



Federal and Tribal Court Jurisdiction Over Youthful Offenders in Indian Country

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Introduction and Background

Youth have been involved with crime and violence for centuries. The juvenile justice system has transformed throughout American history. The American Jurisprudence system has sought different ways to rehabilitate and punish youthful offenders who commit various crimes.

During the nineteenth century, youthful offenders were exposed to harsh prison conditions as a result of being placed in adult correctional facilities.¹ During their time in the adult prison system, juveniles were educated on criminal activity by adult inmates.² Due to the increase in poverty, crime, and disease, the Progressive Movement emerged.³ It was during this movement that the view of youthful offenders changed. The new view was the need to provide structure and supervision to delinquent children who were seen as products of a corrupt environment.⁴ It was during this time period that a specific court system was developed to treat youthful offenders, known as the juvenile court movement.⁵

The juvenile court movement focused on removing youthful offenders from adult prisons and placing them in a system that focused on individual rehabilitation.⁶ This approach was described as scientific and sociological, because the new objective was to focus on the best interest of the child.⁷ This led to the creation of the first juvenile court, established by the state of Illinois in 1899, and by 1925, all but two states implemented a juvenile court system.⁸

The juvenile court system was seen as an individualistic system focused on treatment rather than punishment.⁹ During this time period, the juvenile court system was conducted as a civil court, giving judges broad flexibility regarding adjudication.¹⁰ However, this system was

¹ Randie P. Ullman, Federal Juvenile Waiver Practices; A Contextual Approach to the Consideration of Prior Delinquency Records, 68 Fordham L. Rev. 1329, 1331 (2000) (discussing the history of the juvenile justice system).

² Id.

³ Id.

⁴ Id. at 1332

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Id. at 1333.

⁹ Id.

¹⁰ Id. at 1334.

seen as unconstitutional by critics of the juvenile courts, because due process was seen as inapplicable in the juvenile system.¹¹

During the 1960s and 1970s, several Supreme Court decisions changed the process and structure of the juvenile system.¹² These decisions held that juveniles were constitutionally entitled to due process and entitled to representation by an attorney, which led to the diminishment of a rehabilitative system.¹³ However, to this day, juveniles are not entitled to a jury trial. By twentieth century, every state had a law that mandated or allowed juveniles to be tried as adults under certain circumstances.¹⁴ The juvenile justice system today can be described as a punitive geared toward punishing our youth rather than rehabilitating them back into society.

Federal Jurisdiction over Youthful Offenders

When a juvenile is transferred into the criminal adult system, to be prosecuted as a criminal defendant, the juvenile faces serious adult sentences as well as the possibility of being placed in a adult prison. The Federal Government would have jurisdiction over youthful offenders in general under the following circumstances.

In 1938, the Federal Juvenile Delinquency Act was passed by Congress.¹⁵ Juveniles who are subject to federal jurisdiction for a crime that violates federal law, fall under the FJDA. The FJDA was designed to provide rehabilitation rather than punishment, however, treatment under the Act is not mandatory and criminal prosecution has often been utilized.¹⁶ The Act applies only to those juveniles who are alleged to have committed a crime that violates federal law before their eighteenth birthday, or for the purpose of disposition and proceedings, an individual who has not reached their twenty-first birthday.¹⁷

The FJDA specifies three situations in which a federal prosecutor may assert jurisdiction over a juvenile offender: (1) if a state refuses to assume jurisdiction over the juvenile for the alleged act; (2) if the state does not have available or adequate programs to meet the needs of the juvenile; or (3) if there is a substantial interest in prosecuting the juvenile federally.¹⁸ Once

¹¹ Id.

¹² Id. at 1337.

¹³ Id.

¹⁴ Ashley Nellis, *The Live of Juvenile Offenders: Findings from a National Survey*, The Sentencing Project (Mach, 2012).

¹⁵ Jean M. Radler, *Treatment, under Federal Juvenile Delinquency Act (18 U.S.C.A. §§ 5031-5042), of juvenile alleged to have violated law of United States*, 137 A.L.R. Fed. 481 (1997).

¹⁶ Id.

¹⁷ Id.

¹⁸ Joseph F. Yeckel, *Violent Juvenile Offenders: Rethinking Federal Intervention in Juvenile Justice*, *Journal of Urban and Contemporary Law*, 331, 338 (1998).

federal jurisdiction is established, a juvenile may stand trial as an adult three different ways: (1) the juvenile can consent to stand trial in the criminal adult system; (2) if a juvenile is charged with committing a certain drug offense or violent felony, the Attorney General may request jurisdiction. If this is the case, a federal judge must conduct a hearing to determine if it is in the interest of justice to prosecute the juvenile as an adult, or (3) criminal jurisdiction can be established if the federal prosecutor invokes a mandatory transfer provision for a juvenile sixteen years or older being charged with a certain serious offense.¹⁹

The Juvenile Justice and Delinquency Prevention Act was passed in 1974 by Congress. The purpose of this Act was to prevent delinquency and remove juveniles from the traditional juvenile justice system.²⁰ The JJDPA provided states with federal funds on three conditions: (1) placing juveniles in correctional facilities or secure detention was no longer allowed for juveniles charged with status offenses; (2) placing juveniles in facilities where they would be subject to regular contact with adult inmates was no longer allowed for juveniles who were found or alleged to be delinquent; and (3) states were required to place juveniles in a correctional/detention facility where they would have no contact with adult inmates.²¹ If a state could not comply with these three requirements, they would forfeit their federal funds.²² This could also be seen as a state not being able to provide an adequate system for a juvenile to be prosecuted in, therefore, making the federal government more likely to assert jurisdiction.

In 1994, Congress passed the Violent Crime Control and Law Enforcement Act.²³ The Act was passed to address juvenile gang violence and serious felonies.²⁴ The Act allows for juveniles who are thirteen years old to be criminally prosecuted for crimes such as first and second degree murder, attempted murder, and bank robbery.²⁵ The Act also makes it a crime to participate in a criminal street gang, and can subject a juvenile to federal jurisdiction if certain federal crimes are committed while being a member of a criminal street gang.²⁶ In order for a juvenile to be transferred to adult status, a federal judge may determine the role the juvenile played in the criminal street gang, leading the federal judge to determine if the juvenile will be transferred into the adult system or not.²⁷

¹⁹ Id. at 339.

²⁰ Id. at 342.

²¹ Id. at 343.

²² Id.

²³ Id.

²⁴ Id. at 344.

²⁵ Id.

²⁶ Id.

²⁷ Id.

There remained to be no set guidelines for transferring a juvenile into the adult court system until the mid-1960's. The United States Supreme Court ruled in Kent v. United States that juveniles have due process protections during waiver of jurisdiction proceedings.²⁸ The Kent court found that when juveniles are facing waiver of jurisdiction from juvenile court into adult court, they are afforded a right to counsel.²⁹ "The juvenile's counsel must be afforded (1) access to all of the juvenile's records, and (2) the opportunity to examine, criticize and refute any information in those records, as well as present affirmative information to the court."³⁰ In addition, the juvenile court judge must, "accompany its waiver order with a statement of the reasons or considerations therefor."³¹ The waiver of jurisdiction hearing does not have to conform to all the requirements of an administration or criminal hearing, but "must measure up to the essentials of due process and fair treatment."³²

It appears as if the federal government can assert jurisdiction over a juvenile in a number of different ways, depending on the type of crime, and whether the state decides to take action against a juvenile.

Federal Jurisdiction over Youthful Offenders in Indian Country

There are jurisdictional complexities that deal with Indian Country, and federal jurisdiction over youthful offenders is one of them. Just because an Indian tribe or an Indian is a party to a case does not mean there is federal jurisdiction, there has to be some sort of statutory grant of jurisdiction. The Federal Government would have jurisdiction over youthful offenders in Indian Country under the following circumstances.

When a crime is committed in Indian Country by a juvenile, the federal system may have jurisdiction if federal law is applicable. There are three different federal jurisdiction crimes that could apply to Indian Country: (1) federal crime of nationwide applicability; (2) crimes punishable under the General Crimes Act; and (3) crimes punishable under the Major Crimes Act.³³

Crimes of nationwide applicability apply to tribes when the law applies equally to everyone in the United States, unless there is a treaty which exempts the tribe.³⁴ If these laws

²⁸ Kent v. United States, 383 U.S. 541, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966)

²⁹ 2 Children & the Law: Rights and Obligations § 8:7

³⁰ Id.

³¹ Id.

³² Id.

³³ 1 Subst. Crim. L. § 4.5 (2d ed.).

³⁴ Id.

apply to everyone, they most likely will apply to youthful offenders who commit crimes in Indian Country. These crimes could include firearms possession, narcotics violations, and assaulting a federal officer.³⁵

The General Crimes Act states: "Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian Country."³⁶ If a youthful offender is a non-Indian who commits a crime against an Indian in Indian Country, federal law may apply through the General Crimes Act. However, this Act cannot apply to Indians in three exceptions: (1) "offenses committed by one Indian against the person or property of another Indian"; (2) "any Indian committing any offense in the Indian country who has been punished by the local law of the tribes"; and (3) "any case where, by treaty, stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes."³⁷ It appears as if the Federal Government can assert jurisdiction over a youthful offender who commits crime listed in the General Crimes Act, unless it is one of the three exceptions listed.

The Major Crimes Act provides (18 U.S.C.A. § 1153):

Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, an assault against an individual who has not attained the age of 16 years, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.³⁸

The Federal Government may assert jurisdiction over a youthful offender who commits any one of the offenses listed above in Indian country. Tribal consent is not needed if a youthful offender is charged with a serious offense and the federal government is asserting jurisdiction over the

³⁵ Id.

³⁶ Id.

³⁷ Id.

³⁸ Id.

juvenile.³⁹ However, if the federal government wants to prosecute an Indian juvenile as an adult, who is thirteen or fourteen years old, they can only do this by obtaining tribal consent.⁴⁰

A federal prosecutor may file a motion with the federal court system, seeking a transfer of jurisdiction from the tribal system to the federal system, of a youthful offender who commits a crime in Indian country pursuant to the Federal Juvenile Delinquency Act. Overall, the Federal Government has jurisdiction over all major crimes committed on Indian country, however, they do not have jurisdiction when the crime committed by and the victim is non-Indian, in this situation, the state would have jurisdiction.⁴¹ However, states do not have jurisdiction over any Native American that commits a crime on Indian country unless Congress has delegated jurisdiction to the state.⁴²

Tribal Court Jurisdiction over Youthful Offenders in Indian Country

Native American tribes are self-governing entities located in the United States. When a crime is committed in Indian country that does not violate the Major Crimes Act, General Crimes Act or Federal Juvenile Delinquency Act, and the juvenile who committed the crime and victim are Native American, then the Tribal Court retains exclusive jurisdiction.⁴³ However, prosecution under the FJDA and Major Crimes Act has been primarily that of Indian juveniles.⁴⁴ That being said, Tribal courts still obtain jurisdiction over Indian youthful offenders who commit non-major crimes against another Indian in Indian country. Also, an Indian youth who commits a crime against a non-Indian in Indian country are subject to Tribal Court jurisdiction, but not exclusively because the federal government may assert jurisdiction under the General Crimes Act.⁴⁵

According to 18 U.S.C. § 5032, no person subject to the criminal jurisdiction of an Indian tribal government shall be subject to the preceding sentence for any offense the Federal jurisdiction for which is predicated solely on Indian country (as defined in section 1151), and which has occurred within the boundaries of such Indian country, unless the governing body of the tribe has elected that the preceding sentence have effect over land and persons subject to its criminal jurisdiction. However, a juvenile who is alleged to

³⁹ Amy J. Standefer, The Federal Juvenile Delinquency Act: A Disparate Impact on Native American Juveniles, 84 Minn. L. Rev. 473, 483 (1999).

⁴⁰ Id. at 484.

⁴¹ Id. at 488.

⁴² Id.

⁴³ Id. at 483.

⁴⁴ Id. at 498.

⁴⁵ 1 Subst. Crim. L. § 4.5 (2d ed.).

have committed an act after his sixteenth birthday which if committed by an adult would be a felony offense that has as an element thereof the use, attempted use, or threatened use of physical force against the person of another, or that, by its very nature, involves a substantial risk that physical force against the person of another may be used in committing the offense, or would be an offense described in section 32, 81, 844(d), (e), (f), (h), (i) or 2275 of this title, subsection (b)(1) (A), (B), or (C), (d), or (e) of section 401 of the Controlled Substances Act, or section 1002(a), 1003, 1009, or 1010(b) (1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b) (1), (2), (3)), and who has previously been found guilty of an act which if committed by an adult would have been one of the offenses set forth in this paragraph or an offense in violation of a State felony statute that would have been such an offense if a circumstance giving rise to Federal jurisdiction had existed, shall be transferred to the appropriate district court of the United States for criminal prosecution.⁴⁶

Said differently, if an Indian youthful offender is sixteen years of age or older, a transfer of jurisdiction from the tribal court to the federal system is mandatory. The FJDA provides the procedure on how youthful offenders are transferred into federal court. According to criminal procedure, "18 U.S.C.A. § 5032 does not require filing of certification as to the existence of Native American tribal jurisdiction and adequacy of tribal facilities before federal jurisdiction can be invoked.³ The plain meaning of the word "state" in the statute does not include Indian tribes or tribal governments and thus the Attorney General is not required to consult with tribal authorities before certifying federal jurisdiction under the statute."⁴⁷

If the Indian youthful offender is under the age of sixteen, the tribe may opt to assert jurisdiction and prosecute the juvenile in tribal court. It appears as if the Tribal courts have limited jurisdictional authority when it comes to prosecuting youthful offenders for major crimes in Indian country.

Conclusion

Approximately 61% of youthful offenders incarcerated in the Federal Bureau of Prisons are Native Americans.⁴⁸ The Native American population accounts for approximately 1.5% of the total population in the United States.⁴⁹ These numbers are drastic compared to the overall

⁴⁶ 18 U.S.C.A. § 5032

⁴⁷ 9B Fed. Proc., L. Ed. § 22:2459

⁴⁸ Clare E. Lyon, Alternative Methods for Sentencing Youthful Offenders: Using Traditional Tribal Methods As A Model, 4 Ave Maria L. Rev. 211, 230 (2006).

⁴⁹ Id.

Native American population. The high percentage of youthful offenders incarcerated is due to sentencing under the FJDA, Major Crimes Act, and the General Crimes Act. These Acts subject youthful offenders to federal prosecution when they commit a crime in Indian country. Federal prosecution subjects the youthful offender to federal criminal sentencing guidelines instead of tribal sentencing guidelines. It costs approximately \$35,000-\$64,000 annually to incarcerate a youthful offender.⁵⁰ It appears as if the Federal Government has jurisdiction over youthful offenders who commit crimes in Indian country more often than not. The sentences that Indian youthful offenders receive in the federal system is not consistent with tribal values, and Native American youth continue to be transferred into the federal system regardless of the tribe's willingness to assert jurisdiction over their own tribal member.

⁵⁰ Id. at 244.