment available for alcohol. The group, which began in 1985, is presently inactive but the original organizer is now attempting to reactivate it.

Nez Perce Tribal Children's Home
Lapwai, Idaho
Mary Jane Foucher--Program Director

Opened in June, 1989, the four-bed home is a 24-hour facility when necessary and houses abused, neglected, and delinquent children from newborn to age 18. The staff, consisting of the director and 2.5 house parents on-call at all times, perform all functions, including cooking and cleaning. In 1991, approximately six adolescents between the ages of 10 through 18 were housed, four of whom were

referred by the court. It is state licensed and the staff work closely with state human service agencies, including working with Interstate Compact on Placement issues. Referral sources consist of all tribal agencies such as the tribal court, Maternal Health, Headstart, Senior Citizens Center, as well as B.I.A. Law Enforcement and the Indian Health Service. Its 1991 budget was \$55,000.

The home encourages frequent extended family visits and seeks to provide a nurturing, caring, family-like atmosphere. It is too small to provide in-house programs, so the staff emphasizes case management and networking, a teamwork approach to the care of children. By coordinating with other programs, the home is able to offer an extensive array of services, including medical services and counseling. While allowing visits by extended family may undercut confidentiality, the staff believe the visits are vital to the well-being of the children. Because it provides a safe haven, adolescents have come to the home and asked to be taken in.

The Tribe's Juvenile Court Counselor has done the home's outreach in the past. This year, it has added outreach formally as well as short-term respite care to allow parents and guardians time for counseling or school. Respite care is a prevention measure which allows families in crisis time to stabilize.

Health and Human Services Department
Mille Lacs Band of Ojibwe Indians
Onamia, Minnesota
Candi Gile-Aubid--Program Director

The Health and Human Services Department has four divisions, Social Services, Nutrition, Medical, and Chemical Dependency and Mental Health (CD/MH). The CD/MH Division, in existence since November, 1989, is responsible for caring for and providing treatment for both children and adults with mental health problems or who are chemical abusers or both. The Chemical Dependency Program provides a continuum of care including prevention through community and peer education, and intervention using clinical treatment programs and aftercare. The division staff is comprised of a director and two administrators and

ten counselors including three staff members who work with youth. In addition, consultants are employed when necessary. The program has no support staff, preferring to funnel as much of its funding into direct services as possible. The department is administered by the Mille Lacs Band of Ojibwe Indians and receives tribal, private and state funding. The CD/MH division's 1991 budget was \$448,597, of which a minimum of \$100,000 is earmarked for treatment. Eighty percent of the budget consists of non-recurring funds, making fund raising a major activity every year.

During 1991, approximately 30 adolescents were treated, and 37 were in treatment as of early 1992. The Social Services Division is the major referring agency for this division. The CD/MH Division provides both residential and non-residential treatment and clinical services including counseling, therapy and a tribal health practitioner. The health practitioner, under the direction of a masters level counselor, practices traditional and cultural counseling and works with chemical dependency groups. For children 14 years of age and older as well as for adults, there are three off-reservation residential programs available in the state designed specifically for Indian people. For children under the age of 14, there are no Indian-specific programs off the reservation.

Once a child returns from residential treatment, the division has a 90-day non-residential program called Oshki Maa Jii Taa Win which acts as a follow-up or half-way program. This program furnishes support services to members returning from treatment and incorporates individual and group counseling, lectures, AA and traditional teaching by elders to maintain sobriety and reconnect recovering members with the community and its culture. Family retreats lasting three days are being instituted to bring extended family members and provide counseling. Periodic follow-ups are provided at family nights to review a youth's progress and offer additional support and other referrals if necessary. The staff find that their services are effective because of the cultural component incorporated into every program, including the use of elders as teachers, mentors, and counselors.

Adolescent Sex Offenders' Group
 Confederated Salish and Kootenai Tribes
 Ronan, Montana
 Gyda Swaney--Clinical Supervisor
 Stan Flemming--Contract Provider

The Adolescent Sex Offender Group provides a support program for court ordered, sexual offenders ages 12 to 19, although the referred age range has been as low as 8 years of age. The very young offender is treated individually or referred to in-patient treatment off the reservation. The group was formed late in 1989 as an outgrowth of need after several adolescent offenders had been identified. Even though several programs are available off the reservation, this program evolved because of the problem of transportation, plus a number of local resources could be integrated into the treatment process. Missoula and Kalispell are located at either end of the reservation and offer excellent programs and good professional support for the program. Adolescents and their families have access to a full range of mental health treatment. It has no separate budget; the two therapists and professional consultants working with the adolescents are funded from a patchwork of I.H.S. programs such as service unit contract dollars and "638" contract monies paid to the tribe.

Referrals of male and, with much less frequency, female offenders are made to the program by tribal and non-tribal courts, the community, human services, law enforcement, and the schools. Over the life of the program, approximately 15 youth have been treated, four in 1991. Before being accepted into the group, a referred adolescent is evaluated by an off-reservation treatment program for amenability to treatment. The screening also ensures that the program has leverage over the adolescent to compel attendance at group sessions. Once an adolescent leaves the group, follow-up consists of periodic contacts by the therapists plus individual counseling if appropriate.

The group serves five small reservation communities, responding to the needs of the adolescents as they arise. The treatment program is not rigid, but it is confrontative and not a support group. Adolescents are strongly encouraged to

examine their reasons for their behaviors and take responsibility for them. While the process does not directly incorporate spirituality, participants are encouraged to take care of their spiritual needs along with their emotional and physical well being.

Confederated Salish & Kootenai Tribes Alcohol and Substance Abuse Program
 Ronan, Montana
 Anna Whiting-Sorrell--Program Director

The program, administered by the Confederated Salish and Kootenai Tribes, provides comprehensive community-based prevention, intervention, treatment, and aftercare services. The program as it now exists began in 1985, growing out of the detoxification center which started in the early 1970's. Referrals to the program are made by non-Indian and tribal courts, social service agencies, probation departments, schools, and other health care providers. Out of a total 1991 client population of 357, approximately 26% were court referred. These data include the adolescent referrals.

This is a varied, extensive program which attempts to involve the entire community in the healing process. The staff, some of whom are recovering alcoholics, are expected to be role models in the community. Sobriety activities, recreation, and social events encourage modeling of alcohol and drug-free behaviors by families and individuals. The Soaring Eagles program focuses on the relationship of the individual to an alcohol and drug-free life style for youth ages 6 to 18. Community Action Prevention Teams reach families to discourage chemical dependency and provide alternatives to drug-taking behavior.

Adolescents with serious chemical dependency or mental health issues are placed in a structured program including a 21-day, off-reservation in-patient program at a private hospital, a 21-day, on-reservation in-patient program which incorporates issues relevant to self-esteem and to Indian youth, and an after care program lasting as long as a year with various activities and group counseling sessions. A relapse prevention program is being developed

for the estimated 30% of the youth who relapse. At present, follow-up is provided according to the IHS requirements on a 3, 6, 12, and 24 month basis and consists of questioning the youth about such matters as activities, involvement with law enforcement, school, and abstinence. The Blue Bay Healing Center, the location of the adolescent in-patient on-reservation program, also provides co-dependency workshops, anger management, support groups, aftercare, recreation, and education for both adults and youth.

The tribe maintains a drug-free workplace policy and employees are required to complete in-service training on chemical dependency awareness and intervention provided by the program. Recently, the program has initiated prevention and awareness training for high school students and teachers in the schools. The program also administers a state-approved DUI school.

The staff consists of a director, 6 administrators and support staff, 13 prevention staff, and 13 treatment staff. Two of the staff are adolescent counselors whose average case load each is 20 youth a month. In addition, approximately 15 youth were treated in the in-patient program during 1991. Offices are located in 5 communities on the million acre reservation. The program budget earmarked for adolescents is \$730,000.

**Mescalero Apache Tribal Community
Services Department
Mescalero, New Mexico
Gwen Schafer--Executive Director
Joseph Geronimo--Program Director of the
Adolescent Department**

Tribal Human Services is an umbrella agency offering a wide variety of programs for individuals including children and adolescents and for families. The programs, except for the Jobs Program, are housed in four contiguous buildings on the reservation which originally housed a rehabilitation center. The tribe began expanding the programs for the community in 1985. Because of their centralized location, the programs can coordinate and avoid duplication, while still serving clients who are not

forced to travel to different locations. Each program emphasizes treating the family as a unit as well as incorporating tribal culture as a basis of the program. This approach boosts self-esteem and strengthens personal identity while maintaining tribal culture.

The 11 programs are: day care for children while parents participate in any of the programs; jobs program to train adults in job skills; a traditional counseling program using elders; a state-funded substance abuse prevention program directed at elementary age children; a community awareness health education project; substance abuse residential treatment programs for single persons and for families; a family-based treatment program; an adult outpatient relapse program; a first offenders program for adolescents and an adolescent treatment program (dual diagnosis - mental health and substance abuse).

The first offenders program provides education and prevention services to juveniles referred by tribal court for a first offense. Their families participate in the program along with the juvenile. For the separate adolescent treatment program, referrals may be made by the IHS hospital or mental health program, other tribal agencies, schools, tribal court, and families. These programs stress traditional healing and communication skills and provide individual and group counseling, evaluations, and referrals.

While children and adolescents may participate in the family residential treatment program, on-reservation inpatient adolescent programs are not available and adolescents are sent off-reservation either to an IHS residential program or a private treatment program paid for by the tribe and the BIA. Once an adolescent returns to the reservation, the adolescent program follows the youth and maintains contact.

The staff consists of a director, clinical director, department heads who are also counselors or other service providers, other counselors, residence managers, day care workers including a child therapist and a number of support staff. The 1991

annual budget of \$500,000 covers all programs and costs of off-reservation treatment and is from tribal, federal, and state sources.

The Cheyenne River Youth Project - "The Main"
Eagle Butte, South Dakota
Julie Garreau--Program Director
Danette Albers--Coordinator

The Main is a recreational youth center where children can go to "hang out" in a safe, drug/alcohol free environment. The center provides dances, movie nights, a library, a small arcade, and an outreach program. The Main, located on the Cheyenne River Reservation, is staffed by a full time youth coordinator and many volunteers. It opened in 1988 and, in 1991, received \$21,000 in tribal and private funding.

Located in its own building, the Main can serve approximately 75 children at a time, ranging in age from 5 to 17. It is open seven days a week with hours fluctuating from after school hours to longer summer hours. While there are difficulties serving the age range, the staff manages to provide the variety of activities needed. The program's effectiveness is reflected in the number of children served and the number of hours open at times convenient to children and youth. In 1991, 6,193 visits were recorded. The Main provides a safe, clean, healthy environment for children.

As part of its outreach, staff arrange meetings with parents in other communities to encourage development of similar centers in the communities. At one community, the staff organized a dance.

Stepping Stone Program
Cheyenne Eagle Butte School
Eagle Butte, South Dakota
Jane Azure--Contact Person

The Stepping Stone Program was a residential program for male students with behavioral problems and was located in the Cheyenne Eagle Butte School, a kindergarten through grade 12 school jointly funded by BIA and the state. The program

was a local effort to curtail off-reservation intense residential placement for severely troubled boys, usually at a cost of approximately \$35,000 each.

About 30 students participated in the program during its existence from the fall of 1988 through May 1990. The students were housed in a separate dorm and enrolled in a specialized academic program with a therapy component. Although only approximately \$69,000 was budgeted for the program by BIA, coordination with other programs expanded services, e.g., the special education teacher was paid through another program and the IHS Children's Program and Mental Health Program supplied in-service training and other assistance. Through coordination with the IHS Mental Health program, the juvenile probation officer, child protection team, alcohol programs, and other agencies, along with an off-reservation residential treatment center which served as a model for the program, Stepping Stone was able to offer a wide variety of services and resources. The program did not restrain or lockup the participants.

Staff consisted of a special education teacher, a social worker, and a number of dorm attendants who underwent specialized training during the program. Originally, boys ages 12-18 were eligible, but the program eventually concentrated on ages 12-14. A staffing was held for each referral to screen out youth who needed a more intensive program than Stepping Stone. Referrals were made by parents, social services, schools, and the tribal court.

The youth were usually dual diagnosis, learning disorders and emotional problems, and a number were suspected to have Fetal Alcohol Syndrome or Effect. Many of the youth abused alcohol, drugs, or other substances, and were chronic status offense repeaters, often beyond parental control. They were challenging and disruptive.

In spite of a good staff and coordinated resources, the program ended before its efficacy could be measured. At least three years was needed to do this properly. Although the program's funding did cease, another reason for the program's end was staff burnout caused, in part, by what the staff found to be a lack of community support. The

youth served were perceived by the community to be troublemakers. When the program ended, the participants were integrated into regular dorms or were sent to alcohol treatment or other treatment programs off-reservation.

Peer Counseling Program

Little Wound School

Kyle, South Dakota

Freda Apple--Program Director

The Peer Counseling Program at the Little Wound School trains students to be peer counselors in their school and community. Students learn about personal development through self-esteem, social skills and behavioral models. Students also learn how to present alcohol and drug abuse skits to the schools and community. A spirituality component is used in intervention and educating the community. In addition to peer counseling, staff provide counseling where necessary and other prevention activities. Located on the Pine Ridge Reservation, it is administered by the Little Wound School, and receives federal funding. The program's budget for 1991 was approximately \$170,000, which funded a combination director-counselor, a peer-counselor trainer, a community resource counselor, and a secretary-assistant. This is its third year in existence.

Students are referred by tribal court, teachers, and the community. In 1991, 21 students were court-referred. In addition, other students are recruited to participate at registration. Counselors work with the high school students who, in turn, work with the mid-school students for peer counseling. A student being counseled is followed up at regular intervals for at least a year after leaving the program.

The training and counseling components attempt to build self-esteem for all participants. In addition, staff work with non-tribal member teachers to help them understand tribal culture. Each component incorporates traditional culture, spirituality, and tribal values. Several curricula are used as needed.

To combat the boredom that leads to substance abuse, the program has undertaken a series of monthly activity nights and a number of large, all-

night theme parties. The monthly nights are held at the gym and a variety of games and other activities are organized. Volleyball and basketball teams have been established which compete for prizes. The theme parties are held at homecoming, New Years, and prom where youth are served several meals, have activities, and are transported each way by the program. Between 75 to 100 youth participate.

Project Wakanyaje

Porcupine, South Dakota

Patricia Iron Cloud--Program Director

Project Wakanyaje is comprised of two components, in-school and out-of-school, but its emphasis is on the in-school component. The in-school classes offer a daycare lab and prenatal programs for in-school teen parents. Fetal alcohol syndrome, AIDS, sex education, and traditional parenting and child rearing skills are emphasized, and students receive elective credits for attendance. It also operates as a drop out and drug/alcohol prevention program. The program is administered by the Oglala Sioux Tribe and is located on the Pine Ridge Reservation. Project Wakanyaje has a budget of approximately \$200,000. In addition to the director, the seven staff members are teachers, day care providers, and three family advocates who work in the community. Two advocates counsel adolescent girls not in school, and the other, a man, works with teen fathers. The director is a certified drug and alcohol counselor and the rest of the staff are working toward certification. Staff also provide training on pregnancy prevention and fetal alcohol syndrome to the general high school population.

Although funding was available in 1990, the project became completely operative recently. In 1991, it treated 25 adolescent girls and handled 50 referrals. The majority of referrals are from the schools, community, and families; however, staff maintain continual contact with alcohol and drug programs and other social service agencies which refer cases, and cooperate by supplying services where necessary.

The project incorporates several elements designed to keep the adolescent mothers in school and assist them in being responsible parents. The strong

cultural element uses elders in the day care lab and provides lectures by traditional midwives who teach the ceremonies related to birth. One of the advocates is a peer counselor with children and recently completed high school with excellent grades. The crucial importance of education is emphasized throughout the project along with the need to recognize the importance of each child by giving the child proper attention and spacing births.

In addition to the classes held one hour a day, five days a week, the day care lab works with up to 15 children, ages 2 weeks to 3 years, whose mothers are participating in the in-school project. The mothers come to the lab located in a separate building near the high school to feed and play with their babies during lunch. The staff are planning to videotape mothers playing with their children to assist the mothers in improving parenting techniques. Follow-up consists of referrals to other agencies as well as support groups for teen mothers or for pregnant teens which continue the counseling effort begun in the classes.

Maehnowesekiyah Treatment Center
Menominee Tribe
Gresham, WI 54128
Sylvia Wilber--Program Director

The Maehnowesekiyah Treatment Center (MTC) provides alcohol and drug abuse (AODA) assessment, treatment, and prevention services to residents of the Menominee Indian Reservation. The adolescent component provides aftercare services for youth returning from primary treatment, and assists youth at high risk of developing AODA problems with education/prevention/intervention counseling. Treatment programs include residential, outpatient, and day services. The residential facility also contracts with the Federal Bureau of Prisons to transition prisoners back into the mainstream of

community life. Support services available to the community at large and to the treatment programs include Women's Special Needs and Co-Dependency support groups, and a Capacity Building Program for women who have alcohol problems and who are pregnant or have children from birth to five years of age.

The 24 professional staff members include the director, three other administrators, and various counselors such as an adolescent counselor, a family therapist, an in-home family counselor. The program also has a consulting psychologist, and a consulting physician. Four support staff members assist the professional employees.

The total 1991 budget was \$1,381,936, including the prevention programs, and \$67,267 of that amount was earmarked for adolescent aftercare. Tribal, state, and federal governments provide the funds, depending upon the program. The Center has been in existence for eight years.

The Center served 15 juvenile clients in 1991, three of whom were referred by tribal court and the rest by Menominee County Human Services, county courts, and community members. Since the Center offers a variety of programs, it is difficult to assess the recidivism rate, but the Center continues to work with a client who is regressing so long as the client is cooperative. Follow up is provided to adolescents and consists of home visits and phone checks, as well as additional services when necessary.

Every program at the Center attempts to treat the client's family and peer groups where possible. In addition, the closeness of the tribal community assists the staff in tracking individuals and assessing the factors significant in the treatment process. The community plays a crucial role in the treatment process.

V. CONCLUSIONS AND RECOMMENDATIONS

This study has identified some model programs operated for the benefit of tribal youth and their families. The potential exists for replication of such programs and of further program development. It is crucial that tribes have a mechanism for sharing information about effective services for youth and families.

8.1 OJJDP SHOULD UTILIZE ITS CLEARINGHOUSE CAPABILITIES TO DISSEMINATE INFORMATION REGARDING TRIBAL SERVICES.

The clearinghouse should acquire information on effective tribal programs, potential funding sources, and organizations that are available to provide technical assistance to tribes wishing to

develop new juvenile justice related programs. A periodic directory of such programs and resources should be published and disseminated to all tribes.

8.2 THE BIA AND OJJDP SHOULD CO-SPONSOR AN ANNUAL CONFERENCE ON TRIBAL JUVENILE JUSTICE ISSUES.

The BIA and OJJDP should sponsor an annual conference on juvenile justice related services. Tribal participation should be sought during the planning process and financial assistance should be provided to encourage the participation of the tribes and practitioners in the field of juvenile justice.

CHAPTER NINE ALASKA AND CALIFORNIA

I. INTRODUCTION

Throughout this report, we have alluded to issues of state jurisdiction in Indian country. Public Law 83-280 (280) was the first general grant of jurisdiction over reservations to states. Before its enactment in 1953, Congress granted jurisdiction in a piecemeal fashion, either to a particularly designated state or over a particularly designated tribe. The Act and the relevant history leading up to its passage has been covered in Chapter One of this report. This chapter will focus on juvenile justice in two P.L. 83-280 states, Alaska and California, where state government and state courts perform the majority of juvenile justice functions. California and Alaska are mandatory P.L. 83-280 states as specified in the Act and its amendments.

As discussed earlier, some tribes located in P.L. 83-280 states exercise concurrent jurisdiction over juvenile delinquent and status offender youth. It is important to note that no legislative language in P.L. 83-280 or its amendments prohibits tribes from exercising concurrent jurisdiction. In fact, the language in 28 U.S.C. 1360 (c) allows tribes the right to exercise jurisdiction consistent with state jurisdiction.¹ Legal scholars support the proposition that the legislation allows the exercise of concurrent tribal jurisdiction,² and the 8th Circuit Court of Appeals in *Walker v. Rushing*³ held that P.L.83-280 did not divest Indian tribes of their power to punish their members for tribal law violations.

The extent of state jurisdiction was defined by *Bryan v. Itasca County*.⁴ The Supreme Court opinion made it clear that 280 states did not have taxing or regulatory authority on reservations or within Indian country. State civil jurisdiction thus was limited to civil causes of action between private parties. However, this civil versus criminal delineation provides an interesting twist to the issue of tribal juvenile jurisdiction. While juvenile delinquency laws are considered civil in nature, they are, in actuality, quasi-criminal if not criminal in nature since minors can lose their freedom upon adjudication. Reinforcing this characterization of

juvenile justice as quasi-criminal is the extension of Indian Civil Rights Act protection to delinquents in tribal codes and the application of the U.S. Constitution's Bill of Rights (with the exception of the right to jury trials) to non-tribal juvenile courts.

Tribal self government which can include juvenile justice functions is a multifaceted issue, partly mired in history and partly determined by current social, political, and economic factors. Whether or not a tribe exercises concurrent jurisdiction over juveniles depends upon a number of conditions including a tribe's interest in handling its own juvenile problems (which may be affected by their ability to acquire funds necessary to provide services and their perception of services provided by the state). However some tribes that wish to handle their own juvenile problems may be discouraged from doing so by the lack of receptiveness of state courts and agencies to accept such a role for the tribe. In fact, some states have taken the position that the state's role is clearly paramount and there is a lack of recognition of the concurrent jurisdiction option for tribes residing in these states. Both Alaska and California are states in which the exercise of concurrent jurisdiction by tribes and villages is limited and the current policies of these states appear to discourage such tribal efforts.

The implementation and use of tribal courts by Native Americans has been limited in Alaska and California. In both states the populations of Native Americans who do not live in the state's cities and towns tend to be widely dispersed in the state. Tribal entities (villages in Alaska and rancherias in California) are for the most part quite small and this fact alone may be an impediment to the development of strong self-government and tribal courts efforts. However, particularly in Alaska, there is significant movement in the direction of governmental autonomy for villages and the creation of tribal courts. The issues surrounding self-determination by Native people, and the exercise of concurrent jurisdiction specifically, are likely to be further pursued and tested in the future. This

study examines the present status and issues of juvenile justice in these states. To do so requires the examination of how state agencies and institutions serve Native American youth and the perception of their native populations of these

II. ALASKA

A. INTRODUCTION TO ALASKA

The Alaska Native population consists of different ethnic populations including the Athabaskans, Aleuts, Yupiks, Inupiaqs and the coast tribes such as the Tlingit, Haida and Tsimshian. The traditions and languages of these peoples vary, but most data sources do not identify these subgroups and thus we are unable to discuss issues which may pertain to one of these specific ethnic subgroups.

The state has undergone, and continues to undergo, rapid change. Alaska joined the Union in 1959 after having been a territory since 1912. The Alaska Native Claims Settlement Act was passed in 1971. Thus, there have been 32 years of operation of state services and less than 20 years of services being operated in conjunction with the 12 non-profit native regional corporations. In the last ten years, the population of Alaska has increased more than a third. A two-year commission to review federal and state policies and programs dealing with Alaska Natives has been created by Congress. This commission was established in recognition of problems of Alaska Natives which need attention. Nevertheless, many of the themes which are seen as important from the perspective of the villagers are likely to remain constant.

In Alaska, the tensions between Native control of community life and centralized control continue.⁵ In 1986, the Alaska Supreme Court ruled that the village council of Kaltag was authorized to function as a tribal court (In Re J.M., 718 P.2d 150, Alaska, 1986). In August, 1991 Governor Hickel revoked a 1990 order that recognized tribal status for Alaska Native Villages. He stated that "the State of Alaska opposes expansion of tribal governmental powers and creation of 'Indian country' in Alaska".⁶

To obtain data regarding juvenile justice in Alaska, the study employed the following activities:

systems and services. This chapter will also describe current efforts of tribal and village governments to develop tribal courts and to provide services to their youth in these states.

1. site visits to 3 villages;
2. focus groups held with representatives from 23 villages and other Alaska Native communities;
3. analysis of pertinent state documents and policy manuals and other literature;
4. analysis of state juvenile justice data, and
5. survey of 185 villages resulting in responses from 34 villages.

B. OVERVIEW OF THE STATE DEMOGRAPHICS

Alaska is the largest state in the nation with over 570,000 square miles of territory, or approximately 1/5 of the size of the lower 48 states with a population of only 550,000. The majority of the population is located in the cities and towns of Alaska and only 14% reside in the rural areas (Alaska Native Village Statistical Areas.) Throughout Alaska, the climate and the terrain are inhospitable and roads are limited. Transportation must often be by plane or boat and, with poor weather, communication may be delayed.

Although originally the sole inhabitants of Alaska (in 1880 there were approximately 33,000 Natives and 400 non-Natives in Alaska), according to the 1990 Census the Native population is 16% of the total state population. The Native population is estimated at 85,698 (including Metlakatla and those living in urban areas). Approximately 45% of the Native population reside in the cities and towns and 47,244 or 55% reside in the Alaska Native Village Statistical Areas. Although these Alaska Native Village Statistical Areas (ANVSA) are not exactly coterminous with village designations by the Bureau of Indian Affairs (BIA), population estimates are consistent. According to the 1989 BIA data, the

NEW YORK (8)

Legislation

Federal - ch. 809, 62 Stat. 1224 (April 2, 1948);
25 U.S.C. § 232 confers to the state
criminal jurisdiction over offenses on all
reservations except hunting and fishing. ch.
947, 64 Stat. 845 (September 13, 1950); 25
U.S.C. § 233 confers civil jurisdiction;

Case Law

People v. Redeye, 358 N.Y.S. 2d 632, 78 Misc.
2d 834
U.S. v. Burns, 725 F. Supp. 116 (N.D.N.Y.
1989); *aff'd sub nom.*,
U.S. v. Cook, 922 F.2d 1026 (2d Cir. 1991), *cert.*
denied, *Tarbell v. U.S.*, ___ U.S. ___, 111
S.Ct. 2235, 114 L.Ed.2d 477 (1991).
Johnson v. Eastern Band Cherokee Nation, 718
F.Supp. 6 (N.D.N.Y. 1989).
People v. Boots, 106 Misc. 2d 522, 434 N.Y.S.2d
850, (N.Y.Co.Ct. 1980).

People v. Edwards, 104 Misc.2d 305, 428
N.Y.S.2d 406 (N.Y.Sup. 1980), *rev'd*, 78
A.D.2d 582, 432 N.Y.S.2d 567 (N.Y.A.D.
1980).

People ex rel. Ray v. Martin, 181 Misc. 925, 47
N.Y.S.2d 883 (N.Y.Co.Ct. 1944), *aff'd*, 268
A.D.218, 52 N.Y.S.2d 496, *aff'd*, 294 N.Y.
61, 60 N.E.2d 541 (1945), *aff'd*, 326 U.S.
496, 66 S.Ct. 307, 90 L.Ed. 261 (1946).

Tribes

Cayuga Nation
Oneida Nation
Onondaga Nation
Seneca Nation ■ - Allegheny Tonawanda Band
Cattaraugus
St. Regis Mohawk ■
Tonawanda Band of Senecas
Tuscarora Nation

NORTH CAROLINA (1)

Legislation

N.C. Const., art. IV, § 12
Federal - See Allotment Act - 25 U.S.C. § 331
- Eastern Band of Cherokee Indians of
North Carolina and 25 U.S.C. § 349.

Case Law

Joseph v. Redwing, 429 N.W.2d 49 (1988), *cert.*
denied, 490 U.S. 1069, 109 S.Ct. 2071, 104
L.Ed.2d 636 (1989).
Jackson County v. Swayney, 319 N.C. 52, 352
S.E.2d 413 (1987).

Wildcatt v. Smith, 69 N.C. App. 1, 316 S.E.2d
870 (N.C. App. 1984), *reviewed*, 312 N.C.
90, 321 S.E.2d 909 (N.C. 1984).

Sasser v. Beck, 40 N.C. App. 668, 253 S.E.2d
577 (1979), *cert. denied*, 298 N.C. 300, 259
S.E.2d 915 (1979).

Tribes

Eastern Band of Cherokee Indians

RHODE ISLAND (1)

Legislation

25 U.S.C.S. 1701; PL 95-395, § 2, 92 Stat. 813
(Sept. 30, 1978) Rhode Island Indian
Claims Settlement Act. 25 U.S.C. § 1708
confers state jurisdiction over civil and
criminal over the reservation.

Case Law

None

Tribes

Narragansett

KEY:

- - Tribal Court
- - Court of Indian Offenses
- ⌘ - Oklahoma Indian Courts that are not CIOs
- ◊ - Reassumption of ICWA jurisdiction
- ★ - Retrocessions

TEXAS (3)

Legislation

Federal - three separate acts of restoration/ recognition confers civil and criminal jurisdiction to the state.

Case Law

Ex parte Floumoy, 158 Tex. 425, 312 S.W.2d 488 (1958).

Tribes

Alabama-Coushatta - Restores status PL 100-89, August 18, 1987, 101 Stat. 670; 25 U.S.C. §§ 731-737. Sec. 736f confers criminal and civil jurisdiction to state as if it had been assumed under 25 U.S.C. §§ 1321 & 1322.

Kickapoo of Texas - Recognizes status P.L. 92-467, October 6, 1972, 86 Stat. 781; 25 § 1300b et seq. P.L. 97-429, § 6, Jan 8, 1983, 96 Stat. 2270; 25 U.S.C. 1300b-15 confers criminal and civil jurisdiction to state as if it had been assumed under 83-280.

Ysleta del Sur Pueblo - recognition of status PL 100-89, Title 1, §105, August 18, 1987, 101 Stat. 667; 25 U.S.C. § 1300G, Sect. 1300g-4(g) confers criminal and civil jurisdiction to state as if it had been assumed under 25 U.S.C. §§ 1321 & 1322.

KEY:

▣ - Tribal Court

■ - Court of Indian Offenses

⌘ - Oklahoma Indian Courts that are not CIOs

◊ - Reassumption of ICWA jurisdiction

★ - Retrocessions

Juneau Area office reported a "tribal enrollment" of 84,180.

With the exception of the Metlakatla tribe in southeastern Alaska, the Native communities are not reservation based. (In this report, most juvenile justice issues concerning Metlakatla are discussed in other chapters.) Thus, there are villages which are predominately Native and there are Native communities in villages with a significant number of non-Natives. Overall, the rural population is 60% Native. Many of the over 200 villages are very small. There are 55 ANVSAs with populations less than 100 persons and an additional 135 with populations less than 750 persons.

Children and youth under 18 years comprise 31% of the Alaska state population. Of all children and youth, approximately 20% or 34,753 are Alaska Natives and 58% of these live in the ANVSAs. Thus, in the rural areas, there are approximately 20,218 Alaska Native children and youth under 18, and approximately 10,000 Native youth 10 -18 years old. It is important to bear in mind that the State of Alaska has the fifth largest number of Native children and youth after Oklahoma (94,136), Arizona (85,498), California (73,986), and New Mexico (54,455).

C. OVERVIEW OF THE JUVENILE JUSTICE DELIVERY SYSTEM

The juvenile justice system in Alaska is administered by state agencies. Tribal involvement, with the exception of Metlakatla, has been limited by a number of factors, most notably Public Law 83-280 (18 U.S.C. 1162). All juvenile delinquency cases are heard in state superior courts. All juvenile intake officers, probation officers and workers in juvenile detention and correctional facilities are ultimately responsible to the Youth Corrections Administrator for the Division of Family and Youth Services. All municipal jails are operated under contract with the Department of Public Safety. Law enforcement services are provided in most Alaska Native villages by Village Public Safety Officers (VPSOs), who are trained and supervised by State troopers, and by periodic State Trooper patrols.

1. LAW ENFORCEMENT AGENCIES

a. STATE TROOPERS

The Alaska State Troopers are responsible for law enforcement in all parts of the state which are not served by municipal police departments. There are 43 rural trooper posts, most of which are staffed by one or two troopers who patrol highways and/or serve as oversight troopers for VPSOs in neighboring villages, visiting each village on a more or less regular basis to answer calls and to provide assistance and supervision for the resident VPSOs. Because of the limitations on roads, much travel is by air and delays of as much as a week in answering calls, even in emergencies, are commonplace due to severe weather conditions.

b. VILLAGE PUBLIC SAFETY OFFICERS

The VPSO program was introduced in 1981 to improve delivery of an array of basic public safety services, including law enforcement, fire safety, search and rescue, emergency medical assistance and water safety to Alaska Native villages. In order to maximize local autonomy, the Department of Public Safety, the regional non-profit Native associations, and the village councils play a role in its administration. The VPSO program is funded by the state of Alaska. There are approximately 130 villages with VPSOs.

New VPSOs receive instruction in law enforcement, fire prevention and suppression, search and rescue techniques, and emergency trauma and treatment assistance during a six week course at the Alaska State Troopers training academy in Sitka. Additional training is also provided on specialized topics in other courses.

VPSOs do not receive training in the use of firearms and usually do not carry weapons. They are not eligible for police officer certification by the Alaska Police Standards Council. Their functions are rather limited in that they provide the initial response to public safety emergencies and they investigate minor offenses. Usually their involvement in felony investigations is to secure the scene and summon troopers following commission

of an offense and then to assist on an as needed basis.

c. MUNICIPAL LAW ENFORCEMENT AGENCIES

There are 54 municipal law enforcement agencies in the state. The police and public safety departments in the largest Alaska Native villages are similar in organizational structure and operations to the police departments found in small and medium sized cities throughout the United States. Police departments in the smaller villages tend to be semiprofessional agencies employing one to four officers and function as a supplement to the VPSOs and or state troopers. (In some villages one person may be serving simultaneously as a VPSO and a village police officer.)

Two exceptions to this scenario are the North Slope Borough Department of Public Safety and the Bristol Bay Borough Police Department. The North Slope Borough service model is more professional in nature and provides for less involvement of the community in its administration and control. There are two officers, serving two year tours of duty, in each village and each village has a modern public safety building with two secure holding cells.

2. DIVISION OF FAMILY AND YOUTH SERVICES

The Youth Services Section of the Department of Family and Youth Services (DFYS) provides services mandated through statute through 3 regional offices, 13 field offices and 5 youth facilities. Services include intake, detention screening and admission, intake diversion, initiation of court action, probation services, service referral, out-of-home placement and monitoring, secure detention, secure long-term correctional treatment and aftercare. Four centers provide detention and correctional treatment programs (Anchorage, Fairbanks, Nome and Bethel) and a fifth facility (Juneau) provides only secure juvenile detention.

The Family Services Section provides protective services in five regional and 36 field offices throughout the state. Services include investigation of abuse and neglect, client assessment, crisis care,

intervention, counseling, arranging for substitute care, petitioning for court custody, adoption services, and licensing of community facilities.

3. THE JUDICIARY

As of 1990, there were 30 superior court judges in 15 combined superior and district court locations. There were 17 district court judges in six communities and magistrates in 42 communities, most of which are Alaska Native villages. Children's matters are normally handled in superior court, although district court judges and magistrates may take emergency action. Standing masters or special masters are used regularly in some areas of the state to handle juvenile hearings.

In recent years a number of Alaska Native villages have established tribal courts. Although they exercise jurisdiction over various types of civil and criminal litigation, most of the courts appear to have focused primarily on child custody matters under the Indian Child Welfare Act. Although the exact number of tribal courts is not known, such courts are known to be formally established in a number of Native villages. In other villages, tribal councils are formally authorized to function as tribal courts, while in other villages, tribal councils or other entities function in a less formal capacity with regard to adoptions and other matters. Not all tribal courts in Alaska perform the same court functions nor do they exercise the same scope of subject matter jurisdiction.

4. PROSECUTION AND DEFENSE

Presentation of the state's evidence in court is normally the role of an assistant district attorney or for minor offenses in some jurisdictions, an assistant attorney general. The offices of the district attorneys and the assistant attorney general are in the major cities and towns of Alaska.

Public defenders are located in most of these same locations.

5. FACILITIES

Facilities run the gamut from counseling centers to secure correctional facilities designed for long-term treatment of seriously delinquent youth. While facilities of all types are concentrated in urban areas of the state, a range of services is also available in the regional centers where superior courts, juvenile probation officers, etc., are located. In all but the largest Alaska Native villages, however, available facilities other than resident alcohol abuse counselors and rudimentary police lockups are virtually nonexistent.

a. SECURE JUVENILE FACILITIES

There are five juvenile facilities in Alaska for detention and or correctional treatment. These facilities are in Anchorage, Bethel, Fairbanks, Nome, and Juneau. The Nome Youth Facility also provides a group home atmosphere for nine residents in its treatment program where children attend public schools in the community. Both the Nome and Bethel facilities have been reported to have incorporated culturally relevant programs. The Juneau facility serves only eight juveniles in its co-educational detention unit.

b. CONTRACT JAILS AND LOCKUPS

Although state law forbids detention of juveniles in municipal jails unless they are assigned to separate quarters, to date only two of the contract jails have achieved sight and sound separation. There are no juvenile facilities in these locations.

Eighty-six small police lockups have been identified, most of which are in Alaska Native villages and are operated by Village Public Safety Officers, village police officers, or by state troopers stationed at rural villages.

c. NON-SECURE FACILITIES

Although a range of non-secure facilities are found in Anchorage, the regional centers (i.e., Bethel, Barrow, Nome, Kotzebue, Kodiak, Juneau, and Killisnoy) serving Alaska Native villages are far more limited in the kinds of non-secure facilities available for placement of juveniles. Even those facilities which are designed for juveniles are often unavailable for immediate placement either due to

being filled or due to the reluctance of the staff to accept certain types of juveniles. For example, receiving homes which are specifically designed as short-term alternatives to secure detention of accused delinquents usually prohibit the admission of intoxicated juveniles. Non-secure facilities are virtually nonexistent in villages which are not regional centers. Many villages use informal placements with relatives or neighboring villages.

Non-secure attendant care shelters are being used as an alternative to detention in adult jails. DFYS has established small non-secure facilities staffed on an as needed basis in 13 regional centers and other communities. Training is provided to staff to provide 24 hours supervision in a non-secure facility. Partially as a result of this program, the number of juveniles detained in adult jails has decreased in the last few years.

D. THE VIEW FROM THE VILLAGES

1. YOUTH PROBLEMS

Native peoples identify youth problems as being related to the confrontation of two cultures. Although villages are isolated geographically, the pipeline, television and satellite disks have brought the world beyond the village and indeed beyond Alaska into each village. Value systems, material possessions, recreational activities and life options which are not apparent in the village are presented to youth producing a comparison and a conflict. At the same time, in many villages, the traditional heritage has been weakened as fewer people speak the Native language, know the history and tradition of the people, and practice subsistence activities. Use of alcohol and inhalants is a widely recognized problem. Rural Alaska sources universally agree that most crime and delinquency in Alaska Native villages is committed by intoxicated individuals. Relatively few Alaska Native juveniles, even those living in Anchorage and other urban areas, are arrested for crimes committed while sober. Youth suicides have also been a problem for several communities.

Village leaders ranked the most important offenses that juveniles in the villages commit as: use of

alcohol (a criminal offense in Alaska), curfew violation, use of drugs, vandalism and theft. Although there is an overall concern for the future of youth, some villages report few juvenile problems, while others report increases in theft and sexual offenses.

2. COMMUNITY RESOURCES

The further a village is from a regional center, the fewer the services that are available. Many villages have a resident Village Public Safety Officer, while other villages may have access to a community health worker, a substance abuse counselor and/or a DFYS social worker. Individuals may play multiple roles in the village. Given both the size of the population and the geographic conditions, the main concern of the villages is to acquire locally based services and/or to achieve local control over services. Although services provided by regional offices of the state and by the regional corporations are found to be positive, nevertheless there is a local desire to be able to make decisions regarding youth and to administer services.

As discussed above, several villages are utilizing tribal courts with regard to children and youth issues. Villages have also developed children's codes which state the jurisdiction and policies and procedures regarding children and youth. For the most part, these are concerned with dependency issues and the implementation of concurrent jurisdiction is still evolving. Although it appears that these courts are not yet being utilized for juvenile delinquency cases, there is a possibility that these courts will be used for such cases in the future.

There are instances of status offenses being handled by the village authority. For example, the Code of Village Regulations of Chalkyitsik has a section establishing a village curfew for all minors. The Code states that "all complaints arising from violation of state law with regard to dependent children will be filed with the appropriate state agency for legal action. All other complaints will be made to the village council for action."⁷

The Tribal Court Handbook of the Tanana Chiefs Conferences, Inc., discusses the "decriminalization"

of laws so that a violation is not a "criminal" offense, but is treated as a civil offense. Penalties would be limited to fines or village work but would not include incarceration. The Handbook does not discuss juvenile matters with the exception of the Indian Child Welfare Act.

In informal interviews, village leaders emphasized their desire to take responsibility for youth problems and to offer services to prevent problems and better assist youth in preparing for adulthood. A variety of programs currently exist or have been utilized. A few of them include:

a. SUICIDE PREVENTION PROGRAMS

The Suicide Prevention Program is a source of state funds for village based services. This funding program provides dollars directly to villages to run their own counseling programs, using village staff. These programs also provide general youth counseling services and alcohol prevention and treatment programs.

b. SPIRIT CAMPS AND OTHER CULTURE BUILDING PROGRAMS

Spirit camps have been mentioned as positive experiences for youth and as programs that villages alone, or in combination with neighboring villages, can start fairly easily. Camps concentrate on subsistence and survival skills, development of knowledge about traditional Native life and generally serve to enhance the confidence of youth who attend. Spirit Camps and Culture Building Programs are funded in part by Department of Education Johnson O'Malley grants.

c. PARENTS' COMMITTEES AND AT-RISK COMMITTEES

Village institutions, other than formally structured tribal courts, have also been used as mechanisms for quasi-traditional dispute resolution and/or intervention with juveniles and their families. A number of years ago, one village developed a process by which community sessions would be held to assist in improving the child's behavior and in improving the parent child relationship. Solutions

such as voluntary agreement to obey the laws of the village, to refrain from drinking and/or to provide restitution were utilized. Other villages have developed multi-disciplinary committees which may include such persons as a council member, teacher, social worker, counselor and VPSO or magistrate to discuss what should be done with regard to a child. In instances where the village finds the youth beyond the control of the village, the youth is referred to DFYS.

3. COMMUNITY NEEDS

Three general areas of needs with regard to juveniles have been expressed by village leaders. These are: service needs, administrative and linkage needs, and training needs.

a. SERVICE NEEDS

As stated above the service needs of the villages vary in direct relationship to the proximity of the village to a regional center. Statewide planning processes can be used to assess which needs are most relevant to which villages. Although it is beyond the scope of this report to address the needs of each village, certain themes as to those services which should be available at the local and regional level are discernible. These include:

1. After-school and alternative activities including sports, recreation and study activities;
2. Youth centers to provide alcohol and drug free environments for youth and counseling;
3. Non-secure shelter facilities for youth who need protection;
4. Treatment facilities for youth with alcohol and drug problems; and
5. Aftercare services for youth who are returning to the village after a placement.

b. ADMINISTRATIVE AND LINKAGE NEEDS

Several villages report problems when interfacing with DFYS, especially with regard to children who are to be removed from the village. Most of the problems are related to the roles and responsibilities of the organizations and agencies involved at each level. A Village Public Safety Officer who responds to an initial report may find that his effort is subsequently disregarded if the related investigation is conducted by a State Trooper. Similarly, VPSOs are often not included in the court process despite their initial involvement. Village leaders are often not told of a child being removed and once a child is removed, there is little follow-up with the village as to what is being done. Several villages described the problem of losing contact with a youth once he or she was transferred to a state facility. On the other hand, removal sometimes appears arbitrary, with the state failing to transport a youth whom the village feels should be removed from the community.

Roles and responsibilities need to be discussed and clarified. Increased responsibility at the local level, with funding to support the development of that responsibility, would be welcomed by many villages.

c. TRAINING NEEDS

Although the State of Alaska has conducted culturally appropriate training, it needs to be recognized that the training should be on-going with input from villagers and that each sector of the juvenile justice system needs to receive training in the history and culture of the Alaska Native peoples.

E. TYPES OF OFFENSES

Data pertaining to juvenile offenses involving Alaska Natives were obtained from the Department of Youth Services' automated system for the year ending 1990. 1547 offenses by Alaska Native youth in both cities and villages were tracked. Exhibit 9.1 presents the data on offenses and petitions by community size.

EXHIBIT 9.1
OFFENSES AND PETITIONS BY COMMUNITY SIZE

COMMUNITY	OFFENSES		PETITIONS	
	N	%	N	%
Over 10,000 (Three communities)	648	42	144	40
5,000 to 10,000 (Four communities)	212	14	53	15
2,500 to 4,999 (Twelve communities)	334	22	65	18
1,000 to 2,499 (Five communities)	32	2	11	3
Under 1,000	259	17	76	21
Unincorporated	61	4	7	2
Other	1	.1	1	.3

Of the 1547 offenses, 73% involved male juveniles and 28% involved female juveniles. The median age was 15 years. 49% of referrals were with regard to property offenses, 30% with regard to alcohol and/or drugs, and 12% with regard to personal injury. 56% of the offenders had prior records with youth services. Of the 1510 offenses for which intake decisions were reported, 113 (7.5%) were dismissed, 887 (59%) were adjusted or diverted, 153 (10%) received informal probation, and 357 (24%) resulted in petitions.

Eighty-five percent of the petitions involved males and 15% involved females. Forty-eight percent involved property offenses, 19% involved offenses against persons, and 16% involved alcohol or drug offenses. Thirteen percent involved warrants for probation violations. Eighty-two percent of the cases involved juveniles with prior records. For the 323 petitions for which court outcomes are known, 238, or 74%, resulted in adjudication of delinquency, 46, or 14%, were dismissed, 38 (12%) were diverted, and 1 (.3%) was waived.

Although Alaska Native juveniles are an estimated 20% of the juvenile population, they account for 27% of juvenile offenses and 32.5% of juvenile petitions. Of the 375 youth detained by the court, Alaska Native juveniles accounted for 31% of the total. Thirty percent of the arrests of Alaska Native

Youth were for alcohol related offenses while only 16% of the arrests of non-Native youth were for alcohol related offenses. On the other hand, property offenses accounted for a substantially smaller proportion of referrals among Alaska Native youth than among non-Native youth.

Under the impetus of the Juvenile Justice and Delinquency Prevention Act, DFYS has compiled data on admissions to treatment programs in secure facilities. In 1989, Alaska Native youth accounted for 45% of all such admissions although they were estimated to be 16% of the at-risk juvenile population. Thus, their proportion of admissions was 2.9 times as great as their representation in the at-risk population. When admissions to detention programs are combined with admissions to treatment programs, Alaska Native youth accounted for 39% of all such admissions statewide.

States participating in the Formula Grant Program administered by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) are not required to report racial breakdowns of juveniles detained in violation of regulations relating to deinstitutionalization, separation, and jail removal, nor are they required to provide facility-specific information. The figures reported annually by the State of Alaska do, however, provide some indication of the extent to which Alaska Native

youth are detained in violation of these provisions because of the preponderance of Alaska Native villages. This indication can be gained by examining the communities in which adult lockups are located and the regions served by several of the adult jails in which juveniles are frequently detained in violation of the regulations. Of the 86 adult lockups in Alaska's "monitoring universe" of secure facilities, nearly 90 percent are located in Alaska Native villages. Of the 17 municipal jails, several are in Alaska Native villages or in communities which have large Alaska Native minorities and/or serve as regional hubs for political and economic activity among the residents of surrounding Alaska Native villages (such as Barrow, Kotzebue, Dillingham, Naknek and Kake).

Based on a survey of 38 lockups for the 1989 monitoring report to OJJDP and a statistical projection to estimate levels of noncompliance at facilities for which data were unavailable, a total of 32 adult lockups were estimated to have detained 79 juveniles in violation of the jail removal requirement. Another 211 separation violations and 202 jail removal violations were recorded at adult jails.⁸

F. SUMMARY AND CONCLUSIONS

Extension of the state legal system into rural areas has been accompanied by the diminishing of traditional social controls. As the residents of Alaska Native villages began to comply with official encouragement to refer all law violations to the appropriate state authorities for proceedings consistent with Alaska law, tribal councils in many villages ceased to perform the judicial functions. However, state officials with responsibility for administration of justice in rural Alaska generally perform most or all of their duties in the larger communities in which state superior courts, probation offices, trooper posts, correctional centers, etc., are located.

What this has meant for Alaska Native villages, in the words of one commentator, is that "[i]f you want American style justice, you must come to town".⁹ But "coming to town" can be an excessively expensive and discomforting undertaking for both

villagers and the legal system, generally occurring only when serious offenses are committed. In cases involving less serious offenses, including most juvenile misbehavior, a void developed wherein neither the state system nor traditional methods could be brought to bear to respond to the situation. State resources seemed perpetually committed to more serious, or at least more visible, problems in urban areas and tribal councils, having relinquished their judicial functions, lacked either the authority or the ability to intervene.

This situation may have improved within the past three or four years, as the tribal courts which have sprung up during this period in many Alaska Native villages have begun to exercise jurisdiction in ICWA cases and other minor disputes, and as an indigenous sobriety movement has spread among residents of Alaska Native villages. This has spawned a variety of culturally-grounded intervention programs aimed at prevention and treatment of alcoholism and related social problems such as suicide and child abuse and at transmission of Alaska Native cultural values and subsistence skills to village children and adolescents.

The state has also begun in recent years to pay greater attention to problems associated with juvenile delinquency in Alaska Native villages. Juvenile protection services were for the first time made available in extreme southwestern Alaska, the Dillingham, Bristol Bay and Aleutian Islands regions, with introduction of a Youth Corrections field office in Dillingham five years ago. The Bethel Youth Facility began providing detention services in late 1987, and, in 1989, the facility began providing long-term institutional treatment, the first time such treatment was available within reasonable proximity to the parental homes of youth in a region which includes more than 25 percent of all Alaska Native villages. Also in 1989, the Nome Youth Facility was re-opened for long-term residential treatment following a hiatus of nearly three years.

Additionally, under the impetus of the deinstitutionalization, separation and jail removal mandates of the Juvenile Justice and Delinquency Prevention Act, non-secure alternatives to detention in adult jails have been implemented in several

communities in which Alaska Native juveniles are frequently detained in close proximity to adult criminals, and law enforcement agencies have been encouraged to use such alternatives and to curtail the practice of detaining juveniles in adult facilities except in circumstances where less restrictive alternatives are clearly inappropriate. The effects of these efforts are apparent in the marked decrease in both separation violations (a 40.7% reduction in separation violations was reported by the state for the one year period between 1988 and 1989) and jail removal violations (a 38.9% reduction in jail removal violations was reported for the same one-year period) as reported in the 1989 Juvenile Justice and Delinquency Prevention Act monitoring report for the State of Alaska.¹⁰

Recent developments such as those noted above have barely begun, however, to remedy the dearth of juvenile justice-related services in Alaska Native villages. While both state and tribal organizations have begun in recent years to implement new services for village juveniles and their families, the gains, are to some extent, offset by two important points. First, the bulk of attention, on the part of both state and tribal organizations, has been paid to abused and neglected youth and to those whose offenses are limited to curfew violations, truancy, or running away from home, etc. Although recent developments in the services available for these youth represent extremely important gains for the children and families who will benefit from them, there remains a general absence in Alaska Native villages of either state or tribal services for those children who engage in acts which would be considered crimes if committed by an adult. For these juveniles, the tendency remains for tribal organizations to rely upon state agencies to take appropriate action. State agencies have shown little inclination to devote additional resources to juvenile

justice services at the village level, preferring instead to utilize their limited resources in ways which will permit services to be provided for the greatest number of clients. Thus, state superior courts and regional offices of the state agencies which are responsible for the provision of juvenile justice services to Alaska Native villages, and also the private counseling and diagnostic centers and residential treatment facilities with which the state agencies contract for services, are almost exclusively located in cities and towns along the state's limited road and marine highway systems and in a small number of larger communities which serve as regional centers for networks of remote villages.

A second caveat which tempers the recent improvements in juvenile justice for children living in Alaska Native villages relates to the considerable variation among villages in the viability of traditional values and lifestyle and, correspondingly, in the ability of tribal institutions to provide meaningful services for troubled juveniles and their families. Although some Alaska Native villages have managed to retain their cultures almost intact, adopting those staples of western life which blend relatively well with tradition and rejecting those which are destructive of traditional values, others have suffered from cultural disintegration.

For those villages which have retained, or re-established, their cultural vitality, tribal courts and other tribal institutions show considerable potential to develop an authentic Alaska Native juvenile justice system. For other villages such as those which have lost touch with tradition and which continue to be plagued by high rates of alcoholism, suicide, child abuse and other related social problems, tribal institutions are unable to organize effectively for delivery of services for village juveniles and their families.

III. CALIFORNIA

A. INTRODUCTION TO CALIFORNIA

California's non-urban Indian population, for the most part, lives on small reservations called rancherias. With a few exceptions, California's Indian tribes do not maintain their own police departments, courts, or service agencies, but rely on local officials for those functions. One tribe has established a tribal court, but this court is essentially a specialized court for child welfare matters.¹¹ Two tribes are reported to have their own law enforcement officers.¹²

The authority of the state and local government over Indian law enforcement has been the subject of conflict in recent years, with divergent opinions issued by the Interior Solicitor, the California Attorney General and Indian Legal Services. The California Attorney General expressed his opinion that "state and local law enforcement agencies possess exclusive authority over criminal matters on Indian lands."¹³ Indian Legal Services staff maintain that local law enforcement has jurisdiction over major criminal cases and some civil cases. The Indian Child Welfare Act and P.L.93-638 have been enacted since the P.L. 83-280 statute and have confused tribal status with regard to law enforcement in California.¹⁴ Congress has offered Indian tribes the option of changing their 280 status in California but none has done so.

In the course of preparing this report, the study team interviewed government officials and Indian leaders familiar with Indian juvenile justice. The sense of these experts is that there is an uneasy state of affairs regarding juvenile justice matters on tribal lands in California. Local sheriffs and law enforcement officials are hesitant to be overly aggressive in coming onto a reservation or rancheria or the BIA school in Riverside to arrest an Indian for a crime committed against another Indian or non-Indian. Likewise, Indians are usually not included in prevention efforts geared to foster the personal, social, economic and educational success of adolescents to prevent their involvement with drugs, alcohol and crime.

Experts agree that Indian youth have tremendous needs for services. They are truant and drop out of school in large numbers, participate in unlawful activities involving substance abuse and need intervention services. Local authorities near reservations are hesitant to intervene on the reservation and will do so only in the most extreme cases. Rebellious teenagers may take advantage of legal ambiguities to defy parental and police authority. Indian youth go unserved and may eventually become involved in the criminal justice system. Despite the needs of Indian youth for a wide range of services, at the present there are blurred lines of accountability and responsibility for tribal juvenile justice.

A recent incident at the BIA school in Riverside illustrates the impact of 280 status. Two Indian youth were fighting. One was drunk and broke the jaw of the other youth. Local police called to the scene refused to enter school grounds and spoke to the boys through a chain link fence. BIA interprets California's 280 status as prohibiting their hiring a security force for the school.

B. OVERVIEW OF STATE DEMOGRAPHICS

According to the 1990 U.S. Census, there were 242,164 American Indians and Alaska Natives living in California, 0.8 percent of the population. There were 73,986 American Indians between the age of 0 and 18 reported to be living in California in the 1990 US Census, which is 1 percent of the total population in that age group. Most Indian people in California do not live on reservations. BIA estimates that one half of the Indians in California are not enrolled in a federally recognized tribe.

The BIA estimates that 29,805 Indians live on or near reservations or rancherias in 1990.¹⁵ There are 99 reservations and rancherias in California each with a separate tribal government and culture.¹⁶ Rancherias and reservations are scattered throughout California, with significant concentrations in Humboldt, Mendocino, and Lake counties in northern California, and Riverside and San Diego Counties in Southern California.

California Indian reservations and rancherias are generally small; only two over 2,000 residents.

Exhibit 9.2 shows the size distribution of California reservations and rancherias in 1990.

EXHIBIT 9.2
CALIFORNIA RANCHERIAS AND RESERVATIONS BY SIZE 1990

POPULATION	NUMBER OF RANCHERIAS AND RESERVATIONS
0 - 24	20
25 - 100	19
101 - 500	47
501 - 1,000	9
1,001 - 5,000	4
Total Reservations	99

Source: Tribal Information and Directory, Bureau of Indian Affairs, Sacramento: January 1991.

The population on Indian reservations in California is younger than the population of California as a whole. Youth ages 5 - 17 make up 29% of reservation residents, compared to 20% of statewide residents. The CYA estimates that there were 2,429 youth aged 5 - 17 living on Indian reservations in 1980.¹⁷ Indian youth living on reservations in California attend schools operated by local school districts. There is only one BIA school in California, located in Riverside, and it serves Indians from out of state.

To summarize, while California has a large number of American Indians living within its borders, a relatively small number (around 30,000) live on reservations. The Indian rancherias and reservations in California are small and scattered widely, mainly in rural areas of the state. Only four rancherias have more than 1,000 residents. Youth comprise proportionately a greater share of the reservation populations than in the state as a whole.

C. INDIAN YOUTH AND JUVENILE JUSTICE

This section of the paper presents available information on the participation of American Indian youth in juvenile justice in California. The state's

data collection procedures do not distinguish between Indian youth living on or off reservations, so the following analysis covers both groups. First, data from statewide sources for 1989 are presented, followed by 1985 data from 28 rural counties analyzed in a study by the California Youth Authority.

Statewide Information on Indian Youth

The California Department of Justice collects data on juvenile justice cases by ethnicity. Exhibit 9.3 shows data on the most recent year available (1989) for American Indian juveniles who were referred to county probation departments. Almost 1,000 American Indian Youth were referred to probation authorities, which is 0.6% of all juveniles referred to authorities. In 1990, the following year, American Indian youth in California were 1% of the total youth population and 0.8% of the grade 7-12 enrollment in public schools.¹⁸

Over half (53%) of American Indian juveniles referred to county probation were given informal probation or had the charges dismissed. The remaining 47% were remanded to the juvenile court. 31% of Indian juveniles referred to county probation authorities were "repeat" referrals.

EXHIBIT 9.3
CALIFORNIA JUVENILE JUSTICE REFERRALS
TO PROBATION DEPARTMENTS IN 1989

REFERRALS	AMERICAN INDIAN	PERCENT
Total Referrals	992	100%
New Referrals	680	69%
Subsequent Referrals	312	31%
ACTION		
Closed/transferred	421	42%
Informal probation	108	11%
Petition Filed with Juvenile Court	463	47%

Source: California Department of Justice, Division of Law Enforcement, Bureau of Criminal Statistics.

Exhibit 9.4 shows the disposition of petitions remanded to the juvenile courts for California youth. 47% of Indian youth sent to court are new petitions. Only a very small number and percentage of American Indian youth were incarcerated in the

California Youth Authority in 1989. Because the numbers are small, small differences in absolute numbers can generate large percentage differences. These differences should be interpreted with caution.

Exhibit 9.4
Petition Type and Disposition for California Juveniles 1989

PETITION	AMERICAN INDIAN	PERCENT
Total Petitions	463	100%
New Petitions	219	47%
Subsequent Petitions	244	53%
DISPOSITION		
Closed/Dismissed/Transferred	81	17%
Remanded to Adult Court	0	0%
Informal Probation	14	3%
Non-ward probation	15	3%
Wardship probation	342	74%
CYA	11	2%

Source: California Department of Justice, Division of Law Enforcement, Bureau of Criminal Statistics.

Indian Youth in Rural Counties

The figures in Exhibit 9.3 and 9.4 show all juveniles identified as American Indian, including those living

on reservations and those not living on reservations. A CYA report in 1987 attempted to isolate criminal justice statistics for American Indian youth residing

on reservations. The study examined results for 28 rural counties which are home to the reservations and rancherias in California.¹⁹ The definition of rural was taken from the U.S. Bureau of the Census Standards defined in November 1984.²⁰

Exhibits 9.5 and 9.6 show the referrals of American Indian youth from the 28 rural counties to probation departments in 1985 and the disposition of petitions by the juvenile courts.

EXHIBIT 9.5
JUVENILE JUSTICE REFERRALS TO PROBATION IN 1985
IN 28 RURAL CALIFORNIA COUNTIES

REFERRALS	AMERICAN INDIAN	PERCENT
Referrals Total	342	100%
New Referrals	244	71%
Subsequent Referrals	98	29%
ACTION		
Closed/transferred	126	37%
Informal probation	67	19%
Petition Filed	149	44%

Source: Needs of Rural American Indian Youth and California Department of Justice, Bureau of Crime Statistics.

Exhibit 9.6 shows that 29% of Indians youth who were referred for juvenile offenses were repeat referrals. 37% of Indian youth in these rural counties had their cases closed or transferred.

Exhibit 9.6 shows the disposition of petitions filed with the juvenile court in 1985 for Indian youth in the 28 rural counties.

EXHIBIT 9.6
PETITION TYPE AND DISPOSITION FOR INDIAN JUVENILES
IN 28 RURAL COUNTIES 1985

PETITIONS/DISPOSITIONS	AMERICAN INDIAN	PERCENT
Total Petitions	149	100%
Closed/Dismissed/Transferred	26	17%
Remanded to Adult Court	0	0
Informal/non-ward Probation	8	5%
Wardship probation	109	73%
CYA	6	4%

Source: Needs of Rural American Indian Youth and California Department of Justice, Bureau of Crime Statistics.

The CYA 1987 report compared referrals and dispositions of petitions in the 28 rural counties between Indian youth and all others and found similar patterns for the five year period under review, 1981 to 1985.²¹ The report analyzed the type of offenses (whether felony or misdemeanor) and the nature of the offense (burglary, etc.) and found that in one area Indian youth in the 28 counties varied from youth statewide. Indian youth had three times higher rate of arrest for driving under the influence of alcohol (DUI) than youth in the state. (14% of all Indian offenses compared to 4.5% statewide).²² The report included a needs assessment obtained through questionnaires of Indian leaders, rural county probation departments and Youth Authority staff. Four needs were identified: alcohol abuse services, afterschool and summer recreational activities, drug abuse services and job training and placement services.²³

A comparison of the above data to delinquency statistics for all juveniles in California identifies few differences in how Indian youth are handled by the state juvenile justice system. Most Indian youth referrals, that are not diverted or dismissed, receive informal or formal probation services similar to all referred California youth. In addition, Indian juveniles who commit delinquent offenses have no greater likelihood of incarceration for offenses than do youth in general. However Indian youth do show a higher repeat referral rate and, in rural counties, show a three times higher rate for alcohol related offenses.

The study did not find that Indian youth receive substantially different handling by the formal juvenile justice system. The next section of this chapter, however, examines the treatment services that these youth have access to, and it is in this area that the greatest concerns arise.

C. INTERVENTION SERVICES

California's juvenile justice system is built around county probation departments, which are connected to a number of other state, county and municipal agencies. Some counties have no local facilities to incarcerate youth and either commit them directly

to state facilities or contract with other counties for jail services. Youth enter the juvenile justice system upon arrest by law enforcement officers. In California, county sheriffs provide law enforcement in unincorporated areas of a county, and city police departments perform law enforcement functions in cities. After arrest, a juvenile's case may be "dismissed, transferred to another public or private agency, adjudicated to some form of probation or referred to juvenile court. Substantial discretion is available all through the system, especially in the early stages."²⁴

Referrals to juvenile court can be dismissed, transferred or remanded to adult court, juveniles may be placed on nonward informal probation, formal probation, or placed in a California Youth Authority (CYA) facility. Probation of juveniles may be informal or nonward for up to six months, or formal with an open-ended duration. In general, offenders with limited prior arrest records are sent home on probation, with occasional work service or restitution requirements. Foster home placements occur when the minor's home is regarded as unsuitable.

If a juvenile court judge wishes to confine the juvenile, he/she has the option of county facilities or the California Youth Authority. Counties operate juvenile halls, camps or ranches and/or non-secure facilities such as shelter care and crisis resolution homes. The other choice for the juvenile court judge is the California Youth Authority, which operates 17 facilities: ten institutions, six conservation camps and one pre-release site. CYA facilities are severely overcrowded, running at between 15% and 67% over their capacity.²⁵

There are several issues in California juvenile justice which are important to understanding the context of Indian juvenile justice. First, California incarcerates a higher percentage of its youth than the nation at large and similar states. California incarcerates 430 juveniles per 100,000, a rate twice the national average, much higher than Ohio, Michigan, Illinois and Texas.²⁶ California's incarcerated youth make up one quarter of incarcerated youth nationally, whereas California's youth population is roughly 10% of the national total.²⁷

Second, there are few alternatives to incarceration for youth who run afoul of the criminal justice system in California. Juvenile justice services in California are described as "polarized between little or no service to wards at home and providing intensive services in a residential setting. ... Generally, there is not a continuum of services available to match the variations among wards."²⁸

The third issue concerns differences among counties. County probation departments are the linchpin of the juvenile justice system in California. Counties vary greatly in their approach to juvenile justice so that a similar offense committed by a juvenile will result in different actions in different counties. The Legislative Analyst reports, "According to a recent CYA study, there is no correlation between juvenile arrest rates and juvenile incarceration rates. Instead, the rate of incarceration in a particular county is dependent on the policies of that county regarding the use of custody as a treatment for youthful offenders."²⁹

Finally, severe overcrowding and outdated facilities mark the juvenile halls in many counties. Chronic overcrowding occurs in Los Angeles, Orange, Riverside, San Diego, Kern, Imperial and Tulare County juvenile facilities. The overcrowding is due to three factors: youth are being incarcerated at higher rates, the length of stays are longer, and few new juvenile facilities have been built in recent years.³⁰

The overall policy climate in California juvenile justice is marked by concern about increasing rates of incarceration in overcrowded facilities and the lack of viable alternative placements for youth who could benefit from them.

Tribal involvement in delinquency prevention services has been limited. California received \$5.2 million from the U.S. Department of Justice for the Juvenile Justice and Delinquency Prevention Formula Grant in 1990/91. With state and local matching funds, the total amount in 1990 was \$5.6 million. California's Office of Criminal Justice Planning (OCJP) receives and disburses the federal funds, allocating 75% to local projects and retaining the balance for state administration, training and

technical assistance contracts and research and evaluation. The state agency makes local grants in three broad areas: delinquency prevention and diversion, serious/violent juvenile offender and community corrections (removal of juveniles from adult jails and lockup). The LEAA regions are in urban areas of California.

Over the past five years, two state agencies, OCJP and CYA, have cooperated in research on the needs of rural Indian youth. In 1987, the report cited earlier in this paper was prepared by CYA under contract to OCJP. A similar report is forthcoming with updated information. Staff of the two agencies (OCJP and CYA) were not satisfied with the participation of Indian youth in federally supported juvenile delinquency prevention efforts. Due to the demography of California Indian groups, the Indian set-aside formula in the federal OJJDP act would generate only about \$2,000 for Indians living on reservations in California. The state Office of Criminal Justice Planning, in cooperation with the California Youth Authority, developed an alternative strategy for serving Indian youth in the late 1980s. The state Office of Criminal Justice Planning (OCJP) staff wrote to all Indian rancherias in California, inviting them to participate in a planning session during which an Indian task force was established. The task force was composed of Indian representatives elected by the tribal representatives at the meeting. OCJP granted \$35,000 to the California Youth Authority to administer the task force. This task force was subsequently dropped with only one tribe having received funds from through this group.

Due to the high rate of alcohol related offenses in the Indian youth population, substance abuse intervention services are crucial. California received \$132.5 million in 1990/91 from the federal government from the Alcohol, Drug and Mental Health Services block grant (ADMS). California allocates those funds on a per capita basis, in combination with state funds, to 58 counties for alcohol and drug prevention and treatment services. California's Department of Alcohol and Drug Programs does not allocate ADMS formula funds directly to tribes. Native Americans are designated as a target group by the state for counties to serve as a special

priority. In practice, however, Indians in California are rarely served by county operated alcohol and drug services. The factors which contribute to this pattern include demography, county priorities and cultural differences. Indians living on small reservations located in rural counties typically lack a wide array of drug and alcohol services. The Indian bands in California are generally too small to mount effective programs on their own. Also, it is not uncommon for there to be a mismatch between alcohol and drug treatment programs designed for the population at large and the needs of Indian people with distinct cultural backgrounds. Non-Indian staff in treatment programs may be ineffective in treating Indians with substance abuse problems. Finally, rural county administrators may regard the Indian Health Service as primarily responsible for (and funded for) treating Indian people with alcohol and drug issues.

Rather than participate in county-operated, federal and state funded alcohol and drug services, California Indian people receive treatment from Indian Health Service projects in the state.³¹ Also, the state Department of ADP contracts with the American Indian Training Institute (AITI) to provide alcohol services training and technical assistance to American Indian groups or providers serving Indians. Training topics include: obtaining grants, proposal writing, Fetal Alcohol Syndrome, case management and prevention strategies. The AITI helps to establish support groups and provides monthly newsletters and an annual conference on Indian alcohol issues.

Indians needing residential treatment for alcoholism and drug problems in California are sent to one of 12 IHS centers for residential treatment. There are no adolescent drug treatment facilities designed for Indian youth in California. Indian youth needing treatment are sent to facilities in Oregon or Nevada.³² As noted earlier in this report, the practice of distant residential placements for adolescent substance abuse problems is considered far from the optimal solution.

D. SUMMARY and CONCLUSIONS

The vast majority of Indian tribes in California do not operate their own law enforcement or court systems and rely on local and state officials for these functions. Local law enforcement is often reluctant to intervene in Indian lands for all but the most severe of crimes. In the view of California experts, the result is a juvenile justice "no man's land" in which Indian youth who are truant, involved with substance abuse, or rebellious to adult authority, do not receive intervention services until they have committed a serious infraction. Criminal justice statistics, while sketchy, do support this hypothesis. Proportionately more Indian youth statewide and in 28 rural counties who are involved with criminal authorities are repeat offenders and Indian youth in rural counties have a three times higher rate for arrests for driving under the influence (DUI).

California Indian tribes are small and scattered widely on 99 separate rancherias and reservations. Most are located in rural counties in California. State agencies examined in this study (Office of Criminal Justice Planning, Alcohol and Drug Programs and Education) have adopted special outreach strategies and developed alternative pathways for Indian involvement in the programs which support juvenile justice functions. None of the experts and officials interviewed for this study are satisfied with the extent of participation of Indian youth in prevention and early intervention activities that would forestall their involvement in destructive behavior such as truancy, dropping out of school, substance abuse and criminal activity. All agree that a combination of the 280 status of California, the small and scattered demographic pattern of Indian tribes in the state, and the need for tribal financial and institutional infrastructure to obtain help from state and federal sources, are contributing to the lack of service to Indian youth.

IV. RECOMMENDATIONS

Tribal self-government which can include juvenile justice functions is a multi-faceted issue, partly mired in history and partly determined by social, political, and economic factors. Whether or not a tribe exercises concurrent jurisdiction over juveniles depends upon a number of conditions including a tribe's interest in handling its own juvenile problems (which may be affected by their ability to acquire funds necessary to provide services) and their perception of services provided by the state. The recommendations below address the juvenile justice needs of the two states analyzed in detail on these issues.

9.1 OJJDP SHOULD ENCOURAGE THE STATE OF ALASKA TO IMPROVE COLLABORATION WITH NATIVE VILLAGES.

There is a recognized need to improve the coordination between state agencies/police/courts with Native villages in regard to placement of village youth. OJJDP should take the initiative of working with the State of Alaska to develop such procedures.

9.2 OJJDP SHOULD ENCOURAGE THE DEVELOPMENT OF VILLAGE LEVEL SERVICES FOR JUVENILES.

Although the State has developed a regional system of services for Native youth, there remains much to be accomplished in terms of local services. Due to the small size and relative isolation of many Native villages, regionally based services cannot meet all social service and justice related needs. Programs

employing village residents as staff, such as those funded through Suicide Prevention funding, should be encouraged as supplements to the regional center services. Besides availability, such services offer the greatest potential to incorporate traditional and culturally-sensitive program components which villagers typically state are keys to program effectiveness.

9.3 OJJDP SHOULD ENCOURAGE THE STATE OF CALIFORNIA TO IMPROVE ITS SERVICES TO NATIVE AMERICAN YOUTH.

The State of California provides virtually all law enforcement and court functions, and many other juvenile justice related services for Indians living on tribal lands in the state. It is most important that these juvenile justice service providers develop a focus on the needs of the Native American population they serve. OJJDP should encourage the State to increase its attention to the needs of, and service provision to, this population. OJJDP discretionary funds should be directed at this area of concern.

9.4 IHS SHOULD DEVELOP A PLAN FOR SERVING NATIVE AMERICAN YOUTH IN NEED OF SUBSTANCE ABUSE TREATMENT WITHIN THE STATE OF CALIFORNIA.

IHS should develop alternatives to the out-of-state residential treatment for youth requiring treatment for alcohol and substance abuse problems.

CHAPTER NINE ENDNOTES

1. "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...."
2. *Cohen's Handbook on Federal Indian Law*, 3rd ed.; R. Clinton, N. Newton, M. Price, *American Indian Law, Cases and Materials*, 3rd ed. (1991).
3. 898 F.2d 672 (8th Cir. 1990).
4. 426 U.S. 373 (1976).
5. In 1986, the Alaska Supreme Court ruled that the state's jurisdiction over Native children was exclusive, relying on P.L. 280. *Native Village of Nenana v. Alaska*, 722 P.2d 219 (Alaska 1986), *cert. denied*, 107 S.C. 649 (1986). However, in a case pertaining to the state's refusal to give full faith and credit to an adoption decree issued by a Native village's tribal court, the 9th Circuit held that, at the least, such court's jurisdiction is concurrent, reasoning that the inherent sovereignty of an historical band of Native Americans was not wiped out by the adoption of P.L. 280. The case was remanded to determine if the present Native village is the successor of an historical band, in which case, the village had the right to issue the decree and Alaska must recognize the decree. *Native Village of Venetie I.R.A. Council v. State of Alaska*, 944 F.2d 548, (9th Cir. 1991).
6. State of Alaska Administrative Order 125 signed by Governor Walter J. Hickel, August 16, 1991.
7. Jaeger, L., *Tribal Court Handbook*, Fairbanks: Tanana Chiefs Conference, Inc., 1986.
8. Read, E., *1989 Juvenile Justice and Delinquency Prevention Act Compliance Monitoring Report*, Anchorage: Justice Center, University of Alaska.
9. Alaska Federation of Natives, *Bush Justice Policing-Courts-Correction: A Report on the Fourth Bush Justice Conference*, Bethel: Unpublished Manuscript, 1985.
10. Read, E., *ibid*
11. Interview with Mary Wandschneider, Office of Criminal Justice Planning, State of California.
12. Interview with Vernon Johnson, Executive Director, California Council of Tribal Governments.
13. *Public Law 83-280: Retrocession and Other Alternatives Handbook*, Office of Criminal Justice Planning, Indian Justice Program, Sacramento: September 1980, p. 25.
14. Interview with Vernon Johnson.
15. *Tribal Information and Directory*, Bureau of Indian Affairs, Sacramento: January 1991.
16. Of those 99, eleven rancherias' trust status were pending in 1987 according to the BIA *Tribal Information and Directory*, January, 1987.

17. *Needs Assessment for Rural American Indian Youth*, p. 20.
18. 1990 US Census and California Basic Education Data System, *Racial or Ethnic Distribution of Staff and Students*, 1989-90, California Department of Education, Sacramento 1990.
19. Department of the Youth Authority, Program Research and Review Division, *Needs of Rural American Indian Youth in California: Offenders and Those At Risk of Offending*, Sacramento: December 1987.
20. The counties include: Alpine, Amador, Calaveras, Colusa, Del Norte, El Dorado, Glenn, Humboldt, Imperial, Inyo, Kings, Lake, Lassen, Madera, Mariposa, Mendocino, Merced, Modoc, Mono, Nevada, Plumas, San Benito, San Luis Obispo, Sierra, Siskiyou, Tehama, Trinity, Tuolumne.
21. *Needs of Rural American Youth in California*, pp. 43-45.
22. *Needs of Rural American Indian Youth*, p. 55.
23. *Needs of Rural American Indian Youth*, p. 65.
24. *Conditions of Children in California*, Policy Analysis For California Education, Berkeley: March 1989, p. 260.
25. *Conditions of Children in California*, pp. 271-276.
26. *Conditions of Children in California*, pp. 261-262.
27. *Conditions of Children in California*, p. 262.
28. *The 1989-90 Budget: Perspectives and Issues*, Legislative Analyst, California Legislature, Sacramento: February 1989, p. 326.
29. California, Legislative Analyst, Report to the Joint Legislative Budget Committee, *Analysis of the 1989-90 Budget Issues and Perspectives*, Sacramento, CA., undated, p. 325.
30. *Statewide Needs Assessment of County Juvenile Facilities*, California Youth Authority, Sacramento: June 30, 1988, by Jay Farbstein and Associates, pp. 6-8.
31. Interview with Dave Vallo, American Indian Training Institute.
32. Interview with Andre Cramblit, BIA and Dave Vallo, AITI.

STUDY OF TRIBAL AND ALASKA NATIVE JUVENILE JUSTICE SYSTEMS

APPENDICES

APPENDIX A - SURVEY INSTRUMENTS

APPENDIX B - BIBLIOGRAPHY

**APPENDIX C - TRIBAL-STATE INTERGOVERNMENTAL AGREEMENTS;
ANALYSIS OF STATE ENABLING LEGISLATION**

APPENDIX D - TRIBAL JURISDICTIONAL STATUS ANALYSIS

STUDY OF TRIBAL AND ALASKA NATIVE JUVENILE JUSTICE SYSTEMS

APPENDIX A

SURVEY INSTRUMENTS

STUDY OF TRIBAL AND ALASKA NATIVE JUVENILE JUSTICE SYSTEMS
All Tribe Survey Instructions

1. **General** - This instruction sheet provides information on completing the attached survey which has been designed to collect quantitative data on how your tribe, pueblo or village handles juvenile offenders. Please read and keep these instructions for reference as you answer questions. Many tribes will only need to complete the first five questions. Please read the instructions at the end of Question 5 carefully.
2. **Data Requested** - The survey has nine sections with headings which indicate the type of information sought in the questions. It is important that every question is answered. We are seeking current, accurate data, if available. If you do not have particular data, but can provide estimates or representative figures, this is our second preference. Finally, if the information requested is not available and cannot be estimated, a "Don't Know" response has been provided. If a question is left unanswered, we will assume it was an oversight and will call to seek an answer.
3. **Confidentiality** - Identifying information from any tribe, pueblo, village, or individual will not be released to anyone without written consent.
4. **Glossary** - A glossary of terms follows which explains how we have used certain terms. It is suggested you keep the glossary and these instructions for your reference.
5. **Copy Your Survey** - Please make a copy of the completed All Tribe Survey for your records. This will be helpful should we call to clarify information.
6. **Deadline** - WE NEED THE COMPLETED SURVEY NO LATER THAN MAY 10, 1991. An addressed, stamped envelope is provided to return the survey. Additional materials should be mailed to the American Indian Law Center, Inc., separately from the survey.
7. **Assistance** - If you need help, have questions about the survey, or need additional information, please call Heidi Estes at (505) 277-5462, or write:

All Tribe Survey
American Indian Law Center, Inc.
P.O. Box 4456 - Station A
Albuquerque, New Mexico 87196

8. **Thanks** for your participation and support of the Study of Tribal and Alaska Native Juvenile Justice Systems. You will receive summary results from us when they are available.

GLOSSARY OF TERMS

ADJUDICATION - a final decision by the Court finding the minor to be delinquent, a status offender, a minor in need of supervision/care or that the petition's allegations are not sustained; a judgment which decides all issues raised in a case.

ADJUDICATORY HEARING - a fact finding hearing in which the Court decides whether there is sufficient evidence to support the allegations contained in the petition; the hearing at which an adjudication is issued by the court.

ADULT JAIL - any secure building or locked facility used to hold adults charged with a criminal offense and awaiting trial or adults convicted of a criminal offense.

ALASKA NATIVE - a member of an Alaska Native Village or Corporation as defined by the Alaskan Native Claims Settlement Act.

ALTERNATIVES TO PROSECUTION - See DIVERSION.

APPREHENSION - the act of taking a minor into custody for the purpose of starting juvenile proceedings.

CHARGING - the formal allegation contained in the juvenile petition claiming that the minor has committed an offense.

CFR COURT - a Court of Indian Offenses established pursuant to Section 11 of the Code of Federal Regulations. It is a federal court, not a tribal court.

COMMUNITY SERVICE - service to the community ordered by a court as a dispositional alternative, e.g., helping tend a community garden, helping clean the community school.

CORRECTION FACILITY - a locked facility to which delinquents (and sometimes status offenders) are committed after a disposition hearing.

DEFERRED PROSECUTION - decision by the prosecutor, presenting officer, or probation officer which postpones the filing of a juvenile petition and which is generally dependent upon conditions of behavior, e.g., treatment, counselling, compliance with curfew, attendance at school, etc.

DELINQUENT - a minor who has been found by the Court to have committed an act which would be a crime if committed by an adult.

DELINQUENT ACT - an act which, if committed by an adult, is designated a crime under the Tribal Law and Order or Criminal Code.

DETENTION FACILITY - a secure facility in which a minor alleged to be a delinquent or status offender is placed while waiting for an adjudication.

DETENTION HEARING - a hearing prior to adjudication in which the Court determines whether the minor is to be detained, continued to be detained, or released to the custody of the minor's parents or guardian.

DISPOSITION - the decision of the Court after an adjudication to release the minor, place the minor in a correctional facility, treatment facility, on probation, or subject the minor to other alternatives the court considers appropriate.

DIVERSION - an alternative to adjudication which suspends all judicial proceedings and releases the minor with or without being subject to other conditions imposed by the court.

FOSTER CARE - a child welfare service which provides substitute family care for a minor for a planned period when his or her own family cannot care for him/her.

INDIAN - a minor or adult who is an enrolled member of a Tribe or Pueblo, who is eligible for enrollment, or who is recognized by the community as an Indian.

JUDGMENT - a decree or final decision of the Court from which an appeal may be taken.

JURISDICTION - the legal authority or power of the Court to hear and decide a case.

JUVENILE - any minor between the ages of 10-17, inclusive, or other age groupings defined by tribal law or practice.

LAW ENFORCEMENT - refers to any person who is employed by the Tribe or by the Bureau of Indian Affairs as a law enforcement officer, police officer, or public safety officer. Includes officers of federal, state, or municipal agencies with legal authority to enforce laws on reservations or in villages.

MINOR - a person who is not, legally, an adult; usually someone who is under eighteen (18) or twenty-one (21) years of age; a person concerning whom proceedings are commenced in Tribal or Children's Court prior to his/her 18th or 21st birthday; a person eighteen (18) years of age or older who is under the continuing jurisdiction of the Children's Court.

NON-OFFENDER - an abused child, neglected child, or minor in need of supervision/care; a minor who has no parent or other adult available and willing to care for the child; or who has suffered or is likely to suffer physical, sexual, mental, emotional abuse or exploitation; or who has not been provided with adequate food, clothing, shelter, medical care, education, or supervision.

- NON-SECURE FACILITY** - an out-of-home placement which does not entail supervision under locked circumstances, such as foster care, group homes, treatment facilities, or mental health facilities.
- OUT-OF-HOME PLACEMENT** - the placement of a minor in a foster home, group home or institution.
- PETITION** - the legal document filed with the Court alleging the minor is a delinquent, status offender, or minor in need of supervision/care.
- PREVENTION** - activities conducted by schools, law enforcement, courts, and other organizations to prevent delinquency, e.g., police athletic leagues, ride-a-long programs, project D.A.R.E., youth councils, etc.
- PROBATION** - a legal status created by court order following adjudication whereby the minor is permitted to remain in his home under certain conditions and supervision of a person designated by the Court; the minor on probation may be subject to further proceedings for violation of any of the conditions contained in the Court order.
- RESTITUTION** - financial reimbursement to the victim by the order of the court; restitution may include actual repairs by the minor to the victim's damaged property.
- SECURE FACILITY** - a detention or correctional facility in which minors are held under locked circumstances.
- SHELTER CARE** - a temporary or emergency placement in a group home or other non-secure facility, usually for the protection of the minor from abuse, neglect, or absence of supervision/care.
- STATUS OFFENDER** - a minor who is charged with an offense which would not be a crime if committed by an adult, e.g., absence from school without an excuse for more than a certain number of days, runaway, violating curfew, disobeying the reasonable demands of a parent, guardian, or custodian, or possession of an alcoholic beverage in a jurisdiction where it is not a crime for an adult to possess alcoholic beverages.
- TRANSFER TO ADULT COURT** - a decision by the Court, following a finding of probable cause that the minor committed an offense, to waive jurisdiction of the Juvenile or Children's Code, and prosecute the minor as an adult in criminal court.
- TRIBAL COURT** - as used in this Survey refers to: the tribal, pueblo, or village court; tribal, pueblo, or village family court; or tribal, pueblo, or village children's court.

**STUDY OF TRIBAL AND ALASKA NATIVE JUVENILE JUSTICE SYSTEMS
ALL TRIBE SURVEY**

Name of Tribe, Pueblo or Village (For office use only: [][][]-[][][])

Name of Person Primarily Responsible for Completing Survey

Mailing Address

P.O. Box, Route, Street

City

State

Zip Code

Telephone Number ()

Title and Major Responsibilities

Department or Agency

CONFIDENTIALITY OF SURVEY

Identifying information from any tribe, pueblo, village or individual will not be released to anyone, either in the final report or by any other means, without prior written consent. Each tribe will be assigned a code number in this survey. The only copy of the master list of code numbers will be maintained in the project offices and will not be released. The top page of this survey, with all identifying information, will be removed before the survey is sent to data processing and the only information data processing personnel will see is the coded number. Information from this survey will be presented in aggregate or summary form. A list of tribes, pueblos, and villages participating in the study will be issued.

**STUDY OF TRIBAL AND ALASKA NATIVE JUVENILE JUSTICE SYSTEMS
ALL TRIBE SURVEY**

SECTION A. BACKGROUND

Questions 1 - 5 refer to background or descriptive information about your tribe, pueblo or village and reservation.

1. What is the current population of youth aged 10-17 for the reservation or village? Please include in the count youth on the reservation and youth off the reservation who have a continuing relationship with the tribe, pueblo or village. For example, count youth who are temporarily away from the reservation in out-of home placement, attending job corps, in residential treatment programs, enrolled in boarding schools, etc. If breakout by sex is not available, please provide totals.

	Males	Females	Total
a. Indians & Alaska Natives			
Enrolled Members	_____	_____	_____
Enrolled with Another Tribe	_____	_____	_____
Not Enrolled Anywhere			
1. Eligible for Enrollment	_____	_____	_____
2. Recognized as Indians but Not Eligible for Enrollment	_____	_____	_____
b. Non-Indians	_____	_____	_____
c. If statistics are not available, please estimate your total population aged 10-17:	_____		

2. Does the tribe, pueblo or village exercise jurisdiction over the following types of cases involving Indian and Alaska Native children and juveniles? Circle the number of each one that applies.

- 1 Indian Child Welfare Act transferred cases
- 2 Abuse or Neglect cases
- 3 Minor in Need of Supervision or Care cases
- 4 Status Offense cases
- 5 Delinquency cases
- 6 Other _____
- 8 None
- 9 Don't know

3. Does the tribe, pueblo or village issue citations to juveniles for violations of tribal code provisions or tribal ordinances other than delinquent offenses and status offenses? For example, tribes might issue citations for: traffic, game and fish, woodcutting, fireworks, etc. Circle the answer which best applies.

Yes No

4. What type(s) of court does the tribe, pueblo or village use for juvenile matters? Circle the number for each one that applies.

- 1 Tribal, pueblo or village court
- 2 Court of Indian Offenses (CFR Court)
- 3 Traditional dispute resolution
- 4 State court system
- 5 Federal court system (other than CFR Courts)
- 6 Other, please describe.

8 None

9 Don't know

5. Listed below are activities which describe the parts of the juvenile justice system this survey is studying. Please circle the number of each activity administered by the tribe, pueblo, or village.

- 1 Prevention and diversion, including informal counseling by police, educators, etc.
- 2 Apprehension
- 3 Charging
- 4 Detention
- 5 Prosecution
- 6 Public Defense
- 7 Adjudication
- 8 Non-residential alternatives to commitment, including community service and restitution
- 9 Residential treatment
- 10 Commitment/Incarceration to secure (locked) facilities
- 11 Probation/Parole
- 98 None

If you have Circled "98 (None)" please explain who administers these juvenile justice activities and return this survey to us. You do not need to complete the remaining questions. Otherwise, please continue to the next page.

SECTION B. JUVENILE OR CHILDREN'S CODE

Questions 6 - 16 refer to the Tribal Children's or Juvenile Code and its provisions regarding delinquency, status offenses, and abuse, neglect or minors in need of supervision/care.

6. Does the tribe, pueblo or village have a written juvenile or children's code? Circle the number of the answer that best applies.

- 1 Yes (Please continue with question 7. Please enclose a copy of the code and the tribe's constitution as requested on the last page.)
- 2 No (Skip the rest of Section B and go to Section C on page 7)
- 9 Don't know (Skip the rest of Section B and go to Section C on page 7)

7. Does the Code define delinquent as "a minor who has committed an act which is defined by the tribal criminal code as a crime if committed by an adult?" (If another term is used in the code for juveniles who commit offenses that would be criminal if committed by an adult, circle 4 and indicate the term.) Circle the number of the answer that best applies.

- 1 Term not defined in Code
- 2 Basically same definition
- 3 Different definition. Definition is:

- 4 Different term: _____
- 9 Don't know

8. Does the Code define status offender as "a minor who is charged with an offense which would not be a crime if committed by an adult, i.e., curfew violations, truancy, underage drinking (where adult drinking is permitted)?" (If another term, such as "Incorrigible child," is used in the code for juveniles who commit offenses that would not be criminal if committed by an adult, circle 4 and indicate the term.) Circle the number of the answer that best applies.

- 1 Term not defined in Code
- 2 Basically same definition
- 3 Different definition. Definition is:

- 4 Different term: _____
- 9 Don't know

9. Does the Code define abused or neglected child or minor in need of supervision or care, or dependent child (non-offender) as "a minor who has no parent or other adult available and willing to care for the child, or has suffered or is likely to suffer physical, sexual, mental, emotional abuse or exploitation or has not been provided with adequate food, clothing, shelter, medical care, education or supervision?" (If another term is used in the code for juveniles who are under the jurisdiction of the court but who have not committed an offense, circle 4 and indicate the term.) Circle the number of the answer that best applies.

- 1 Term not defined in Code
2 Basically same definition
3 Different definition. Definition is:

- 4 Different term: _____
9 Don't know

10. Does the Code specify a minimum age at which a youth may be found to be a status offender or delinquent? Circle the answer that best applies.

No Less than 10 years 10 or older Don't know

11. Does the Code specify a maximum age at which a youth accused of an offense may be found to be a status offender or delinquent? Circle the answer that best applies.

No Less than 16 years 16 17 18 19 20 Don't know

12. For children who have been found to be delinquent or status offenders, does the Code set a maximum age that they can remain under juvenile court authority? Circle the answer that best applies.

No 17 18 19 20 or older Don't know

13. Does the Code allow juveniles to be held in any secure building or locked facility where accused or convicted adult offenders sometimes are held (e.g., adult jails)?

A. Circle the number of the statement that best applies.

- 1 Code prohibits holding juveniles in adult jails
2 Code allows holding juveniles in adult jails but for no longer than 6 hours
3 Code allows holding juveniles in adult jails but for no longer than _____ hours
4 Code allows holding juveniles in adult jails without regard to time limits
5 Code has no requirement
9 Don't know

B. If there is a Court policy regarding this issue, please describe. _____

14. If the Code allows juveniles to be kept in the same building as adults, does the Code require that juveniles and adults be separated?

A. Circle the number of the statement that best applies.

- 1 Juveniles may not be held in a building that also holds adult offenders
- 2 Juveniles may be held in the same building but out of sight and sound of adults
- 3 Juveniles may be held in the same building and may have sight and sound contact with adults, but must be in separate cells
- 4 Code has no requirement
- 9 Don't know

B. If there is a Court policy regarding this issue, please describe. _____

15. Does the Code allow status offenders or non-offenders (abused or neglected children, or minors in need of supervision/care) to be placed in secure (locked) facilities?

A. Circle the number of the statement that best applies.

- 1 Code prohibits housing status offenders or non-offenders in a locked facility for any length of time
- 2 Code allows housing status offenders or non-offenders in a locked facility, but not for more than 24 hours
- 3 Code allows housing status offenders or non-offenders in a locked facility for more than 24 hours under certain circumstances which are:

- 4 Code allows housing status offenders or non-offenders in a locked facility without regard to time limits
- 5 Code has no requirement
- 9 Don't know

B. If there is a Court policy regarding this issue, please describe. _____

16. Does the Code require a detention hearing be held within 24 hours after a minor is taken into custody?

A. Circle the number of the statement that best applies.

- 1 Code requires a detention hearing within 24 hours
- 2 Code requires a detention hearing within _____ hours
- 3 Code has no requirement
- 9 Don't know

B. If there is a Court policy regarding this issue, please describe. _____

SECTION C. JUVENILE JUSTICE SERVICES

Questions 17 - 22 refer to the tribal, pueblo or village juvenile justice system activities, processes and services.

17. Does the tribe, pueblo or village use any of the following alternatives to prosecution, detention or commitment for alleged or adjudicated juvenile delinquents and status offenders? Circle the number of each statement that applies.

- 1 Transfer to Minor In Need of Supervision/Care status
- 2 Prosecution deferred pending treatment or counseling
- 3 Substance abuse treatment
- 4 Counseling
- 5 Supervised Probation
- 6 Boarding School
- 7 Job Corps
- 8 Military Service
- 9 Other _____
- 98 Do not use any alternatives to prosecution, detention or commitment
- 99 Don't know

18. For your tribe, pueblo or village, who performs the juvenile justice activities listed below? Please circle the number in each appropriate column. If you circle the number for "Another Tribe" or "Other," give "Name of Organization."

<u>Activity</u>	<u>Not</u> <u>Avail.</u>	<u>Don't</u> <u>Know</u>	<u>Tribe</u>	<u>BIA</u>	<u>IHS</u>	<u>State or</u> <u>County</u>	<u>Another</u> <u>Tribe</u>	<u>Other</u>	<u>(Name of</u> <u>Organization)</u>
Prevention & Diversion	8	9	1	2	3	4	5	6	_____
Apprehension	8	9	1	2	3	4	5	6	_____
Charging	8	9	1	2	3	4	5	6	_____
Detention	8	9	1	2	3	4	5	6	_____
Prosecution	8	9	1	2	3	4	5	6	_____
Public Defense	8	9	1	2	3	4	5	6	_____
Adjudication	8	9	1	2	3	4	5	6	_____
Non-Residential/ Alternatives to Commitment	8	9	1	2	3	4	5	6	_____
Residential Treatment	8	9	1	2	3	4	5	6	_____
Commitment/ Incarceration	8	9	1	2	3	4	5	6	_____
Probation/ Parole	8	9	1	2	3	4	5	6	_____

19. What services are available for alleged or adjudicated delinquents and status offenders?

A. For each service listed, please indicate who provides it. Circle the number in each appropriate column. If you circle the number for "Another Tribe" or "Other," give "Name of Organization."

They are provided by:

<u>Service</u>	<u>Not Available</u>	<u>Don't know</u>	<u>Tribe</u>	<u>BIA</u>	<u>IHS</u>	<u>State or County</u>	<u>Another Tribe</u>	<u>Other</u>	<u>(Name of Organization)</u>
Shelter Care	8	9	1	2	3	4	5	6	_____
Foster Home	8	9	1	2	3	4	5	6	_____
Group Home	8	9	1	2	3	4	5	6	_____
Social Services	8	9	1	2	3	4	5	6	_____
Counseling	8	9	1	2	3	4	5	6	_____
Detox & Treatment	8	9	1	2	3	4	5	6	_____
Special Education	8	9	1	2	3	4	5	6	_____
Other Service	8	9	1	2	3	4	5	6	_____

If "Other Service", please name: _____

B. If these services are available, but insufficient to meet the needs of your juveniles, please discuss below.

20. What court adjudicates juveniles as delinquents or status offenders from your tribe, pueblo or village? Circle the number of the answer that best applies for each type of juvenile. If "Other Court," please name.

	<u>Don't Know</u>	<u>Tribal Court</u>	<u>CFR Court</u>	<u>Other Court</u>	<u>(Name of Court)</u>
a. Enrolled Members	9	1	2	3	_____
b. Enrolled with Another Tribe	9	1	2	3	_____
c. Not Enrolled Anywhere					
1. Eligible for Enrollment	9	1	2	3	_____
2. Recognized as Indians but Not Eligible for Enrollment	9	1	2	3	_____
d. Non-Indians	9	1	2	3	_____

21. What is the annual budget and source of funds of the tribal court? If there is no separate juvenile court, please complete only the tribal court section. If your tribe, pueblo or village has both a tribal court and a separate juvenile court, please complete both sections. Please attach a copy of the court budget for the current year, if possible.

	<u>638 Funds</u>	<u>CFR Funds</u>	<u>Tribal Funds</u>	<u>Court Fines</u>	<u>Other Amount</u>	<u>Source</u>
Tribal Court	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	_____
Juvenile Court	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	_____

- 97 We do not have a tribal court
 98 Current tribal policy does not allow me to release this information.
 99 Don't know

[][][][]-[][][][]

OMB No. 1121-0159
Expiration: 1/31/93

22. How many personnel does your tribal court currently have? If one person fills more than one position, please count them only in their primary position. If some personnel serve on a part-time basis, please describe in the comments section below.

<u>Number</u>	<u>Position</u>
___	Chief Judge
___	Judges who hear <u>only</u> cases involving minors
___	Other Judges
___	Court Administrator
___	Juvenile Court Clerks
___	Other Court Clerks
___	Balliffs
___	Prosecutors
___	Public Defenders/Advocates
___	Juvenile Presenting Officers
___	Probation Officers
___	Other Court Personnel _____

97 We do not have a tribal court (circle if appropriate)

Comments:

SECTION D. INTERGOVERNMENTAL RELATIONS

Questions 23 - 26 refer to formal and informal agreements between the tribe, pueblo, or village and other governmental entities.

23. Does the tribe, pueblo or village have any of the following types of agreements to receive services from or to use facilities of a state, county, municipality, or another tribe? Circle the number of each statement that applies.

- 1 Contracts
- 2 Other formal agreements
- 3 Informal agreements
- 8 No agreements or contracts
- 9 Don't know

24. If the tribe, pueblo or village has an agreement to receive services for juveniles from a state, county, municipality or another tribe, does it pertain to any of the following? Circle the number of each statement that applies.

- 1 Cross Deputization
With whom _____
- 2 Shelter Care
With whom _____
- 3 Treatment/Counseling
With whom _____
- 4 Detention Facilities
With whom _____
- 5 Correction Facilities
With whom _____
- 6 Other (please describe) _____
With whom _____
- 8 Not applicable; no agreements
- 9 Don't know

25. Does the tribe, pueblo or village have any of the following types of agreements to provide services or the use of facilities to a state, county, municipality, or another tribe? Circle the number of each statement that applies.

- 1 Contracts
- 2 Other formal agreements
- 3 Informal agreements
- 8 No agreements or contracts
- 9 Don't know

26. If the tribe, pueblo, or village has an agreement to provide services for juveniles to a state, county, municipality, or another tribe, does it pertain to any of the following? Circle the number of each statement that applies.

- 1 Cross Deputization
With whom _____
- 2 Shelter Care
With whom _____
- 3 Treatment/Counseling
With whom _____
- 4 Detention Facilities
With whom _____
- 5 Correction Facilities
With whom _____
- 6 Other (please describe) _____
With whom _____
- 8 Not applicable; no agreements
- 9 Don't know

SECTION E. SECURE FACILITIES

Questions 27 - 33 refer to secure facilities, including adult jails, where juveniles are held under locked circumstances.

27. Please indicate the circumstances under which juveniles are held in secure facilities. Circle the number of each statement that applies.

- 1 Awaiting release to parent or adult caretaker
- 2 Awaiting detention hearing
- 3 Awaiting adjudication hearing
- 4 Awaiting disposition hearing
- 5 Pursuant to disposition and commitment
- 6 Awaiting transfer to another facility
- 7 Other _____
- 97 Do not have access to a secure facility
- 98 Not applicable. Juveniles are not held in secure facilities.
- 99 Don't know

28. Which of these factors are taken into consideration in the decision to hold a juvenile in a secure (locked) facility? Circle the number of each statement that applies.

- 1 To prevent minor from running away
- 2 Minor a danger to self
- 3 Minor a danger to others
- 4 Minor intoxicated
- 5 Family member not available or willing to take custody
- 6 Shelter or foster home not available
- 7 Treatment facility not available
- 8 Other _____
- 98 Not applicable. Juveniles are not held in secure facilities.
- 99 Don't know

29. Which of the following conditions contribute to the decision NOT to hold a juvenile in a secure facility? Circle the number of each statement that applies.

- 1 Pregnancy
- 2 Risk of Suicide
- 3 Physical Handicap
- 4 Medical Conditions such as diabetes or epilepsy
- 5 AIDS
- 6 Fetal Alcohol Effect
- 7 Emotional Disturbance/Mental Illness
- 8 Other _____
- 98 Not applicable; juveniles are not held in secure facilities.
- 99 Don't know

30. Please complete the following information for each secure facility used to hold juveniles: name of the facility; the town in which it is located; the number of juveniles the facility was designed to hold (capacity); whether or not adults are held in the same building; and the agency responsible for design and construction.

FACILITY 1: Name _____
Town/Location _____

Juvenile
Capacity _____

Are adults ever held in this building? (circle one)

Yes No

Designed and constructed by: (circle all that apply)

N/A Don't Know Tribe BIA US Bureau of Prisons State Other _____

FACILITY 2: Name _____
Town/Location _____

Juvenile
Capacity _____

Are adults ever held in this building? (circle one)

Yes No

Designed and constructed by: (circle all that apply)

N/A Don't Know Tribe BIA US Bureau of Prisons State Other _____

FACILITY 3: Name _____
Town/Location _____

Juvenile
Capacity _____

Are adults ever held in this building? (circle one)

Yes No

Designed and constructed by: (circle all that apply)

N/A Don't Know Tribe BIA US Bureau of Prisons State Other _____

31. Are there problems with the design, staffing, maintenance or cost of operation of facilities described above?

FACILITY 1: _____

FACILITY 2: _____

FACILITY 3: _____

32. What is the annual budget and source of funds for operating the secure facilities described above? Please attach a copy of the budget for the current year, if possible.

	638 Funds	CFR Funds	Tribal Funds	State Funds	Other Funds	Source of other funds
FACILITY 1	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	_____
97	Not applicable					
98	Current tribal policy does not allow me to release this information					
99	Don't know					
 FACILITY 2	 \$ _____	 \$ _____	 \$ _____	 \$ _____	 \$ _____	 _____
97	Not applicable					
98	Current tribal policy does not allow me to release this information					
99	Don't know					
 FACILITY 3	 \$ _____	 \$ _____	 \$ _____	 \$ _____	 \$ _____	 _____
97	Not applicable					
98	Current tribal policy does not allow me to release this information					
99	Don't know					

33. Is a new secure or non-secure juvenile facility planned or under construction? Circle the answer that best applies.

Yes No Don't know

If yes, please describe the type of facility, its capacity, its location, and the agency who is building it. If there are more than one in planning, describe each one.

SECTION F. DELINQUENT OFFENDERS

Questions 34 - 44 refer to delinquent offenders, minors who are charged with conduct which would be a crime if committed by an adult. We are asking for FY 90 data and, if available, FY 89 also. Throughout this section, the term "tribal court" includes any tribal, pueblo, or village court.

34. How many petitions were filed with the court alleging a minor had committed a delinquent act? How many minors were named in only one petition during the fiscal year? How many were named in more than one petition during the fiscal year? Please check, "Don't know" if appropriate.

	<u>Total Number of Petitions Filed</u>		<u>Number of Minors Named Only Once</u>		<u>Number of Minors Named More Than Once</u>	
	FY 90	FY 89	FY 90	FY 89	FY 90	FY 89
Tribal court	_____	_____	_____	_____	_____	_____
CFR court	_____	_____	_____	_____	_____	_____
Other court	_____	_____	_____	_____	_____	_____
Don't know	_____	_____	_____	_____	_____	_____

35. Please estimate the number of delinquency cases in FY 1990 which were heard as minor in need of supervision/care cases. Circle the answer that best applies.

0 1-9 10-25 26-50 51-99 100+ Don't Know

36. Please estimate the number of alleged delinquents in FY 1990 that were turned over to the U.S. Attorney for prosecution because the juvenile was alleged to have committed a major crime. Circle the number that best applies.

0 1-9 10-25 26-50 51-99 100+ Don't Know

37. Please estimate the number of delinquency petitions filed in FY 1990 that alleged the juvenile involved had committed an offense including one or more of the following behaviors. Circle the number that best applies. If you don't know, circle "D/K."

**Violent Offenses in which
the most serious effect
was that a victim:**

Died	0	1-9	10-25	26-50	51-99	100+	D/K
Received medical treatment, but did not die	0	1-9	10-25	26-50	51-99	100+	D/K
Was injured, but did not receive treatment	0	1-9	10-25	26-50	51-99	100+	D/K
Was threatened, but not injured	0	1-9	10-25	26-50	51-99	100+	D/K

**Offenses Involving theft of
or damage to:**

Automobile	0	1-9	10-25	26-50	51-99	100+	D/K
Property other than an automobile: loss of <u>more than \$500</u>	0	1-9	10-25	26-50	51-99	100+	D/K
Property other than an automobile: loss of <u>\$500 or less</u>	0	1-9	10-25	26-50	51-99	100+	D/K
Property of great personal importance to the owner	0	1-9	10-25	26-50	51-99	100+	D/K
Other property	0	1-9	10-25	26-50	51-99	100+	D/K

Offenses not involving a specific victim:

Sale of alcohol	0	1-9	10-25	26-50	51-99	100+	D/K
Sale of other controlled substance	0	1-9	10-25	26-50	51-99	100+	D/K
Use of alcohol	0	1-9	10-25	26-50	51-99	100+	D/K
Use of other controlled substance	0	1-9	10-25	26-50	51-99	100+	D/K
Weapons violations	0	1-9	10-25	26-50	51-99	100+	D/K
Gambling violations	0	1-9	10-25	26-50	51-99	100+	D/K
Consensual sex offenses	0	1-9	10-25	26-50	51-99	100+	D/K
Loitering/trespassing	0	1-9	10-25	26-50	51-99	100+	D/K
Disturb peace/disorderly	0	1-9	10-25	26-50	51-99	100+	D/K
Other offenses	0	1-9	10-25	26-50	51-99	100+	D/K

38. During the three month period between June and August 1990, estimate the number of minors alleged to be delinquent who were also thought to have abused alcohol or other substances? Circle the answer that best applies.

0 1-9 10-25 26-50 51-99 100+ Don't Know

39. How many minors were held in a secure facility either before or after adjudication? Please indicate whether each juvenile is counted only once or each time held.

	Total Number Held in a Secure Facility		<u>Counting Procedure</u>
	FY 90	FY 89	
Tribal Court	_____	_____	_____ Counted only once
CFR Court	_____	_____	_____ Counted each time
Other Court	_____	_____	
Don't know	_____	_____	

40. How many minors were found to be delinquent by the court? How many were adjudicated as delinquents only once during the fiscal year? How many were adjudicated as delinquents more than once during the fiscal year? If you don't know, check the appropriate space.

	Total Number Found Delinquent		Number Found Delinquent Once		Number Found Delinquent More Than Once	
	FY 90	FY 89	FY 90	FY 89	FY 90	FY 89
Tribal Court	_____	_____	_____	_____	_____	_____
CFR Court	_____	_____	_____	_____	_____	_____
Other Court	_____	_____	_____	_____	_____	_____
Don't know	_____	_____	_____	_____	_____	_____

41. Of the minors found delinquent, how many were committed to a secure facility? If you don't know, check the appropriate space. Please indicate whether each juvenile is counted only once or each time held.

	<u>Total Number Committed to a Secure Facility</u>		<u>Counting Procedure</u>
	FY 90	FY 89	
Tribal Court	_____	_____	_____ Counted only once
CFR Court	_____	_____	_____ Counted each time
Other Court	_____	_____	
Don't know	_____	_____	

42. Of the juveniles found to be delinquent, how many were placed in a "non secure" facility, that is, out-of-home placement including foster care, group homes, treatment facilities, mental health facilities, etc., instead of committing them to a secure facility? Please indicate whether each juvenile is counted only once or each time held.

	Total Number Placed In a Secure Facility		Counting Procedure
	FY 90	FY 89	
Tribal Court	_____	_____	_____ Counted only once
CFR Court	_____	_____	_____ Counted each time
Other Court	_____	_____	
Don't know	_____	_____	

43. Of the juveniles found to be delinquent, how many were ordered to participate in a treatment program, community service program, restitution program, etc., while remaining in their home, instead of committing them to a secure facility or placing them out-of-home? Please indicate whether each juvenile is counted only once or each time held.

	<u>Total Number Ordered to Participate in Program</u>		<u>Counting Procedure</u>
	FY 90	FY 89	
Tribal Court	_____	_____	_____ Counted only once
CFR Court	_____	_____	_____ Counted each time
Other Court	_____	_____	
Don't know	_____	_____	

44. If you have been unable to provide some of the statistics for delinquents, please indicate the reason. Circle the number of each statement that applies.

- 1 These statistics are not kept
- 2 Personnel are not available to provide statistics
- 3 Policies require this information not be released
- 4 Other _____
- 9 Have provided all statistics

SECTION G. STATUS OFFENDERS

Questions 45 - 54 refer to status offenders, or other term used to describe minors who are charged with conduct which would not be a crime if committed by an adult, i.e., curfew violations, truancy, underage drinking (where adult drinking is permitted). We are asking for FY 90 data and, if available, FY 89 also.

45. How many petitions were filed with the court alleging a minor had committed a status offense? How many minors were named in only one petition during the fiscal year? How many were named in more than one petition during the fiscal year? Please check "Don't know" if appropriate.

	<u>Total Number of Petitions Filed</u>		<u>Number of Minors Named Only Once</u>		<u>Number of Minors Named More Than Once</u>	
	FY 90	FY 89	FY 90	FY 89	FY 90	FY 89
Tribal Court	_____	_____	_____	_____	_____	_____
CFR Court	_____	_____	_____	_____	_____	_____
Other Court	_____	_____	_____	_____	_____	_____
Don't know	_____	_____	_____	_____	_____	_____

46. Please estimate the number of status offense cases in FY 1990 which were heard as minor in need of supervision/care cases. Circle the answer which best applies.

0 1-9 10-25 26-50 51-99 100+ Don't Know

47. During the three month period between June and August 1990, how many minors alleged to be status offenders who were thought to have abused alcohol or other substances? Circle the answer that best applies.

0 1-9 10-25 26-50 51-99 100+ Don't Know

48. How many minors alleged to be status offenders, but not yet charged, were held more than 24 hours in a secure facility? Please indicate whether each juvenile is counted only once or each time held in a secure facility.

	Total Number Held More than 24 Hours			<u>Counting Procedure</u>
	FY 90	FY 80		
Tribal Court	_____	_____	_____	Counted only once
CFR Court	_____	_____	_____	Counted each time
Other Court	_____	_____		
Don't know	_____	_____		

49. How many status offenders were held in a secure facility either before or after adjudication? Please indicate whether each juvenile is counted only once or each time held.

	Total Number Held In a Secure Facility			<u>Counting Procedure</u>
	FY 90	FY 80		
Tribal Court	_____	_____	_____	Counted only once
CFR Court	_____	_____	_____	Counted each time
Other Court	_____	_____		
Don't know	_____	_____		

50. How many minors were found to be status offenders by the court? How many were adjudicated as status offenders only once during the fiscal year? How many were adjudicated as status offenders more than once during the fiscal year? If you don't know, check the appropriate space.

	<u>Total No. Found to be Status Offenders</u>		<u>Number Found to be Status Offenders Once</u>		<u>No. Found to be Status Offenders more than Once</u>	
	FY 90	FY 89	FY 90	FY 89	FY 90	FY 89
Tribal Court	_____	_____	_____	_____	_____	_____
CFR Court	_____	_____	_____	_____	_____	_____
Other Court	_____	_____	_____	_____	_____	_____
Don't know	_____	_____	_____	_____	_____	_____

51. Of the minors found to be status offenders, how many were committed to a secure facility? If you don't know, check the appropriate space. Please indicate whether each juvenile is counted only once or each time held.

	<u>Total Number Committed to a Secure Facility</u>		<u>Counting Procedure</u>
	FY 90	FY 89	
Tribal Court	_____	_____	_____ Counted only once
CFR Court	_____	_____	_____ Counted each time
Other Court	_____	_____	
Don't know	_____	_____	

52. Of the juveniles found to be status offenders, how many were placed in a "non secure" facility, that is, out-of-home placement including foster care, group homes, treatment facilities, mental health facilities, etc., instead of committing them to a secure facility? Please indicate whether each juvenile is counted only once or each time held.

	<u>Total Number Placed in a Non-Secure Facility</u>		<u>Counting Procedure</u>
	FY 90	FY 89	
Tribal Court	_____	_____	_____ Counted only once
CFR Court	_____	_____	_____ Counted each time
Other Court	_____	_____	
Don't know	_____	_____	

53. During FY 1990, please estimate the number of adjudicated status offenders the court ordered to participate in a treatment program, community service program, restitution program, etc., while remaining in their home?

0 1-9 10-25 26-50 51-99 100+ Don't Know

54. If you have been unable to provide some of the statistics for status offenders, please indicate the reason. Circle the number of each statement that applies.

- 1 These statistics are not kept
2 Personnel are not available to provide statistics
3 Policies require this information not be released
4 Other _____
9 Have provided all statistics

SECTION H. NON-OFFENDERS

Questions 55 - 58 refer to non-offenders (abused or neglected children or minors in need of supervision/care). We are asking for FY 90 data and, if available, FY 89 also.

55. How many petitions were filed with the court alleging a minor was abused, neglected or in need of supervision/care? How many minors were named in only one petition during the fiscal year? How many were named in more than one petition during the fiscal year?

	Total Number of Petitions Filed		Number of Minors Named Only Once		Number of Minors Named More Than Once	
	FY 90	FY 89	FY 90	FY 89	FY 90	FY 89
Tribal Court	_____	_____	_____	_____	_____	_____
CFR Court	_____	_____	_____	_____	_____	_____
Other Court	_____	_____	_____	_____	_____	_____
Don't know	_____	_____	_____	_____	_____	_____

56. During the three month period between June and August 1990, please estimate the number of minors named in petitions alleging abuse, neglect, or need for supervision/care who were from families in which alcohol or other substances were abused? Circle the answer that best applies.

0 1-9 10-25 26-50 51-99 100+ Don't Know

57. How many minors alleged or found to be abused, neglected or in need of supervision/care were held in a secure facility? Please indicate whether each juvenile is counted only once or each time held.

	Total Number Held In a Secure Facility		Counting Procedure
	FY 90	FY 89	
Tribal Court	_____	_____	_____ Counted only once
CFR Court	_____	_____	_____ Counted each time
Other Court	_____	_____	
Don't know	_____	_____	

58. If you have been unable to provide some statistics for minors who are abused, neglected or in need of supervision/care, please indicate the reason. Circle the number of each statement that applies.

- 1 These statistics are not kept
- 2 Personnel are not available to provide statistics
- 3 Policies require this information not be released
- 4 Other _____
- 9 Have provided all statistics

SECTION I. TRAINING

Questions 59 - 61 refer to juvenile or children's law training and resources available to the tribal juvenile justice system personnel.

59. Have any juvenile justice system personnel (judges, clerks, prosecutors, presenting officers, public defenders, probation officers, police officers, detention and correctional personnel) participated in juvenile justice training within the past two years? Circle the answer that best applies.

Yes No Don't know

60. If juvenile justice personnel sometimes have not been able to attend training, please indicate the reasons or barriers that they experienced. Circle the number of each statement that applies.

- 1 Training and/or travel funds not available
- 2 Training leave not available due to heavy case load and/or too few staff
- 3 Tribal Courts not included in State Court and/or Bar Association training
- 4 Did not receive information on training opportunities
- 5 Location was inconvenient
- 6 Schedule conflicted
- 7 Not applicable
- 8 Other _____
- 9 Don't know

61. Please describe the juvenile justice training received by tribal juvenile justice personnel. Include the title of the personnel receiving training, the name of the training provider, topic of the training, the degree or certification received, and the number of hours of training. (Attach additional pages if needed).

EXAMPLES:

<u>Trainee (Personnel)</u>	<u>Training Provider</u>	<u>Training Topic</u>	<u>Degree or Certificate</u>	<u>Hours</u>
Juvenile Judge & Presenting Officer	National Indian Justice Center	Juvenile Systems	Certificate	35
Judges, Public Defender, Police, & Prosecutor	FBI	Investigation & Evidence	Certificate	40

<u>Trainee (Personnel)</u>	<u>Training Provider</u>	<u>Training Topic</u>	<u>Degree or Certificate</u>	<u>Hours</u>
--------------------------------	------------------------------	---------------------------	----------------------------------	--------------

SECTION J. RESOURCES AND SERVICES

62. Please describe all programs, services or resources on or off the reservation which are available for juveniles, especially community-based alternatives to incarceration. Include the name, description, location, funding source and funding level of the program.

EXAMPLES:

<u>Program Name & Description</u>	<u>Location</u>	<u>Funding Source</u>	<u>Funding Level</u>	
			<u>FY 90</u>	<u>FY 89</u>
Delinquency Prevention	On Reservation	OJDP	\$35,000	N/A
Juvenile Detention	County Facility	638-BIA	\$25/day	\$17/day
Foster Care	On Reservation	Title IV-E	\$14,000	\$11,000

<u>Program Name & Description</u>	<u>Location</u>	<u>Funding Source</u>	<u>Funding Level</u>	
			<u>FY 90</u>	<u>FY 89</u>

[] [] [] [] [] [] [] [] [] []

OMB No. 1121-0159
Expiration: 1/31/93

63. If you think any of the above programs are innovative and other tribes or villages would be interested in learning about them, please list the names of the programs below and attach a description of the program(s).

64. Please describe the areas for which services for juveniles are needed. Please feel free to share with us any additional thoughts you have regarding Indian and Alaska Native juvenile justice issues. (Attach additional pages if needed.)

65. Please share with us any other information (including annual reports, regulations, etc.) or comments that you believe would enhance our understanding of your juvenile justice system.

[] [] [] [] [] [] [] [] [] []

OMB No. 1121-0159
Expiration: 1/31/93

Please enclose a copy of the Juvenile or Children's Code of the tribe, pueblo or village. If the tribe, pueblo or village has a Constitution, we would also appreciate a copy of it. If you return a copy of the juvenile/children's code and constitution with this survey, we will reimburse your office \$15.00 for photocopying and postage. If the check should be made out to an organization other than the tribe, pueblo or village, or mailed to an address other than that on the first page, please provide the correct information below:

Check should be made payable to: _____

Check should be mailed to: _____

We suggest you photocopy the survey in order to have a record of the information that could prove useful for reporting and funding purposes.

**PLACE THE QUESTIONNAIRE IN THE
ENCLOSED ENVELOPE AND RETURN IT BY MAY 10, 1991.
(Please send other documents separately.)**

**TRIBAL AND ALASKA NATIVE JUVENILE JUSTICE SYSTEM STUDY
AMERICAN INDIAN LAW CENTER, INC.
P.O. Box 4458 - Station A
Albuquerque, New Mexico 87196**

**THANK YOU FOR COMPLETING THIS SURVEY.
WE ARE VERY GRATEFUL FOR YOUR ASSISTANCE IN THIS STUDY.**

PUBLIC REPORTING BURDEN FOR THIS COLLECTION OF INFORMATION IS ESTIMATED TO AVERAGE 2 HOURS PER RESPONSE, INCLUDING THE TIME FOR REVIEWING INSTRUCTIONS, SEARCHING EXISTING DATA SOURCES, GATHERING AND MAINTAINING THE DATA NEEDED, AND COMPLETING AND REVIEWING THE COLLECTION OF INFORMATION. SEND COMMENTS REGARDING THIS BURDEN ESTIMATE OR ANY OTHER ASPECTS OF THIS COLLECTION OF INFORMATION, INCLUDING SUGGESTIONS FOR REDUCING THIS BURDEN, TO OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, 633 INDIANA AVENUE NW, WASHINGTON, D.C., 20531; AND TO THE PUBLIC USE REPORTS PROJECT, 1121-0159, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET, WASHINGTON, D.C., 20503.

STUDY OF TRIBAL AND ALASKA NATIVE JUVENILE JUSTICE SYSTEMS
All Tribe Survey Instructions

1. **General** - This instruction sheet provides information on completing the attached survey which has been designed to collect quantitative data on how your tribe, pueblo or village handles juvenile offenders. Please read and keep these instructions for reference as you answer questions. Many tribes will only need to complete the first five questions. Please read the instructions at the end of Question 4 carefully.
2. **Data Requested** - It is important that every question is answered. We are seeking current, accurate data, if available. If you do not have particular data, but can provide estimates or representative figures, this is our second preference. Finally, if the information requested is not available and cannot be estimated, a "Don't Know" response has been provided. If a question is left unanswered, we will assume it was an oversight and will call to seek an answer.
3. **Confidentiality** - Identifying information from any tribe, pueblo, village, or individual will not be released to anyone without written consent.
4. **Glossary** - A glossary of terms follows which explains how we have used certain terms. It is suggested you keep the glossary and these instructions for your reference.
5. **Copy Your Survey** - Please make a copy of the completed All Tribe Survey for your records. This will be helpful should we call to clarify information.
6. **Deadline** - THE COMPLETED SURVEY MUST BE MAILED TO US BY AUGUST 9, 1991. An addressed, stamped envelope is provided to return the survey. Additional materials should be mailed to the American Indian Law Center, Inc., separately from the survey.
7. **Assistance** - If you need help, have questions about the survey, or need additional information, please call Heidi Estes at (505) 277-5462, or write:

All Tribe Survey
American Indian Law Center, Inc.
P.O. Box 4456 - Station A
Albuquerque, New Mexico 87196
8. **Thanks** for your participation and support of the Study of Tribal and Alaska Native Juvenile Justice Systems. You will receive summary results from us when they are available.

BAC-4410-18

OMB No. 1121-0159

Expiration: 1/31/93

**STUDY OF TRIBAL AND ALASKA NATIVE JUVENILE JUSTICE SYSTEMS
ALASKA NATIVE VILLAGE SURVEY**

Name of Village

(For office use only: |_|_|_|-|_|_|_|)

Name of Person Primarily Responsible for Completing Survey

Mailing Address

P.O. Box, Route, Street

Village/City

State

Zip Code

Telephone Number ()

Title and Major Responsibilities

Department or Agency

CONFIDENTIALITY OF SURVEY

Identifying information from any village or individual will not be released to anyone, either in the final report or by any other means without prior written consent. Each village will be assigned a code number in this survey. The master list of code numbers will be maintained in the project offices, and will not be released. The top page of this survey, with all identifying information, will be removed before the survey is sent to data processing and the only information data processing personnel will see is the coded number. Information from this survey will be presented in aggregate or summary form. A list of villages participating in the study will be issued.

1 2 3 4 5 6 7 8 9 0

OMB No. 1121-0159
Expiration: 1/31/93

**STUDY OF TRIBAL AND ALASKA NATIVE JUVENILE JUSTICE SYSTEMS
ALASKA NATIVE VILLAGE SURVEY**

1. What is the current population of Alaska Native youth aged 10-17 in your village? Please include both youth who are living in the village and those who have a continuing relationship with the village but temporarily are away at school, in residential treatment programs, or visiting. If breakout by sex is not available, please provide totals.

	Males	Females	Total
Number of Native Youth aged 10-17	_____	_____	_____

If statistics are not available, please estimate your total population of Alaska Native youth aged 10-17. _____

2. Who performs law enforcement activities in your village? For each choice, check whether or not they perform law enforcement activities and, if so, whether or not they live in your village.

	Perform Law Enforcement		Check here, if they live in your village.
	Yes	No	
Village Public Safety Officer	_____	_____	_____
Village Police	_____	_____	_____
State Trooper	_____	_____	_____
Village Council Member	_____	_____	_____
Other _____	_____	_____	_____
____ Don't Know			

1-1-1-1-1-1-1-1-1-1

OMB No. 1121-0159

Expiration: 1/31/93

3. What type(s) of court does your village use for juvenile matters? For each type of court, check the best answer. If your village does not use any court for juvenile matters, check "Does Not Apply."

	Yes	No
Tribal or Village Court	___	___
Traditional Dispute Resolution	___	___
State Court System	___	___
Other _____	___	___
___ Does Not Apply, No Court Used		
___ Don't Know		

4. In 1990, how many of your village youth (under 18) were detained in a locked facility while waiting for transportation to State police station or a court hearing? Please estimate if no records available.

Number Detained _____

If your village has a tribal or village court, please continue to question 5. If your village does not have a tribal or village court, please go to question 14 and skip questions 5 to 13.

5. What does your village do when it needs to keep a youth under close supervision while waiting for a court hearing? Please check the best answer for each of the following.

	Yes	No
Place youth in a locked facility in the village, separate from adults.	___	___
Place youth in a locked facility in the village, even if separation from adults is not possible.	___	___
Place youth in custody of his or her family.	___	___
Place youth in custody of a village official, (council member, police officer, judge, etc.)	___	___
___ Don't know		
___ Other, please describe.		

1 2 3 4 5 6 7 8 9 0

OMB No. 1121-0159

Expiration: 1/31/93

6. Please describe any arrangements the village must make to transport a youth to a court hearing. If the village does not make any transportation arrangements, who does make them?

7. Does your village council also serve as the village court? Please circle the answer that best applies.

Yes (go to # 9 and skip 8)

No

Don't Know

8. If your council does not serve as the court, how are judges selected?

Elected

Appointed

Other (please describe)

Don't Know

9. How is your village court funded? Check the best answer for each source.

BIA

Yes

No

Don't Know

Village Funds

Court Fines

Regional Corporation Funds

Volunteer

Other

10. What is the staff the of the village court? Write the number in the appropriate spaces, or check "Don't Know" if appropriate.

Full-Time

Part-Time

Don't Know

Judges

Clerks

Other

1-1-1-1-1-1

OMB No. 1121-0159
Expiration: 1/31/93

11. What types of cases does your village court hear? Please check the best answer for each type of case.

	Yes	No	Don't Know
Indian Child Welfare Act cases transferred from state court	___	___	___
Abuse or Neglect cases	___	___	___
Minor in Need of Supervision or Care cases	___	___	___
Status Offense cases (Children in Need of Aid or Dependent Children)	___	___	___
Delinquency cases	___	___	___
Other _____	___	___	___

12. 1990 statistics on Status Offenders or Children in Need of Aid. These questions refer to minors who came to the attention of the village court in 1990 because of problem behavior that would not be an offense if committed by an adult, e.g., running away, truancy, curfew violation, being "out of control". These minors are called "children in need of aid" or "dependent" children in the Alaska State Children's Code. Circle "Don't Handle" or "Don't Know" if appropriate.

- a. How many were charged with committing a status offense or being a child in need of aid?

_____ Don't Handle Don't Know

- b. How many were found or adjudicated to be status offenders or children in need of aid?

_____ Don't Handle Don't Know

- c. How many received each of the following dispositions?

	Number of Children in Need of Aid	Don't Know
Village provided supervision.	_____	___
Turned over to the State system	_____	___
Other disposition (specify below)	_____	___

• | | | | | • | | | | |

OMB No. 1121-0159
Expiration: 1/31/93

13. **1990 statistics on Delinquents.** These questions refer to minors who came to the attention of the village court in 1990 because of behavior that is a criminal offense if committed by an adult, e.g., assault, burglary, vandalism. Circle "Don't Handle" or "Don't Know" if appropriate.

a. How many were charged with committing a delinquent offense?

_____ Don't Handle Don't Know

b. How many were found or adjudicated to be delinquents?

_____ Don't Handle Don't Know

c. How many received each of the following dispositions?

	Number of Delinquents	Don't Know
Village provided Supervision	_____	_____
Turned over to the State system	_____	_____
Other disposition (specify below)	_____	_____

14. **Who supervises youth living in the village if they are on probation?** You may check more than one source of help if several sources are used.

	Yes	No
State social worker/probation officer	_____	_____
Village social worker/probation officer	_____	_____
Village Public Safety Officer	_____	_____
Village Police	_____	_____
Village Official	_____	_____
State Trooper	_____	_____
Family Member	_____	_____
Other _____	_____	_____
_____ Don't Know		

15. **Does your village have any written ordinances or a code related to juveniles?** Circle the answer that best applies.

Yes (Please enclose a copy.) No Don't Know

1 1 1 1 1 1 1 1 1 1

OMB No. 1121-0159
Expiration: 1/31/93

16. In our discussions with some village officials different types of youth offenses were identified as common problems. Please identify the five that are of most concern in your village and rank them from 1 to 5, with "1" being the most important and "5" being the least important.

_____ assaults on persons	_____ theft
_____ vandalism	_____ curfew violation
_____ alcohol use	_____ drug use
_____ snow machine violations	_____ truancy
_____ breaking and entering	_____ other (please describe)

17. What services are available for alleged or adjudicated delinquents and status offenders or children in need of aid?

- A. For each service listed, please indicate who provides it by circling the number in every appropriate column. If you circle the number for "Other," please give the name of organization.

They are provided by:

<u>Service</u>	<u>Don't Know</u>	<u>Village</u>	<u>Regional Corporation</u>	<u>State</u>	<u>Other</u>	<u>(Name of Organization)</u>
Shelter Care	9	1	2	3	4	_____
Foster Home	9	1	2	3	4	_____
Group Home	9	1	2	3	4	_____
Social Services	9	1	2	3	4	_____
Counseling	9	1	2	3	4	_____
Detox & Treatment	9	1	2	3	4	_____
Special Education	9	1	2	3	4	_____
Other	9	1	2	3	4	_____

(If "Other", please name: _____)

1-1-1-1-1-1-1-1-1-1

OMB No. 1121-0159
Expiration: 1/31/93

- B. If these services are available, but insufficient to meet the needs of your juveniles, please explain why they are not sufficient.

18. What type of training would be helpful for village officials who are responsible for juvenile offenders?
19. Does your village have any programs which you have found to be especially effective with troubled youth? If so, please describe briefly and provide the name, address and telephone number (if available) of a person we can contact for more information.

Please continue to next page.

|_|_|_|-|_|_|_|

OMB No. 1121-0159
Expiration: 1/31/93

Please enclose a copy of any ordinances relating to juveniles and/or the Juvenile or Children's Code of the village. If the village has a Constitution, we would also appreciate a copy of it. If you return a copy of the juvenile/children's code and constitution with this survey, we will reimburse your office \$15.00 for photocopying and postage. If the check should be made out to an organization other than the village, or mailed to an address other than that on the first page, please provide the correct information below:

Check should be made payable to:

Check should be mailed to:

We suggest you photocopy the survey in order to have a record of the information that could prove useful for reporting and funding purposes.

**PLACE THE QUESTIONNAIRE AND ALL MATERIALS
IN THE RETURN ENVELOPE AND MAIL IT BY AUGUST 9, 1991.**

**TRIBAL AND ALASKA NATIVE JUVENILE JUSTICE SYSTEM STUDY
ALASKA NATIVE VILLAGE SURVEY
AMERICAN INDIAN LAW CENTER, INC.
P.O. Box 4456 - Station A
Albuquerque, New Mexico 87196**

**THANK YOU FOR COMPLETING THIS SURVEY.
WE ARE VERY GRATEFUL FOR YOUR ASSISTANCE.**

PUBLIC REPORTING BURDEN FOR THIS COLLECTION OF INFORMATION IS ESTIMATED TO AVERAGE 2 HOURS PER RESPONSE, INCLUDING THE TIME FOR REVIEWING INSTRUCTIONS, SEARCHING EXISTING DATA SOURCES, GATHERING AND MAINTAINING THE DATA NEEDED, AND COMPLETING AND REVIEWING THE COLLECTION OF INFORMATION. SEND COMMENTS REGARDING THIS BURDEN ESTIMATE OR ANY OTHER ASPECTS OF THIS COLLECTION OF INFORMATION INCLUDING SUGGESTIONS FOR REDUCING THIS BURDEN, TO OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, 633 INDIANA AVENUE, NW, WASHINGTON, D.C. 20531; AND TO THE PUBLIC USE REPORTS PROJECTS, 1121-0159, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET, WASHINGTON, D.C. 20503.

STUDY OF TRIBAL AND ALASKA NATIVE JUVENILE JUSTICE SYSTEMS

APPENDIX B

BIBLIOGRAPHY

**STUDY OF TRIBAL AND ALASKA NATIVE
JUVENILE JUSTICE SYSTEMS**

BIBLIOGRAPHY

May 1992

FINAL DRAFT

**PREPARED AND SUBMITTED BY
AMERICAN INDIAN LAW CENTER, INC.
AND
WALTER R. McDONALD & ASSOCIATES INC.**

**Prepared under the Auspices of a Cooperative Agreement between the
U. S. DEPARTMENT OF JUSTICE,
OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION;
THE AMERICAN INDIAN LAW CENTER, INC.; AND
WALTER R. McDONALD & ASSOCIATES, INC.
(Cooperative Agreement No. 90-JN-CX-K002)**

Study of Tribal and Alaska
Native Juvenile Justice Systems

BIBLIOGRAPHY

CONTENTS

I. Juvenile Justice Systems (General)	1
A. Corrections Reform	1
B. Questionnaires and Surveys	3
C. Rural Policing	4
D. Offense Statistics	4
E. Juvenile Offender Profile	4
F. Substance Abuse	5
G. Restitution	5
H. Alternative Education	5
II. American Indians and Alaska Natives in Juvenile Justice System	5
III. American Indian and Alaska Native Youth in Juvenile Justice-Legal Status, Laws, etc.	8
IV. American Indian and Alaska Native Juveniles and the Police	8
V. American Indian and Alaska Native Juveniles and Corrections	8
VI. American Indian and Alaska Native Juvenile Programs and Services	9
A. Diversion	9
B. Counseling	9
C. Program Evaluation	9
D. Proposed Programs	9
E. Restitution	10
VII. American Indian and Alaska Native (General)	10
A. Health and Mental Health	10
B. Substance Abuse	11
C. Demographics	13
D. Judicial System	13
E. State and Federal Policy	14
F. Research Guides	15
VIII. General (Non-Juvenile Justice References)	16
A. Corrections Reform	16
B. Questionnaires and Surveys	16
C. Rural Policing	17
D. Offense Statistics	17
E. Substance Abuse	18
F. Mental Health	19
G. Restitution	19

Bibliography with Abstracts

IX. Juvenile Justice Systems (General)	20
A. Corrections Reform	20
B. Questionnaires and Surveys	22
C. Rural Policing	24
D. Offense Statistics	24
E. Juvenile Offender Profile	24
F. Substance Abuse	25
X. American Indians and Alaska Natives in Juvenile Justice System	25
XI. American Indian and Alaska Native Youth in Juvenile Justice System-Legal Status, Laws, etc.	31
XII. American Indians and Alaska Native Juveniles and the Police	31
XIII. American Indian and Alaska Native Juveniles and Corrections	32
XIV. American Indian and Alaska Native Juvenile Programs and Services	32
A. Diversion	32
B. Counseling	33
C. Program Evaluation	34
D. Proposed Programs	35
E. Restitution	36
XV. American Indian and Alaska Native (General)	37
A. Substance Abuse	37
B. Demographics	37
C. Judicial System	37
XVI. General (Non-Juvenile Justice References)	38
A. Corrections Reform	38
B. Rural Policing	38
C. Offense Statistics	39
XVII. Cases	40
XVIII. Statutes and Regulations	44
XIX. Bibliographies	45
XX. Author Index	48

Note: Sections IX through XVI and Section XIX include abstracts. Acknowledgements are made to the National Criminal Justice Reference Center Database (NCJRS) and the DIALOG Database when appropriate. The databases were used solely to obtain bibliographic references.

Study of Tribal and Alaska
Native Juvenile Justice Systems

BIBLIOGRAPHY

I. Juvenile Justice Systems (General)

A. Corrections Reform

- Ainsworth, Janet E. "Re-imaging Childhood and Reconstructing The Legal Order: The Case for Abolishing The Juvenile Court." *North Carolina Law Review* 69, no. 5 (June 1991): 1083-1133.
- American Correctional Association and Commission on Accreditation for Corrections. *Standards for Juvenile Detention Facilities*. Third edition. American Correctional Association in cooperation with the Commission on Accreditation for Corrections, May 1991.
- Arthur, Lindsay, and William A. Gauger. *Disposition Hearings: The Heartbeat of the Juvenile Court*. Juvenile Justice Textbook Series. Reno, NV: National Council of Juvenile Court Judges, 1974.
- Austin, James, Karen Joe, Barry Krisberg, and Patricia A. Steele. "The Impact of Juvenile Court Sanctions: A Court That Works." National Council on Crime and Delinquency. *NCCD Focus* March 1990.
- Baron, Roger, and Floyd Feeney. *Preventing Delinquency Through Diversion. The Sacramento County Probation Department 601 Diversion Project. A First Year Report*. University of California at Davis: Center on Administration of Criminal Justice, May 1972.
- Bell, James. "Advocates Persevere in Jail Removal Efforts." *Youth Law News*. 11, no. 2 (March-April 1990): 9-11.
- Blackmore, John, Marci Brown, and Barry Krisberg. *Juvenile Justice Reform: The Bellwether States*. Ann Arbor, MI: Center for the Study of Youth Policy, The University of Michigan School of Social Work, May 1988.
- Boxerman, Lawrence A. *Juvenile Justice Information Systems: 1 2 3. A National Model*. Reno, NV: National Council of Juvenile and Family Court Judges, 1977.
- Butts, Jeffrey A., and Samuel M. Streit. *Youth Corrections Reform: The Maryland and Florida Experience*. Ann Arbor, MI: Center for the Study of Youth Policy, University of Michigan School of Social Work, 1988.
- Camp, G., and C. Camp. *The Corrections Yearbook*. South Salem, NY: Criminal Justice Institute, 1988.
- Community Research Forum. *Prohibiting Secure Juvenile Detention: Assessing the Effectiveness of National Standards Detention Criteria*, 1980.
- Department of Justice. Law Enforcement Assistance Administration. *A Comparative Analysis of Standards and State Practices. Pre-Adjudication and Adjudication Processes*. Volume 7 (of 9). Working Papers of the National Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention. Washington, D.C.: U.S. Dept. of Justice, Law Enforcement Assistance Administration, 1977.
- Department of Justice. Law Enforcement Assistance Administration. *First Comprehensive Plan for Federal*

Juvenile Delinquency Programs. Washington, D.C.: U.S. Dept. of Justice. Law Enforcement Assistance Administration, March 1, 1976.

Department of Justice. Law Enforcement Assistance Administration. *Youth Advocacy*. Washington, D.C.: U.S. Dept. of Justice. Law Enforcement Assistance Administration, October 1979.

Department of Justice. National Institute for Juvenile Justice and Delinquency Prevention. *Report of the Advisory Committee to the Administrator on Standards for the Administration of Juvenile Justice*. Standards on Adjudication. General Implementation Plan. Washington, D.C.: U.S. Dept. of Justice. National Institute for Juvenile Justice and Delinquency Prevention, September 30, 1976.

Department of Justice. Office of Juvenile Justice and Delinquency Prevention. *OJJDP Fiscal Year 1989 Program Plan*. Washington, D.C.: U.S. Dept. of Justice. Office of Juvenile Justice and Delinquency Prevention, 1989.

Department of Justice. Office of Juvenile Justice and Delinquency Prevention. *Removal of Juveniles from Adult Jails and Lock-ups: A Review of State Approaches and Policy Implications*. Washington, D.C.: U.S. Dept. of Justice. Office of Juvenile Justice and Delinquency Prevention, March 1981.

Department of Justice. Office of Juvenile Justice and Delinquency Prevention. *Report on Missing and Exploited Children: Progress in the 80's*. Washington, D.C.: U.S. Dept. of Justice. Office of Juvenile Justice and Delinquency Prevention, 1987.

Department of Justice. Office of Juvenile Justice and Delinquency Prevention. *Standards in the Administration of Juvenile Justice*. U.S. Dept. of Justice. Office of Juvenile Justice and Delinquency Prevention. Washington, D.C.: GPO, 1980.

Finkelstein, M. Marvin, Elyn Weiss, Stuart Cohen, and Stanley Z. Fisher. *Prosecution in the Juvenile Courts. Guidelines for the Future*. Washington, D.C.: U.S. Dept. of Justice. National Institute of Law Enforcement and Criminal Justice. Monograph, December 1973.

Garff, Reginal W. *Handbook for New Juvenile Court Judges*. Juvenile Justice Textbook Series. Reno, NV: National Council of Juvenile Court Judges, 1973.

Guernsey, Carl E. *Handbook for Juvenile Court Judges*. Juvenile Justice Textbook Series. Reno, NV: National College of Juvenile Justice. National Council of Juvenile and Family Court Judges, 1986.

Hutzler, John L., and Howard N. Snyder. *Guidelines for the Coding of Data Elements Commonly Found in Juvenile Court Information Systems*. Pittsburgh, PA: National Center for Juvenile Justice, 1986.

Ito, Jeanne A. *Measuring the Performance for Different Types of Juvenile Courts*. Williamsburg, VA: National Center for State Courts, March 1984.

Jenkins, Richard L., and Waln K. Brown, eds. *The Abandonment of Delinquent Behavior. Promoting the Turnaround*. New York, NY: Praeger Publishers, 1988.

Kannensohn, M., R. Harris, D. Gabriel, J. Uppal, W. Lyday, and S. Clapsaddle. *Status Offenders: A Working Definition*. Lexington, KY: The Council of State Governments, September 1975.

Lambert, David. "Few Procedural Protections. Growing Numbers of Youth Committed to Psychiatric Hospitals." *Youth Law News* 11, no. 2 (March-April 1990).

Maloney, Dennis, Dennis Romig, and Troy Armstrong. *Juvenile Probation: The Balanced Approach*. Juvenile Justice Textbook Series. Reno, NV: National College of Juvenile and Family Law. National Council of Juvenile and Family Court Judges, 1989.

- Margolis, Richard J. *Out of Harm's Way. The Emancipation of Juvenile Justice*. Edna McConnell Clark Foundation, 1988.
- McGee, Charles M. "Measured Steps Toward Clarity and Balance in the Juvenile Justice System." *Juvenile and Family Court Journal* 40, no. 3 (1989): 1-23.
- National Council of Juvenile and Family Court Judges. *Metropolitan Court Judges Committee Report. Deprived Children: A Judicial Response. 73 Recommendations*. National Council of Juvenile and Family Court Judges, 1986.
- Olson, Jay, and George H. Shepard. *Intake Screening Guides. Improving Justice for Juveniles*. Washington, D.C.: U.S. Dept. of Health, Education and Welfare. Office of Youth Development, February 1975.
- Ross, Robert R. "Time to Think: A Cognitive Model of Offender Rehabilitation and Delinquency." Research Summary. Ottawa, Ontario: University of Ottawa. Department of Criminology, February 1990.
- Ross, Robert R. and Bambi D. Ross. "Delinquency Prevention Through Cognitive Training." *Educational Horizons* 67, no. 4, (Summer 1989): 124-130.
- Scott, S. F. "Outward Bound: An Adjunct to the Treatment of Juvenile Delinquents: Florida's STEP Program." *New England Journal on Criminal and Civil Confinement* 11, no. 2 (Summer 1985): 420-436.
- Social Science Research Institute. *National Evaluation Design for the Deinstitutionalization of Status Offender Program*. University of Southern California: Social Science Research Institute. Deinstitutionalization of Status Offender Evaluation Project Staff, n.d.
- Traitel, Richard B. *Dispositional Alternatives in Juvenile Justice: A Goal-Oriented Approach*. Juvenile Justice Textbook Series. Reno, NV: National Council of Juvenile Court Judges, 1974.
- Wydra, Donald E. "Louisiana: Making Major Strides Through Innovative Juvenile Programs." *Corrections Today* 28, no. 2 (April 1987): 128-131.
- B. Questionnaires and Surveys**
- Beck, Allen J., Susan A. Kline, and Lawrence Greenfeld. *Survey of Youth in Custody 1987*. Washington, D.C.: U.S. Dept. of Justice. Bureau of Justice Statistics, 1988.
- Bercovitz, Jeffery. "Juveniles in Indiana's Jails." *Res Gestae* 32, no. 2 (August 1989): 58-62.
- Department of Justice. Law Enforcement Assistance Administration. *Prosecution and Defense. A Comparative Analysis of Standards and State Practices*. Volume 8 (of 9). Working Papers of the National Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention. Washington, D.C.: U.S. Dept. of Justice. Law Enforcement Assistance Administration, n.d.
- Department of Justice. Office of Juvenile Justice and Delinquency Prevention. *The Police and Missing Children: Findings from a National Survey*. Washington, D.C.: U.S. Dept. of Justice. Office of Juvenile Justice and Delinquency Prevention, 1988.
- McCune, Blair. "An Overview of Juvenile Delinquency Law in Alaska." *Alaska Law Review* 8, no. 1 (June 1991): 1-26.
- National Center for State Courts. *Study of Structural Characteristics, Policies and Operational Procedures in*

Metropolitan Juvenile Courts. Volume I. Williamsburg, VA: National Center for State Courts, n.d.

National Center for State Courts. *Study of Structural Characteristics, Policies and Operational Procedures in Metropolitan Juvenile Courts. Volume II. Appendices.* Williamsburg, VA: National Center for State Courts, n.d.

Search Group: The National Consortium for Justice Information and Statistics. *Survey of States: Report of Juvenile Fingerprinting Requirements.* Sacramento, CA: Search Group, Jan, 1990.

Wisconsin Council on Criminal Justice. *Juvenile Justice Standards and Goals, Final Report.* Madison, WI: Wisconsin Council on Criminal Justice, 1975.

Wisconsin Council on Criminal Justice. *Special Committee on Criminal Justice Standards and Goals, Final Report.* Madison, WI: Wisconsin Council on Criminal Justice, 1977.

C. Rural Policing

Department of Justice. Office of Juvenile Justice and Delinquency Prevention. "Juvenile Courts Vary Greatly in How They Handle Drug and Alcohol Cases." *NJI Reports* 215 (July/Aug. 1989): 10-13.

Department of Justice. Office of Juvenile Justice and Delinquency Prevention. *Juvenile Detention and Correctional Facility Census, 1986-1987: Public Facilities.* Washington, D.C.: U.S. Dept. of Justice. Office of Juvenile Justice and Delinquency Prevention, 1988.

Izzo, Rhena L., and Robert R. Ross. "Meta-analysis of Rehabilitation Programs for Juvenile Delinquents. A Brief Report." *Criminal Justice and Behavior* 17, no. 1 (March 1990): 134-142.

D. Offense Statistics

Lerman, Paul. *Counting Youth in Trouble Living Away From Home: Recent Trends and Counting Problems.* Ann Arbor, Michigan: Center for the Study of Youth Policy, The University of Michigan School of Social Work, 1990.

E. Juvenile Offender Profile

Alaska Department of Health and Social Sciences. *1988 Juvenile Justice and Delinquency Prevention and Compliance Report.* Prepared by David L. Perry. Anchorage, AK: University of Anchorage Alaska, 1990.

Allen-Hagen, Barbara. "Children in Custody: Public Juvenile Facilities, 1987." *Juvenile Justice Bulletin* (October 1988).

Allen-Hagen, Barbara. "Public Juvenile Facilities. Children in Custody 1989." *National Institute of Justice Reports.* No. 223 (January/February 1991): 20-23.

The Carnegie Council on Adolescent Development. "Adolescence: Path to a Productive Life or a Diminished Future?" The Carnegie Council on Adolescent Development: Work in Progress. *Carnegie Quarterly.* 35, no. 1,2 (Winter/Spring 1990): 1-13.

Department of Justice. Office of Juvenile Justice and Delinquency Prevention. *Child Abuse: Prelude to Delinquency? Findings of a Research Conference Conducted by the National Committee for Prevention of Child Abuse.* Washington, D.C.: U.S. Dept. of Justice. Office of Juvenile Justice and Delinquency Prevention, September 1986.

Eddison, L., ed. *Violent Juvenile Crime: What Do We Know About It and What Can We Do About It?* Ann Arbor, MI: Center for the Study of Youth Policy, The University of Michigan School of Social Work, 1988.

Huizinga, David, Rolf Loeber, and Terence P. Thornberry. *Program of Research on the Causes and Correlates of Delinquency*. Washington, D.C.: U.S. Dept. of Justice. Office of Juvenile Justice and Delinquency Prevention, n.d.

Mildon, M. R., ed. "Preliminary Report from the National Task Force on Juvenile Sexual Offending 1988." Reno, NV: *Juvenile and Family Court Journal*. 39, no. 2 (1988): 1-67.

New Mexico Youth Authority. *New Mexico Youth Authority 79th Fiscal Year Annual Report*. For the 78th Fiscal Year July 1, 1989 through June 30, 1990. Santa Fe, NM: New Mexico Youth Authority, n.d.

Nimick, Ellen H. "Juvenile Court Property Cases." *Juvenile Justice Bulletin*. *OJJDP Update on Statistics*. Washington, D.C.: U.S. Dept. of Justice. Office of Juvenile Justice and Delinquency Prevention, November 1990.

Schwartz, Ira M., ed. "Special Issue: Children in Jails." *Crime and Delinquency* 34, no. 2 (April 1988).

F. Substance Abuse

National Advisory Committee for Juvenile Justice and Delinquency Prevention. *Standards for the Administration of Juvenile Justice*. Washington, D.C.: U.S. Dept. of Justice, 1980.

U.S. Congress. House. Subcommittee on Human Resources of the Committee on Ways and Means. *Impact of Substance Abuse on State and Local Child Welfare Systems*. 102nd Cong., 1st sess., April 30, 1991.

G. Restitution

Liability and Legal Issues in Juvenile Restitution. Bethesda, MD: Restitution Education, Specialized Training & Technical Assistance Program, May 1990.

H. Alternative Education

Department of Justice. Law Enforcement Assistance Administration. *Alternative Education Options*. Washington, D.C.: Dept. of Justice. Law Enforcement Assistance Administration, 1979.

Department of Justice. Office of Justice and Delinquency Prevention. *Program Announcement: Prevention of Delinquency through Alternative Education*. Washington, D.C.: U.S. Dept. of Justice. Office of Justice and Delinquency Prevention, February 1980.

Hawkins, J. David, and John S. Wall. *Reports of the National Juvenile Justice Assessment Centers. Alternative Education: Exploring the Delinquency Prevention Potential*. Washington, D.C.: U.S. Dept. of Justice. Office of Juvenile Justice and Delinquency Prevention, June 1980.

II. American Indians and Alaska Natives in Juvenile Justice System

American Indian Law Center, Inc. *Indian Child Welfare Impact and Improvement Under P.L. 95-608 and P.L.*

96-272. Albuquerque, NM, American Indian Law Center, Inc., 1985.

American Indian Law Center, Inc. *Model Children's Code*. Albuquerque, NM: American Indian Law Center, Inc., 1977.

American Indian Law Center, Inc. *Model Children's Code and Children's Court Rules*. (2nd Ed.) Albuquerque, NM: American Indian Law Center, Inc., 1981.

Babcock, William T. *Youthful Offenders Project: Report to Canadian Aboriginal Justice Council*. Ottawa, Ontario: Canadian Aboriginal Justice Council, 1978.

Commission on State-Tribal Relations. *State-Tribal Agreements: A Comprehensive Study*. Albuquerque, NM: American Indian Law Center, Inc., 1981.

Cronk, Shanler D., Joanne Jankovic, and Ronald K. Green. *Criminal Justice in Rural America*. Washington, D.C.: U.S. Dept. of Justice. Office of Development, Testing and Dissemination, 1982.

Department of Justice. Office of Juvenile Justice and Delinquency Prevention. "Program Announcement; American Indian and Alaskan Native Youth: Study of Tribal and Alaskan Native Justice Systems; Notice," *Federal Register* 54, no. 98 (Tuesday, May 23, 1989): 22398-22404.

Donovan, James P. *Adult and Juvenile Detention Standards*. Washington, D.C.: U.S. Dept. of Interior. Division of Law Enforcement Services, n.d.

Faust, F. L. "Dimensions of Delinquency Tolerance: Differential Tolerance of Juvenile Delinquent Behavior By Adult Members of Different Socio-Economic Classes and Racial Groups." Ph.D. diss., Ann Arbor, MI: University Microfilms, 1970.

Feld, Barry C. *The Right to Counsel in Juvenile Court: Fulfilling Gault's Promise*. Ann Arbor, MI: Center for the Study of Youth Policy, The University of Michigan School of Social Work, 1989.

Forslund, Morris A., and Virginia A. Cranston. "A Self-Report Comparison of Indian and Anglo Delinquency in Wyoming." *Criminology: An Interdisciplinary Journal* 13, no. 2 (August 1975): 193-198.

French, Laurence, ed. *Indians and Criminal Justice*. Montclair, NJ: Allanheld, Osmun and Company, 1982.

Griffiths, C. T., and C. P. LaPrairie. "Native Indian Juvenile Delinquency in a Northwest British Columbia Community: A Summary of the Research and It's Policy Implications." Burnaby, British Columbia: Department of Criminology, Simon Fraser University, 1982. Unpublished Paper.

Griffiths, C. T., and L. F. Weafer. *Native North Americans: Crime, Conflict and Criminal Justice*, 2d ed. A Joint Publication of the Criminology Research Center, Simon Fraser University and The Northern Conference, 1984.

Harris, Anthony R. "Race, Commitment to Deviance, and Spoiled Identity." *American Sociological Review* 41 (1976): 432-442.

Holzbauer, Ida. *Omaha Juvenile Justice Program: Final Evaluation Report*. Lincoln, NE: Nebraska Commission on Law Enforcement and Criminal Justice, 1976.

Kickingbird, Kirke. "In Our Image..., After Our Likeness: the Drive for the Assimilation of Indian Court Systems." *American Criminal Law Review* 13, no. 4 (Spring 1976): 675-700.

LaPrairie, C. P., and C. T. Griffiths. "Native Indian Juvenile Delinquency: A Review of Recent Findings."

Canadian Legal Aid Bulletin 4, no. 1 (1982): 39-46.

Linkages: For Indian Child Welfare Programs. Washington, D.C.: TCI Incorporated, 1988.

May, Philip A. "Contemporary Crime and the American Indian: A Survey and Analysis of the Literature." *Plains Anthropologist* 27 (1982): 225-238.

McFarlane, George. *The Probation Officer's Study and Treatment of Delinquent Youth*. Toronto, Ontario: Department of the Attorney General, Province of Ontario, 1967.

Menezes, Julie. "Legal Perspectives on Contemporary Social Issues: Decade of Adjustment." In *Young Offenders: Another Look At Individualized Justice*, edited by Larry C. Wilson, 146-172. Toronto, Ontario: Butterworths, 1980.

Miller, Frank C., and D. D. Caulkins. "Chippewa Adolescents: A Changing Generation." *Human Organization* 23, no. 2 (1964): 150-159.

Minnes, Mythra. "The Relationship of The Social Structure of An Indian Community To Adult and Juvenile Delinquency." *Social Forces* 41, no. 4 (1963): 395-403.

Mudd, J. E. "Indian Juveniles and Legislative Delinquency In Montana." *Montana Law Review* 33 (1972): 233-254.

National American Indian Court Judges Association, Inc. *Courts and the Juvenile Offender*. National American Indian Court Judges Association, Inc. Family Law/Child Welfare Training Program, 1977.

National Indian Justice Center, Inc. "Tribal Court Probation." *Legal Education Series*. Petaluma, CA, 1987.

National Minority Advisory Council on Criminal Justice. "The Impact of Crime and Criminal Justice on American Indians." In *The Inequality of Justice: A Report on Crime and the Administration of Justice in the Minority Community*, 78-111. Washington, D.C.: A. L. Nullum and Associates, 1980.

Olney, Orville N., and David H. Getches. *Indian Courts and the Future. Appendix I. Compilation of Findings From Reservation Surveys. Report of the NAICJA Long Range Planning Project*. The National American Indian Court Judges Association, Inc., 1978.

Patterson, J. "Education, Jurisdiction, and Inadequate Facilities as Causes of Juvenile Delinquency Among Indians." *North Dakota Law Review* 48 (1972): 661-694.

Price-Cohen, Cynthia. "Juvenile Justice Provisions of the Draft Convention on the Rights of the Child." *New York Law School Journal of Human Rights* 7 (1989): 1-15.

Province of Alberta. *Juvenile Delinquency Report*. Edmonton, Alberta: Department of Social Development, March, 1970.

Steiger, John L., and Richard A. Doyan. *Juvenile Justice In Transition: Changing Philosophy, Changing Laws*. Winnipeg, Manitoba: University of Winnipeg, 1979.

U.S. Congress. Senate Committee. *Juvenile Delinquency Among Indians*. Washington, D.C.: Bureau of Indian Affairs, United States Congress Senate Committee on the Judiciary Subcommittee to Investigate Juvenile Delinquency Report, 1955.

Weis, Joseph. *A Prevention Program Report*. Seattle, WA: Center For Law and Justice, University of Washington, 1981.

Woods, R. G., and A. M. Harkins. *Rural and City Indians in Minnesota Prisons*. Minnesota, MN: University of Minnesota Training Center for Community Programs, 1970.

Wyman, Max. *Comments on Juvenile Delinquency*. Edmonton, Alberta: Board of Review, Provincial Courts, Province of Alberta, 1977.

III. American Indian and Alaska Native Youth in Juvenile Justice-Legal Status, Laws, etc.

American Indian Law Center, Inc. *State-Tribal Agreements: A Comprehensive Study*. Albuquerque, NM, American Indian Law Center, Inc., 1981.

Clinton, R. "Development of Criminal Jurisdiction Over Indian Lands: the Historical Perspective." *Arizona Law Review* 17, no. 4 (1975): 951-963.

Clinton, R. "State Power Over Indian Reservations: A Critical Comment on Burger Court Doctrine." *South Dakota Law Review* 26 (1981): 434-446.

Goldberg, C. "Public Law 280: State Jurisdiction Over Reservation Indians." *American Indian Treatises Publication*. Series 1. Los Angeles, CA : American Indian Culture and Research Center, 1975.

U.S. Congress. Senate. Select Committee on Indian Affairs. *Jurisdiction on Indian Reservation: Hearings on S. 3092*. 98th Cong., 2d sess., 1985.

U.S. Congress. Senate. Select Committee on Indian Affairs. *Tribal Court Systems and Indian Civil Rights Act: Hearings*. 100th Cong., 2d sess., 1988.

IV. American Indian and Alaska Native Juveniles and the Police

Cockerham, W. C., and M. A. Forslund. "Attitudes Toward The Police Among White and Native Indian Youth." *American Indian Law Review* 3, no. 2 (1975): 419-428.

Winfree, L. Thomas, and Curt Taylor Griffiths. "The Determinants of Adolescent Attitudes Toward The Police: A Survey of High School Students." In *Juvenile Delinquency: Little Brother Grows Up*, edited by Theodore Ferdinand, 79-99. Beverly Hills, CA: Sage Publications, 1977.

V. American Indian and Alaska Native Juveniles and Corrections

Abram, Linda. *Children In Federal Custody: A Preliminary Report to the Office of Juvenile Justice and Delinquency Prevention*. Washington, D.C.: National Indian Library, n.d.

American Correctional Association. *Juvenile and Adult Correctional Departments, Institutions, Agencies, and Paroling Authorities - United States and Canada*. College Park, MD: American Correctional Association, 1977.

Curley, W. A., and J. Newbauer. *Wisconsin Division of Corrections - Residents In Wisconsin Juvenile Corrections Institutions on December 31, 1978, with Five-Year Trends for 1974-1978*. Madison, WI: State of Wisconsin, Department of Health and Social Services, Division of Corrections, 1979.

Dinges, N. G., and A. R. Hollerbeck. "The Effect of Instructional Set on The Self-Esteem of Navajo Children." *Journal of Social Psychology* 104, no. 1 (1978): 9-13.

Parker, A. "Delinquency and Tribal Courts in Montana." *American Indian Culture Center* 3, no. 1 (1971-1972): 3-6.

Russell, M. S. *Children In Custody: Advance Report of the Juvenile Detention and Correctional Facility Census of 1975*. Washington, D.C.: U.S. Dept. of Justice. Law Enforcement Assistance Administration, 1977.

VI. American Indian and Alaska Native Juvenile Programs and Services

A. Diversion

Piccuto, D. *Comprehensive San Carlos Apache Juvenile Delinquency Prevention Program*. Washington D.C.: U.S. Dept. of Justice, 1973.

B. Counseling

Barton, William H., J. A. Butts, C. R. Stromberg, R. S. Weaver, I. M. Schwartz, and F. Orlando. *Programs for Serious and Violent Juvenile Offenders*. Ann Arbor, MI: Center for the Study of Youth Policy, The University of Michigan School of Social Work, 1989.

Blue, A. W. *Child Care Workers Program of Saskatchewan. Indian Residences. Report to Department of Indian Affairs*. Saskatoon, Saskatchewan: Indian and Northern Education, University of Saskatchewan, 1972.

Pourier, James E. "Rehabilitation Project in Juvenile Delinquency." Pine Ridge, SD: Statement of Grant Award, 1970-1971.

Youngman, G., and M. Selongei. "Counseling the American Indian Child." *Elementary School Guidance and Counselling* 8, no. 4 (May 1974): 273-277.

C. Program Evaluation

Department of Justice. Office of Justice Programs. *Fiscal Year 1990 Program Plan*. Washington, D.C.: U.S. Dept. of Justice. Office of Justice Programs, 1990.

National Academy of Public Administration. *Survey of Indian Detention Facilities*. Washington, D.C.: Dept. of Interior, 1988.

D. Proposed Programs

Klienfeld, Judith. "Getting It Together at Adolescence: Case Studies of Positive Socializing Environments for Eskimo Youth." In *New Directions in Prevention Among American Indian and Alaska Native Communities*, edited by Spero M. Manson, 341-367. Portland, OR: National Center for American Indian and Alaska Native Health Research, 1982.

Loucks, Bryan. "Preliminary Responses to the Ontario Consultation Paper on Implementing Bill C-61 The Young Offenders Act." Toronto, Ontario: Ontario Native Council on Justice, 1982.

"Project Nak-nu-we-sha: A Preventive Intervention in Child Abuse and Neglect Among a Pacific Northwest Indian Community." In *New Directions in Prevention Among American Indian and Alaska Native Communities*, edited by Spero M. Manson, 233-251. Portland, OR: National Center for American Indian

and Alaska Native Health Research, 1982.

Red Horse, Yvonne. "A Cultural Network Model: Perspectives for Adolescent Services and Paraprofessional Training." In *New Directions in Prevention Among American Indian and Alaska Native Communities*, edited by Spero M. Manson, 173-188. Portland, OR: National Center for American Indian and Alaska Native Health Research, 1982.

Shore, James H., and George Keepers. "Examples of Evaluation Research in Delivering Preventive Mental Health Services to Indian Youth." In *New Directions in Prevention Among American Indian and Alaska Native Communities*, edited by Spero M. Manson, 325-340. Portland OR: National Center for American Indian and Alaska Native Health Research, 1982.

E. Restitution

Beck-Zierdt, Nathaniel. "Tricounty Juvenile Restitution Program." St. Paul, MN: Crime Control Planning Board Research and Evaluation Unit, 1980. Unpublished.

Griffith, William R. *Restitution or Rebate: The Issue of Job Subsidies in Juvenile Restitution Projects*. Eugene, OR: Institute of Policy Analysis, 1983.

Schneider, Anne L. "Restitution and Recidivism Rates of Juvenile Offenders: Results From Four Experimental Studies." *Criminology* 24, no. 3 (August, 1986): 533-552.

Schneider, Anne, ed. *Guide to Juvenile Restitution Programs*. Washington, D.C.: GPO, 1985.

Schneider, Anne, and Peter Schneider. "A Comparison of Programmatic and 'Ad Hoc' Restitution in Juvenile Courts." *Justice Quarterly* 1, no. 4 (December, 1984): 529-548.

Schneider, Anne, and Jean Shumway Warner. "The Role of Restitution in Juvenile Justice Systems." *Yale Law and Policy Review*, 5, no. 2 (1987): 382-401.

Schneider, Peter R., and Anne L. Schneider. "Restitution Requirements for Juvenile Offenders: A Survey of Practices in American Juvenile Courts." *Juvenile Justice Journal* 18 (1977): 43-56.

Schneider, Peter R., Anne L. Schneider, William Griffith, and Michael Wilson. "Two Year Report on the National Evaluation of Juvenile Restitution Initiative: An Overview of Program Performance." National Criminal Justice Reference Service. Unpublished.

Warner, Jean, Vincent Burke, and Anne L. Schneider. *Directory of Juvenile Restitution Programs*. National Criminal Justice Reference Service, 1987.

VII. American Indian and Alaska Native (General)

A. Health and Mental Health

American Indian Law Center, Inc. *Block Grants and the State-Tribal Relationship. Part II. Interaction of States and Tribes in Administering Health and Human Services Block Grants*. Albuquerque, NM: American Indian Law Center, Inc. Commission on State-Tribal Relations, April 1984.

Berlin, Irving N. "Effects of Changing Native American Cultures on Child Development" *Journal of Community Psychology* 15 (July 1987): 299-306.

- Boyum, William. "Health Care: An Overview of the Indian Health Service." *American Indian Law Review* 14, no. 2 (1989): 241-267.
- Department of the Interior and the Department of Health and Human Services. *Moving Toward Self-Sufficiency for Indian People: Accomplishments 1983-84: An Interdepartmental Report*. Washington, D.C.: U.S. Dept. of the Interior, Office of the Secretary, 1984.
- General Accounting Office. *Indian Health Service. Funding Based on Historical Patterns, Not Need*. GAO/HRD-91-5. Washington, D.C.: G.A.O. Human Resource Division. Report to Congressional Requesters, February 21, 1991.
- Guy, Elmer. "Vocational Rehabilitation Services for American Indians." *Osers News in Print*, 3, no. 4 (Spring 1991): 10-15.
- May, Philip A., Carol C. Lujan, Lemyra Debruyne, and Michael E. Bird. "Profile of Abused and Neglected Indian Children in the Southwest." *Child Abuse and Neglect: The International Journal* 13, no. 4 (1989): 449-461.
- McMahon, David H. *Suicide Behavior in Three Native American Boarding Schools*. Indian Health Service. Injury Prevention Fellowship, May 3, 1991.
- Navajo Nation. *Navajo Tribal Education Policies. Approved November 14, 1984 by the Navajo Tribal Council*. Windowrock, AZ: Navajo Nation, 1984.
- Save the Children. *The Indian Family-Foundation for the Future. Report of the National Indian Child Conference*. (3rd), May 17-12, 1981. Rockville, MD: Indian Health Service (PHS/HSA) and Albuquerque, NM: Save the Children, 1981.
- Swinomish Tribal Mental Health Project. *A Gathering of Wisdoms. Tribal Mental Health: A Cultural Perspective*. LaConner, WA: Swinomish Tribal Community, 1991.
- Tafoya, Nadine W. *American Indian History: A Perspective for Effective Mental Health Treatment Among American Indian Tribes*, June 1990.
- U.S. Department of Health and Human Services. Division of Program Statistics. *Indian Health Service. Regional Differences in Indian Health*. 1990. Washington, D.C.: U.S. Dept. of Health and Human Services. Division of Program Statistics, n.d.
- University of Colorado Health Sciences Center. "American Indian and Alaska Native Mental Health Research." Denver, CO: University of Colorado Health Sciences Center. Department of Psychiatry. *The Journal of the National Center*, Special Issue. 1, no. 1 (June 1987).

B. Substance Abuse

- American Indian Policy Review Commission. *Report on Alcohol and Drug Abuse: Final Report to the American Indian Policy Review Commission. Task Force Eleven: Alcohol and Drug Abuse*. Washington, D.C.: GPO, 1976.
- The Indian Bar Association of New Mexico and the National Judicial College. *Judicial Branch of the Navajo Nation. Inter-Judicial Symposium: Substance Abuse and Addictions in American Indians--Implications for Tribal, State and Federal Courts*. Co-Sponsored by: The Indian Bar Association of New Mexico and the National Judicial College in Reno, Nevada, September 14, 1990.

- Kusserow, Richard P. *Indian Health Service Youth Alcohol and Substance Abuse Programs*. Washington, D.C.: Dept. of Health and Human Services, Office of the Inspector General, April 1991.
- Martin, Kallen M. *Guidelines on How to Perform a Native Community Drug and Alcohol Needs Assessment Study*. Ontario, Canada: St. Regis, Drug and Alcohol Division, 1986.
- Masis, Kathleen B. *Fetal Alcohol Syndrome Prevention on the Navajo Reservation With Attention to the Role of the Judicial System*. Tuba City, AZ: Tuba City FAS Prevention Program, Navajo Area Indian Health Service, n.d.
- Mason, Velma Garcia. *What Life Will We Make for Our Children?* Washington, D.C.: National Institute on Drug Abuse, Multicultural Drug Abuse Prevention Resource Center, 1980.
- May, Philip A. "Alcohol Abuse and Alcoholism Among American Indians: An Overview," Chapter 5 in *Alcoholism in Minority Populations*, edited by Thomas D. Watts and Roosevelt Wright, Jr. Reprint. Springfield, IL: Charles C. Thomas, Publisher, 1989.
- May, Philip A. "Alcohol and Drug Misuse Prevention Programs for American Indians: Needs and Opportunities." *Journal of Studies on Alcohol* 47, no. 3 (May 1986): 187-195.
- May, Philip A. *Healing the System. A Public Health Perspective on Potential Directions for Policy and Action in Halting the Alcohol Abuse Epidemic in Northwest New Mexico and Northeast Arizona*. Presented as a White Paper to the Regional Conference on Substance Abuse. Gallup, NM: New Mexico Council of Governments, August 29-31, 1990.
- May, Philip A. "Motor Vehicle Crashes and Alcohol Among American Indian and Alaskan Natives." *The Surgeon General's Workshop in Drunk Driving: Background Papers* (1989): 207-223.
- May, Philip A., and Karen J. Hymbaugh. "A Macro-Level Fetal Alcohol Syndrome Prevention Program for Native Americans and Alaska Natives: Description and Evaluation." *Journal of Studies on Alcohol* 50, no. 6 (Nov. 6, 1989): 508-518.
- May, Philip A., and Karen J. Hymbaugh. "A Pilot Project on Fetal Alcohol Syndrome Among American Indians." *Alcohol Health & Research World* 7, no. 2 (Winter 1982/83): 3-9.
- May, Philip A., Karen J. Hymbaugh, Jon M. Aase, and Jonathan M. Samet. "Epidemiology of Fetal Alcohol Syndrome Among American Indians of the Southwest." *Social Biology* 30, no. 4 (1983): 374-387.
- National Clearinghouse for Alcohol and Drug Information. Office for Substance Abuse Prevention. "Alcohol and Other Drug Problems Are A Major Concern in Native American Communities." *The Fact Is...* MS392. Rockville, MD: U.S. Dept. of Health and Human Services, Alcohol, Drug Abuse, and Mental Health Administration, September 1989.
- National Institute on Drug Abuse. *Drug Program Report: American Indian Training Initiatives*. Rockville, MD: U.S. Dept. of Health and Human Services, Public Health Service, Alcohol, Drug Abuse, and Mental Health Administration, 1982.
- Ross, Virginia. "The Extent and Effect of Alcohol and Drug Addiction in American Indians." Navajo Judicial Symposium on Substance Abuse in American Indians, 1990.
- Tso, Tom. "How the Legal System Can Contribute to the Prevention, Treatment, and Rehabilitation of the Alcoholic and Alcohol/Drug Abusers." Presented at the Inter-Judicial Symposium: Substance Abuse and Addiction in American Indians--Implications for Tribal, State, and Federal Courts, June 1990.

U.S. Congress, Senate, Select Committee on Indian Affairs on Indian Health Service Youth Alcohol and Substance Abuse Programs. *Testimony of Michael Mangano, Deputy Inspector General, Department of Health and Human Services*, May 23, 1991.

Wescott, Siobhan. "Hippity Hops Velcroed to the Floor and Other Strategies to Educate Kids with FAS or FAE." *Winds of Change* 6, no 3 (Summer 1991): 64-67.

C. Demographics

American Indian Policy Review Commission. *Final Report Appendices and Index*. 2 vols. Washington, D.C.: GPO, 1977-.

American Indian Policy Review Commission. *Report on Indian Education: Final Report to the American Indian Policy Review Commission Task Force Five: Indian Education*. Washington, D.C.: GPO, 1976.

American Indian Policy Review Commission. *Report on Urban and Rural Non-Reservation Indians: Final Report to the American Indian Policy Review Commission. Task Force Eight: Urban and Rural Non-Reservation Indians*. Washington, D.C.: GPO, 1976.

Department of the Interior. Office of Indian Affairs. *Annual Report of the Commissioner of the Office of Indian Affairs to the Secretary of the Interior*. Washington, D.C.: U.S. Dept. of the Interior. Office of Indian Affairs, n.d.

Philp, Kenneth R., ed. *Indian Self-Rule: First-hand Accounts of Indian-White Relations From Roosevelt to Reagan*. Salt Lake City, UT: Howe Bros., 1985.

D. Judicial System

American Indian Policy Review Commission. *Final Report on Law Consolidation, Revision and Codification. Task Force No. Nine*. Washington, D.C.: GPO, 1976.

American Indian Policy Review Commission. *Report on Tribal Government: Final Report to the American Indian Policy Review Commission. Task Force Two: Tribal Government*. Washington, D.C.: GPO, 1976.

Cubberley, Douglas B. "Criminal Jurisdiction over Nonmember Indians: The Legal Void after *Duro v. Reina*." *American Indian Law Review* 16, no. 1 (1991): 213-246.

Department of the Interior. Bureau of Indian Affairs. *Governing Bodies of Federally Recognized Indian Groups, Excluding Alaska*. Washington, D.C.: U.S. Dept. of the Interior, Bureau of Indian Affairs, n.d.

Department of the Interior. Bureau of Indian Affairs. *Indian Reservation Criminal Justice Task Force Analysis 1974-1975*. Washington, D.C.: U.S. Dept. of the Interior. Bureau of Indian Affairs, 1975.

Department of the Interior. Bureau of Indian Affairs. *Native American Tribal Court Profiles 1985*. Washington, D.C.: Dept. of the Interior. Bureau of Indian Affairs. Branch of Judicial Services, 1985.

Department of the Interior. Solicitor. *Draft Model Code to Govern the Administration of Justice by Courts of Indian Offenses on Indian Reservations*. Washington, D.C.: Dept. of the Interior, Solicitor, 1975.

Gubler, Brend [i.e. Brent] H. *A Constitutional Analysis of the Criminal Jurisdiction and Procedural Guarantees of the American Indian*. San Francisco, CA: R and E Research Associates, 1974.

Hagan, William T. *Indian Police and Judges; Experiments in Acculturation and Control*. New Haven, CN: Yale University Press, 1966.

Johnson, Ralph, and Sue Crystal, comps. *Criminal Law & Procedure for Indian Tribal Courts*. Washington, D.C.: National American Indian Court Judges Association, Inc., 1977.

Lux, Joseph R. "When Is An Indian Not an 'Indian?'-- *State v. Daly*." *South Dakota Law Review* 36, no. 2 (1991): 419-433.

Murchison, Kenneth S., comp. *Digest of Decisions Relating to Indian Affairs: Vol. 1, Judicial*. Compiled under supervision of Hon. W. A. Jones, Commissioner of Indian Affairs. Washington, D.C.: G.P.O., 1901.

National American Indian Court Judges Association, Inc. *Model Court Development Project. State Court Enforcement of Indian Court Judgments. Phoenix, Arizona*. Washington, D.C.: National American Indian Court Judges Association, Inc. August 7, 1981.

Native American Rights Fund. *Indian Legal Problems*. Boulder, CO: Native American Rights Fund, National Indian Law Library Press, 1973.

Pommersheim, Frank. "Tribal-State Relations: Hope for the Future?" *South Dakota Law Review* 36, no. 2 (1991): 239-276.

Rusco, Elmer R. "Civil Liberties Guarantees Under Tribal Law: A Survey of Civil Rights Provisions in Tribal Constitutions." *American Indian Law Review* 14, no. 2 (1989): 269-299.

Sentell, David B., and Melanie T. Morris. "Criminal Jurisdiction on the North Carolina Cherokee Indian Reservation - A Tangle of Race and History." *Wake Forest Law Review* 24 (1989): 335-366.

U.S. Commission on Civil Rights. *American Indian Civil Rights Handbook*. Washington, D.C.: U.S. Commission on Civil Rights, 1980.

U.S. Congress. House. Committee on Interior and Insular Affairs. *Oversight Hearings on Investigations and Prosecution of Federal Crimes on Indian Reservations*. 100th Cong., 2d Sess., 1990.

E. State and Federal Policy

American Indian Policy Review Commission. *Report on Federal Administration and Structure of Indian Affairs: Final Report to the American Indian Policy Review Commission. Task Force Three: Federal Administration and Structure of Indian Affairs*. Washington, D.C.: GPO, 1976.

American Indian Policy Review Commission. *Report on Federal, State, and Tribal Jurisdiction: Final Report to the American Indian Policy Review Commission. Task Force Four: Federal, State, and Tribal Jurisdiction*. Washington, D.C.: GPO, 1976.

American Indian Policy Review Commission. *Report on Terminated and Nonfederally Recognized Indians: Final Report to the American Indian Policy Review Commission. Task Force Ten: Terminated and Non-federally Recognized Indians*. Washington, D.C.: GPO, 1976.

American Indian Policy Review Commission. *Special Joint Task Force Report on Alaskan Native Issues*. Washington, D.C.: GPO, 1976.

Burt, Larry W. *Tribalism In Crisis: Federal Indian Policy, 1953-1961*. Santa Fe, NM: National Indian Justice

- Planning Association, 1971(?).
- Comptroller General of the United States. *Information on Federal Programs Which Benefit American Indians: Report*. Washington, D.C.: G.A.O., 1975.
- Confederation of American Indians, comp. *Indian Reservations: A State and Federal Handbook*. Jefferson, NC: McFarland, 1986.
- Department of the Interior, Bureau of Indian Affairs. *American Indians: U.S. Indian Policy, Tribes and Reservations, BIA: Past and Present Economic Development*. Washington, D.C.: Dept. of the Interior, Bureau of Indian Affairs, 1984.
- Department of the Interior, Bureau of Indian Affairs. *Training and Technical Assistance for Indians: A Review*. Prepared by Marilyn Youngbird Martin, Washington, D.C.: U.S. Dept. of the Interior, Bureau of Indian Affairs, Intergovernmental Relations, 1976.
- Jones, Richard S. *Federal Programs of Assistance to American Indians*. Washington, D.C.: Congressional Research Service, Library of Congress, 1978.
- Jones, Richard S. *Federal Programs of Assistance to American Indians: A Report Prepared for the Senate Select Committee on Indian Affairs of the United States Senate*. Washington, D.C.: Congressional Research Service, GPO, 1985.
- Jones, Richard S., ed. *Federal Programs of Assistance to American Indians: A Report Prepared for the Senate Select Committee on Indian Affairs of the United States Senate*. Washington, D.C.: GPO, 1981.
- National Council on Indian Opportunity. *Tribal Officials' Guide to Federal Assistance for Indians*. Washington, D.C.: National Council on Indian Opportunity, 1970.
- O'Brien, Sharon. "Tribes and Indians: With Whom Does The United States Maintain a Relationship?" *Notre Dame Law Review* 66, no. 5 (1991): 1461-1494.
- Prucha, Francis Paul, ed. *Documents of United States Indian Policy*. Lincoln, NE: University of Nebraska Press, 1975.
- Rubin, H. Ted. *Disputed Jurisdiction and Recognition of Judgments Between Tribal and State Courts: A Typology of States With Indian Country*. Denver, CO: Institute for Court Management of The National Center for State Courts, 1990.
- Skibine, Alex Tallchief. "Applicability of Federal Laws of General Application to Indian Tribes and Reservation Indians." *U.C. Davis Law Review* 25, no. 1 (Fall 1991): 85-140.
- Taylor, Theodore W. *American Indian Policy*. Mt. Airy, MD: Lomond Publications, 1983.
- U.S. Commission on Civil Rights. *Hearing Before the United States Commission on Civil Rights: National Indian Civil Rights Issues*. Washington, D.C.: U.S. Commission on Civil Rights, 1979.
- U.S. Congress. Senate. Select Committee on Indian Affairs. *Budget Views and Estimates for Fiscal Year 1933: A Report to the Budget Committee (Pursuant to Section 301(c) of Public Law 93-344)*. Washington, D.C.: GPO, 1982.
- U.S. Congress. Senate. Select Committee on Indian Affairs. *Mutual Agreements and Compacts Respecting Jurisdiction and Governmental Operations: Hearing*. 97th Cong., 1st sess., on S. 563..., May 11, 1981.

F. Research Guides

Manson, Spero M., and Norman G. Dinges, eds. *Psychosocial Research on American Indian and Alaska Native Youth: An Indexed Guide to Recent Dissertations*. Westport, CT: Greenwood Press, 1984.

University Microfilms International. *North American Indians: A Dissertation Index*. Ann Arbor, MI: University Microfilms International, 1977.

VIII. General (Non-Juvenile Justice References)

A. Corrections Reform

Department of Justice. National Institute of Justice. *Statement of Recommended Judicial Practices*. Adopted by the National Conference of the Judiciary on the Rights of Victims of Crime. Washington, D.C.: U.S. Dept. of Justice. National Institute of Justice, 1983 (?).

Hudzik, John K. *Federal Aid to Criminal Justice. Rhetoric, Results, Lessons*. Washington, D.C.: National Criminal Justice Association, 1984.

Langston, Denny C. "Probation and Parole: No More Free Rides." In *Correctional Issues: Probation and Parole*, 1-4. Laurel, MD: American Correctional Association, 1990.

Nidorf, Barry J. "Probation and Parole Officers: Police Officers or Social Workers." In *Correctional Issues: Probation and Parole*, 69-75. Laurel, MD: American Correctional Association, 1990.

Nimmer, Raymond T. *Diversion. The Search for Alternative Forms of Prosecution*. Chicago, IL: American Bar Foundation, 1974.

Parker, Ann, Carol McDonald, Justus Freimund, Harold Bradley, and Richard Groskin. *So you Want to Start a Community Corrections Project. A Primer for Developing a Community Corrections Project*. Hackensack, NJ: National Council on Crime and Delinquency, November 1974.

Reaves, Brian A. "National Pretrial Reporting Program. Pretrial Release of Felony Defendants." *Bureau of Justice Statistics Bulletin*, 1988.

Rupp, Lloyd G., Edward E. Rhine, William R. Smith, and Ronald W. Jackson. "Parole: Issues and Prospects for the 1990s." In *Correctional Issues: Probation and Parole*, 23-31. Laurel, MD: American Correctional Association, 1990.

Umbreit, Mark. "Victim Offender Mediation and Judicial Leadership." *Judicature*, 69, no. 4 (December-January 1986): 202-204.

B. Questionnaires and Surveys

Department of Justice. Bureau of Justice Statistics. *Criminal Victimization in the United States: 1973-88 Trends. A National Crime Survey Report*. NCJ-129392. Washington, D.C.: U.S. Dept. of Justice. Bureau of Justice Statistics, July 1991.

Department of Justice. Bureau of Justice Statistics. *Criminal Victimization in the United States, 1989. A National Crime Survey Report*. NCJ-129391. Washington, D.C.: U.S. Dept. of Justice. Bureau of Justice Statistics, June 1991.

Sentencing Commission. *Questions Most Frequently Asked about the Sentencing Guidelines*. Washington, D.C.: U.S. Sentencing Commission. Volume III, March 1, 1990.

Smith, William R., Edward E. Khine, Ronald W. Jackson. "Parole Practices Survey Finds U.S. Agencies Undergoing Changes." In *Correctional Issues: Probation and Parole*, 37-43. Laurel, MD: American Correctional Association, 1990.

Whitaker, Catherine J., and Lisa D. Bastian. *Teenage Victims. A National Crime Survey Report*. NCJ-128129. Washington, D.C.: U.S. Dept. of Justice. Office of Justice Programs. Bureau of Justice Statistics, May 1991.

C. Rural Policing

Miller, Fred. "Delay in Rural Courts: It Exists But It Can Be Reduced." *State Court Journal* 14, no. 3 (Summer 1990): 23-40.

D. Offense Statistics

Beck, Allen J. "Profile of Jail Inmates, 1989." Washington, D.C.: U.S. Dept. of Justice. *Bureau of Justice Statistics Special Report*, April 1991.

Cohen, Robyn L. "Prisoners in 1990." Washington, D.C.: U.S. Dept. of Justice. *Bureau of Justice Statistics Bulletin*, May 1991.

Department of Justice. Bureau of Justice Statistics. *Census of Local Jails, 1988: Volume I. Selected Findings, Methodology and Summary Tables*. Washington, D.C.: U.S. Dept. of Justice, Bureau of Justice Statistics, 1991.

Department of Justice. Bureau of Justice Statistics. "Federal Offenses and Offenders. Drug Law Violators, 1980-1986." NCJ-111763. Washington, D.C.: U.S. Dept. of Justice. *Bureau of Justice Statistics Special Report*, June 1988.

Department of Justice. Bureau of Justice Statistics. "Felony Sentences in State Courts." Washington, D.C.: U.S. Dept. of Justice. *Bureau of Justice Statistics Bulletin*, 1986.

Department of Justice. Bureau of Justice Statistics. *National Update*. Washington, D.C.: U.S. Dept. of Justice. Bureau of Justice Statistics. 1, no. 2 (July 1991).

Department of Justice. Bureau of Justice Statistics. *Report to the Nation on Crime and Justice, the Data*. NCJ-87068. Washington, D.C.: U.S. Dept. of Justice. Bureau of Justice Statistics, October 1983.

Department of Justice. Bureau of Justice Statistics. *Report to the Nation on Crime and Justice, the Data*. NCJ-105506. Washington, D.C.: U.S. Dept. of Justice. Bureau of Justice Statistics, March 1988.

Flanagan, Timothy J., and Kathleen Maguire, eds. *Sourcebook of Criminal Justice Statistics 1989*. Washington, D.C.: U.S. Dept. of Justice, 1990.

Greenfeld, Lawrence A., and Stephanie Minor-Harper. "Women in Prison." Washington, D.C.: U.S. Dept. of Justice. *Bureau of Justice Statistics Special Report*, March 1991.

Harlow, Caroline Wolf. *Female Victims of Violent Crime*. NCJ-126826. Washington, D.C.: U.S. Dept. of Justice, Bureau of Justice Statistics, January 1991.

Innes, Christopher A. "Profile of State Prison Inmates, 1986." NCJ-109926. Washington, D.C.: U.S. Dept. of Justice. *Bureau of Justice Statistics Special Report*, January 1988.

National Center for State Courts. *State Court Caseload Statistics: Annual Report*. Williamsburg, VA: National Center for State Courts, 1988.

National Center for State Courts. *State Court Organization*. Williamsburg, VA: Conference of State Court Administrators and National Center for State Courts, joint effort, 1987.

National Victims Resource Center. *National Victims Resource Directory*. Washington, D.C.: U.S. Dept. of Justice, Bureau of Justice Statistics, n.d.

Stephan, James J., and Louis W. Jankowski. "Jail Inmates, 1990." Washington, D.C.: U.S. Dept. of Justice. *Bureau of Justice Statistics Bulletin*, 1991.

E. Substance Abuse

Collins, James J., and Marianne W. Zawitz. *Drugs and Crime Data. Federal Drug Data for National Policy*. NCJ-122715. Washington, D.C.: U.S. Dept. of Justice, Bureau of Justice Statistics, April 1990.

De La Rosa, Mario, Elizabeth Y. Lambert, Bernard Gropper, eds. *Drugs and Violence: Causes, Correlates, and Consequences*. DHHS Pub. No. (ADM)90-1721. Washington, D.C.: U.S. Dept. of Health and Human Services. National Institute on Drug Abuse. *NIDA Research Monograph* 103, 1990.

Department of Justice. Bureau of Justice Statistics. *Drugs and Crime Facts, 1989*. Rockville, MD: U.S. Dept. of Justice, Bureau of Justice Statistics, 1990.

Department of Justice. Bureau of Justice Statistics. *Drugs and Crime Facts, 1990*. Rockville, MD: U.S. Dept. of Justice, Bureau of Justice Statistics, 1991.

Department of Justice. Bureau of Justice Statistics. *State Drug Resources: A National Directory*. NCJ-122582. Washington, D.C.: U.S. Dept. of Justice, Bureau of Justice Statistics, March 1990.

English, Abigail. "Prenatal Drug Exposure and Pediatric AIDS: New Issues for Children's Attorneys." *Clearinghouse Review* 24, no. 5 (Special Issue 1990): 452-459.

Gates, David, and Deborah Beck. "Prevention and Treatment: The Positive Approach to Alcoholism and Drug Dependency." *Clearinghouse Review* 24, no. 5 (Special Issue 1990): 472-492.

Jones, Kenneth L. "Fetal Alcohol Syndrome" *Pediatrics in Review* 8, no. 4 (October 1986): 122-126.

Pickens, Roy W., Carl G. Leukefeld, and Charles R. Schuster, eds. *Improving Drug Abuse Treatment*. DHHS Pub. No. (ADM)91-1754. Washington, D.C.: U.S. Dept. of Health and Human Services. National Institute on Drug Abuse. *NIDA Research Monograph* 106, 1991.

Spencer, John W., and John J. Boren, eds. *Residual Effects of Abused Drugs on Behavior*. DHHS Pub. No. (ADM)90-1719. Washington, D.C.: U.S. Dept. of Health and Human Services. National Institute on Drug Abuse. *NIDA Research Monograph* 101, 1990.

Streissguth, Ann Pytkowicz, Jon M. Aase, Sterling K. Clarren, Sandra P. Randels, Robin A. LaDue, and David F. Smith. "Fetal Alcohol Syndrome in Adolescents and Adults." *JAMA* 265, no.15 (April 17, 1991): 1961-1967.

U.S. Congress. Senate. Committee on Finance. *Fetal Alcohol Syndrome*. Hearing Before the Subcommittee on Social Security and Family Policy. December 10, 1990. 101st Congress. 2d Sess., 1991.

U.S. Department of Health and Human Services. Office for Substance Abuse Prevention. *Legal Issues for Alcohol and Other Drug Use Prevention and Treatment Programs Serving High-Risk Youth*. DHHS Pub. No. (ADM) 90-1674. Washington, D.C.: U.S. Dept. of Health and Human Services. Office for Substance Abuse Prevention. *OSAP Technical Report-2*, 1990.

F. Mental Health

Ford, Mary, and Koe Kroll. "Challenges to Child Welfare: Countering the Call for a Return to Orphanages." St. Paul, MN: North American Council on Adoptable Children, November 1990.

Hamburg, David A. *Early Adolescence: A Critical Time for Interventions in Education and Health*. New York, NY: Carnegie Corporation of New York. Reprinted from the 1989 Annual Report.

Hofford, Meredith, ed. *Families in Court*. Meredith Hofford, ed. National Council of Juvenile and Family Court Judges, 1989.

National Arizona Area Health Education Center, Inc. *Child Sexual Abuse: the Victim and The Offender*. National Arizona Area Health Education Center, Inc., June 4-5, 1990.

National Institute of Mental Health. *Caring for People with Severe Mental Disorders: A National Plan of Research to Improve Services*. DHHS Pub. No. (ADM)91-1762. Washington, D.C.: National Institute of Mental Health, 1991.

Office of Technology Assessment. *Adolescent Health--Volume I: Summary and Policy Options*. OTA-H-468. Washington, D.C.: U.S. Congress, Office of Technology Assessment, April 1991.

U.S. Congress. House. Committee on Ways and Means. *Health Care Resource Book*. 102d Cong., 1st Sess. Washington, D.C.: U.S. GPO Committee Print. WMCP:102-8, 1991.

U.S. Congress. Senate. Subcommittee on Labor, Health and Human Services, Education and Related Agencies, Committee on Appropriations. *Home Visiting. A Promising Early Intervention Strategy for At-Risk Families*. Washington, D.C.: G.A.O., July 1990.

G. Restitution

McDonald, Douglas C. *Restitution and Community Service*. Washington, D.C.: U.S. Dept. of Justice. National Institute of Justice. *Crime File Study Guide*, 1988.

BIBLIOGRAPHY WITH ABSTRACTS

IX. Juvenile Justice Systems (General)

A. Corrections Reform

Brown, James W., and Michael J. McMillen. *Residential Environments For the Juvenile Justice System: A Deinstitutionalization Perspective*. Urbana, IL: University of Illinois at Urbana-Champaign, 1974.

Analysis of architecture and design for juvenile residential facilities including growth projections, psychological and social needs, security issues, spatial utility issues, and location and size.

Department of Justice. Bureau of Justice Statistics. *Children in Custody, 1975-85. Census of Public and Private Juvenile Detention, Correctional, and Shelter Facilities*. Washington, D.C.: U.S. Dept. of Justice. Bureau of Justice Statistics, 1986.

Between 1975 and 1985, the number of juveniles in custody increased by 12 percent, but the West was the only area to experience an increase in public facility population (33 percent) while Midwest experienced decrease of 1 percent and South and Northeast each experienced 9 percent decrease. Majority of juveniles in juvenile facilities from 1975-1985 were held for delinquent acts. This number increased by 31 percent while status offense detainees increased only 2 percent. Total number of juvenile facilities increased from 2,151 to 3,036 or 41 percent. Population of juveniles held in severe facilities increased by 54 percent and in non-severe facilities by 12 percent. The average length of stay for juveniles in public juvenile facilities, 1984, was 41 days and in private juvenile facilities, 126 days. Includes charts, tables.

Department of Justice. Office of Juvenile Justice and Delinquency Prevention. *Desktop Guide to Good Juvenile Probation Practice*. Washington, D.C.: U.S. Dept. of Justice. Office of Juvenile Justice and Delinquency Prevention, March 1991.

Intended for use as a reference/resource document, this is a practitioner's guide written by practitioners with a focus on the client and community. The emphasis is on job-related skills of juvenile probation officers and their decisions. Divided into two major sections: Professional Orientation and Job Related Skill Areas, the first section is a general overview of the juvenile justice system with a focus on probation. The second section focuses on "good practice" philosophies of juvenile justice probation.

Krisberg, Barry A. *Juvenile Justice: A Critical Examination*. San Francisco, CA: The National Council on Crime and Delinquency, 1989.

Critical analysis of theory and practice of juvenile justice as to whether current practices respond to needs of youths in terms of their developmental differences and either family and community environment. Includes Bibliography.

Krisberg, Barry A., ed. "Special Issue-Watershed of Juvenile Justice Reform. " *Crime and Delinquency* 32, no. 1 (January 1986): 1-143.

Overview of juvenile justice system trends. Review by OJJDP administrator of programmatic elements of OJJDP reforms. Articles on juvenile transfers to adult courts, juvenile probation, juvenile incarceration. Tabular data and references.

Krisberg, Barry A., I. M. Schwartz, P. Litsky, and J. Austin. *Watershed of Juvenile Justice Reform*. Minneapolis, MN: University of Minnesota. Center for the Study of Youth Policy, 1985.

Analysis of juvenile justice trends since Juvenile Justice and Delinquency Prevention Act, 1974. Current issues include reassessment of diversion and focus on restrictive, formal responses. Notes higher institutionalization of Hispanic and Black youth. Examines data from U.S. Census Bureau, "Children in Custody," 1974-82. Tables and 22 references.

Loughran, Edward J., Russell Van Vleet, Andrew Rutherford, Ira M. Schwartz, and Thomas O. Marshall. *Reinvesting Youth Corrections Resources: A Tale of Three States*. Ann Arbor, MI: Center for the Study of Youth Policy. The University of Michigan School of Social Work, January 1987.

Reproductions of three papers describe three states exploration for cost effective alternatives of current resources used for youth corrections.

In "Juvenile Corrections: The Massachusetts Experience" Edward J. Loughran describes how Massachusetts reformed its juvenile justice system in 1972 with impressive results that provides both humane services and increased public protection. The Massachusetts program has become an important model for other states. Four major reforms it instituted are: 1) the elimination of large training schools, 2) high security treatment units were used for treatment of violent youth and youth repeatedly committing serious felonies, 3) a community-based network of programs who contracted with the state provided individual treatment and security where appropriate, and 4) the funds used for training schools were redirected to community programs.

The second paper, "Reinvesting Youth Corrections Resources in Utah" focuses on efforts in the late 1970's to implement similar reforms as those in Massachusetts. Positive results were also experienced. Authors include Russell Van Vleet, Andrew Rutherford and Ira M. Schwartz.

The third paper by the chief justice of Georgia's supreme court, Thomas O. Marshall, analyzes this state's juvenile issues and outlines an action agenda. In "Building a Juvenile Justice System for Georgia's Future" emphasis is placed on achieving consensus of strategies among juvenile justice professionals to implement a cooperative and humane statewide system to reduce the number of youth offenders and thus future adult offenders.

Rossum, R. A., B. J. Koller, and C. P. Manfredi. *Juvenile Justice Reform: A Model for the States*. Claremont, CA: McKenna College Rose Institute of State and Local Govt., 1987.

State Model Acts which limit discretionary decision making and expand due process rights. Offense-oriented code which uses offense severity and prior offense history for disposition determination. Includes Model Delinquency Act and Disobedient Children's Act. Comparison of state juvenile codes. Includes survey opinion results and 182 item annotated bibliography and tables.

Schneider, A. L., and D. D. Schram. "Washington State Juvenile Justice System Reform-A Review of Findings." *Criminal Justice Policy Review* 1, no. 2 (1986): 211-235.

Evaluation of 1978 juvenile justice reform requiring diversion for some juveniles and removing status offenders from juvenile court jurisdiction. Delinquents with status offense records more likely to be treated more harshly. Includes 3 tables, 4 figures and

28 references.

Steinhart, David. "California Legislature Ends the Jailing of Children: The Story of a Policy Reversal." *Crime and Delinquency* 34, no. 2 (1988): 169-189.

California S.B. 1637, January 1, 1987, prohibits use of jails for minors under juvenile court jurisdiction but permits six hour confinement of certain minors. Includes history of legislative reform and early operation of the law. Included in "Children in Jails." Ira M. Schwartz, ed. *Crime and Delinquency* 34, no.2 (1988): 131-227.

B. Questionnaires and Surveys

Behavioral Research Institute. *Youth Interview Schedule. National Youth Survey, 1980*. Boulder, CO: Behavioral Research Institute, 1980.

Includes questionnaire.

Castellano, T. C. "Justice Model in the Juvenile Justice System: Washington State's Experience." *Law and Policy* 8, no. 4 (1986): 479-506.

Analysis of 1977 Washington State juvenile justice code reviews research on effects of determinate sentencing, greater due process and diversion process have influenced equality, fairness and punishment levels.

Department of Justice. *Survey of Youths in Custody, 1987*. Washington, D.C.: Dept. of Justice, 1987.

Includes questionnaire, data analysis.

Heide, K. M., and B. W. Pardue. "Juvenile Justice in Florida-A Legal and Empirical Analysis." *Law and Policy* 8, no. 4 (1986): 437-462.

Evaluation of Florida Juvenile Justice Act concludes it allows flexible alternative disposition but gives great discretion to State Attorney. Juvenile Court processing data shows rehabilitation oriented policy as well as a "get tough" policy on juveniles. Includes 5 tables, 20 notes, 5 references, 14 statute references.

Kihm, Robert. *Prohibiting Secure Juvenile Detention: Assessing the Effectiveness of National Standards Detection Criteria*. Washington, D.C.: Dept. of Justice, 1980.

Study of Gloucester County, New Jersey; Salt Lake County, Utah; Taos County, New Mexico; and Lenewee County, Michigan of juvenile court referrals from July 1978 to May 1979. Includes detention rates, failure to appear rates, and rearrest data.

Krisberg, Barry, I. Schwartz, G. Fishman, Z. Eisikovits, and E. Guttman. *Incarceration of Minority Youth*. Minneapolis, MN: University of Minnesota. Hubert R. Humphrey Institute of Public Affairs, 1986.

Analysis of four data sets: 1977-1982 children in custody on youth incarceration in private and public juvenile correctional facilities, 1980 Census data, 1977-1982 Uniform Crime Reports, and 1976-1983 self-reported delinquency data from National Youth Survey shows minority youth are confined at a ratio 3 to 4 times that of white youth and in more secure facilities. Arrest statistics and self-reports do support hypothesis that higher confinement rate is due to higher involvement of minority youth in serious crime. But higher arrest rates for minority youth and severe sentences for repeat offenders may contribute to over-representation of minority youth among incarcerated

KANSAS (4)

Legislation

Federal - ch. 276, 54 Stat. 249 (June 8, 1940);
25 U.S.C. § 257(a)
18 U.S.C. § 3243. ch. 645, 62 Stat. 827, June 25,
1949 or 48

Case Law

Negonsott v. Samuels, 696 F.Supp. 561 (D. Kan.
1988), *aff'd*, 933 F.2d 818 (10th Cir. 1991),
review pending.
State v. Nioce, 239 Kan. 127, 716 P.2d 585
(1986).

*Iowa Tribe of Indians of Kansas and Nebraska
v. State of Kansas*, 787 F.2d 1434 (10th Cir.
1986).

State v. Mitchell, 231 Kan. 144, 642 P.2d 981
(1982).

Tribes

Iowa of Kansas
Kickapoo Tribe
Prairie Band of Potawatomi
Sac & Fox of Missouri

MAINE (3)

Legislation

Federal - 25 U.S.C. 1721 et. seq.; Maine Indian
Claims Settlement Act. Civil and criminal
jurisdiction conferred on state by 25 U.S.C.,
§ 1725 (b)(1), (f), and (h). Child Welfare
jurisdiction specifically addressed 25 U.S.C.,
§ 1727(e).

Case Law

Penobscot Nation v. Stilphen, 461 A.2d 478
(1983), *appeal dismissed by*, 464 U.S. 923,
104 S.Ct. 323, 78 L.Ed.2d 296 (1983).

State v. Dana, 404 A.2d 551 (1979), *cert. denied*,
444 U.S. 1098, 100 S.Ct. 1064, 62 L.Ed.2d
785 (1980).

Tribes

Houlton Band of Maliseet Indians
Passamaquoddy Tribe ■
Pleasant Point
Indian Township - ♢; 47 F.R. 3414, January
25, 1982; Effective March 26, 1982.
Penobscot Tribe ■ - ♢; 46 F.R. 27397, May 19,
1981; Effective date July 17, 1981.

MASSACHUSETTS (1)

Legislation

Massachusetts Indian Land Claims Settlement
Act, PL 100-95, August 18, 1987, 101 Stat.
704; 25 U.S.C. § 1771a-i. Sec. 1771e(a) -
jurisdiction over settlement lands places
restriction on tribe not to enact laws in
contravention to state, county, and
municipal laws.

Case Law

James v. Wampanoag Tribal Council, 23
Mass.App.Ct. 122, 499 N.E.2d 1213 (1986).

Tribes

Wampanoag

KEY:

TRIBAL JURISDICTIONAL STATUS

Appendix D - Page 18

Study of Tribal and Alaska Native Juvenile Justice Systems

- - Tribal Court
- - Court of Indian Offenses
- ♣ - Oklahoma Indian Courts that are not CIOs
- ♢ - Reassumption of ICWA jurisdiction
- ★ - Retrocessions

GROUP 4 - OTHER FEDERAL ACTS CONFERRING JURISDICTION TO STATES

COLORADO (2)

Legislation

Federal Statute: P.L. 98-290, § 1 - 5, 98 Stat. 201, 202; May 21, 1984. Jurisdiction to the state - Town of Igancio.

Case Law

People v. Morgan, 785 P.2d 1294 (Colo. 1990).

Whyte v. District Court of Montezuma County, 140 Colo. 334, 346 P.2d 1012 (1959), cert. denied, 363 U.S. 829, 80 S.Ct. 1600, 4 L.Ed.2d 1624 (1960).

U.S. v. McBratney, 14 Otto 621, 104 U.S. 621, 26 L.Ed. 869 (1881).

Tribes

Southern Ute □
Ute Mountain □

CONNECTICUT (1)

Legislation

State - Act to Implement the Settlement of the Mashantucket Pequot Indian Land Claim, June 9, 1982.

Federal - Mashantucket Pequot Indian Land Claims Settlement Act. PL 98-134, October 18, 1983, 97 Stat. 855; 25 U.S.C.S.116 § 1751 et seq (1990).

Case Law

Campbell v. Mashantucket Pequot Tribal Council, 1991 WL 40031 (Conn. Super.) (1991).

Schaghticoke Indians of Kent, Conn., Inc. v. Potter, 22 Conn.App. 229, 217 Conn. 612, 587 A.2d 139 (1991).

Tribes

Mashantucket Pequot

IOWA (1)

Legislation

State - Iowa Code Ann. §§1.12-1.14 (West Supp. 1979); Origin - 1967 (62 G.A.)ch. 79, § 1, eff. July 1, 1967 - Assumed civil jurisdiction.

Federal - ch. 759, 62 Stat. 1161 (June 30, 1948); not codified; Criminal jurisdiction delegated to state over the Sac and Fox Reservation only.

Case Law

State v. Bear, 452 N.W.2d 430 (1990).

Youngbear v. Brewer, 415 F.Supp. 807 (N.D. Iowa 1976), *aff'd*, 549 F.2d 74 (8th Cir. 1977).

Tribes

Sac & Fox

KEY:

- - Tribal Court
- - Court of Indian Offenses
- ⌘ - Oklahoma Indian Courts that are not CIOs
- ◊ - Reassumption of ICWA jurisdiction
- ★ - Retrocessions

Tribes (Washington)

Chehalis ☐ - NICS - ★ - 54 F. Reg. 19,959 (1989);
Tribal action: 3/9/88, Tribal Resolution #
88-A-23

State action: RCW 37.12.100 Laws 1988,
Ch. 108, Governor's Proclamation 88-7

Colville ☐

Tribal Action: Tribal Resolution # 1986-
245, May 19, 1986.

State Statutes: RCW 37.12.120 Laws 1986,
ch. 267, § 4. Amended: Laws 1988, ch.
108 § 3. Governor's proclamation #
86-94. Passed by legislature March 11,
1986.

Federal Statute: Retrocession 52 F.R. 8372
(1987); ICWA Exclusive jurisdiction -
45 F.R. 56450 August 25, 1980;
Effective October 24, 1980.

Hoh ☐

Jamestown Band of Klallam ☐

Kalispel ☐ - NICS

Lower Elwha ☐ - NICS

Lummi ☐ - NICS

Makah ☐

Muckleshoot† ☐ - NICS - July 11, 1980; 45 F.R.
49363. ICWA Exclusive jurisdiction -
effective date September 22, 1980.

Nisqually† ☐ - NICS

Nooksack ☐ - NICS

Port Gamble Klallam ☐ - NICS

Puyallup ☐

Quileute ☐ - NICS ★

Tribal action: Tribal Resolution 88-A-23,
3/17/88

Federal action: 54 F. Reg. 19,959 (1989)

State action: RCW 37.12.120 Laws 1986,
ch. 267, § 4. Amended: Laws 1988, ch.
108 § 3.

Quinalt ☐ ★

State action: Governor's Proclamation
August 15, 1968.

Federal action: 34 F. Reg. 14,288,
September 11, 1969;

Sauk-Suiattle†

Shoalwater Bay ☐

Skokomish†

Spokane ☐ - 45 F.R. 47,926 July 17, 1980;
ICWA Exclusive jurisdiction effective
September 15, 1980.

Squaxin Island† ☐

Stillaquamish

Suquamish (Port Madison) ☐ ★

State action: Governor's Proclamation
August 26, 1971.

Federal action: 37 F. Reg. 7352, April 13,
1972.

Swinomish ☐ - NICS ★

Tribal action: Tribal Resolution 88-3-12,
3/17/88

State action: RCW 37.12.120 Laws 1986,
ch. 267, § 4. Amended: Laws 1988, ch.
108 § 3.

Federal action: 54 F. Reg. 19,959 (1989);

Tulalip† ☐

Upper Skagit† ☐ - NICS

Yakima ☐ - 45 F.R. 6479, January 11, 1980.
ICWA Exclusive jurisdiction effective
March 28, 1980.

† - Five tribes requested state assumption of
criminal jurisdiction.

† - Reservations formed after state action to
assume jurisdiction.

KEY:

☐ - Tribal Court

■ - Court of Indian Offenses

☐ - Oklahoma Indian Courts that are not CIOs

☐ - Reassumption of ICWA jurisdiction

★ - Retrocessions

UTAH (3)

Legislation

Utah Const., art. III, § 2.
Utah Code Ann. §§ 63-36-9 to 63-36-21 (1978);
Origin Laws 1971, ch. 169, § 1. Sec. 63-36-10 requires tribe's consent.

Case Law

State v. Hagen, 802 P.2d 745 (Utah App. 1990),
cert. granted, 815 P.2d 241 (Utah 1991).
Brough v. Appawora, 553 P.2d 934 (Utah 1976),
dismissed, 431 U.S. 901, 95 S.Ct. 1690, 52
L.Ed.2d 384 (1977).
State v. Roedl, 107 Utah 538, 155 P.2d 741
(1945).

Tribes

Northwestern Band of Shoshone (Also in
Idaho)

Paiute - Paiute Indians of Utah Restoration Act
PL 96-227, April 3, 1980, 94 Stat. 317. 25
U.S.C. §§ 761-768; Sec. 766(b) confers civil
and criminal jurisdiction over reservation.
Sec. 766(e)(4) provides that any additions
to the reservation means that state has
criminal and civil jurisdiction over
additions.

Skull Valley Goshute - (Also in Nevada)

Uintah & Ouray (Ute) ☐ - Termination of
federal supervision over property of mixed-
blood members August 27, 1954, ch. 1009,
§ 1, 68 Stat. 868; 25 § 677.

WASHINGTON (26)

Legislation

Wash. Const., art. XXVI, § 2.
State statute: Wash. Rev. Code Ann. §§
37.12.010-37.12.070 (1964); Origin - Wash.
Laws 1957, ch. 240 § 1 (p.941); Amended
Wash. Laws 1963 ch. 36 § 1. & Supp. 1971.
Also see, tribe-specific legislation.
Retrocessions; Reassumption of ICWA juris-
diction: NICS - Northwest Indian Court
System

Case Law

U.S. v. Farris, 624 F.2d 890 (9th Cir. 1980), cert.
denied, 449 U.S. 1111, 101 S.Ct. 920, 66
L.Ed.2d 839 (1981).
*Confederated Bands and Tribes of the Yakima
Indian Nation v. Washington*, 550 F.2d 443
(9th Cir. 1977), appeal after remand, 552
F.2d 443 (9th Cir. 1977), rev'd, 439 U.S.
463, 99 S.Ct. 740, 58 L.Ed.2d 740 (1979),
rehearing denied, 440 U.S. 940, 99 S.Ct.
1290, 59 L.Ed.2d 500 (1979).
U.S. v. Marcyes, 557 F.2d 1361 (9th Cir. 1977).

Tonasket v. State, 79 Wash.2d 607, 488 P.2d 281
(1971), vacated, 411 U.S. 451, 93 S.Ct. 2432,
32 L.Ed.2d 681 (1972), 84 Wash. 2d 164,
525 P.2d 744 (1974), dismissed, 420 U.S.
915, 95 S.Ct. 1108, 43 L.Ed.2d 387 (1975).
Makah Indian Tribe v. State of Washington, 76
Wash.2d 485, 457 P.2d 590 (1969), appeal
dismissed, 397 U.S. 316, 90 S.Ct. 1115, 25
L.Ed.2d 335 (1970).

Quinault Tribe v. Gallagher, 368 F.2d 648 (9th
Cir. 1966), cert. denied, 387 U.S. 907, 87
S.Ct. 1684, 18 L.Ed.2d 626 (1967).

State v. McCoy, 63 Wash.2d 421, 387 P.2d 942
(1963).

Arquette v. Schneckloth, 56 Wash.2d 178, 351
P.2d 921 (1960).

Wesley v. Schneckloth, 55 Wash.2d 90, 346 P.2d
658 (1959).

State v. Paul, 53 Wash.2d 789, 337 P.2d 33
(1959), appeal dismissed, 361 U.S. 898, 80
S.Ct. 203, 4 L.Ed.2d 155 (1959).

State v. Hoffman, 116 Wash.2d 51, 804 P.2d 577
(1991).

KEY:

- ☐ - Tribal Court
- - Court of Indian Offenses
- ☞ - Oklahoma Indian Courts that are not CIOs
- ◊ - Reassumption of ICWA jurisdiction
- ★ - Retrocessions

Tribes (North Dakota)

Standing Rock Sioux - (According to BIA there is some legislation) ■
Devils Lake Sioux ■

Three Affiliated Tribes (Fort Berthold-Arikara, Mandan, Hidatsa) ■
Turtle Mountain Chippewa ■

SOUTH DAKOTA (8)

Legislation

S.D. Const., art. XXII, § 2.
S.D. Compiled Laws Ann. §§ 1-1-12 to 1-1-21 (Repealed see § 1-1-20) Invalid because states cannot condition assumption of jurisdiction in Indian country on federal reimbursement.

Case Law

State v. Spotted Horse, 462 N.W.2d 463 (S.D. 1990), *cert. denied*, 111 S.Ct. 2041, 114 L.Ed.2d 125 (1991).
South Dakota v. Larson, 455 N.W.2d 600 (S.D. 1990).
Rosebud Sioux Tribe v. South Dakota, 709 F.Supp. 1502 (1989), *vacated by*, 900 F.2d 1164 (8th Cir. 1990), *cert. denied*, 111 S.Ct. 2009, 114 L.Ed.2d 98 (1991).
Sisseton-Wahpeton Sioux Tribe v. U.S. Department of Justice, 718 F.Supp. 755 (D.S.D. 1989), *order rev'd*, 897 F.2d 385 (8th Cir. 1990).
State v. Onihan, 427 N.W.2d 365 (S.D. 1988).
U.S. v. Bartlett, 794 F.2d 1285 (8th Cir. 1986), *cert. denied*, 479 U.S. 934, 107 S.Ct. 409, 93 L.Ed.2d 361 (1986).
Bartlett v. Solem, 691 F.2d 420 (8th Cir. 1982), *aff'd*, 465 U.S. 463, 104 S.Ct. 1161, 79 L.Ed.2d 443 (1984), *rehearing denied*, 466 U.S. 948, 104 S.Ct. 2148, 80 L.Ed.2d 535 (1984).

Rosebud Sioux Tribe v. Kneip, 375 F.Supp. 1065 (D.S.D. 1974), *aff'd*, 521 F.2d 87 (8th Cir. 1975), *aff'd*, 430 U.S. 584, 97 S.Ct. 1361, 51 L.Ed.2d 443 (1977).

DeCoteau v. District Court for Tenth Judicial Dist., 87 S.D. 555, 211 N.W.2d 843 (S.D. 1973), *rev'd*, 489 F.2d 99 (8th Cir. 1973), *rev'd*, 420 U.S. 425, 95 S.Ct. 1082, 43 L.Ed.2d 300 (1975), *rehearing denied*, 421 U.S. 939, 955 S.Ct. 1667, 44 L.Ed.2d 95 (1975).

U.S. v. Feather, 489 F.2d 99 (8th Cir. 1973), *rev'd*, *DeCoteau v. District Court for Tenth Judicial Dist.*, 420 U.S. 425, 95 S.Ct. 1082, 43 L.Ed.2d 300 (1975).

State v. Molash, 86 S.D. 558, 199 N.W.2d 591 (1972).

Smith v. Temple, 82 S.D. 650, 152 N.W.2d 547 (1967).

In re Hankins' Petition, 805 S.D. 435, 125 N.W.2d 839 (1964).

Tribes

Cheyenne River Sioux ■
Crow Creek Sioux ■
Flandreau Santee Sioux ■
Lower Brule Sioux ■
Ogala Sioux (Pine Ridge) ■
Rosebud Sioux ■
Sisseton-Wahpeton Sioux ■
Standing Rock Sioux (Also in North Dakota) ■
Yankton Sioux ■

KEY:

■ - Tribal Court

■ - Court of Indian Offenses

■ - Oklahoma Indian Courts that are not CIOs

° - Reassumption of ICWA jurisdiction

★ - Retrocessions

Tribes (Nevada, con't.)

Fort Mojave - (Also in Arizona and California)
Goshute (Also in Utah) ■ - ★ - 40 F. Reg. 27,501, June 30, 1975; Effective July 1, 1975. See also Utah
Las Vegas Colony (Paiute) ■
Lovelock Paiute ■ - ★ - 40 F. Reg. 27,501, June 30, 1975; Effective July 1, 1975.
Moapa Paiute ■
Pyramid Lake Paiute ■
Reno-Sparks Colony ■ - ★ - 40 F. Reg. 27,501, June 30, 1975; Effective July 1, 1975.
Shoshone Paiute ■
Summit Lake Paiute
Te-Moak Western Shoshone Indians of Nev. ■
Battle Mountain Colony ■ - 40 F. Reg. 27,501, June 30, 1975; Effective July 1, 1975.
Elko ■ - ★ - 40 F. Reg. 27,501, June 30, 1975; Effective July 1, 1975.
South Fork Band ■ - ★ - 40 F. Reg. 27,501, June 30, 1975; Effective July 1, 1975.
Wells Indian Colony ■

Walker River Paiute ■

Washoe ■

Carson Colony - 40 F. Reg. 27,501 June 30, 1975; Effective July 1, 1975.
Dresslerville Community - 40 F. Reg. 27,501, June 30, 1975; Effective July 1, 1975.
Stewart Community
Woodfords (Markleeville, CA) (See also California)
Washoe Tribal Farms - ★ - 40 F. Reg. 27,501, June 30, 1975; Effective July 1, 1975.
Washoe Pinenut Allotment - ★ - 40 F. Reg. 27,501, June 30, 1975; Effective July 1, 1975.
Winnemucca ■ (Also in California) - ★ - 40 F. Reg. 27,501, June 30, 1975; Effective July 1, 1975. Ft. McDermitt tribe handles Winnemucca cases.
Yerington Paiute ■
Yomba Shoshone ■ - ★ - 40 F. Reg. 27,501, June 30, 1975; Effective July 1, 1975.

NORTH DAKOTA (6)

Legislation

N.D. Const., art. XIII, § 2.

State - N.D. Cent. Code §§ 27-19-01 to 27-19-13 (1973). State will assume civil jurisdiction if tribe consents by: 1) petition of majority of enrolled residents 18 or older; or 2) vote of majority of enrolled residents in election supervised by the ND Indian Affairs upon petition of 15% of eligible voters. Even though state constitution was amended, there was no state legislative action; (See Goldberg article) treated as invalid by federal, state and tribal authorities.

Federal - P.L. 79-394, May 31, 1946, ch. 279, 60 Stat. 229 (1946). Confers criminal jurisdiction to state over Devil's Lake Reservation.

Case Law

State v. Hook, 476 N.W.2d 565 (N.D. 1991).

Greywater v. Joshua, 846 F.2d 486 (8th Cir. 1988).

Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering, P.C., 467 U.S. 138 104 S.Ct. 2267, 81 L.Ed.2d 113, (1984), *on remand*, 364 N.W.2d 98 (1985), *judgment on remand rev'd*, 476 U.S. 877, 106 S.Ct. 2305, 90 L.Ed.2d 881 (1986).

Gourneau v. Smith, 207 N.W.2d 256 (N.D. 1973).

Nelson v. Dubois, 232 N.W.2d 54 (1975).

Schantz v. White Lightning, 231 N.W.2d 812 (1975).

Vermillion v. Spotted Elk, 85 N.W.2d 432 (N.D. 1957), *overruled*, 207 N.W.2d 256 (1973).

Fournier v. Roed, 161 N.W.2d 458 (1968).

In re Whiteshield, 124 N.W.2d 694 (N.D. 1963).

State v. Lohnes, 69 N.W.2d 508 (N.D. 1955), *abrogated by*, *State v. Hook*, 476 N.W.2d 565 (N.D. 1991).

State ex rel. Baker v. Mountrail County, 28 N.D. 389, 149 N.W. 120 (N.D. 1914).

KEY:

- - Tribal Court
- - Court of Indian Offenses
- ⌘ - Oklahoma Indian Courts that are not CIOs
- ◊ - Reassumption of ICWA jurisdiction
- ★ - Retrocessions

MONTANA (7)

Legislation

Mont. Const., Ord. 1

Mont. Rev. Codes Ann. §§ 83-801 to 83-806 (1966)

Case Law

First v. State, Dept. of Social and Rehabilitation Services ex rel. LaRoche, 247 Mont. 465, 808 P.2d 467 (Mont. 1991).

State v. LaPier, 242 Mont. 335, 790 P.2d 983 (1990).

State v. Thomas, 233 Mont. 451, 760 P.2d 96 (Mont. 1988).

State ex rel. Greely v. Confederated Salish and Kootenai Tribes of Flathead Reservation, 219 Mont. 76, 712 P.2d 754 (1985).

In re Marriage of Limpy, 195 Mont. 314, 636 P.2d 266 (Mont. 1981).

Fisher v. District Court of Sixteenth Judicial Dist. of Mont. In and For Rosebud County, 424 U.S. 382 96 S.Ct. 943, 47 L.Ed.2d 106 (1976), rehearing denied, 425 U.S. 926, 96 S.Ct. 1524, 47 L.Ed.2d 772 (1976).

Bad Horse v. Bad Horse, 163 Mont. 445, 517 P.2d 893 (1974), cert. denied, 419 U.S. 847, 95 S.Ct. 83, 42 L.Ed.2d 76 (1974).

State ex rel Iron Bear v. District Court of 15th Judicial Dist. In and For Roosevelt County, 162 Mont. 335, 512 P.2d 1292 (1973).

Kennerly v. District Court of Ninth Judicial Dist. of Mont., 400 U.S. 423, 91 S.Ct. 480, 27 L.Ed.2d 507 (1971).

State ex rel. Irvine v. District Court of 4th Judicial Dist. In and For Lake County, 125 Mont. 398, 239 P.2d 272 (1951).

Draper v. U. S., 164 U.S. 240, 17 S.Ct. 107, 41 L.Ed. 419 (1896).

Tribes

Blackfeet ■

Chippewa-Cree (Rocky Boy Reservation) ■

Confederated Salish & Kootenai (Flathead) ■

Crow ■

Fort Belknap ■

Fort Peck (Assiniboine & Sioux) ■

Northern Cheyenne ■

NEVADA (18*)

Legislation

Nev. Rev. Stat. § 41.430 (1973), ch. 601, Statutes of Nevada 1973; - Assumes criminal and civil jurisdiction when tribe: 1) consents in manner provided by ch. 601, Statutes of Nevada 1973, or 2) consents in accord with P.L. 90-284, § 406, April 11, 1969, 82 Stat. 80.

Also see NRS 194.040

State Statute - Retrocessions:

Senate Bill 578, Statutes of Nevada 1975, ch. 474.

Odger's Ranch - 40 F. Reg. 27,501, June 30, 1975; Effective July 1, 1975.

Ruby Valley Allotment - 40 F. Reg. 27,501, June 30, 1975; Effective July 1, 1975.

See also, tribe-specific legislation below.

Case Law

Adams v. Adams, 107 Nev. 790, 820 P.2d 752 (1991).

Patterson v. Four Rent, Inc., 101 Nev. 651, 707 P.2d 1147 (1985).

State v. Jones, 92 Nev. 116, 546 P.2d 235 (1976).

Jones v. State, 94 Nev. 679, 585 P.2d 1340 (1978).

Tribes

Duck Valley Reservation (See also Idaho)

Duckwater Shoshone ■ - 40 F.R. 27,501, June 30, 1975; Effective July 1, 1975.

Ely Colony - ★ - 53 F. Reg. 5837, February 26, 1988; Effective March 1, 1988. ■

Fallon (Paiute/Shoshone) ■

Fort McDermitt (Paiute & Shoshone) (Also in Oregon) ■

KEY:

■ - Tribal Court

■ - Court of Indian Offenses

⊗ - Oklahoma Indian Courts that are not CIOs

◊ - Reassumption of ICWA jurisdiction

★ - Retrocessions

TRIBAL JURISDICTIONAL STATUS

Appendix D - Page 12

Study of Tribal and Alaska Native Juvenile Justice Systems

FLORIDA (2)

Legislation

State - Fl. Stat. Ann. § 285.16 (West 1975);
Origin: Laws 1961, c. 61-252, §§ 1, 2. Civil
and Criminal jurisdiction assumed by state.
Note: Miccosukee and Seminole Tribal
Councils have power to employ personnel
to exercise law enforcement powers under
Fl. Stat. Ann. § 285.16(2)(b).

Federal - Miccosukee Tribe - P.L. 97-399, § 7,
Dec. 31, 1982. 96 Stat. 2015, 25 U.S.C. §§
1741 et seq. Reference § 1746 - Rights
Under Lease Agreement.

Case Law

Seminole Tribe of Florida v. Butterworth, 491
F.Supp. 1015 (S.D.Fla. 1980), *aff'd*, 658
F.2d 310 (5th Cir. 1981), *cert. denied*, 455
U.S. 1020, 102 S.Ct. 1717, 72 L.Ed.2d 138
(1982).

Tribes

Miccosukee ■

Seminole

Dania

Big Cypress

Brighton

IDAHO (5)

Legislation

Idaho Const. of 1890, art. 21, § 19

State - Idaho Code §§ 67-5101 to 67-5103
(1973); Origin - 1963, ch. 58, § 1, p. 224.
Over 7 subject areas: a) Compulsory school
attendance; b) Juvenile Delinquency and
Youth Rehabilitation; c) Dependent,
neglected and abused children; d) Insanities
and mental illness; e) Public Assistance; f)
Domestic relations; g) Operation and
management of motor vehicles upon
highways and roads maintained by the city
or state, or political subdivision thereof;
and full jurisdiction with tribe's consent
(Idaho Code § 67-5102 (1973)).

Case Law

State v. Snyder, 119 Idaho 376, 807 P.2d 55
(1991).

State v. Marek, 112 Idaho 860, 736 P.2d 1314
(1987), *appeal after remand*, 116 Idaho 580,
777 P.2d 1253 (1989).

State v. Fanning, 114 Idaho 646, 759 P.2d 937
(Idaho App. 1988).

Sheppard v. Sheppard, 104 Idaho 1, 655 P.2d
895 (1982).

State v. Allan, 100 Idaho 918, 607 P.2d 426
(1980).

Boyer v. Shoshone-Bannock Indian Tribes, 92
Idaho 257, 441 P.2d 167 (1968).

Tribes

Coeur D'Alene ■

Duckwater Shoshone (Also in Nevada) ■

Fort Hall (Shoshone Bannock) ■

Kootenai ■

Nez Perce ■

Northwestern Band of Shoshoni (Also in Utah)

KEY:

■ - Tribal Court

■ - Court of Indian Offenses

■ - Oklahoma Indian Courts that are not CIOs

◊ - Reassumption of ICWA jurisdiction

★ - Retrocessions

GROUP 3 - STATE ACTION 280 JURISDICTION

ARIZONA (20)

Legislation

See, Ariz. Const., art 20, ¶ 4

State Statutes:

Ariz. Rev. Stat. Ann. §§ 36-1801, 36-1865
(1974) Recodified as:

Ariz. Rev. Stat. Ann. § 49-561. State
assumed jurisdiction over air and water
pollution only.

Federal Statutes:

PL 95-375, September 18, 1978; 25 U.S.C.
1300f(c) & § 3 12/23/82; Recognizes status
of Pascua Yaqui Indian Tribe and creates
reservation. § 1300f(c) authorizes state to
accept criminal and civil jurisdiction as if
complied with 83-280.

PL 97-386 establishes trust lands for Pascua
Yaqui Tribe to include lands described as
part of reservation.

P.L. 97-386, § 3, Dec. 23, 1982; 96 Stat. 1946. -
Requires state civil and criminal
jurisdiction as if assumed pursuant to 67
Stat. 588 as amended 82 Stat. 79 over
additional reservation lands.

Case Law

State v. Flint, 157 Ariz. 227, 756 P.2d 324 (Ariz.
App. 1988), cert. denied, 492 U.S. 911, 109
S.Ct. 3228, 106 L.Ed.2d 577 (1989).

Val/Del, Inc. v. Superior Court, 145 Ariz. 558,
703 P.2d 502 (Ariz. App. 1985), cert.
denied, 474 U.S. 920, 106 S.Ct. 250, 88
L.Ed.2d 257 (1985).

*U.S. v. Superior Court In and For Maricopa
County*, 144 Ariz. 265, 697 P.2d 658 (1985).

Arizona v. San Carlos Apache Tribe of Arizona,
463 U.S. 545, 103 S.Ct. 3201, 77 L.Ed.2d
837 (1983), rehearing denied, 464 U.S. 545,
104 S.Ct. 3209, 78 L.Ed.2d 185 (1983).

State v. Griswold, 101 Ariz. 577, 422 P.2d 693
(1967), cert. denied, 388 U.S. 913, 87 S.Ct.
2113, 18 L.Ed.2d 1352 (1967).

Williams v. Lee, 358 U.S. 217, 79 S.Ct. 269, 3
L.Ed.2d 251 (1959).

In re Denetclaw, 83 Ariz. 299, 320 P.2d 697
(1958).

Tribes

Ak Chin □

Cocopah - ■

Colorado River □

Gila River (Pima-Maricopa) □

Fort Mojave (Also in California) □

Havasupai □

Hopi □

Hualapai □

Kaibab Paiute Band □

Mohave-Apache (Fort McDowell) (Salt River
Tribal Court prosecutes)

Navajo Nation □ 9 District Courts in the Navajo
Judicial System:

Tuba City, Kayenta, Chinle, Window Rock,
Shiprock, Crownpoint, Ramah, Alamo,
Canoncito.

Pascua Yaqui □ - ★ - Tribe - Resolution No. C-
42-84(a) dated September 3, 1984 requests
state to retrocede civil and criminal
jurisdiction. State - Proclamation of
Governor dated 10/04/84. Federal - 50 F.
Reg. 34,555, Aug. 26 (1985); Accepts state
retrocession.

Quechan (Yuma, AZ)

Salt River Pima-Maricopa Indian Community
San Carlos □

San Juan Southern Paiute (Tuba City, AZ)

Tohono O'odham (Papago) □

Tonto Apache □

White Mountain Apache □

Yavapai-Apache (Camp Verde) □

Yavapai-Prescott □

KEY:

□ - Tribal Court

■ - Court of Indian Offenses

3 - Oklahoma Indian Courts that are not CIOs

9 - Reassumption of ICWA jurisdiction

★ - Retrocessions

TRIBAL JURISDICTIONAL STATUS

Appendix D - Page 10

Study of Tribal and Alaska Native Juvenile Justice Systems

WISCONSIN (11)

Legislation

See, tribe-specific legislation below.

Case Law

Lac du Flambeau Band of Lake Superior Chippewa Indians v. State of Wis., 770 F.Supp. 480 (W.D.Wis. 1991), *appeal dismissed*, 957 F.2d 515 (7th Cir. 1992).

Lac du Flambeau Band of Lake Superior Chippewa Indians v. State of Wis., 743 F.Supp. 645 (W.D.Wis. 1990).

Jacobs v. Jacobs, 138 Wis.2d 19, 405 N.W.2d 668 (1987), *review denied*, 139 Wis.2d 860, 415 N.W.2d 162 (1987).

County of Vilas v. Chapman, 122 Wis.2d 211, 361 N.W.2d 699 (1985).

State v. Webster, 114 Wis.2d 418, 338 N.W.2d 474 (1983).

State v. Lemieux, 106 Wis.2d 484, 317 N.W.2d 166 (App. 1982), *aff'd*, 110 Wis.2d 158, 327 N.W.2d 669 (1983).

Tribes

Bad River ▣

Forest County Potawatomi

Lac Courte Oreilles ▣ - Reassumption ICWA jurisdiction: 46 F.R. 15579, March 6, 1981; Exclusive jurisdiction effective May 5, 1981.

Lac du Flambeau ▣

Menominee ▣ - ★ - 41 F. Reg. 8516 (Feb. 20, 1976)

Oneida Tribe

Red Cliff Tribal Council ▣

Sokaogon Chippewa ▣

St. Croix ▣

Stockbridge-Munsee

Wisconsin Winnebago

KEY:

▣ - Tribal Court

■ - Court of Indian Offenses

☒ - Oklahoma Indian Courts that are not CIOs

☿ - Reassumption of ICWA jurisdiction

★ - Retrocessions

TRIBAL JURISDICTIONAL STATUS

Appendix D - Page 9

Study of Tribal and Alaska Native Juvenile Justice Systems

OREGON (9)

Legislation

See, tribe-specific legislation below.

Case Law

Anderson v. Gladden, 188 F.Supp. 666 (D.Ore. 1960), *aff'd*, 293 F.2d 463 (9th Cir. 1961), *cert. denied*, 368 U.S. 949, 82 S.Ct. 390, 7 L.Ed.2d 344 (1961).

Anderson v. Britton, 212 Or. 1, 318 P.2d 291 (1957), *cert. denied*, 356 U.S. 962, 78 S.Ct. 999, 2 L.Ed.2d 1068 (1958).

Tribes

Burns-Paiute □

Confederated Tribes of Coos Lower Umpqua & Siuslaw - Restored status under Coos, Lower Umpqua & Siuslaw Restoration Act, PL 98-481, Oct. 17, 1984, 98 Stat. 2250; 25 U.S.C. § 714. Sect. 714e(c) authorizes state to assume criminal and civil jurisdiction.

Confederated Tribes of the Grande Ronde □ - Restored status P.L. 98-165, November 22, 1983, 97 Stat. 1064; 25 U.S.C. § 713. Criminal and civil jurisdiction conferred on state under § 713f(c)(6). See also PL 100-425, Sept. 9, 1988, 102 Stat. 1594, as amended PL 100-581, Title II, § 202, 11/1/88, 102 Stat. 2939.

Tribes (con't. - Oregon)

Coquille - Restored status P.L. 101-42, June 28, 1989, 103 Stat. 91; 25 U.S.C. § 715. Sec. 715d authorizes the state to assume criminal and civil jurisdiction.

Cow Creek Band of Umpqua - Cow Creek Band of Umpqua Tribe of Indians Recognition Act. PL 97-391, § 2, December 29, 1982, 96 Stat. 1960; Amended PL 100-139, § 5(b), October 26, 1987, 101 Stat. 827; Amended PL 100-446, Title 1, September 27, 1988, 102 Stat. 1794.

Klamath □ - Restored status P.L. 99-398, August 27, 1986, 100 Stat. 850; 25 U.S.C. § 566. Sec. 556e authorizes state to assume criminal and civil jurisdiction.

Siletz □ - Restored status P.L. 95-195, November 18, 1977, 91 Stat. 1415; 25 U.S.C. §§ 711. Sec. 711(d)(6) provides that the state shall have civil and criminal jurisdiction.

Umatilla □ - Retrocession of criminal jurisdiction; Tribal Resolution # 79-31. Oregon State Executive Order EO-80-8; 46 F.R. 2195, January 8, 1981; Effective January 2, 1981.

Warm Springs □ - excepted in P.L. 280.

KEY:

□ - Tribal Court

■ - Court of Indian Offenses

≡ - Oklahoma Indian Courts that are not CIOs

◊ - Reassumption of ICWA jurisdiction

★ - Retrocessions

MINNESOTA (10)

Legislation

P.L. 83-280 67 Stat. 588 (1953) as amended, 18 U.S.C.A. §§ 1161-62, 25 U.S.C.A. §§ 1321-22, 28 U.S.C.A. § 1360 (1953). (See, tribe-specific legislation below.)

Case Law

State v. Folstrom, 331 N.W.2d 231 (1983).
State v. Keezer, 292 N.W.2d 714 (1980), *cert. denied*, 450 U.S. 930, 101 S.Ct. 1389, 67 L.Ed.2d 363 (1981).
State v. Clark, 282 N.W.2d 902 (1979), *cert. denied*, 445 U.S. 904, 100 S.Ct. 1080, 63 L.Ed.2d 320 (1980).
State v. Forge, 262 N.W.2d 341 (1977), *appeal dismissed by*, 435 U.S. 919, 98 S.Ct. 1479, 55 L.Ed.2d 512 (1978).
Bryan v. Itasca County, Minnesota, 303 Minn. 395, 228 N.W.2d 249 (1975), *rev'd*, 426 U.S. 373, 96 S.Ct. 2102, 48 L.Ed.2d 710 (1976).
Leech Lake Band of Chippewa Indians v. Herlst, 334 F.Supp. 1001 (1971).
State v. Holthusen, 261 Minn. 536, 113 N.W.2d 180 (1962).

State v. Jackson, 218 Minn. 429, 16 N.W.2d 752 (1944).

Tribes (Minnesota)

Lower Sioux

Minnesota Chippewa

Bois Forte/Nett Lake - State retrocession; 40 F.R. 4026, January 27, 1975; Governor's Proclamation August 20, 1973; □

Fond du Lac □

Grand Portage □

Leech Lake □

Mille Lacs □

White Earth □

Prairie Island (Minnesota Mdewakanton Sioux)

Red Lake (excepted in 83-280) □

Shakopee Mdewakanton Sioux (Prior Lake) □

Upper Sioux

NEBRASKA (6)

Legislation

See, tribe-specific legislation below.

Case Law

Walker v. Rushing, 898 F.2d 672 (8th Cir. 1990).
Tyndall v. Gunter, 681 F.Supp. 641 (D.Neb. 1987), *aff'd*, 840 F.2d 716 (8th Cir. 1988).
Omaha Tribe of Nebraska v. Village of Walthill, 334 F. Supp. 823 (D.Neb. 1971), *aff'd*, 460 F.2d 1327 (8th Cir. 1972), *cert. denied*, 409 U.S. 1107, 93 S.Ct. 898, 34 L.Ed.2d 687 (1973).

Tribes

Iowa of Nebraska

Omaha □ - ★ - 35 F. Reg. 16,598 (1970); ♀ - 45 F.R. 20568, March 28, 1980; Effective May 28, 1980.

Ponca Tribe of Nebraska - TERMINATED

P.L. 87-629, September 5, 1962, 76 Stat. 429, 25 U.S.C. §§ 971-980; [Rerecognized P.L. 101-484] Act of Oct. 31, P.L. 101-484, § 2 104 Stat. 1167 (1990) codified at 25 U.S.C. §§ 983 et seq.

Sac and Fox

Santee Sioux

Winnebago □ - ★ - 51 F.Reg. 24,234 (1986); ♀ - 47 F.R. 17,337, April 22, 1982; Effective June 21, 1982

KEY:

- - Tribal Court
- - Court of Indian Offenses
- ⌘ - Oklahoma Indian Courts that are not CIOs
- ♀ - Reassumption of ICWA jurisdiction
- ★ - Retrocessions

TRIBAL JURISDICTIONAL STATUS Appendix D - Page 7

Study of Tribal and Alaska Native Juvenile Justice Systems

GROUP 2 - MANDATORY P.L. 280 STATES

ALASKA

Legislation

See Alas. Const., art. XII, § 12
P.L. 85-615 § 1, 72 Stat. 545 (August 8, 1958);
18 U.S.C. § 1162(a); 25 U.S.C. § 1360(a). (Also
see, tribe-specific legislation below.)

Case Law

State v. Lewis, 559 P.2d 630 (Alaska 1977),
review dismissed, 432 U.S. 901, 97 S.Ct.
2943, 53 L.Ed.2d 1073 (1977).
Organized Village of Kake v. Egan, 369 U.S. 60,
82 S.Ct. 552, 7 L.Ed.2d 573 (1962).
*Metlakatla Indian Community, Annette Island
Reserve v. Egan*, 369 U.S. 45, 82 S.Ct. 552,
7 L.Ed.2d 562 (1962).
United States v. Booth, 161 F. Supp. 269 (D.
Alaska 1958).

Tribes

Metlakatla Indian Community ■ - P.L. 91-523 §
1, Nov. 25, 1970; 84 Stat. 1358; 18 U.S.C. §
1162(a). Amended 18 U.S.C. § 1162(a) to
except Metlakatla Indian Tribe, Annette
Islands Reservation from state criminal
jurisdiction. In most cases where state has
280 jurisdiction, the state requests
retrocession and BIA accepts on behalf of
the United States. This legislation is
extraordinary in that regard. Congress
expressly directed state's retrocession of
jurisdiction. *Metlakatla submitted request
for Reassumption of ICWA jurisdiction: 56
FR 6260.

93 Native Village/Corporations

CALIFORNIA

Legislation

P.L. 83-280 67 Stat. 588 (1953) as amended, 18
U.S.C.A. §§ 1161-62, 25 U.S.C.A. §§ 1321-
22, 28 U.S.C.A. § 1360 (1953). (See, tribe-
specific legislation below.)

Case Law

California v. Cabazon Band of Mission Indians,
480 U.S. 202, 107 S.Ct. 1083, 94 L.Ed.2d
244 (1987).
Rice v. Rehner, 463 U.S. 713, 103 S.Ct. 3291, 77
L.Ed.2d 961 (1983), on remand, 717 F.2d
492 (9th Cir. 1983), rehearing denied, 464
U.S. 874, 104 S.Ct. 209, 78 L.Ed.2d 185
(1983).
*Barona Group of Capitan Grande Band v.
Duffy*, 694 F.2d 1185 (9th Cir. 1982), cert.
denied, 461 U.S. 929, 103 S.Ct. 2091, 77
L.Ed.2d 301 (1983).
Santa Rosa Band of Indians v. Kings County,
532 F.2d 655 (9th Cir. 1976), cert denied,
429 U.S. 1038, 97 S.Ct. 731, 50 L.Ed.2d
748, (1977).

*Rincon Band of Mission Indians v. San Diego
County*, 324 F. Supp. 371 (S.D.Cal. 1971),
aff'd, 495 F.2d 1 (9th Cir. 1974), cert
denied, 419 U.S. 1008, 95 S.Ct. 328, 42
L.Ed.2d 283 (1974).

In re Carmen, 48 Cal.2d 851, 313 P.2d 817
(1957), cert. denied, 355 U.S. 924, 78 S.Ct.
367, 2 L.Ed.2d 354 (1958).

Tribes

Agua Caliente - ch. 604, P.L. 81-322, October 5,
1949; 63 Stat. 705. Grants state civil and
criminal jurisdiction over the Agua Caliente
reservation. Repealed by P.L. 83-280.

Fort Mojave ■ - (Also in Arizona and Nevada)
Tule River Tribe

Winnemucca - (Also in Nevada)
Woodfords (See Nevada Washoe)

106 Rancherias/Indian Communities

KEY:

■ - Tribal Court

■ - Court of Indian Offenses

Ξ - Oklahoma Indian Courts that are not CIOs

¶ - Reassumption of ICWA jurisdiction

★ - Retrocessions

Oklahoma (36)

Legislation

See Okla. Const., art. 3, § 1

Federal - See 25 U.S.C. § 476 - Allotment Act provision for state jurisdiction; note that it does not apply to the former Indian territory.

Case Law

United Keetoowah Band of Cherokee Indians v. State of Okl. ex rel. Moss, 927 F.2d 1170 (10th Cir. 1991).

Ross v. Neff, 905 F.2d 1349 (10th Cir. 1990).

State v. Klindt, 782 P.2d 401 (Okla. Cr. 1989).

Indian Country, U.S.A., Inc. v. State of Okla. Tax Com'n, 829 F.2d 967 (10th Cir. 1987), cert. denied, *Oklahoma Tax Com'n v. Muscogee (Creek) Nation*, 487 U.S. 1218, 108 S.Ct. 2870, 101 L.Ed.2d 906 (1988).

State ex rel. May v. Seneca-Cayuga Tribe, 711 P.2d 77 (Okla. 1985), see also, *Seneca-Cayuga Tribe of Oklahoma v. State of Okla. ex rel. Thompson*, 874 F.2d 790 (10th Cir. 1989).

Goforth v. State, 644 P.2d 114 (Okla. Cr. 1982).

Cheyenne-Arapaho Tribes of Oklahoma v. State of Okla., 618 F.2d 665 (10th Cir. 1980), appeal after remand, 681 F.2d 705 (10th Cir. 1982).

State v. Littlechief, 573 P.2d 263 (Okla. Cr. 1978).

Tribes:

Absentee-Shawnee ☐

Alabama-Quassarte Tribal Town (Creek)

Apache ■

Caddo ■

Cherokee Nation ☐ (Judicial Appeals Tribunal)

Cheyenne-Arapaho ☐

Chickasaw Nation

Choctaw Nation ☐

Citizen Band Potawatomi ☐

Comanche ■

Delaware ■

Eastern Shawnee

Fort Sill Apache ■

Iowa of Oklahoma ☐

Kaw ■

Kialegee Tribal Town (Creek)

Kickapoo ☐

Kiowa ■

Miami Tribe ■

Modoc ■

Muscogee Creek Nation ☐ (Judicial Branch)

Osage

Ottawa

Otoc-Missouria ■

Pawnee ■

Peoria ■

Ponca ■

Quapaw ■

Sac & Fox of Oklahoma ☐

Seminole Nation ☐

Seneca-Cayuga Nation ☐

Thlopthlocco Tribal Town (Creek)

Tonkawa ■

United Keetoowah Band of Cherokee Indians

Wichita ■

Wyandotte

WYOMING (2)

Legislation

Wyom. Const., Art 21, § 26

Case Law

In re General Adjudication of All Rights to Use Water in the Big Horn River System, 753 P.2d 76 (1988).

Vialpando v. State, 640 P.2d 77 (Wyo. 1982).

State ex rel. Peterson v. District Court of Ninth Judicial Dist., 617 P.2d 1056 (Wyo. 1980).

Blackburn v. State, 357 P.2d 174 (Wyo. 1960), rehearing denied, 357 P.2d 1111 (Wyo. 1960).

Tribes

Arapahoe (Wind River Reservation) ☐

Shoshone (Wind River Reservation) ☐

KEY:

☐ - Tribal Court

■ - Court of Indian Offenses

☐ - Oklahoma Indian Courts that are not CIOs

◊ - Reassumption of ICWA jurisdiction

★ - Retrocessions

TRIBAL JURISDICTIONAL STATUS

Appendix D - Page 5

Study of Tribal and Alaska Native Juvenile Justice Systems

MISSISSIPPI (1)

Legislation

No P.L. 280 or similar legislation.

Case Law

U.S. v. John, 347 So.2d 959 (Miss. 1977), *rev'd*, 437 U.S. 634, 98 S.Ct. 2541, 57 L.Ed.2d 489 (1978), *on remand to*, 587 F.2d 683 (5th Cir. 1979), *cert denied*, 441 U.S. 925, 99 S.Ct. 2036, 60 L.Ed.2d 399 (1979).

Tubby v. State, 327 So.2d 272 (Miss. 1976).

Tribes:

Mississippi Band of Choctaw Indians □

NEW MEXICO (21)

Legislation

See N.M. Const., art. XXI, § 2.

Case Law

Your Food Stores, Inc. v. Village of Espanola, 68 N.M. 327, 361 P.2d 950 (1961).

State v. Ortiz, 105 N.M. 308, 731 P.2d 1352 (1986).

Mountain States Telephone and Telegraph Co. v. Pueblo of Santa Ana, 734 F.2d 1402 (10th Cir. 1984), *rev'd*, 472 U.S. 237, 105 S.Ct. 2587, 86 L.Ed. 2d 168 (1985).

Blatchford v. Gonzales, 100 N.M. 333, 670 P.2d 944 (1983), *cert. denied*, 464 U.S. 1033, 104 S.Ct. 691, 79 L.Ed.2d 158 (1984).

Alexander v. Cook, 90 N.M. 598, 566 P.2d 846 (N.M. App. 1977).

Chino v. Chino, 90 N.M. 203, 561 P.2d 476 (1977).

Sangre de Cristo Development Corp., Inc. v. City of Santa Fe, 84 N.M. 343, 503 P.2d 323 (1972), *cert. denied*, 411 U.S. 938, 93 S.Ct. 1900, 36 L.Ed.2d 400 (1973).

Paiz v. Hughes, 76 N.M. 562, 417 P.2d 51 (1966).

Batchelor v. Charley, 74 N.M. 717, 398 P.2d 49 (1965).

State v. Warner, 71 N.M. 418, 379 P.2d 66 (1963).

Montoya v. Bolack, 70 N.M. 196, 372 P.2d 387 (1962).

Valdez v. Johnson, 68 N.M. 476, 362 P.2d 1004 (1961).

State v. Begay, 63 N.M. 409, 320 P.2d 1017 (1958), *cert. denied*, 357 U.S. 918, 78 S.Ct. 1359, 2 L.Ed.2d 1363 (1958), *overruled*, 71 N.M. 418, 379 P.2d 66 (1963).

Tribes

Acoma Pueblo □

Cochiti Pueblo □

Isleta Pueblo □

Jemez Pueblo □

Jicarilla Apache □

Laguna Pueblo □

Mescalero Apache □

Nambe Pueblo □

Navajo Nation □ (Also in Arizona and Utah)

Picuris Pueblo □

Pojaque Pueblo □

San Felipe Pueblo □

San Ildefonso Pueblo □

San Juan Pueblo □

Sandia Pueblo □

Santa Ana Pueblo □

Santa Clara Pueblo □

Santo Domingo Pueblo □

Taos Pueblo □

Tesuque Pueblo □

Zia Pueblo □

Zuni Pueblo □

KEY:

□ - Tribal Court

■ - Court of Indian Offenses

⊠ - Oklahoma Indian Courts that are not CIOs

⧫ - Reassumption of ICWA jurisdiction

★ - Retrocessions

STUDY OF TRIBAL AND ALASKA NATIVE JUVENILE JUSTICE SYSTEMS

TRIBAL JURISDICTIONAL STATUS ANALYSIS

GROUP 1 - NO STATE JURISDICTION

ALABAMA - (1)

Legislation

No P.L. 280 or similar legislation jurisdiction.

Case Law

S.A. v. E.J.P., 571 So.2d 1187 (Ala.Civ.App. 1990).

Ex parte Harris, 506 So.2d 1003 (Ala.Civ.App. 1987).

Tribes:

Poarch Creek Indians ☐

LOUISIANA (3)

Legislation

No P.L. 280 or similar state jurisdiction.

Case Law

Langley v. Ryder, 602 F. Supp. 335 (W.D.La. 1985), *aff'd*, 778 F.2d 1092 (1985).

Tribes:

Chitimacha ☐

Coushatta

Tunica-Biloxi

MICHIGAN (7)

Legislation

No P.L. 280 or similar jurisdiction.

Case Law

Wisconsin Potowatomies of Hannahville Indian Community v. Houston, 393 F.Supp. 719 (W.D. Mich. 1973).

People v. Jondreau, 15 Mich.App. 169, 166 N.W.2d 293 (Mich.App. 1968), *rev'd*, 384 Mich. 539, 185 N.W.2d 375 (Mich. 1971).

Tribes:

Bay Mills ☐

Lac Vieux Desert Band of Chippewas ☐

Grand Traverse (Ottawa & Chippewa) ☐

Saginaw Chippewa Tribe ☐

Hannahville Indian Community ☐

Sault Ste. Marie ☐

Keweenaw Bay ☐

KEY:

☐ - Tribal Court

■ - Court of Indian Offenses

⌘ - Oklahoma Indian Courts that are not CIOs

◊ - Reassumption of ICWA jurisdiction

★ - Retrocessions

TRIBAL JURISDICTIONAL STATUS

Appendix D - Page 3

Study of Tribal and Alaska Native Juvenile Justice Systems

STUDY OF TRIBAL AND ALASKA NATIVE JUVENILE JUSTICE SYSTEMS

TRIBAL JURISDICTIONAL STATUS ANALYSIS

This analysis describes the legislation and case law pertaining to the jurisdiction of tribes in relationship to state jurisdiction. The tribes are separated into four groups, based upon the jurisdictional connection between the tribe and the state in which the tribe is located.

- **GROUP 1** includes tribes found in states with no federal mandate to assume jurisdiction over tribes found within their borders;
- **GROUP 2** includes tribes in states where P.L. 83-280 requires those states to assume jurisdiction over federally recognized tribes within their borders;
- **GROUP 3** includes tribes in states which have assumed jurisdiction to any degree pursuant to the state option provisions of P.L. 83-280;
- **GROUP 4** includes tribes in states which have assumed jurisdiction over tribes within their borders under non-280 statutes, such as restoration or recognition acts.

Governing legislation, pertinent case law, and the tribes included in the boundaries of a state are listed for each state. The types of courts for each tribe, if any, are indicated by a key. The kinds of courts included are tribal courts, Courts of Indian Offenses (CIO's), and Oklahoma Indian courts that are not CIO's. In addition, reassumption of Indian Child Welfare Act (ICWA) jurisdiction and retrocessions are included in the key.

STUDY OF TRIBAL AND ALASKA NATIVE JUVENILE JUSTICE SYSTEMS

APPENDIX D

TRIBAL JURISDICTIONAL STATUS ANALYSIS

- 49) West Virginia W. Va. Code § 8-23-1 (1990) [Municipal Corporations; Intergovernmental Relations; Contracting and Joint Enterprises]
- Language does not mention Indian tribes.
 - Local governmental units cooperate on basis of mutual advantage and to consolidate functions.
 - Defines "public agency" as any municipality, county or other political subdivision of the State, or any county board of education of the state.
- 50) Wisconsin Wis. Stat. § 66.30 (1990) [Municipalities; General; Intergovernmental Cooperation]
- Language does not mention Indian tribes (but see below).
 - Allows municipalities to enter into cooperation agreements with other municipalities for the receipt or furnishings of services or the joint exercise of power.
 - Defines "municipalities" as any department, agency, or any city, village, town, etc.
 - Sec. 66.30(b) allows Indian tribes to enter into cooperation agreements with the municipality if the purpose of the agreement is to establish a joint transit commission.
- 51) Wyoming Wyo. Stat. § 16-1-101 (1990) [City, County, State and Local Powers; General; Intergovernmental Cooperation]
- Language does not mention Indian tribes.
 - Allows any agency or any officer or legal representative of any one or more of the agencies to cooperate with and assist each other, and like entities or authorities of other states, and of the United States.
 - Defines "agency" as counties, municipal corporations, school districts, special districts, public institutions, boards, commissions and political subdivisions.

- 45) Utah Utah Code Ann. § 11-13-2 (1986) [Cities, Counties and Local Taxing Units; Interlocal Cooperation Act]
- Language does not mention Indian tribes.
 - Any public agency may cooperate with another public agency for their mutual advantage to provide services and facilities.
 - Defines "public agency" as any political subdivision of the state including, but not limited to, cities, towns, counties, school districts, and various special districts, any agency of the United States or any political subdivision of another state.
- 46) Vermont Vt. Stat. Ann. tit. 24, § 4801 (1975) [Municipal and County Government; General; Intermunicipal Cooperation and Services]
- Language does not mention Indian tribes.
 - This section deals exclusively with municipal unions and interlocal contracts, most of the language deals with the creation of committees, and the responsibility and duties of the Commission.
 - Defines "municipality" as any city, town, town school district, incorporated school or fire district or incorporated village and all other governmental incorporated units.
 - Agreements appear restricted as between municipalities (Sec. 4866).
- 47) Virginia Va. Code Ann. § 15.1-21 (1989) [Counties, Cities and Towns; General; Joint Exercise of Powers]
- Language does not mention Indian tribes.
 - Allows "political subdivision" of Virginia or other states to enter into agreements.
 - "Political subdivision" is not defined.
- Va. Code Ann. § 15.1-1372.11 (1989) [Counties, Cities and Towns; General; Transportation Improvement District in Multi-County Areas; Cooperation Between]
- Any local district created under the provisions of this chapter may enter into agreements with counties, cities, towns or other political subdivisions within the Commonwealth for joint cooperative action in accordance with the authority contained in § 15.1-21.
- 48) Washington Wash. Rev. Code § 39.34.010 (Supp. 1991) [Public Contracts and Indebtedness; Interlocal Cooperation Act]
- Language does mention Indian tribes.
 - Federally recognized Indian tribes are specifically mentioned as being a public agency.
 - Any public agency may enter into agreements with other Washington public agencies or with public agencies of any other state or of the United States.

- Language does not mention Indian tribes.
 - Permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities to provide services and facilities.
 - Defines "public agency" as any political subdivision of this state, any agency of the state government or of the United States, and any political subdivision of another state.
 - Section 45-40.1-8 allows public agencies to contract with each other to perform any governmental service, activity, or undertaking.
- 41) South Carolina S.C. Code Ann. § 51-15-340 (Law. Co-op. 1977) [Parks, Recreation and Tourism; Municipal Parks]
- Any municipality may, by and through its park and recreation board, join or cooperate with one or more other municipalities or with boards of education in providing, establishing and conducting parks, playgrounds, recreation centers, and other recreation facilities and activities.
- 42) South Dakota S.D. Codified Laws Ann. § 1-24-1 (Supp. 1990) [State Affairs and Government; Governmental Powers; Joint Exercise]
- Indian tribes are specifically mentioned as being a public agency.
 - Any public agency can enter into an agreement with another public agency within South Dakota or from another state.
- 43) Tennessee Tenn. Code Ann. § 12-9-102 (Supp. 1987) [Public Property, Printing and Contracts; Interlocal Cooperation]
- Language does not mention Indian tribes.
 - Any two or more public agencies may enter into agreements with one another for joint or cooperative action.
 - Defines "public agency" as any political subdivision of Tennessee or another state, or an agency of the state or federal government, as well as a private incorporated fire departments and industrial fire departments.
- 44) Texas Tex. Rev. Civ. Stat. Ann. art. 4413(32) (Vernon Supp. 1991) [Heads of Departments; Interagency Cooperation Act]
- Language does not mention Indian tribes.
 - Any state agency may enter into or perform a written agreement or contract to furnish necessary and authorized special or technical services, including the services of employees materials or equipment.
 - Defines "agency" as any department, board, bureau, commission, court, office, authority, council, institution, university, college, and any service or part of a State institution of higher education.
 - 32(b) provides for agreements between the state and its "local governments" and the state and the federal government.
 - 32(c) intergovernmental contracting authority at the local level.

- A unit of local government or a state agency of the state may cooperate, by agreement or otherwise, with a unit of local government or a state agency of Oregon, or with the United States, or with a United States governmental agency, or with an American Indian tribe or an agency of an American Indian tribe.
- The Executive Department has the power to enter into agreements to insure that the state, a state agency or unit of local government does not interfere with or infringe on the right or privilege of an American Indian tribe or members of a tribe held or granted under any federal treaty, executive order, agreement, statute, policy or any other authority..

39) Pennsylvania Pa. Stat. Ann. tit. 53, § 5422 (Purdon 1990) [Municipal and Quasimunicipal Corporations; General; Social Service Programs-Funds; Intergovernmental and Interstate Cooperation]

- Language does not mention Indian tribes.
- Two or more municipalities may jointly cooperate, or any municipality may jointly cooperate with any municipality located in any other state, in the sponsorship, establishment, administration, maintenance and operation of social service programs for the poor, the disabled and the aging and for the sites of established historical, architectural or esthetical value pursuant to the Act relating to intergovernmental cooperation, P.L. 762, no. 180.
- Defines "municipality" as any county, city, borough, incorporated town, township, etc.

Pa. Const. art. IX, § 5 (1969) [Local Government; Intergovernmental Cooperation]

- A municipality by act of its governing body may, or upon being required by initiative and referendum in the area affected shall, cooperate or agree in the exercise of any function, power or responsibility with one or more other governmental units including other municipalities or districts, the federal government, any other state or its governmental units, or any newly created governmental unit.

40) Rhode Island R.I. Gen. Laws § 45-13.1-1 (Supp. 1990) [Towns and Cities; State-Local Relations Commission]

- Language does not mention Indian tribes.
- The Commission is to be a permanent intergovernmental body that strengthens and facilitates relationships between the state government, the cities and towns and other local governments in the state.

R.I. Gen. Laws § 45-40-1 (1988) [Towns and Cities; Interlocal Cooperation Commissions]

- Language does not mention Indian tribes.
- City and town councils authorized to form cooperation commission.
- Commission to recommend to its town council to cooperate with other localities or any other political subdivision of Rhode Island or another state or to any agency, federal or state for the purpose of mutual advantage.

R.I. Gen. Laws § 45-40.1-1 (Supp. 1990) [Towns and Cities; Interlocal Contracting and Joint Enterprise]

- Act enables units of a local government to enter into agreements with another unit of North Carolina or another state.
 - Defines "unit" as any county, city, consolidated city-county, local board of education, sanitary district, or other local political subdivision, authority, or agency of local government.
 - Agreements between units are to be of reasonable duration.
- 35) North Dakota N.D. Cent. Code § 54-40.2 (1989) [State Government; Public Agencies and Indian Tribes; Agreements]
- Any public agency may enter into an agreement with any one or more tribal governments to perform any administrative service, activity, or undertaking.
 - This section does not affect the validity of any agreement entered into between a tribe and a public agency prior to July 1, 1983. However, any such agreement must satisfy the requirements of this section no later than January 1, 1985.
- 36) Ohio Ohio Rev. Code Ann. § 713.23 (Baldwin 1976) [Municipal Corporations; Planning Commissions; Regional and County; Powers and Duties]
- Language does not mention Indian tribes.
 - Allows contracting with other units of local government, cooperating with the state and federal governments in coordinating planning activities and programs in the region.
- Ohio Rev. Code Ann. § 715.02 (Baldwin 1990) [Municipal Corporations; General; Joint Municipal Improvement]
- Language does not mention Indian tribes.
 - Two or more municipal corporations may enter into an agreement for the joint construction and/or management benefiting each such municipal corporation.
- 37) Oklahoma Okla. Stat. tit. 74, § 1001 (1987) [State Government; Interlocal Cooperation Act]
- Language does not mention Indian tribes.
 - Act permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities to provide services and facilities.
 - Defines "public agency" as any political subdivision of Oklahoma, any agency of state or federal government, and any political subdivision of another state.
- Okla. Stat. tit. 10, § 40.07 (1987) [Children; Indian Child Welfare Act]
- Director of Department of Human Services is authorized to enter into agreements with Indian tribes regarding care and custody of Indian children as authorized by the federal Indian Child Welfare Act, 25 U.S.C. Section 1919.
- 38) Oregon Or. Rev. Stat. § 190.110 (Supp. 1990) [Government and Public Affairs; Governmental Units, State Census, Arbitration; Intergovernmental Cooperation]

- Language does not mention Indian tribes.
 - Governmental units may enter into agreements for the performance of 13 specified services.
 - Defines "governmental unit" as any county, town, city, village, district or other municipal corporation.
- 31) New Jersey N.J. Rev. Stat. § 40:8A-1 (Supp. 1990) [Municipalities and Counties; General; Interlocal Services]
- Language does not mention Indian tribes.
 - Any local unit may enter into a contract with any other local unit or units.
 - Defines "local unit" as any municipality, county, school district or a regional authority or district other than an interstate authority or district.
 - Intent of the Legislature is to facilitate and promote interlocal and regional service agreements, and therefore the grant of power under this act is intended to be broad.
- 32) New Mexico N.M. Stat. Ann. § 11-1-2 (Supp. 1988) [Inter-governmental Agreements and Authorities; Joint Powers Agreements]
- Language defines Indian tribe or pueblo as a public agency.
 - Allows for contractual agreements between public agencies of New Mexico, other states and the federal government.
- 33) New York N.Y. Exec. Law § 107 (Consol. 1982) [Executive Law; Department of State; Intergovernmental Agreements]
- Statute requires the secretary of state to keep a current list of interstate and intergovernmental agreements.
- N.Y. Gen. Mun. Law § 460 (Consol. 1986) [General Municipal Law; Interlocal Agreements; Interlocal Agreements with Governmental Units of Other States]
- Language does not mention Indian tribes.
 - Act appears confined to agreements between public agencies of New York and public agencies of another state.
 - Defines "public agency" as any county, city, town, village, school district, improvement district or district corporation of the state of New York; and any local governmental unit, subdivision, or special district of another state.
 - Act enumerates 23 purposes for which agreements can be entered into but is not restricted to the stated 23 purposes.
 - Article does not appear to authorize such agreements with public agencies of foreign countries.
- 34) North Carolina N.C. Gen. Stat. § 160A-461 (1987) [Cities and Towns; Interlocal; Joint Exercise of Powers]
- Language does not mention Indian tribes.

- Language does not mention Indian tribes.
- Any one or more public agencies may contract with any one or more other public agencies to perform any administrative service, activity, or undertaking which each is authorized by law to perform.
- Defines "public agency" as any political subdivision including municipalities, counties, school districts and any agency or department of the state of Montana.

Mont. Code Ann. § 18-11-101 (1989) [Public Contracts; State-Tribal Cooperative Agreements]

- A specific statute which authorizes a "public agency" of Montana to enter into cooperative agreements with Tribal Governments.
- Defines "tribal governments" as the officially recognized government of any Indian tribe, nation, or other organized group or community located in Montana exercising self-government powers and recognized as eligible for services provided by the United States to Indians because of their status as Indians.
- Any one or more public agencies may enter into an agreement with any one or more tribal governments to perform any administrative service, activity, or undertaking that each to authorized by law to perform.

Mont. Code Ann. § 53-30-204 (1989) [Social Services and Institutions; Corrections; Youthful Offenders; Cooperative Agreements for Services with Governing Body of Indian Tribe]

- Department of family services may enter into agreements with the governing body of an Indian tribe within the state for residential, educational evaluation, and aftercare services maintained by the department for children who have been adjudicated delinquent by the tribal court.
- Any agreements entered into must also satisfy the requirements of Title 18, chapter 11.

28) Nebraska Neb. Rev. Stat. § 13-802 (1987) [Cities, Counties, and Other Political Subdivisions; Interlocal Cooperation Act]

- Language does not mention Indian tribes.
- Purpose is to enable governmental units to cooperate with other localities to provide services and facilities.
- Defines "public agency" as any county, city, village, school district.
- Act provides for agreements with public agencies of other states, states being defined as a state of the United States, and District of Columbia.

29) Nevada Nev. Rev. Stat. Ann. § 277.080 (Michie 1990) [Planning and Zoning; State, Counties, Cities, Districts, and Other Public Agencies; Interlocal Cooperation Act]

- Language defines Indian tribes as a public agency.
- Act permits agreements between public agencies of Nevada, other states and the United States.

30) New Hampshire N.H. Rev. Stat. Ann. § 53-A:1 (1971) [Towns, Cities, Village Districts, and Unincorporated Places; Agreements Between Government Units]

- Any municipal corporation shall have power to join with any other municipal corporation, or with any number or combination thereof by contract, or otherwise as may be permitted by law.
- Defines "municipal corporation" as any county, charter county, county road commission, township, charter township, city, village, school district, intermediate school district, etc.

Mich. Comp. Laws § 124.505 (Supp. 1990) [Municipalities; Urban Cooperation Act; Joint Exercise of Power by Contract]

- Language does not mention Indian tribes.
- A public agency of this state may exercise jointly with any other public agency of the state, Dominion of Canada, or the federal government.
- Defines "public agency" as any county, city, village, township, charter township, school district, any political subdivision of the Dominion of Canada, any agency of the United States or any similar entity of any other state.

24) Minnesota Minn. Stat. § 471.59 (1977) [Municipalities; Rights, Powers Duties; Economic Development Loan Repayment; Joint Exercise of Power]

- Language does not mention Indian tribes.
- Two or more governmental units may jointly or cooperatively enter into agreements.
- Defines "governmental units" as every city, county, town, school district, other political subdivision of Minnesota or another state, another state, and any agency of the state of Minnesota or the U.S., and includes any instrumentality of a governmental unit.

25) Mississippi Miss. Code Ann. § 17-13-3 (Supp. 1990) [Local Government; Counties and Municipalities; Interlocal Cooperation]

- Language does not mention Indian tribes.
- Allows local governmental units to cooperate with other local governmental units, any state board, agency or commission and any public agency of the United States.
- Defines "local governmental unit" as any county, any incorporated city, town or village, any school district, any utility district, any community college or any institution of higher learning in the state.

26) Missouri Mo. Ann. Stat. § 70.210 (Vernon 1987) [Political Subdivisions; Governmental Units- Cooperation and Contract]

- Language does not mention Indian tribes.
- Any municipality or political subdivision of Missouri, may contract and cooperate with any other municipality or political subdivision, of this state, or with an authorized agency of the United States, or with other states or a private person, firm or corporation for the planning, development, construction, acquisition or operation of any public improvement or facility.
- Defines "political subdivision" as any county, township, city, towns, villages, etc.

27) Montana Mont. Code Ann. § 7-11-104 (1989) [Local Government; General; Provisions Related to Services; Interlocal Agreements]

- Language does not mention Indian tribes.
 - Any parish, municipality or political subdivision of the state, or any combination thereof, may make agreements to engage jointly in the construction, acquisition or improvement of any public project.
- 20) Maine Me. Rev. Stat. Ann. tit. 30-A, § 2203 (Supp. 1989) [Municipalities and Counties; Interlocal Cooperation; Joint Exercise of Powers]
- Language does not mention Indian tribes.
 - Purpose is to provide services and facilities in accord with geographic, economic, population and other factors influencing the needs and development of local communities.
 - Defines "public agency" as any political subdivision of the state, any quasi-municipal corporation, or any agency of state or federal government.
- 21) Maryland Md. State Fin. & Proc. Code Ann. § 5-402 (1988) [State Finance and Procurement; Governmental Coordination, Cooperation, and Assistance in Planning]
- Language does not mention Indian tribes.
 - Permits the Department of State Planning to cooperate and confer with other units of state government, local governments, federal government, other states and regional and private planning agencies.
 - No express authorization for local government or agencies to enter into agreements with each other.
- 22) Massachusetts Mass. Ann. Laws ch. 40, § 4A (Law. Co-op. (1985) [Administration of the Government; Cities, Towns, and Districts; Governmental Units Authorized to Contract Relative to the Performance of Public Services]
- Language does not mention Indian tribes.
 - Any governmental unit may contract with other governmental units for performance of public service (e.g. joint fire, rescue and ambulance service, etc.).
 - Defines "governmental unit" as a city or town, a regional school district, planning commissions, or any other district, howsoever named.
- 23) Michigan Mich. Comp. Laws § 4.1801 (Supp. 1990) [Legislature; Legislative Council Act; Commission on Intergovernmental Relations]
- Language does not mention Indian tribes.
 - The commission was created to study the relationship between state government and local units of government and to improve cooperation and coordination among state government and local units of government, other states, and the federal government.
 - Defines "local unit of government" as any county, township, village, city, school district, community college district, intermediate school district, authority, or other political subdivision.
 - THIS SECTION IS REPEALED EFFECTIVE OCTOBER 1, 1992.
- Mich. Comp. Laws § 124.1 (Supp. 1990) [Municipalities; Intergovernmental Contracts Between Municipal Corporations]
- Language does not mention Indian tribes.

- Limited to municipalities lying within townships or whose boundaries are coextensive with the boundaries of a township.
 - May enter into a contract for the construction of any public improvement.
- 15) **Indiana** Ind. Code Ann. § 36-1-7-1 (Burns 1981) [Local Government; General; Interlocal Cooperation]
- Language does not mention Indian tribes.
 - Authority to enter into an agreement applies to political subdivisions, state agencies, and federal agencies of Indiana and other states.
- 16) **Iowa** Iowa Code Ann. § 28E.3 (1989) [Executive Branch-Other State Agencies; Joint exercise of powers]
- Language does not mention Indian tribes.
 - Allows public agencies to enter into agreements with other public agencies of Iowa or other states.
 - Defines "public agency" as any political subdivision of the state; any agency of the state government or of the federal govt. However, Sec. 28E.1 (Purpose) allows liberal construction of this chapter.
- 17) **Kansas** Kan. Stat. Ann. § 75-4401 (1989) [State Departments; Interchange of Governmental Employees]
- Language does not mention Indian tribes.
 - Any department, agency or instrumentality of the state, county, city, municipality, or college or university operated by the state or any local government is authorized to participate in a program of interchange of employees with departments, agencies, or instrumentalities of the federal government, another state, or this state.
- Kan. Stat. Ann. § 46-401 (1986) [Legislature; Interstate Cooperation Commission]
- Language does not mention Indian tribes.
 - Sec. 46-406 describes the function of the Commission, authorizes cooperation between Kansas and "other states," the "federal government" and "local units of government."
- 18) **Kentucky** Ky. Rev. Stat. Ann. § 65.210 (Baldwin 1987) [Counties, Cities and Other Local Units; General; Interlocal Cooperation Act]
- Language does not mention Indian tribes.
 - Purpose is to facilitate mutual advantage for both entities with regard to services and facilities in accord with geographic, economic, population and other factors influencing the needs and development of local communities.
 - Defines "public agency" as any political subdivision of the state, of the state government, of the United States, or of another state.
- 19) **Louisiana** La. Rev. Stat. Ann. § 33.1324 (West 1987) [Municipalities and Parishes; Local; Intergovernmental Functions; Grant of Authority to Act Jointly]

- Defines "public agency" in terms of state government, county, city, school district, single and multipurpose special district, single and multipurpose public authority, metropolitan or consolidated government, an independently elected county officer, any agency of the U.S. government, and any similar entity of any other state of the U.S.
- 11) Georgia Ga. Code Ann. § 36-71-11 (Supp. 1990) [Local Government; Development Impact Fees; Intergovernmental Agreements]
- Language does not mention Indian tribes.
 - Municipalities and counties which are jointly affected by development are authorized to enter into intergovernmental agreements with each other, with authorities, or with the state for the purpose of developing joint plans for capital improvements or for the purpose of agreeing to collect and expend development impact fees for system improvements, or both, provided that such agreements complies with any applicable state laws.
- Ga. Const. art. IX, § III, Para. I (Supp. 1990) [Counties and Municipal Corporation; Intergovernmental Contracts]
- The state, or any institution, department, or other agency thereof, and county, municipality, school district, or other political subdivision of the state may contract for any period not exceeding 50 years with each other for joint services, for the provision of services, or for the joint or separate use of facilities or equipment.
- 12) Hawaii Haw. Const. art. XVI, § 5 (1985) [General and Miscellaneous Provisions; Intergovernmental Relations]
- The legislature may provide for cooperation on the part of the state and its political subdivisions with the United States, or other states and territories, or their political subdivisions, in matters affecting the public health, safety and general welfare. Funds may be appropriated to effect such cooperation.
- 13) Idaho Idaho Code § 67-2326 (1989) [State Government and State Affairs; Misc.; Joint Exercise of Powers]
- Language does not mention Indian tribes.
 - Permits state and public agencies to cooperate with each other.
 - Defines "public agency" as any city or political subdivision of the state, including, but not limited to counties; school districts, highway districts; and port authorities; instrumentalities of counties, cities or any political subdivision created under the laws of the state of Idaho; any agency of the state government; and any city or political subdivision of another state.
- 14) Illinois Ill. Rev. Stat. ch. 24, para. 11-85-1 (1990) [Cities and Villages; Corporate Powers and Functions; Joint Municipal and Township Contruction Projects]
- Language does not mention Indian tribes.

from uninspected, adulterated, or misbranded meat and poultry meat and products thereof.

- 6) **Colorado** Colo. Rev. Stat. § 29-1-203 (1977) [Government-Local; Budget and Services; Intergovernmental Relationships]
- Language does not mention Indian tribes.
 - Governments may cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units.
 - Defines "government" as any political subdivision of the state, any agency or department of the state government or of the United States, and any political subdivision of an adjoining state.
 - Defines "political subdivision" as any county, city, town, service authority, school district, local improvement district, law enforcement authority, water, sanitation, fire protection, metropolitan, irrigation, drainage, or other special district, or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.
- 7) **Connecticut** Conn. Gen. Stat. § 7-339a (1989) [Municipalities; Fire, Sewer and other Districts; Interlocal Agreements]
- Language does not mention Indian tribes.
 - Any public agency may enter into interlocal agreements with any public agency or agencies of Connecticut or any other state or states.
 - Defines "public agency" as any city, town or borough or any metropolitan or municipal district of the state and any local governmental unit, subdivision or special district of another state.
 - Agreements may be entered into for only the enumerated purposes in the statute: i.e., fire prevention and fire fighting, police protection and police services, supply of water, gas or electricity, . . . etc.
- 8) **Delaware** Del. Code Ann. tit. 17, § 177 (1983) [Highways; General; Controlled Access; Authority of Local Units to Consent]
- Language does not mention Indian tribes.
 - Agreements are limited to other states, counties, towns, or the federal government.
 - Includes financing, planning, establishment, improvement, maintenance, use, regulation or vacation of controlled-access facilities or other public ways in its jurisdiction
- 9) **District of Columbia** No enabling statute authorizing state agencies to enter into cooperative agreements with other governmental units.
- 10) **Florida** Fla. Stat. § 163.01 (1989) [County Organization and Intergovernmental Relations; Misc.; Florida Interlocal Cooperation Act of 1969]
- Language does not mention Indian tribes.
 - Permits local governmental units to cooperate with other localities.

- If authorized by their legislative or other governing bodies, two or more public agencies by direct contract or agreement may contract for services or jointly exercise any common powers.
- 4) Arkansas Ark. Stat. Ann. § 14-54-202 (1987) [Local Government; Municipal; Powers; Interstate Agreements; Authority to Enter]
- Language does not mention Indian tribes.
 - Language restricts interstate municipalities from cooperation unless adjacent and separated by state line.
- 5) California Cal. Gov't. Code § 6514.5 (Supp. 1991) [Government Code; General; Joint Exercise of Powers Agreements]
- Any public agency may enter into agreements with other state agencies pursuant to the provisions of Sec. 11256.
 - Defines "public agency" as the federal government or any federal department or agency, this state, an adjoining state or any state department or agency, a county, etc.
- Cal. Gov't. Code § 11256 (Supp. 1991) [Government Code; State Departments and Agencies; Interagency Services and Transactions]
- Subject to approval of the Director of General Services, state agencies may furnish services, materials or equipment to, or perform work for, other state agencies.
- Cal. Gov't. Code § 67107 (1983) [Government Code; California Tahoe Regional Planning Agency; Agency's Powers]
- The agency is empowered to initiate, negotiate and participate in contracts and agreements among the local governmental authorities of the region, or any other intergovernmental contracts or agreements authorized by state or federal law.
- Cal. Food & Agric. Code § 482 (1986) [Food and Agriculture Code; State Administration; Intergovernmental Cooperation]
- The director may enter into cooperative agreements with individuals, associations, boards of supervisors, and with departments, divisions, bureaus, boards, or commissions of this state or of the United States for the purpose of eradicating, controlling, or destroying any infectious disease or pest within this state.
- Cal. Food & Agric. Code § 484 (1986) [Food and Agriculture Code; State Administration; Cooperative Agreements with Federal Agencies]
- The director may enter into cooperative agreements with departments, divisions, bureaus, boards, or commissions of the United States for the purpose of administering meat or poultry meat inspection programs to protect the public

TRIBAL-STATE AGREEMENTS

ANALYSIS OF STATE ENABLING LEGISLATION

The following chart documents enabling legislation allowing the various states to enter into intergovernmental or tribal-state agreements. If the legislation authorizes such agreements but limits them in any way, the limitation is indicated. References are to the specific state's code and section unless otherwise noted. The bracketed information depicts the level or types of governmental authority.

The *Analysis* is a research document inventorying the status of intergovernmental agreements in law, especially tribal-state agreements, state by state. Every state's constitution and statutes were analyzed to determine if they allow such agreements. The *Analysis* does not cover tribal law; information on the law or policy of a specific tribe is available by contacting that tribe. The research covers legislation through the end of March, 1991.

- | | | |
|----|---------|--|
| 1) | Alabama | <p>Ala. Code § 2-27-7 (1977) [Agriculture; Pesticides Act; Intergovernmental Cooperation and Agreements]</p> <ul style="list-style-type: none">• Language does not mention Indian tribes.• The commissioner is authorized to cooperate with and enter into agreements with any other agency, department or institution of this state, the United States government or any of its departments, and any other state or agency thereof, for the purpose of carrying out the provisions of this article to provide for uniformity of regulations insofar as may be practicable. <p>Ala. Code § 33-10-23 (1985) [Navigation and Watercourses; Ameraport Offshore Harbor and Terminal Commission; Intergovernmental Contracts]</p> <ul style="list-style-type: none">• Language does not mention Indian tribes.• The commission may enter into intergovernmental contract agreements with existing port authorities, individually, or with any city, municipality or subdivision of the state, and may engage jointly in the exercise of any power, the making of any improvements which each of the participating authorities may exercise or undertake individually under any provision of general or special law. |
| 2) | Alaska | <p>Alaska Stat. § 24.20.080 (1985) [Legislature; Agencies; Legislative Council; Intergovernmental Cooperation]</p> <ul style="list-style-type: none">• Language does not mention Indian tribes.• The Council constitutes the Alaska Commission on Interstate Cooperation• Council may arrange conferences with, other units of government, officials of other states and nations. |
| 3) | Arizona | <p>Ariz. Rev. Stat. Ann. § 11-951 (1990) [Counties; Intergovernmental Operations; Joint Exercise of Power]</p> <ul style="list-style-type: none">• Language does mention Indian tribes.• Language includes Indian tribe as part of definition of public agency. |

The driving force for positive intergovernmental relations on Indian reservations is the interest of each government. Assuming that the governments have a mutual interest in working together cooperatively, the first step is to determine whether federal law controls the subject matter or the degree to which federal law may constrain the tribe's ability to make an agreement.

The second step is for both governments to examine their constitutions and statutes to determine the degree to which their own existing law affects their ability to participate in intergovernmental cooperation on and near Indian reservations. For example, most tribal constitutions adopted under the Indian Reorganization Act specifically authorize the tribal government to negotiate with state and local governments. We have not examined the hundreds of tribal constitutions, nor have we undertaken the daunting task of examining the largely unpublished tribal legislation bearing on intergovernmental relations, but, in our experience, tribal law offers few barriers to improved intergovernmental relations.

This document is designed as a starting point for determining from the state point of view the legal framework for agreements with Indian tribes. Each state's constitution and statutes were reviewed to determine, first, if they contained any language allowing intergovernmental agreements and, second, if such language specifically allowed tribal-state agreements.

Although many states have "joint powers" type of legislation, some states have been confused about whether this legislation can encompass agreements with tribes or how to amend this legislation or pass special legislation which would provide the proper framework to facilitate a good intergovernmental relationship with the Indian tribes in the state.

This analysis provides a means to compare state legislation on the subject of intergovernmental relations and state-tribal relations in particular, in the hope that tribes and states can benefit from knowing more about the approaches in use throughout the country. We have attempted to cover legislation through the end of August, 1991, and, if we have omitted any legislation, it was done so inadvertently.

For additional information or to suggest additions to future publications, please contact the American Indian Law Center, Inc.

TRIBAL-STATE AGREEMENTS ANALYSIS OF STATE ENABLING LEGISLATION

INTRODUCTION

One of the essential acts of sovereignty is the conduct of intergovernmental relations. In the mid-1970's, the American Indian Law Center, Inc., founded the Commission on State-Tribal Relations in cooperation with a number of organizations representing tribal, state, and county governments. The purpose of the Commission was to explore the subject of non-federal intergovernmental relations on Indian reservations, an area long neglected as well as to act as an information clearinghouse¹. The Law Center continues this long-held interest in tribal-state relations and provides the following legislative analysis in fulfillment of these purposes.

Indian tribes already have relationships with state, county and municipal governments by virtue of their very existence. The question is not whether the relationships exist, but their quality and nature. Some of them are formal, structured and written; most are informal, unstructured and oral. Some are positive, cooperative relationships; others are negative, mutually self-defeating and unpleasant.

Several widely-held misapprehensions became evident in the course of the Law Center's work with the Commission on State-Tribal Relations. The first and perhaps most damaging is the erroneous impression that tribal-state (and tribal-county) relations can only be conducted with federal approval and supervision. Federal law does place specific limits on the kinds of intergovernmental agreements tribes can make or on tribal power to make certain kinds of concessions, but Congress has not asserted a general power to control this area.² The presumption is that, absent a specific barrier found in a treaty, statute or court decision, federal law does not constrain tribal-state relations.³

The second misapprehension is that the lines between tribal and state jurisdiction must be defined first, before any negotiation can take place. The fallacy of this circular argument is immediately obvious. Because state and county governments may share territory with tribes, the exact distribution of jurisdiction will always be the subject of contention, and cannot be the obstacle that stops discussion.

¹American Indian Law Center, Inc., *Handbook on State-Tribal Relations*, Commission on State-Tribal Relations (1981).

² Indian Civil Rights Act, 25 U.S.C.A. §§ 1321 (b), 1322 (b).

³ The Indian Child Welfare Act, 25 U.S.C.A. §1919, refers to tribal-state agreements respecting the care and custody of Indian children. The mechanism for negotiating child welfare intergovernmental agreements existed prior to the enactment of this section which should be construed as a compelling endorsement for a mechanism which encourages negotiation and cooperation.

Copyright©1991 by
American Indian Law Center, Inc.

American Indian Law Center, Inc.
P.O. Box 4456 - Station A
Albuquerque, New Mexico 87196

TRIBAL-STATE INTERGOVERNMENTAL AGREEMENTS
ANALYSIS OF STATE ENABLING LEGISLATION
SECOND EDITION

AMERICAN INDIAN LAW CENTER, INC.
P.O. BOX 4456 - STATION A
ALBUQUERQUE, NEW MEXICO 87196
505/277-5462

Prepared in cooperation between
THE AMERICAN INDIAN LAW CENTER, INC. AND
THE UNIVERSITY OF NEW MEXICO LAW LIBRARY

Second Edition prepared by
LAURA J. LUNA
Third-Year Law Student
under the direction of
ANITA MORSE
Professor of Law and
UNM Law Librarian

First Edition prepared by
TOBY F. GROSSMAN
Senior Staff Attorney
American Indian Law Center, Inc.

STUDY OF TRIBAL AND ALASKA NATIVE JUVENILE JUSTICE SYSTEMS

APPENDIX C

**TRIBAL-STATE INTERGOVERNMENTAL AGREEMENTS;
ANALYSIS OF STATE ENABLING LEGISLATION**

Whitaker, Catherine J.	16
Williams, G. N.	45
Willis, Deborah Alice	24
Wilson, Larry C., ed.	7
Wilson, Michael	10
Winfrey, L. Thomas, Jr.	8, 30
Wisconsin Council on Criminal Justice.	4
Woods, R. G.	7
Wydra, Donald E.	3
Wyman, Max.	8
Yates, Alayne.	31
Youngman, G.	9
Yueh-Au Chien, Cynthia	28
Zawitz, Marianne W.	18

Steiger, John L.	7
Steinhart, David.	21
Steketee, Martha Wade	24
Stephan, James J.	18
Stott, E. K.	38
Streissguth, Ann Pytkowicz	18
Streit, Samuel M.	1
Stromberg, R. S.	9
Sullivan, D. P.	24
Swinomish Tribal Mental Health Project	11
Tafoya, Nadine W.	11
Tallakson, Joe	30
Taylor, Theodore W.	15
Theis, H. E.	30
Thornberry, Terence P.	5
Thornton, Marlene	36
Thornton, Russell	46
Tierney, N. J.	24
Traitel, Richard B.	3
Tso, Tom.	12
U.S. Commission on Civil Rights	14, 15
U.S. Congress. House. Committee on Education and Labor.	31
U.S. Congress. House. Committee on Interior and...	14, 36
U.S. Congress. House. Committee on Ways and Means.	19
U.S. Congress. House. Subcommittee on Human Resources of...	5
U.S. Congress. Office of Technology.	29
U.S. Congress. Senate Committee.	7
U.S. Congress. Senate. Committee on Finance...	18
U.S. Congress. Senate. Select Committee on Indian Affairs.	8, 15, 31
U.S. Congress. Senate. Select Committee on Indian...	12
U.S. Congress. Senate. Subcommittee on Labor, Health and...	19
U.S. Department of Health and Human Services	18
U.S. Department of Health and Human Services. Division of...	11
U.S. House. Select Committee on Children, Youth, and Families.	29
Umbreit, Mark	16
University Microfilms International	15
University of Colorado Health Sciences Center	11
University of New Mexico. New Mexico Statistical Analysis...	30
Uppal, J.	2
Urban Indian Child Resource Center.	30
Van Vleet, Russell	21
Vetter, Louise	30
Wall, John S.	5
Warner, Jean Shumway	10, 36
Watts, T. D.	45
Weafer, Linda F.	6
Weaver, F. H.	35
Weaver, Linda F.	45
Weaver, R. S.	9
Weichman, D., ed.	32
Weichselbaum, Hart F.	33
Weis, Joseph.	7
Weiss, Ellyn	2
Wescott, Siobhan.	12

Prucha, Francis Paul, ed.	15
Query, Joyn.	35
Radcliffe, G. E.	35
Randall, Vernellia R.	46
Randels, Sandra P.	18
Reaves, Brian A.	16
Red Horse, Yvonne.	9
Rhine, Edward E.	16
Robbins, Susan P.	29
Rojek, Dean G.	33
Romig, Dennis	2
Ross, Bambi D.	3
Ross, Robert R.	3, 4
Ross, Virginia.	12
Rossum, R. A.	21
Rothman, David J.	35
Royster, Judith V.	45
Rubin, H. Ted	15, 36
Rupp, Lloyd G.	16
Rusco, Elmer R.	14
Russell, M. S.	8
Rutherford, Andrew	21
Salzmann, Zdenek, comp.	46
Samet, Jonathan M.	12
Sandefur, Gary D.	46
Save the Children	11
Schneider, Anne Larason	10, 21, 36
Schneider, Anne, ed.	10
Schneider, Peter R.	10
Schram, D. D.	21
Schuster, Charles R., ed.	18
Schwartz, Ira M.	9, 21-24
Schwartz, Ira M., ed.	5
Scott, H., ed.	32
Scott, S. F.	3
Search Group: The National Consortium for Justice... ..	4
Sellers, C. S.	30
Selongei, M.	9
Sentell, David B.	14
Sentencing Commission	16
Shepard, George H.	3
Sherard, Melvena L.	29
Shore, James H.	10
Sickmund, M. H.	24
Skibine, Alex Tallchief	15
Smith, C. P.	26
Smith, David F.	18
Smith, William R.	16
Snyder, Howard N.	2, 24
Social Science Research Institute.	3
Spencer, J.	28
Spencer, John W., ed.	18
Steele, Patricia A.	1

Minor-Harper, Stephanie	17
Morris, Melanie T.	14
Mountain Plains Youth Service Coalition.	35
Mudd, J. E.	7
Murchison, Kenneth S., comp.	14
National Academy of Public Administration.	9
National Advisory Committee for Juvenile Justice and... ..	5
National American Indian Court Judges Association, Inc.	7, 14
National Center for State Courts	3, 17
National Clearinghouse for Alcohol and Drug Information. ...	12
National Conference on State Legislatures.	23
National Council of Juvenile and Family Court Judges	3
National Council on Crime and Delinquency.	33
National Council on Indian Opportunity	15
National Indian Justice Center, Inc.	7
National Institute of Mental Health.	19
National Institute on Drug Abuse	12
National Judicial College	11
National Minority Advisory Council on Criminal Justice.	7, 23
National Task Force on Juvenile Justice for Native... ..	28
National Victims Resource Center.	18
Native American Development Corporation	34, 37
Native American Rights Fund	14
Navajo Nation	11
New Jersey Juvenile Delinquency Disposition Commission.	23
New Mexico Youth Authority	5
Newbauer, J.	8
Nidorf, Barry J.	16
Nimick, Ellen H.	5, 24
Nimmer, Raymond T.	16
O'Brien, Michael J.	28
O'Brien, Sharon	15
Obarapor, Anita M.	37
Office of Techonology Assessment	19
Olney, Orville N.	7, 38
Olson, Jay	3
Orlando, F.	9
Osgood, D. Wayne	33
Outtz, Janice Hamilton	37
Pardue, B. W.	22
Parker, Ann	8, 16
Patterson, J.	7
Peak, K.	28
Pemberton, A. R.	36
Perry, David L.	4
Philp, Kenneth R., ed.	13
Piccuto, D.	9
Pickens, Roy W., ed.	18
Pommersheim, Frank	14
Pourier, James E.	9
Present Relations of the Federal Government... ..	15
Price-Cohen, Cynthia.	7
Province of Alberta.	7
Prucha, Francis Paul	46

Krisberg, Barry A., ed.	20
Kroll, Koe	19
Kusserow, Richard P.	11
La Prairie, Carol	28
LaDue, Robin A.	18
Lambert, David.	2
Lambert, Elizabeth, ed.	18
Langston, Denny C.	16
LaPrairie, C. P.	6
Lehmann, Edward J.	45
Lerman, Paul.	4
Letman, Sloan, ed.	32
Leukefeld, Carl G., ed.	18
Levi, Laurie	23
Liability and Legal Issues in Juvenile Restitution	5
Liability and Legal Issues in Juvenile Restitution.	25
Linkages: For Indian Child Welfare Programs.	7
Litsky, P.	21
Lobb, M. L.	45
Loeber, Rolf	5
Lorch, Barbara Day	28
Loucks, Bryan.	9
Loughran, Edward J.	21
Lujan, Carol C.	11
Lux, Joseph R.	13
Lyday, W.	2
Maguire, Kathleen, ed.	17
Maloney, Dennis	2
Manfredi, C. P.	21
Manson, Spero M., ed.	9, 10, 15
Margolis, Richard J.	2
Marshall, Thomas O.	21
Martin, Kallen M.	11
Masis, Kathleen B.	12
Mason, Velma Garcia	12
May, Philip A.	7, 11, 12
McCune, Blair.	3
McDonald, Carol	16
McDonald, Douglas C.	19
McDonald, Walter R.	45
McFarlane, George	7
McGee, Charles M.	3
McMahon, David H.	11
McMillen, Michael J.	20
McShane, Damian.	28
Menezes, Julie.	7
Metcalf, A.	35
Meyers, Ralph E.	27
Mildon, M. R., ed.	5
Miller, Frank C.	7
Miller, Fred.	17
Mills, Darrell K.	37
Minnes, Mythra.	7

Integrated Education	27
International Journal of the Addictions	35
JAMA	18
Journal of Adolescence	28
Journal of Community Psychology	10
Journal of Criminal Justice	28
Journal of Social Psychology	8
Journal of Studies on Alcohol	12
Journal of the National Center	11
Judicature	16
Justice Quarterly	10, 30
Juvenile and Family Court Journal	3, 5, 35
Juvenile Justice Bulletin	4
Juvenile Justice Bulletin. OJJDP Update on Statistics	5
Juvenile Justice Journal	10
Law and Policy	22
Legal Reference Service Quarterly	45
Montana Law Review	7
National Institute of Justice Reports	4
NCCD Focus	1
New England Journal on Criminal and Civil Confinement	3, 33
New York Law School Journal of Human Rights	7
NIDA Research Monograph	18
NIJ Reports	4
North Carolina Law Review	1
North Dakota Law Review	7
Notre Dame Law Review	15
OSAP Technical Report	18
Osers News in Print	11
Pediatrics in Review	18
Plains Anthropologist	7
Res Gestae	3
Social Biology	12
Social Forces	7
Sociological Viewpoints	28
South Dakota Law Review	8, 13, 14
State Court Journal	17
Surgeon General's Workshop in Drunk Driving: Background Papers	12
U.C. Davis Law Review	15
Wake Forest Law Review	14
Winds of Change	12
Yale Law and Policy Review	10
Youth Law News	1, 2
Judicial Branch of the Navajo Nation.	37
Kahn, Marvin W.	32
Kannensohn, M.	2
Kaufman, C. Bernard	38
Keepers, George	10
Kickingbird, Kirke	6
Kihm, Robert.	22
Klienfeld, Judith.	9
Kline, Susan A.	3
Koller, B. J.	21
Krisberg, Barry A.	1, 20-23

Hodgkinson, Harold L.	37
Hofford, Meredith, ed.	19
Hollerbeck, A. R.	8
Holzbauer, Ida	6, 34
Hudzik, John K.	16
Huizinga, David	5
Hunt, Jo Jo	31
Hutzler, John L.	2
Hyde, Mary	28
Hymbaugh, Karen J.	12
Indian Bar Association of New Mexico	11
Innes, Christopher A.	17, 39
Inter-University Consortium for Political... ..	45
Ito, Jeanne A.	2
Izzo, Rhena L.	4
Jackson, Ronald W.	16
Jankovic, Joanne	6
Jankovic, Joanne, ed.	24
Jankowski, Louis W.	18
Jenkins, Richard L., ed.	2
Joe, Karen	1
Johnson, Ralph, comp.	13
Jolly, S.	32
Jones, Kenneth L.	18
Jones, Richard S.	15
Jones, Richard S., ed.	15
Journal Titles Index	
Academic Psychology Bulletin	32
Alaska Law Review	3
Alcohol Health & Research World	12
American Criminal Law Review	6
American Indian Culture Center	8
American Indian Law Review	8, 10, 13, 14, 28
American Journal of Psychiatry	31
American Sociological Review	6
Arizona Law Review	8
Bureau of Justice Statistics Bulletin	16-18
Bureau of Justice Statistics Special Report	17, 39
Canadian Legal Aid Bulletin	6
Carnegie Quarterly	4
Child Abuse and Neglect: The International Journal	11
Clearinghouse Review	18
Corrections Today	3
Crime and Delinquency	5, 20, 23
Criminal Justice and Behavior	4
Criminal Justice Policy Review	21
Criminology	6, 10, 27
Educational Horizons	3
Elementary School Guidance and Counseling	9
Federal Probation	37
Federal Register	6
Free Inquiry in Creative Sociology	29
Human Organization	7, 27, 29

English, Abigail	18
Fausett, Rory Snow-Arrow	45
Faust, F. L.	6
Feeney, Floyd	1
Feld, Barry C.	6
Ferdinand, Theodore, ed.	8
Fetter, T. J.	38
Finkelstein, M. Marvin	2
Finnegan, T. A.	24
Fisher, Stanley Z.	2
Fishman, G.	22
Flanagan, Timothy J., ed.	17
Ford, Mary	19
Forslund, Morris A.	6, 8, 26, 27
Freimund, Justus	16
French, Laurence	32
French, Laurence, ed.	6, 32
Frock, S. R. Fin	35
Gabriel, D.	2
Garff, Regnal W.	2
Garmire, Bernard L.	31
Gates, David	18
Gauger, William A.	1
General Accounting Office	11, 25
Getches, David H.	7, 38
Goldberg, C.	8
Grasmick, Harold G.	46
Grasmick, Mary K.	46
Green, Ronald K.	6
Green, Ronald K., ed	24
Greenfeld, Lawrence A.	3, 17
Griffith, William R.	10
Griffiths, Curt Taylor	6, 8, 30, 45
Grobsmith, Elizabeth S.	27
Gropper, Bernard, ed.	18
Groskin, Richard	16
Gubler, Brend H.	13
Gubler, Brent H.	13
Guernsey, Carl E.	2
Guilfoyle, Michael Hoag.	27
Guttman, E.	22
Guy, Elmer.	11
Hagan, William T.	13
Hamburg, David A.	19
Harkins, A. M.	7
Harlow, Caroline Wolf.	17
Harris, Anthony R.	6
Harris, Linda	23
Harris, R.	2
Harris, V. W.	35
Hawkins, J. David	5
Heerman, Charles E.	27
Heide, K. M.	22
Henderson, Thomas A.	36

Carnegie Council on Adolescent Development	4
Castellano, T. C.	22
Caulkins, D. D.	7
Child Welfare League of America. Information Service.	45
Clapsaddle, S.	2
Clarren, Sterling K.	18
Clinton, R.	8
Cockerham, W. C.	8
Cohen, Robyn L.	17
Cohen, Stuart	2
Collins, James J.	18
Colosimo, E. Thomas	30
Commission on Accreditation for Corrections	1
Commission on State-Tribal Relations.	6
Commission on Trial Court Performances Standards	38
Community Research Forum.	1
Comptroller General of the United States.	14
Confederation of American Indians, comp.	14
Conway, S. A.	31
Cranston, Virginia A.	6
Crites, L. L.	38
Croan, Gerald M.	32
Cronk, Shanler D.	6
Cronk, Shanler D., ed.	24
Crystal, Sue, comp.	13
Cubberly, Douglas B.	13
Curley, W. A.	8
De La Rosa, Mario, ed.	18
Debruyne, Lemyra	11
Department of Interior. Division of Law Enforcement Services	26
Department of Justice	22
Department of Justice. Bureau of Justice Statistics	16-18, 20, 39
Department of Justice. Law Enforcement Assistance Admin.	1, 5, 34
Department of Justice. Law Enforcement Assistance Admin... ..	1, 3
Department of Justice. National Institute for Juvenile... ..	2
Department of Justice. National Institute of Justice	16
Department of Justice. Office of General Counsel	24
Department of Justice. Office of Justice and... ..	5
Department of Justice. Office of Justice Programs	9
Department of Justice. Office of Juvenile Justice and... ..	2-4, 6, 20
Department of the Interior	34
Department of the Interior and the Department of Health... ..	10
Department of the Interior. Bureau of Indian Affairs	13, 15
Department of the Interior. Office of Indian Affairs	13
Department of the Interior. Solicitor	13
Dinges, Norman G.	8
Dinges, Norman G., ed.	15
Donovan, James P.	6
Doyan, Richard A.	7
Dunford, Franklyn W.	33
Dupont, Jerry, comp. and ed.	45
Eddison, Lee, ed.	4
Eisikovits, Z.	22

Author Index (Title)

Aase, Jon M.	12, 18
Abram, Linda.	8
Ainsworth, Janet E.	1
Alaska Advisory Committee on Minority Judicial Sentencing... ..	25
Alaska Department of Health and Social Sciences,	4
Alexander, Rudolph, Jr.	29
Allen-Hagen, Barbara.	4
American Correctional Association	1, 8
American Indian Law Center, Inc.	5, 6, 8, 10, 25, 31
American Indian Policy Review Commission	11, 13, 14
Angell, J. E.	25
Armstrong, Troy	2
ARROW, Inc.	26
Arthur, Lindsay	1
Austin, J.	21
Austin, James	1
Babcock, William T.	6
Baron, Roger	1
Barton, William H.	9
Bastian, Lisa D.	16
Beck, Allen J.	3, 17
Beck, Deborah	18
Beck-Zierdt, Nathaniel.	10
Behavioral Research Institute.	22
Bell, James.	1
Bennett, Robert L.	26
Bercovitz, Jeffery.	3
Berlin, Irving N.	10
Beville, Sylvia	32
Bird, Michael E.	11
Bird, Thomas	32
Birkenmayer, A. C.	32
Black, T. E.	26
Blackmore, John	1
Blackwell, Charles W.	26
Blue, A. W.	9
Boren, John J., ed.	18
Boxerman, Lawrence A.	1
Boyum, William.	10
Bradley, Harold	16
Brown, James W.	20
Brown, Marci	1
Brown, Waln K., ed.	2
Bureau of the Census.	37
Burke, Vincent	10
Burt, Larry W.	14
Butts, Jeffrey A.	1, 9
Cain, Robert, Jr.	34
California Criminal Justice Legal Foundation.	24
Camp, C.	1
Camp, G.	1

A bibliography divided into the following sections: treatment, pregnancy, infants, children and families, evaluation, and policy. In alphabetical order by author, within each section, the bibliography covers documents from 1982 through 1989 and includes abstracts for each.

- Prucha, Francis Paul. *United States Indian Policy: A Critical Bibliography*. Bloomington, IN: Newberry Library. Indiana University Press, 1977.
- Randall, Vernellia R. *Fetal Alcohol Syndrome Public Health Policy. Selected Annotated Bibliography*. May 30, 1991.
- Salzmann, Zdenek, comp. *The Arapaho Indians: A Research Guide and Bibliography*. New York: Greenwood Press, 1988.
- Thornton, Russell, Gary D. Sandefur, and Harold G. Grasmick. *The Urbanization of American Indians*. Bloomington, IN: Newberry Library. Indiana University Press, 1982.
- Thornton, Russell, and Mary K. Grasmick. *Bibliography of Social Science Research and Writings on American Indians*. Minneapolis, MN: Center for Urban and Regional Affairs, University of Minnesota, 1979.
- Thornton, Russell, and Mary K. Grasmick. *Sociology of American Indians: a Critical Bibliography*. Bloomington, IN: Newberry Library. Indiana University Press, 1980.

XIX. Bibliographies

Child Welfare League of America. Information Service. "Selected References on Juvenile Delinquency, 1973-1987." Washington, D.C.: Child Welfare League of America, Inc., n.d. Photocopy.

Dupont, Jerry, comp. and ed. *Native American Collection*. Law Library Microform Consortium, 1990.

Fausett, Rory Snow-Arrow, and Judith V. Royster. "Courts and Indians: Sixty-five Years of Legal Analysis: Bibliography of Periodical Articles Relating to Native American Law, 1922-1986."

Griffiths, Curt Taylor, and Linda F. Weaver. *Native North Americans-Crime, Conflict and Criminal Justice-A Research Bibliography*. Burnaby, British Columbia: Simon Fraser University Criminology Research Centre, 1982.

Bibliography on American Indian crime, delinquency and criminal justice issues in Canada and United States. Covers legal, political, cultural, demographic issues such as police relations, courts, corrections, parole and probation. Includes publications on health and welfare, alcohol and drug abuse, juvenile programs and services. Coverage is from 1960's to 1980's and is indexed by subject and cross-referenced by year and author. (NCJRS Database)

Griffiths, Curt Taylor, Linda F. Weaver and G. N. Williams. *Native North Americans-Crime, Conflict and Criminal Justice-A Research Bibliography*. 2nd ed. Burnaby, British Columbia: Simon Fraser University Criminology Research Centre, 1984.

Inter-University Consortium for Political and Social Research. *Data Collections Available from the National Archive of Criminal Justice Data*. Ann Arbor, MI: National Archive of Criminal Justice Data, 1989.

Data collections processed and archived in the NACJD under a cooperative agreement with the U.S. Department of Justice. Contents includes attitude studies, community studies, adult corrections, juvenile corrections, court case processing, courts, criminal justice system, delinquency, governmental response to crime, official statistics, and police.

Legal Reference Service Quarterly 7 (1987): 107-228.

Bibliography based on *Index to Legal Periodicals*, *Index to Periodicals Related to Law*, *Legal Resources Index*, *American Indian Journal* and *Canadian Native Law Reporter*. Includes 1300 individual entrees arranged chronologically by title and topically indexed.

Lehmann, Edward J. *American Indians: A Bibliography with Abstracts*. Springfield, VA: National Technical Information Service, 1975.

Lobb, M. L., and T. D. Watts. *Native American Youth and Alcohol: An Annotated Bibliography*. Westport, CT: Greenwood Press, 1989.

Bibliography of published work on all aspects of American Indian youth and alcohol. Includes U.S. and Canadian books, journals, articles, dissertations, conference papers, and government reports, 1969-1988. Indexed by subject including crime, policy and prevention. (NCJRS Database)

McDonald, Walter R. *Evaluation of the Perinatal Substance Abuse Programs. Deliverable #1 - Preliminary Bibliography*. March 1990.

XVIII. Statutes and Regulations

Assimilative Crimes Act, 18 U.S.C. sec. 13

BIA Indian Police, 25 C.F.R. 11.30 4 (b)

Indian Reorganization Act of 1934. Ch. 576, 48 Stat. 984 (codified as amended at 25 U.S.C. sections 461 *et seq.*)

An expression of the government's retreat from the policies of allotment and assimilation. Under IRA, tribes were encouraged to organize along the lines of corporation, in order to provide a way for tribes to interact with non-Indian society as governmental units.

Court of Indian Offenses, 25 C.F.R. sec. 11.2(c)

Indian Civil Rights Act of 1968, Pub. L. No. 90-284, sec. 401-403, 82 Stat. 77 (1968)

Indian Self-Determination and Education Assistance Act of 1975 Pub. L. No. 93-638, 88 Stat. 2203, Jan. 4, 1975 (codified at 25 U.S.C. sections 450 *et seq.*). Title I is Indian Self-Determination Act; Title II is Indian Education Assistance Act.

Authorizes tribes to contract with the Secretaries of Interior and Health and Human Services, to administer federal programs otherwise directly operated by those federal departments. Express federal policy of moving away from federal domination of programs for Indians and toward more meaningful participation of Indian people in the planning and conduct of these programs.

Self-determination contracts are not discretionary; burden of proof is on the Secretary of the Interior to demonstrate adequate grounds for refusing such a contract.

Indian Self-Determination and Education Assistance Amendments of 1988. Pub. L. No. 100-472, 102 Stat. 2285, Oct. 5, 1988 (codified at 25 U.S.C. sections 450 *et seq.*)

Amendments allow tribal organizations more autonomy; their purpose is to increase tribal participation in management of federal Indian programs and remove administrative and practical barriers to effectuating the original Act.

Major Federal Crimes Act, 18 U.S.C. sections 1151, 1152 and 3242

Public Law 83-280, Act of Aug. 15, 1953, Ch. 205, 67 Stat. 588 (codified, as amended, in scattered sections of 18 and 28 U.S.C.)

Act allows states to assume concurrent jurisdiction over reservations.

The Snyder Act. Act of Nov. 2, 1921, ch. 115, 42 Stat. 208 (codified as amended at 25 U.S.C. section 13)

The Act was necessitated by Congress's failure to pass individual appropriations requests for BIA expenditures; it provides general authorization for the BIA to expend moneys appropriated by Congress for the benefit, care, and assistance of American Indians. Authorized programs include those for "general support and civilization," education, health, industrial assistance, water systems, buildings and grounds, employment of various personnel, liquor and drug control. Areas of authorized activity have been expanded since enactment.

Tribal Police, 25 C.F.R. sec. 11(d)

United States v. Wheeler, 435 U.S. 313 (1978).

Indian tribes are sovereigns separate from the United States government and tribal prosecution of a crime already prosecuted in federal court is not barred by the double jeopardy clause of the U.S. Congress.

White v. Califano, 437 F.Supp. 543 (DSD, 1977), *aff'd*, 581 F.2d. 697 (8th Cir. 1978).

State lacks authority and, consequently, responsibility to care for a mentally ill Indian living on reservation and the Indian Health Service has the duty to care for her under the Indian Health Care Improvement Act.

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

State cannot exercise civil jurisdiction over suits by non-Indians against Indians involving a transaction arising on the reservation. The decision articulated the "infringement" test, state action may not infringe on the right of tribal governments to make their own laws.

Williams v. United States, 327 U.S. 711 (1946).

State law crime definitions are used only where no federal definition is provided in the Assimilative Crimes Act.

Wilson v. Watt, 703 F.2d 395 (10th Cir. 1983).

Federal government must observe due process in providing social services to Indians.

Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832).

States have no jurisdiction over Indians or Indian country.

sovereign immunity bar of suits against states.

Oklahoma Tax Commission v. Citizen Band of Potawatomi Indian Tribe of Oklahoma, 111 S.Ct. 915 (1991).

Indian tribes are domestic dependent nations which exercise inherent sovereign authority over their members and territories and suits brought against tribe are barred by doctrine of sovereign immunity absent a clear waiver by the tribe. State may not collect tax on sales of goods to members on land held in trust for federally recognized tribe but may collect taxes on sales to non-members and tribe has obligation to assist in collections of validly imposed state tax.

Oklahoma Tax Commission v. Graham, 489 U.S. 838 (1989).

Possible tribal immunity defense under federal law does not provide independent basis for federal jurisdiction, and state court action based on state law against Indian tribe may not be removed to federal court.

Oliphant v. Suquamish Tribe, 435 U.S. 191 (1978).

Tribal court has no jurisdiction over non-Indians for violation of tribal criminal laws.

Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978).

The proper forum for Indian woman's Indian Civil Rights Act claim against her tribal government was tribal, not federal court and until Congress clearly grants federal courts jurisdiction broader than habeas corpus jurisdiction, federal courts may not imply such jurisdiction.

Seminole Nation v. United States, 316 U.S. 286 (1942).

Court discusses the distinctive obligation of trust incumbent upon the government in its dealings with Indian people.

United States v. Antelope, 430 U.S. 641 (1977).

Federal criminal statutes which subject Indians, by virtue of their status as Indians, to federal criminal prosecution, do not violate Fifth Amendment due process.

United States v. Heath, 509 F.2d 16 (9th Cir. 1974).

Federal jurisdiction over a member of a terminated tribe exists under 18 U.S.C. sec. 1152, interracial crime clause, because victim was a member of a non-terminated tribal Indian.

United States v. McBratney, 104 U.S. 621 (1881).

Jurisdiction over crime in Indian country committed by one non-Indian against another non-Indian properly lies in state court. See, also, *Draper v. United States*, 164 U.S. 240 (1896); *New York ex rel. Ray v. Martens*, 326 U.S. 496 (1946).

United States v. Sandoval, 231 U.S. 28 (1912).

Pueblo Indian lands were Indian country since they were occupied by distinctly Indian communities which were dependent tribes recognized and protected by federal government.

Keeble v. United States, 412 U.S. 205 (1973).

Federal Major Crimes Act includes power to convict and sentence Indians for lesser included offenses. See, also, *Felicia v. United States*, 495 F.2d 353 (8th Cir.), cert. denied, 419 U.S. 849 (1974).

McDonald v. Colville Confederated Tribes, 17 Indian Law Reporter 6030 (no. 90-13008, Colville Tr. Ct., Jan. 12, 1990).

Court ordered closing of Colville tribal jail on grounds that jail conditions presented danger to health and safety of jail inmates.

McNabb v. Bowen, 827 F.2d 787 (9th Cir. 1987).

I.H.S. held responsible for Indian child's health care bills, upon county's refusal to pay. I.H.S. cannot view state and local funds as available and accessible under its alternative source rule when such funds are legally but not actually available.

Mississippi Band of Choctaw Indians v. Holyfield, U.S. (1989) 109 S.Ct. 1597.

Indian Child Welfare Act which gave tribal courts exclusive jurisdiction over Indian youth domiciled on tribal reservation established a uniform federal law. States may not apply state law of domicile in determining jurisdiction over Indian youth in adoption proceedings if it undercuts the clear intent of the Act. ICWA adopted generally accepted meaning that domicile of child is that of parent.

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

Court reaffirms tribal sovereignty in terms of jurisdiction over matters profoundly affecting the status and political organization of the tribe although holding that regulation of hunting and fishing by non-members does not bear sufficient relationship to tribal self-government or internal relations to come under rule.

Morton v. Mancari, 417 U.S. 535 (1974).

Upholds preference for American Indians in B.I.A. employment in spite of non-discrimination provisions of the Equal Opportunity Employment Act; court utilizes rational relationship rather than compelling interest test.

Morton v. Ruiz, 415 U.S. 199 (1974).

B.I.A. General Assistance held available to Indians living in off-reservation community, on basis of residuary nature of B.I.A. support.

National Farmers Union Ins. Co. v. Crow Tribe, 471 U.S. 845 (1985).

Tribal court may exercise civil jurisdiction over non-member and such jurisdiction must be exhausted before federal jurisdiction attaches

Native Village of Noatak v. Hoffman, 896 F.2d 1157 (9th Cir. 1990), rev'd sub nom *Blatchford v. Native Village of Noatak and Circle Village*, 111 S.Ct. 2578 (1991)

28 U.S.C. which grants district court original jurisdiction to hear all civil actions brought by an Indian tribe where controversy arises under federal law does not void the 11th Amendment

XVII. Cases

Blatchford v. Gonzales, 100 N.M. 333, 670 P.2d 944 (1983), Appeal dismissed, cert. denied, 464 U.S. 1033 (1984).

State had jurisdiction over Indian convicted of accessory to criminal sexual penetration and kidnapping of Navajo child occurring on Yah-Ta-Hey, privately owned land near Navajo Reservation populated by Indians and included in Executive order addition 709. Discussed in Hughes, Richard W. "Indian Law," *New Mexico L. Rev* 18 (1988): 403-467, 453-464 with regard to meaning of "dependent Indian community," under 18 U.S.C. Sec. 1151.

Brendale v. Confederated Tribes and Bands of the Yakima Nation, 492 U.S. 408 (1989).

Tribe does not have authority to zone non-member owned fee lands within the reservation unless there is a protectible tribal interest under federal law.

Delaware Tribal Business Comm. v. Weeks, 430 U.S. 73 (1977).

Indian claims case reaffirming Congress's plenary, although not absolute, power to regulate American Indian affairs, limited only by the Constitution.

Donnelly v. United States, 228 U.S. 243 (1913).

Land set aside from public domain by Executive order for use as an Indian Reservation was Indian country.

Duro v. Reina, 110 Sup. Ct. 2053 (1990).

Holding tribal court had no criminal jurisdiction over non-member Indians. Congress reversed this decision in *Criminal Jurisdiction over Non-Member Indians*, 25 U.S.C. 1301 note, as amended by 105 Stat. 646, P.L.No. 102-137 (Oct. 28, 1991), amending 104 Stat. 1892, P.L. No. 101-511, Sec. 8077.

Escondido Mutual Water Co. v. La Jolla, 446 U.S. 765 (1984).

Court states in *dicta* that it is "highly questionable" whether Indian bands have inherent authority to prevent a federal agency from carrying out its statutory responsibility.

Fox v. Morton, 505 F.2d (9th Cir. 1974).

In a case dealing with termination of Indian workers from tribal work experience program, the court, in establishing procedural ~~due~~ process requirements, notes the government's overriding duty of fairness toward Indians.

Henrickson v. Griggs, 672 F.Supp. 1126 (N.D. Iowa 1987).

Individual had enforceable federal right under Juvenile Justice Delinquency and Prevention Act (JJDPa) actionable under 42 U.S.C. Sec. 1983.

Iowa Mutual Ins. Co. v. La Plante, 480 U.S. 9 (1987).

Federal court may not exercise diversity jurisdiction over a dispute before an appropriate Indian tribal court system has first had an opportunity to determine its own jurisdiction.

Male and female samples from central booking facilities in twenty one cities currently in the Drug Use Forecasting Program (DUF) are taken for approximately 14 consecutive evenings for each quarter. Urine specimens are tested for ten drugs. All females arrestees are included in the DUF samples because of their small number. Male arrestees are limited for inclusion if the charge was for sale or possession of drugs or if a traffic offense. Percentages for positive drug tests for males range from 53% (San Antonio) to 82% (San Diego). For females the range is from 45% (Indianapolis) to 83% (Washington, D.C.). Female arrestees tested positive for a drug 70% or more in eight of the 17 cities. Tables are used to graphically depict various trends and comparisons among male and female arrestees. When race is included, White, Black, Hispanic and Other is used.

Innes, Christopher A. *Profile of State Prison Inmates, 1986: Drug Use and Crime*. Washington, D.C.: U.S. Dept. of Justice. *Bureau of Justice Statistics Special Report*, July 1988.

Report seeks to understand the relationship between drugs and crime by focusing on various aspects of state prison inmates histories prior to incarceration. Data from the 1986 survey of state prison inmates is used for the report. Details of prisoner drug use and addiction histories, patterns of employment, and drug treatment program participation is analyzed. Among the findings are indications that illegal drugs were used daily or near daily by 43% of State prison inmates. Major drugs (heroin, methadon, cocaine, PCP, or LSD) were used by 19% daily or near daily. A relationship was found between major drug use and the first arrest. Those who ever used a major drug daily (half of the sample) and those who regularly used a major drug (three-fifths of the sample) did not do so until after their first arrest. Tables.

1989.

The Project proposes 22 separate performance standards. The standards are grouped in the following five areas: 1) access to justice, 2) expedition and timeliness, 3) equality, fairness, and integrity, 4) independence and accountability, and 5) public trust and confidence. After a brief introduction, the "black letter" standards follow in succinct statements. Next a commentary clarifies and explains each standard. Finally, goals, objectives and activities of the Trial Court Performance Standards Project are described as well as a proposed measurement system for trial courts.

Kaufman, C. Bernard. *Alternative Sentencing Evaluation Project. Final Report. Appendix B. Review of Literature*, January 1981.

Focus on DUI offenders.

B. Rural Policing

Stott, E. K., T. J. Fetter and L. L. Crites. *Rural Courts: The Effects of Space and Distance on the Administration of Justice*. Publication No. R0032. Denver, CO: National Center for State Courts, July 1977.

The definition of "rural" varies from agency to agency and runs the gamut of cities with a population of 24,000 to towns of 2,500. As a result rural statistics can be misleading. Chapter 1 describes the changes occurring in rural America: no longer characterized as primarily agribusiness but rather one of an influx of industry and migration from urban areas. While the ideal situation is that there is no difference between urban and rural courts that is not the case. Rural area characteristics affect the court system. Among the characteristics discussed are: the lack of social services, a lower tax base, geographic isolation, the absence of serious crime and close community ties. Chapters 2 through 8 focus on the effects of these characteristics on the issues of rural court operations. Suggested solutions are alternative approaches based on rural characteristics rather than urban solutions. Chapter 9 emphasizes how the findings of the study might affect those involved in rural courts and the positive aspects of the rural vs. urban courts. While interviews for the report focused on professionals in Montana, North Dakota, South Dakota and Wyoming, a national survey was conducted to identify other rural courts that has succeeded in improving services. These examples appear scattered throughout the text and are indexed.

C. Offense Statistics

Department of Justice. Bureau of Justice Statistics. *Correctional Populations in the United States, 1988*. Washington, D.C.: U.S. Dept. of Justice. Bureau of Justice Statistics, March 1991.

Through the use of extensive tables this document gives an overview of all persons in the United States under some form of correctional supervision during 1988. This includes jail inmates, those on probation and parole, prisoners, and a first time look at the census of local jails. Capital punishment is also addressed. Commentaries by jurisdiction are included as well as copies of questionnaires used to acquire the data.

Department of Justice. Bureau of Justice Statistics. *Drugs and Crime. 1989. 1989 Drug Use Forecasting Annual Report*. Washington, D.C.: U.S. Dept. of Justice. National Institute of Justice. *Research in Action*, June 1990.

B. Demographics

Bureau of the Census. *Census of Population: American Indian Areas and Alaska Native Villages: 1980. Supplementary Report*. Washington, D.C.: U.S. Dept. of Commerce, 1980.

Detailed maps, charts, tables and text tables presenting data from the 1980 census counts for the American Indian population. This includes reservations, tribal trust lands (off reservation) and historic areas of Oklahoma (excluding urbanized areas). This is the first decennial census to identify all Federal and State American Indian reservations and other American Indian areas and Alaska Native villages. Also, this is the first 1980 census report to present data on tribal trust lands, historic areas of Oklahoma and Alaska Native regional corporations. Data provided includes distribution of American Indian population in the United States, distribution of American Indian population in and out of identified areas, and the number of identified Indian reservations in the United States.

Hodgkinson, Harold L., Janice Hamilton Outtz, and Anita M. Obarapor. *The Demographics of American Indians: One Percent of the People; Fifty percent of the Diversity*. Washington, D.C.: Center for Demographic Policy. Institute for Educational Leadership, Inc., 1990.

An attempt to address the gap in current statistical data regarding American Indians the authors use a variety of sources. Data is presented in tables and graphs and address health, education, employment, population, and location of American Indians.

C. Judicial System

Judicial Branch of the Navajo Nation. *Annual Report. Fiscal Report, 1989*.

Joint report of the Navajo Nation Judicial Branch and the Judiciary Committee of the Navajo Tribal Council. Narrative and statistical format to review court activities of both. Includes aggregate and separate annual reports by civil, criminal, traffic, family court and supreme court cases. Budget statistics are given including an accounting of the tribal general fund, year to date fines & fees collection and annual training expenses.

Olney, Orville N., and David H. Getches. *Indian Courts and the Future: Report of the NAICJA Long Range Planning Project*. National American Indian Court Judges Association, Inc., 1978.

Long range planning project report on improvements needed in tribal courts. Analysis of jurisdictional issues and relationships with state and federal courts and governments. Discussion of Indian Civil Rights Act, federal jurisdiction over major crimes under the Major Crimes Act, Public Law-280 State Jurisdictions. Analysis of major federal cases on jurisdictional issues involving tribal courts. Includes model standards for Indian judicial systems and a five year plan for support of tribal courts.

XVI. General (Non-Juvenile Justice References)

A. Corrections Reform

Commission on Trial Court Performances Standards. *Tentative Trial Court Performance Standards with Commentary*. Commission on Trial Court Performance Standards. National Center for State Courts, May

Pemherton, A. R. *Alternative Approaches to Reservation Youth Problems*. Washington D.C.: U.S. Dept. of Health, Education, and Welfare, 1974.

Description of reservation based counseling and education centers for youthful offenders which stress American Indian culture and contemporary native issues. Programs include substance abuse education, a detoxification center, vocational counseling and alternatives to delinquency. The Center cooperates with local law enforcement agencies to provide alternatives to court system. Includes statistics on reductions in high school dropouts, juvenile court involvement and institutionalization of youths in areas served by youth center. (NCJRS Database)

U.S. Congress, House, Committee on Interior and Insular Affairs. *Indian Juvenile Alcoholism and Drug Abuse Prevention*. 99th Cong., 1st Sess., 1986.

Hearings held at Rapid City, Albuquerque, and Phoenix focusing on HR 1156 and HR 2624. These bills expand and authorize substance abuse services for Indian youth.

E. Restitution

Schneider, Anne Larason, and Jean Shumway Warner. *National Trends in Juvenile Restitution Programming*. Washington, D.C.: U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Programs, 1989.

Report on restitution as an institutionalized program in juvenile courts. Restitution programs have increased from 15 in 1977 to over 400. Research findings show restitution compensates victims and reduces recidivism. Descriptions of programs and statistics on use and effect of restitution.

Thornton, Marlene, H. Ted Rubin and Thomas A. Henderson. *Juvenile Restitution Management Audit*. Washington, D.C.: U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, 1989.

Auditing manual for agency supervision or restitution cases in juvenile justice settings.

XV. American Indian and Alaska Native (General)

A. Substance Abuse

Mills, Darrell K. "Alcohol and Crime on the Reservation: A 10-Year Perspective." *Federal Probation* 53, no. 4 (December 1989): 12-15.

Analysis of alcohol related crime on Wind River Indian Reservation, Wyoming, 1978-1988 revealed 70% of defendants were under influence of alcohol at time of offense.

Native American Development Corporation. *Pass the Word. A Resource Booklet for the Native American Community Concerning New Concepts About Alcoholism*. Washington, D.C.: Native American Development Corporation, n.d.

Addressing alcoholism in the American Indian community this booklet looks at changing attitudes towards alcohol abuse. New ideas regarding prevention and treatment of alcoholism are also listed. These include ideas that alcoholism is a family and community disease, that it encompasses more than one generation and that it occurs with other problems. The booklet also looks at resources available in the Indian communities and evaluates possible strategies to address the problems of addiction.

severely over-represented in treatment population and positive outcomes higher for White youth than for Indian youth.

Radcliffe, G. E. "Ohio Plan-Oversight 1983." *Juvenile and Family Court Journal* 34, no. 4 (1983-84): 3-10.

Evaluation study of Ohio legislation requiring reduction of institutionalization of juveniles, expansion of community-based services and giving financial assistance to local juvenile courts for development of alternative programs for juvenile offenders. Tabular and graphic data.

Rothman, David J. *Conscience and Convenience: The Asylum and its Alternatives in Progressive America*. Boston, MA: Little, Brown, n.d.

History of juvenile justice in the United States and the creation of juvenile courts by Progressives as a child welfare measure intended to socialize rural and immigrant youth in urban, industrial America.

D. Proposed Programs

Harris, V. W., S. R. Fin Frock, and F. H. Weaver. *Treating Delinquents in the Community: A Behavioral Model for Homeparent Centers for Youth Development and Achievement*. Tucson, AZ: Center for Youth Development and Achievement, 1974.

Manual with procedures for halfway house treatment of youthful offenders based on behavior modification through contingency management. This strategy is a reward-punishment system for appropriate and inappropriate behaviors. Includes guidelines for contingency management, schedules of rewards and punishments, forms for incident reports and reports on types of programs. (NCJRS Database)

Metcalf, A. *Model For Treatment In A Native American Family Service Center*. Rockville, MD: National Criminal Justice Reference Center, 1982.

Report by Urban Indian Child Resource Center (CRC) of Oakland, California. The purpose is development of the Indian treatment model by focusing on diagnosis, intervention, support services, prevention, administration, and etiology. The report avoids contrasting the Center's model with that found in most non-Indian settings. Instead it highlights CRC's qualities and where appropriate comparisons are made. This report attempts to tell its story from an "Indian perspective". Section II of the report begins with an explanation of the problem and its courses. Section III describes the structure of the Center. Section IV contains an overview of the families that use the center for help. Section V describes the Center's activities. An analysis of how the Center works is provided in Section VI. Section VII compares the CRC's program with other Indian programs. The final summary provides a summary and recommendations. Specific recommendations which are judged to be most important in overcoming institutional abuse and neglect are: 1) control of Indian programs must be in the hands of the Indians; 2) utilization of tribally-based family structure and communal events are the most effective basis for treatment; 3) Indian treatment models need to avoid pressure toward "professionalism" which separate therapy from other services; 4) treatment goals must emphasize a transition from dependency to interdependency; 5) the administrative structure needs to be interdependent and nonhierarchical; 6) prevention needs to be aimed at non-Indians; 7) funding needs to be provided in such a way that a secure resource base is available.

Administration. The assessment was carried out by the staff of Associates for Youth Development, Inc. (AYD) through an agreement with NCCD and WCCJ. The assessment team concluded that there is significant potential for the WYSP to vigorously pursue its overall mission of delinquency prevention. This mission can best be pursued through a process of community problem solving which brings people together in a positive manner to change conditions that affect them.

Department of Justice. Law Enforcement Assistance Administration. *Sonoma County Criminal Justice Self-Assessment Project Technical Assistance*. Prepared by Stuart E. Otterlee. Washington, D.C.: Dept. of Justice. Law Enforcement Assistance Administration, 1976.

Analysis of juvenile justice system for Sonoma County, California and suggestions for self-assessment project actions in juvenile court probation procedures and identification/recordation of juvenile justice system issues for further inquiry. Includes forms, charts.

Department of the Interior. *Survey of Indian Detention Facilities*. Prepared by The National Academy of Public Administration, 1988.

Survey of 37 jails on Indian reservations operated by BIA funds and 2 Navajo tribe jails, primarily used for misdemeanants. Most facilities are operated at minimum levels with inadequate attention to health and safety. Over 95% of offenses are alcohol-related and inmates are repeat offenders. Facilities are improperly designed and "New Generation" facilities allowing continual visual supervision and normalized communities of inmates are recommended. More stringent management supervision of P.L. 93-638 contracts is recommended as well as training of personnel.

Holzbauer, I. *Omaha (NE) Tribal Justice Program - Final Evaluation Report*. Lincoln, NE: Nebraska Committee on Law Enforcement and Criminal Justice Statistical Analysis Center, 1976.

Evaluation of probation options for juveniles on Omaha Indian Reservation between March 10, 1975 and December 31, 1975 indicated the program provided referrals in the community and court and police cooperation. While data did not indicate a decrease in school truancy, recidivism, group crimes and juvenile crimes the program was positively previewed by those it served including parents and guardians. It was recommended that the program continue with improvements in staff training and recordkeeping. Tables and appendices. (NCJRS Database)

Mountain Plains Youth Service Coalition. *Documentation of Family Shelter Care Project*. Pierre, SD: Mountain Plains Youth Service Coalition, 1979.

Report on Family Shelter Care Project on South Dakota Indian Reservation for alternative disposition of juvenile offenders. Program trained Indian parents in diagnostic and counseling skills. Juvenile offenders were placed in family environment for care and foster parents observed and diagnosed youth's specific needs to assist caseworker in developing future treatment strategy. Includes tables, diagrams, workshop agendas and evaluation forms. (NCJRS Database)

Query, Joyn. "Comparative Admission and Follow-up Study of American Indians and Whites in a Youth Chemical Dependency Unit on the North Central Plains." *International Journal of the Addictions* 20, no. 3 (1985): 489-502.

Study of 96 youth, aged 10-23 North Dakota drug abusers showed Indian youth

Tulsa and Osage counties, Oklahoma. The Tulsa county system is "metropolitan" in nature while the Osage County system is more rural. The focus of the questionnaire was the patterns of juvenile arrest and of services offered to children in trouble. Questionnaire was also administered to public school youth in both counties.

The report addresses the subjects of diversion of children in need of supervision, central intake and referral and advocacy of youth. Recommendations include children in need of supervision be referred to youth services agencies and police should conduct juvenile handling with court personnel. Also suggests the Tulsa county diversion programs such include alternative education, counseling, and improved administrative procedures. Appendixes include information regarding the youth services agencies of the two counties, the questionnaires administered to the agencies and to the youth, and finally the results of the youth survey. (NCJRS Database)

Rojek, Dean G. "Juvenile Diversion and the Potential of Inappropriate Treatment for Offenders." *New England Journal on Criminal and Civil Confinement* 12 (1986): 329-47.

The disillusionment with the rehabilitative model has led to the development of new strategies and approaches in dealing with juvenile offenders. The most strongly acclaimed innovation in the juvenile justice system is diversion. This article considers the program effectiveness of diversion by employing evaluation research. The article speculates that some juvenile offenders may not be amenable to this proposed treatment. The article concludes that in the present study many clients were lured into treatment not because of client needs but in order to fill program slots. Moreover, the services provided did not match the initial needs of the client. Thus, community-based treatment may be as irrational and vindictory as traditional systems of justice.

B. Counseling

Native American Development Corporation. *Adolescence - A Tough Time for Indian Youth*. Washington, D.C.: Native American Development Corporation, n.d.

This booklet describes statistics that show that Indian youth are particularly vulnerable to differences in their culture and of those of the world around them. Evidence of their inability to cope with these differences is seen in the high incidence of substance abuse, suicide, homicide, etc. This booklet contends that while these problems are evident there is a solution. Adolescence can be a smooth transition into adulthood if American Indians can have positive feelings of themselves and their culture. Evidence also shows that most youth will return to their childhood teachings and values.

C. Program Evaluation

Cain, Robert, Jr. *The Wisconsin Indian Youth Services Program. An Empirical Assessment*. Great Lakes Inter-Tribal Council Incorporated. Hackensack, NJ: National Council on Crime and Delinquency, 1976.

This is a final report of an empirical assessment of the Wisconsin Indian Youth Services Program (WIYSP). The mission of WIYSP is to prevent juvenile delinquency in the Indian reservations/communities in Wisconsin. The assessment was conducted by the Wisconsin Council on Criminal Justice (WCCJ) in conjunction with the National Council on Crime and Delinquency (NCCD). The WCCJ and the NCCD assessed the Youth Services Bureaus in the State of Wisconsin that are supported by the WCCJ with funds from the U.S. Department of Justice, Law Enforcement Assistance

II. Discussion of American Indian inmate survival schools such as the Cheyenne River Swift Bird project which develop a sense of self-worth among American Indians in non-Indian culture.

French, Laurence. "Native American Prison Survival Schools." In *Indians and Criminal Justice*, edited by Lawrence French, 187-195. Montclair, NJ: Allanheld, Osmun and Company Publishers, 1982.

Prison survival schools help American Indian inmates develop an native cultural identity of harmony that can then be used for survival in White culture. American Indian culture subordinates the individual to the group whereas White culture stresses individualism and competition. (DIALOG Database)

Kahn, Marvin W. "Cultural Clash and Psychopathology in Three Aboriginal Cultures." *Academic Psychology Bulletin* 4, no. 3 (1982): 553-561.

Comparison of American Indians, Eskimos and Australian aborigines who all suffered from loss of traditional bands and disruption of culture which resulted in similar forms of psychopathology including delinquency. Remedial and preventative measures are only effective if related to people's customs, culture and values and should be provided by indigenous paraprofessionals supported by professional consultants.

XIV. American Indian and Alaska Native Juvenile Programs and Services

A. Diversion

Croan, Gerald M., Thomas Bird, and Sylvia Beville. *State Options for Supporting Delinquency Prevention: A Working Paper*. Washington, D.C.: U.S. Dept. of Justice. Law Enforcement Assistance Administration, 1979.

Includes consideration of state planning agency resources; identifies prevention programs and problems; and recommends options for use of resources, including technical assistance, training and public education activities planning, funding, evaluation and monitoring options.

Dunford, Franklyn W., D. Wayne Osgood, and Hart F. Weichselbaum. *National Evaluation of Diversion Projects: Final Report*. Boulder, CO: Behavioral Research Institute, 1981.

Review of 11 diversion projects on variables: youth characteristics, youth and service provider views of services, flow of youths through justice system, costs of services. Questions addressed are whether youths diverted from Justice system are less stigmatized; experience more social adjustment; engage in less delinquent activity after diversion. Results of impact analysis on 11 diversion programs across 12 to 18 months showed no significant differences. However results from individual test sites vary in impact. Includes project description; impact assessment variables; self-report questionnaires; tables; bibliography.

National Council on Crime and Delinquency. *Youth Services in Tulsa and Osage Counties, Oklahoma: A Report to the Indian Nations Council of Governments*. Austin, TX: National Council on Crime and Delinquency, 1975.

Report of the Survey and Planning Center of the National Council on Crime and Delinquency on Services to American Indian youth of 39 social service agencies in

problems of jurisdictional conflicts in criminal justice system, education, economic development and alcohol abuse programs. Appendix includes pertinent laws, statutes, reports and court cases. Bibliography.

U.S. Congress. House. Committee on Education and Labor. *Report to Accompany H.R. 1156, Indian Youth Alcohol and Substance Abuse Prevention Act*. 99th Cong., 2d sess., 1986.

Services for the prevention, identification and treatment of substance abuse among American Indian youth.

U.S. Congress. Senate. Select Committee on Indian Affairs. *Hearings on S. 1298 and S. 1621, Indian Juvenile Alcoholism and Eligibility for BIA Schools*. 99th Cong., 1st sess., 1985.

Testimony on bills (S. 1298) (S. 1621) to coordinate and expand services for detection, prevention and treatment of alcohol and drug abuse among American Indian youth and on eligibility for attending BIA schools. Includes texts, testimony, prepared statements.

XII. American Indians and Alaska Native Juveniles and the Police

Garmire, Bernard L., and Jo Jo Hunt. *An Assessment of Current Operations of the Penobscot, Pleasant Point, and Indian Township Reservation Police Departments and Recommendations for Improvement of Police Services*. Washington, D.C.: U.S. Dept. of Justice. Public Administration Service, 1978.

Analysis for Eastern Maine Development District of three tribal police departments on Penobscot Indian Reservation, Penobscot County; Pleasant Point Indian Reservation, Washington County; and Indian Township Reservation, Washington County. All three are authorized to enforce both state and tribal law on reservations. Includes analysis of 270 interview questions asked of each police department, description of police departments and reservations, findings and conclusions.

XIII. American Indian and Alaska Native Juveniles and Corrections

Birkenmayer, A. C., and S. Jolly. *Native Inmates in Ontario*. Ontario, Canada: Ontario Ministry of Correctional Services, 1981.

Profile of Canadian Indian inmates in Ontario based on sample of 66 females and 447 males. Two hundred seventy-two resided on Reserves. Men were primarily imprisoned for property offenses whereas women were imprisoned for alcohol offenses, property offenses or public disorder offenses. Less than 50% had legal representation at first court appearance. Men were primarily single and unemployed. Women were primarily unemployed. The majority of the inmates had been under influence of drugs or alcohol at time of offense, and two-thirds had never been in a treatment program. Most would rather do community service or give restitution than be imprisoned. There was a 63% recidivism rate (2,088) within one-year of interview. (DIALOG Database)

French, Laurence. "Native American Correctional Treatment." In *Contemporary Issues in Corrections*, edited by Sloan Letman, L. French, H. Scott, and D. Weichman, 63-77. Jonesboro, TN: Pilgrimage Press, 1981.

Discussion of American Indian culture and approaches to justice and descriptions of correctional treatment of American Indian based on either American Indian culture or non-Indian adversary system. Authors state that American Indians justice is a synthesis of two approaches based on American Indian movements since World War

Vetter, Louise, Joe Tallakson and E. Thomas Colosimo. *Children in Federal Custody-Native American Youth Study, Phase II Report*. Alexandria, VA: American Society for Public Administration Section on Criminal Justice Administration, 1984.

Report of three phase study initiated in 1982 which collected data on placement and detention of American Indian juveniles. Includes study methodology, detention characteristics, juvenile offenses, support services and a discussion of tribal codes relating to processing of juveniles. There is an extensive juvenile caseload handled by tribal and Code of Federal Regulation (CFR) courts. A large number of tribal codes sampled do not separate juveniles from adults and have no provisions for removal of status offenders, and nonoffenders from secure detention. Includes recommendations. See, ARROW, Inc. *Native American Youth Study, Phase II*, for questionnaires and accompanying project reports. (DIALOG Database)

Winfree, L. T. Jr., C. T. Griffiths, and C. S. Sellers. "Social Learning Theory, Drug Use, and American Indian Youths: A Cross-Cultural Test." *Justice Quarterly* 6, no. 3 (1989): 395-417.

Delinquency theories are culturally biased and do not explain delinquency among American Indian youth well. This study sampled rural American Indian and White youth and examined link between social learning theory and self-reported deviant behavior on alcohol and marijuana use. Tables, references. (NCJRS Database)

Winfree, L. T. Jr., and H. E. Theis. *Drug Use in Rural America-A Cross Cultural Examination of Complementary Social Deviance Theories*. Aspen, CO: Aspen Systems Corporation, 1980.

Analysis of 900 self-administered questionnaires given to 900 sixth through twelfth grade rural students in a Rocky Mountain state. Variances in cross-cultural drug use was explained by using social control and social learning theories in this study. Over 100 American Indians were included in the sample. (NCJRS Database)

Yates, Alayne. "Current Status and Future Directions of Research on the American Indian Child." *American Journal of Psychiatry* 144, no. 9 (1988): 1135-1142.

American Indians are most disadvantaged population in the United States. American Indian youth have higher rates of alcoholism, drug abuse and delinquency. American Indian children suffer from poverty, dislocation and intergenerational conflicts which can lead to higher rates of behavioral problems. 70 references.

XI. American Indian and Alaska Native Youth in Juvenile Justice System-Legal Status, Laws, etc.

American Indian Law Center, Inc. *Tribal-State Agreements: Analysis of State Enabling Legislation*. Albuquerque, NM: American Indian Law Center, Inc., 1986, upgraded 1991.

Includes enabling legislation allowing various states to enter into intergovernmental or tribal-state agreements. Lists specific state code and sections. Arranged by state.

Conway, S. A. *Nebraska Indian Tribes and Criminal Justice Problems, 1973-1974*. Norfolk, NE: Nebraska Tribes Law Enforcement Planning Project, n.d.

Discussion of involvement in criminal justice system of state, local, tribal and federal jurisdiction of Santee, Omaha and Winnebago Indian tribes in Northeastern Nebraska. Includes interviews with 200 members of Indian communities. Major issues include

involved in placement of American Indian youth. Phase I includes data available from BIA: Name of tribal entities within each state; population census by adult and children; tribal legal structure; tribal law enforcement structure; tribal court structure; number, capacity and size of jails; lockups, detention facilities within each tribal entity; and number and location of jails, lockups and detention facilities operated by BIA but outside of tribal entities. Agency or entity responsible for operation of all detention facilities mentioned above. Social services provided by BIA to each tribal entity. Tables, statistics.

U.S. Congress. Office of Technology. *Indian Adolescent Mental Health*. Washington, D.C.: U.S. Congress. Office of Technology Assessment, 1990.

American Indian youth have higher rates of suicide, substance abuse, stress, depression, anxiety and neglect than White adolescents. The Indian Health Service has only 17 mental health professionals aiding nearly 400,000 youth on Indian reservations. Reservations have almost no partial hospitalization, transitional living or child residential health treatment.

U.S. House. Select Committee on Children, Youth, and Families. *Hearings on Native American Children, Youth, and Families*. 99th Cong., 2d sess., 1986. Pt. 1.

Testimony and statements on special problems and needs of American Indian children and families, including alcoholism, substance abuse, unemployment and family dysfunction. Problems include lack of funding, services and breakdown of traditional cultural values and lifestyle. Needs include training, placement, crisis services, treatment, court services, and welfare services.

Testimony from Gila River Indian Community (Arizona); Colorado River Indian Tribes (Arizona); Phoenix Indian Center; Ute Tribes (Utah); Salt River Indian Community (Arizona); and Gila River Indian Community on human services programs, federal funding, mental health treatment, juvenile delinquency, and alcohol and drug abuse. Includes hearing transcripts, statements, letters and articles.

University of New Mexico. New Mexico Statistical Analysis Center. *Sentencing in New Mexico: An Analysis of Prison Probation and Pre-Prosecution Diversion*. Albuquerque, NM: New Mexico Statistical Analysis Center, 1989.

Report to New Mexico Legislative Council examines sentencing disparity by race, ethnicity, age, gender, prior criminal record, offense seriousness and other characteristics of victims, offenders and offenses. Includes questionnaire, references, and data variable availability.

Urban Indian Child Resource Center. *Juvenile Justice Intervention: Final Report*. Oakland, CA: Urban Indian Child Resource Center, 1981.

Evaluation of services of the Indian Youth Services provided to urban American Indian adolescents in Oakland. Report covers a period of October 1978 to January 1981. Measures of effectiveness include total number of clients served, rate of return of youth to their families and decreases in delinquency. Includes statistics, referral sources. (DIALOG Database)

of Indian concerns from state plans; lack of flexibility in funding agencies; lack of coordination among state and federal agencies. Tribes should be able to access needed resources and process should be established for interaction at tribal, state and federal levels to provide services to American Indian/Alaska Native juveniles.

O'Brien, Michael J. "Children: Indian Juveniles in the State and Tribal Courts of Oregon." *American Indian Law Review* 5, no. 2 (1977): 343-367.

Juvenile delinquency on Warm Springs Reservation (Ore.) is higher than in all other Oregon communities, Indian or non-Indian but offenses are less serious and violent. Reservation has responded by increasing its juvenile resources and has achieved its major objective of reducing off-reservation placement of American Indian juveniles. Author concludes that economic development contributed to social dislocation of tribal life, increased alcoholism and juvenile delinquency. Statistics show problems of state and tribal court jurisdictional conflicts and discusses intercourt referrals. (NCJRS Database)

Peak, K., and J. Spencer. "Crime in Indian Country." *Journal of Criminal Justice* 15, no. 6 (1987): 485-494.

American Indian crime rates are compared to a 1964 study and projections for total, adult and juvenile rates of arrest for Uniform Crime Rate (UCR) part I and alcohol-related offenses are given. American Indian crime rates are compared to other ethnic groups particularly the high amount of American Indian alcohol-related offenses. Analysis of on and off reservation violent crime is included. (DIALOG Database)

Robbins, Susan P. "Commitment, Belief and Native American Delinquency." *Human Organization* 44, no. 1 (Spring 1985): 57-62.

Exploratory study of delinquency among Seminole Indian youth in Florida on three reservations based on analysis of 129 self-administered questionnaires (70% response rate). Data reflected high incident of delinquency. (DIALOG Database)

Robbins, Susan P. "Delinquency Among Seminole Indian Youth." Ph.D. diss., Tulane University, 1980.

Delinquency rates for 10-17 year old Florida Seminole youth analyzed by social control theory. Youths with favorable attitudes to teachers, school and police were less likely to be involved in delinquency. Attachment to some non-Indian persons and institutions were found to be linked to delinquency. (DIALOG Database)

Robbins, Susan P., and Rudolph Alexander, Jr. "Indian Delinquency on Urban and Rural Reservations." *Free Inquiry in Creative Sociology* 13, no. 2 (1985): 179-182.

Analysis of differences between types of offenses committed by Seminole American Indian youth on 1 urban and 2 rural reservations. Analysis of variance indicated significant difference on 5 of 7 variables. [129 youth, 7 types of offenses, self-administered questionnaire]. (DIALOG Database)

Sherard, Melvena L. *The Status of Native American Youth in Federal Custody: Preliminary Data Collection, Phase I Report*. Washington, D.C.: U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, 1989.

First of three phase effort conducted by Department of Interior, BIA and Department of Justice, OJJDP to develop information for effective review and resolution of issues

Guilfoyle, Michael Hoag. "Indians and Criminal Justice Administration: The Failure of the Criminal Justice System." Master's Thesis, University of Arizona, 1988.

Analysis of criminal justice administration and the American Indian. Includes history of traditional tribal justice, state and federal policies towards tribal criminal justice and data on treatment of adult and juvenile American Indian offenders. States that American Indians have highest rates of arrest, alcohol-related crime, violent-related crime and conviction rates in proportion to general population. Moreover American Indians are least likely to be considered for probation or parole and have high recidivism rates. Recommends greater autonomy for tribal courts, alternative disposition programs for American Indian offenders, and empowerment of American Indian communities. Includes tables, bibliography.

Heerman, Charles E. "The Poncas and Community Control." *Integrated Education* 13, no. 4 (July/August 1975): 32-36.

Survey of 437 juvenile cases heard in Kay County, Oklahoma courts, 1968-1972. Analyzed issue of whether there is a relationship between Ponca Indian community lack of control on education of its youth and American Indian youth being labeled deviant by state and local courts. (DIALOG and NCJRS Databases)

Hyde, Mary and Carol La Prairie. *Amerindian Police Crime Prevention*. Ottawa, Ontario: Ministry of Solicitor General of Canada, 1987.

Report on Quebec Native Special Constable Program. Includes findings of results based on twenty-five Quebec Indian reserves and suggestions for crime prevention programs appropriate to local community and to Amerindian police force. Report links community characteristics to analysis of crime using a typology of band types based on sociological characteristics of bands. Includes disposition information by age and sex. (DIALOG Database)

Lorch, Barbara Day, and Cynthia Yueh-Au Chien. "An Exploration of Race and Its Relationship to Youth Substance Use and Other Delinquent Activities." *Sociological Viewpoints* 4, no. 2 (1988): 86-100.

1986 questionnaire administered to 9,752 junior and senior high school students used to determine influence of race, social class and gender on alcohol or drug use and delinquency. American Indian youth and Black males of lower class in the study were found to be proportionally more frequent offenders. Includes 11 tables. (DIALOG Database)

McShane, Damian. "An Analysis of Mental Health Research with American Indian Youth." *Journal of Adolescence* 11, no. 2 (1988): 87-116.

Review of post-1970 literature on American Indian mental health. Recommendations made for future research. Focusing on children and adolescents some of the areas addressed include self-concept, conduct disorders, delinquency, drug and alcohol use. (DIALOG Database)

National Task Force on Juvenile Justice for Native Americans and Alaska Natives. *A Report to Congress with Recommendations Regarding the Reauthorization of the JIDP Act*. Tucson, AZ: State Juvenile Advisory Group, 1987.

Juvenile Justice and Delinquency Prevention Act excluded tribal populations through absence of enabling legislative provisions; state distribution of formula funds; exclusion

Department of the Interior, Division of Law Enforcement Services. *Tribal and Bureau Law Enforcement Services Automated Data Report*, Washington, D.C.: Dept. of the Interior, Division of Law Enforcement Services, 1984.

Albuquerque area Law Enforcement services for Jan. 1, 1984 to Dec. 31, 1984. Summary and Uniform Crime Index Offense Report including total incidents reported by month and year, time distribution reports, offense disposition by case disposition and offense type. Breakdowns for Indians and non-Indians under and over age 18. Breakdowns by alcohol/drug related and non-alcohol/drug related. Breakdowns by traffic offenses, misdemeanor and felony offense.

Forslund, Morris A. *Indian and Non-Indian Delinquency: A Self Report Study of Wind River (WY) Reservation Area Youth*. Cheyenne, WY: Wyoming Governor's Planning Committee on Criminal Administration, 1974.

Results of a self-report questionnaire administered to sample of 355 white males, 315 white females, 68 Indian males and 62 Indian females. Reported delinquency between the groups show little differences. Analyzed by race and social class, data showed Indian male only slightly more delinquent than White male, but both middle and lower class Indian females appeared more delinquent than middle and lower class White females. (NCJRS Database)

Forslund, Morris A., and Ralph E. Meyers. "Delinquency Among Wind River Indian Reservation Youth." *Criminology* 12 (1974): 97-106.

Study of 132 American Indian youth under jurisdiction of Wind River Indian Reservation Court of Indian Offenses who turned eighteen during fiscal year 1971. Findings of the 205 charges indicate a high delinquency rate, minor offenses predominated, and 31% of charges were alcohol related offenses. (DIALOG and NCJRS Databases)

Forslund, Morris A., and Ralph E. Meyers. *Planning Project in Juvenile Delinquency: Prevention and Control of Delinquency Among American Indian Youth in Wyoming*. Washington, D.C.: Dept. of Health, Education and Welfare, Youth Development and Delinquency Prevention Administration, 1972.

Analysis of delinquency among American Indian youth on Wind River reservation, Wyoming, based on 1971 data from Court of Indian Offenses, Tribal police, reservation juvenile officer, Riverton police, Lander police, Fremont County sheriff and personal interviews with BIA personnel. Presentation of tabular data and recommendations for delinquency prevention and treatment programs such as employment and alcohol rehabilitation programs. (DIALOG Database)

Grobsmith, Elizabeth S. "The Relationship Between Substance Abuse and Crime Among Native American Inmates in the Nebraska Department of Corrections." *Human Organization* 48, no. 4 (1989): 285-298.

Analysis of relationship between substance abuse and criminal offenses in 45 institutionalized American Indians revealed discrepancies between prison data and interview data. Interviews show stronger correlation between substance abuse and juvenile criminal activity. Discussion of alcohol treatment programs based on American Indian spiritual and cultural beliefs included.

Analysis of public safety and justice problems in remote Alaskan native villages and recommendations for state and local cooperation. A Native village typically has 70 to 1,300 residents and is over 100 miles from a city. Fifty percent employ part-time police officers but have no other justice system representatives. Social control is a mixture of Native and White cultures, and state policies many times conflict with community expectations. Major problems are extreme rural poverty, heavy reliance on hunting and fishing for food supplies, and conflicts with state laws and regulations. There should be a comprehensive approach to rural justice system based on a regionalized system and an emergency communications system. Includes tables, references, appendices.

ARROW, Inc. *Native American Youth Study, Phase II*. Washington, D.C.: U.S. Dept. of Justice, 1984.

On-site monitoring instruments and completed self report questionnaires covering information on the placement and detention of American Indian youth in forty tribal governments representing a mix of geographic location, population size, tribal and CFR court jurisdictions, and placement facilities managed by tribal, BIA, or county-state jurisdiction. No traditional tribal courts were included. Project monitors reported difficulties in finding and obtaining needed statistics and information. See, Vetter, L., J. Tallakson and F. T. Colosimo, *Children in Custody-Native American Youth Study, Phase II Report*, for final report.

Bennett, Robert L., and Charles W. Blackwell. *Study of Systems and Procedures for Processing Children's Cases for Gila River Indian Community Sacaton, Arizona*. Albuquerque, NM: American Indian Tribal Government and Policy Consultants, 1981. Photocopy.

Study of child welfare cases on the Gila River Indian Reservation. Includes study of community, court and Children's Code (Sec. 801-Gila River Community Code). Concludes that Children's Code procedures are not being followed. There is an absence of coordination among various federal and social agencies which results in gaps of services to children. There is no uniform plan for law enforcement agency to follow in processing of children detained or arrested. Youth problems are increasing in substance abuse, sexual assaults, and antisocial behavior. Includes recommendations for implementation of Children's Code.

Black, T. E., and C. P. Smith. *Preliminary Assessment of the Numbers and Characteristics of Native Americans Under 18 Processed by Various Justice Systems*. Sacramento, CA: American Justice Institute National Juvenile Justice Assessment System, 1980.

Study of arrest rates, physical characteristics, court processing and treatment of American Indian offenders under 18 years based on 1979 Bureau of Indian Affairs data, information from 10 sites with large resident Indian populations, and private research organizations. Describes tribal courts and interaction of state, federal and tribal courts. Compares statistics on American Indian juvenile offenders with those of White and Black. Arrest statistics categorized by major, minor and status offenders. American Indian males have higher rates of status offenses than Whites or Blacks and are referred to juvenile court more frequently. Tribal courts generally do not maintain separate case load statistics or juvenile and adult detention facilities. Tribal judges lack viable dispositional alternatives for juveniles. Federal boarding schools and dormitory programs are used and contribute to separation of a large percentage of Indian children from family indicating a broader problem. Includes findings, statistical tables, chart of tribal juvenile justice system and summary of jurisdictional status in Indian communities. (NCJRS Database)

Legislative proposals for reform of California juvenile justice system which stress accountability of juveniles and parents. Includes model legislation.

Department of Justice. Office of General Counsel. *Juvenile and Adult Records: One System, One Record?: Proceedings of a BJS/Search Conference*. Washington, D.C.: U.S. Dept. of Justice. Office of General Counsel, 1989.

Includes proceedings of a conference on alternative viewpoints on management of juvenile records which focus on the issues surrounding the inclusion of juvenile offenses in adult criminal history records.

F. Substance Abuse

General Accounting Office. *Juvenile Justice: Grant to the National Partnership to Prevent Drug and Alcohol Abuse*. Washington, D.C.: G.A.O., 1988.

Report to House Subcommittee on Human Resources found OJJDP grant not effectively monitored or managed and objectives not met. Questions raised concerning propriety of OJJDP involvement on grant procedure.

X. American Indians and Alaska Natives in Juvenile Justice System

Alaska Advisory Committee on Minority Judicial Sentencing Practices. *Report of the Advisory Committee on Minority Judicial Sentencing Practices*. Anchorage, AK: Alaska State Legislature, 1980.

Analysis of all State Superior courts sentencing practices, 1976-1979, which finds American Indian and Black defendants received longer sentences and less probation. Minorities spend more time in pretrial detention. There were few minorities represented in state criminal justice agencies, resulting in poor communication between minority defendants and police officers, public defenders, probation offices and judges. Presentence reports did not include favorable information on minorities. There is a high correlation between alcohol and criminal offenses among Alaskan Natives in Alaska, but state provides inadequate treatment programs. There are also a lack of alternative disposition programs and inadequate funding for quality legal services that directly impact deprived minorities. Recommendations on use of lay magistrates and new diversion programs are included. (DIALOG Database)

American Indian Law Center, Inc. *New Approaches to Juvenile Justice*. Albuquerque, NM: American Indian Law Center, Inc., 1977.

Manual for American Indian communities on new approaches to juvenile problems, including description of community-based treatment programs. Contains model statutes adopted from Model Children's Code providing for children's court counselor investigation, informal adjustment and conferences. Includes written standards for guidance of tribal decision maker. Also contains suggestions for development of a "community-based" treatment program with focus on planning stage. Bibliography. (NCJRS Database)

Angell, J. E. *Public Safety and the Justice System in Alaskan Native Villages*. Jonesboro, TN: Pilgrimage Press, 1981.

Analysis of New Jersey juvenile code. Includes issues of detention, waivers to adult court, family crisis intervention, court access to services, role of human services and

corrections, considerable disparity among counties, lack of services available to court. Includes recommendations, charts.

Schwartz, Ira M., Linda Harris, and Laurie Levi. "The Jailing of Juveniles in Minnesota: A Case Study." *Crime and Delinquency* 34, no. 2 (1988): 133-149.

Minnesota has one of the highest incarceration rates for juveniles. Large numbers of juveniles are committed for short periods to county operated training schools and large numbers of juveniles are admitted to county jails and municipal lockups. The largest number of minorities admitted to county jails or lockups were American Indians, who constituted 6.3% of the total. Legislation is needed to prohibit the confinement of juveniles in county jails and municipal lockups and attentive disposition programs should be developed. Includes tables by type of offense, length of stay and race of offender. Included in, "Special Issue: Children in Jails," Ira M. Schwartz, ed. *Crime and Delinquency* 34, no. 2 (1988): 131-227.

Steketee, Martha Wade, Deborah Alice Willis, and Ira M. Schwartz. *Juvenile Justice Trends, 1977-1987*. Ann Arbor, MI: Center for the Study of Youth Policy, The University of Michigan School of Social Work, 1989.

Youth arrests; youth admissions to and one-day counts in juvenile facilities; youth resident offenses; resident race/ ethnicity; resident drug use and facility drug programming; resident school status and staff; facility crowding; facility average length of stay; facility expenditures; youths in jail.

C. Rural Policing

Jankovic, Joanne, Ronald K. Green and Shanler D. Cronk, eds. *Juvenile Justice in Rural America*. Knoxville, TN: Office of Continuing Social Work Education, University of Tennessee, 1980.

Collected reports and articles on delinquency in rural America emphasizing differences in rural and urban delinquency issues, lack of rural services available to delinquent youth and less formalized procedures of local police agencies, courts and community resources. Emphasizes difficulties in implementing urban oriented standards for dispositional alternatives.

D. Offense Statistics

Snyder, Howard N., T. A. Finnegan, E. H. Nimick, M. H. Sickmund, D. P. Sullivan, and N. J. Tierney. *Juvenile Court Statistics 1985*. Pittsburgh, PA: National Center for Juvenile Justice, April 1989.

Descriptions of the demographics, offense and processing characteristics of delinquency and status offenses. Part of Juvenile Court Statistics Series, 59th annual edition.

E. Juvenile Offender Profile

California Criminal Justice Legal Foundation. *California Criminal Justice: Analysis and Legislative Action*. Sacramento, CA: California Criminal Justice Legal Foundation, 1989.

juvenile offenders. Includes tables.

This article examines the disproportionate incarceration of minority youth in correctional facilities. National data on the extent of this problem is explored. Specifically, the data sources include the U.S. Bureau of the Census and the statistical series *Children In Custody* (CIC). Information is provided on White, Black, Hispanic, American Indian, and Asian American youth. Some information is provided on these groups by gender. The researchers examine the impact of the decarceration and diversion reform movements on the population of these groups in public and private facilities. In addition, data is provided regarding incarceration by state. However, this information is only presented in two broad categories, Whites and Non-Whites.

Finally, data is presented on minority involvement in serious and violent youth crime. The data reviewed is compiled from the FBI on juvenile arrest and self-report questionnaires collected by the National Youth Survey. The article concludes that a growing number of minority youth are being confined in public juvenile correctional facilities. Further, such youths are more likely to be confined in more secure facilities and less likely to be placed in privately operated correctional facilities.

Krisberg, Barry A., et al. *Juveniles Taken into Custody: Developing National Statistics*. San Francisco, CA: The National Council on Crime and Delinquency, 1989.

There is a disproportionate representation of minorities in confinement; increase in juvenile drug offenses, and an increase in overcrowding of juvenile institutions. Reliable data are needed on these issues for county commissioners and state legislatures. Includes survey of national data sources on juveniles in custody: *Children in Custody*; *Census of Juvenile Detention*; *Survey of Youth Industry*; National Juvenile Court Data Archive; *OJJDP Annual Monitoring Reports*; *National Jail Census*; *Survey of Inmates of Local Jails*; *Census of State Adult Correctional Facilities*; National Corrections Reporting Program.

National Conference on State Legislatures. *Current Juvenile Justice Issues Facing State Legislatures*. Ann Arbor, MI: University of Michigan, 1988.

Results of survey of 39 state legislative research divisions which identifies development and implementation of effective placement options as most critical state legislative issue. Other issues includes community-based care, alternative rehabilitation plans, overcrowded facilities, need for secure institutions. 10 footnotes.

National Minority Advisory Council on Criminal Justice. *Inequality of Justice-A Report on Crime and the Administration of Justice in the Minority Community*. Washington, D.C.: A. L. Nellum and Associates, 1982.

Minorities undergo more frequent arrests and are more likely to be imprisoned and serve full terms without parole. Legal cases of minorities are handled by public defenders with large case burdens who lack bilingual skills. Recommendations for collection of national data on status of minorities in criminal justice system and providing bicultural training to criminal justice personnel. Includes tables, statistics and case studies. (NCJRS Database)

New Jersey Juvenile Delinquency Disposition Commission. *Impact of the New Jersey Code of Juvenile Justice: First Annual Report*. Trenton, NJ: New Jersey Juvenile Delinquency Disposition Committee, 1986.