

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on March 18, 1991, at 7 p.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: Senator Mazurek announced that he would chair the meeting at the request of Chairman Pinsoneault and Vice Chairman Yellowtail. He announced that proponents and opponents would have 70 minute each for testimony.

HEARING ON HOUSE BILL 797

Presentation and Opening Statement by Sponsor:

Representative Angela Russell, District 99, asked those present to keep in mind the sacredness of their words as they speak on this bill. She read the title of the bill and said Public Law 280 (PL280) comments on self-determination of the tribes and sovereignty.

Representative Russell explained to the Committee that during the colonization of America, the British dealt with the tribes as sovereign nations. She said America believed in placing Indian affairs within the U.S. Constitution, and that Congress set the basic Indian law policy between 1790 and 1834.

Representative Russell said the Acts made no attempt to regulate the conduct of Indians among themselves, and that tribes were moved west of the Mississippi during that time period. She said that the U.S. Supreme Court, under John Marshall made rulings in Johns v MacIntosh (1823), Cherokee Nation v George, and Wooster v Georgia, concluding that the Cherokee Nation is a distinct entity.

Representative Russell further explained that Indian movement to reservations occurred between 1850 and 1887, and that congress passed the Major Crimes Act in 1883 pertaining to the murder of one Indian by another on a reservation. She said the General Allotment Act reduced Indian-held land to 48 million acres of which 20 million acres are desert or semi-desert.

Representative Russell stated that under the Indian Reorganization Act, the tribes were permitted to set up legal systems to aid in self-government, and that in 1954 trust status terminated, forcing many Indians to cities to find employment. She said PL 280 extends state, civil, and criminal law to reservations, and consent of concerned tribes is not required.

Representative Russell told the Committee that the 1968 Indian Civil Rights Act imposed on tribes most of the Bill of Rights, and that PL280 set forth the manner to retrocede. She said former President Nixon set forth current policy on Indian affairs, and stressed the trustee relationship, urging that tribes negotiate their affairs with a maximum degree of autonomy. Representative Russell commented that acts in 1974, 1975, and 1982 furthered this effort. She said tribal attorneys are present to answer questions.

Proponents' Testimony:

WITNESS: CONFEDERATED SALISH AND KOOTENAI TRIBAL CHAIRMAN, MICHAEL PABLO

Michael Pablo, Chairman, Confederated Salish-Kootenai Tribes read from a prepared statement in support of HB 797 (Exhibit #1). He also provided copies of letters from two U.S. Senators (Exhibit #2).

WITNESS: REPRESENTATIVE BOB GERVAIS

Representative Bob Gervais, District 9, told the Committee he is a veteran of the Korean War, and that Native Americans have the highest percentage of veterans serving in the armed forces. He said these people fought for self-determination for other countries, but the Salish-Kootenai can't have self-determination in Montana. He commented that a Kalispell soldier was killed in Operation Desert Storm.

WITNESS: TRIBAL MEMBER, PAT LEFTHAND

Pat Lefthand, spoke in Native language. He then told the Committee his Indian name is Little Weasel, and commented that he was saying, "You are hearing the language of the first people of this land". Mr. Lefthand said he has served on the Tribal Council during the past 18 years, being elected when PL 280 went into effect. He stated he has been trying to get PL 280 off the books since then.

Pat Lefthand advised the Committee that in no time did chiefs think they would be replaced by the federal government and the Indian Regulatory Act. He said Indians have accepted the new form of government, and no longer operate under the chief's system. Mr. Lefthand told the Committee that, during his period of time with the Tribal Council, many mistakes were made. He said the Salish-Kootenai are a sovereign people and are different, and that he would make no apology for being different.

Mr. Lefthand stated the founding fathers took heed to the words of the Chief of the Iroquois Nation, but they are no longer listened to. He said that today, standing in front of white people, he is expecting these white people to rule in favor of Indians. Mr. Lefthand stated that if there is justice and if they have a heart they will pass the bill.

Mr. Lefthand said the Council used to meet with the County Commissioners on almost a monthly basis to iron out problems of PL 280. He commented that, today, County Commissioners don't want anything to do with the tribes. He stated that several years ago tribal search and rescue people offered to help search for a drowning victim, but Lake County refused their offer. Mr. Lefthand further stated that last October a tribal member who, was wheel-chair bound, was taken from a car and left to sit in the cold until a passerby took him to shelter.

Pat Lefthand told the Committee that justice is supposed to be representative on the Reservation. He said the Flathead Reservation police force is well-trained and well-equipped, and that Indians have a way of life that white neighbors don't take time to understand, but do criticize. He commented that the Tribes have a cultural program, a tribal council, and a reputable court system. Mr. Lefthand further commented that he supported working on government-to-government relations, and he urged the Committee to pass HB 797 on behalf of the Tribes.

WITNESS: EXECUTIVE TRIBAL SECRETARY, JOE DUPUIS

Joe Dupuis, Executive Tribal Secretary, Salish-Kootenai Confederated Tribes, read from a prepared statement. He said the bill would create opportunity for increased cooperation between law enforcement services, and for self-government. He commented that

Indians have an inherent right to choose to self-govern under the U.S. Constitution, and told the Committee that this right was defended by President Bush concerning the people of Kuwait. Mr. Dupuis stated he believes the sense of pride is somewhat hollow when Indians struggle daily to preserve these same rights.

Further, he told the Committee he heard local legislators were saying this is happening too fast. He commented that this was introduced to the Governor in 1989, and said a local legislator was asked to sponsor the bill but declined. Mr. Dupuis stated that Indians represent 19 percent of the adult population in Lake County and 54 percent of arrests. He said Indian arrests jumped 100 percent during the week in December, 1989 when tribal per capita payments were made.

Further, he stated he did not appreciate other county attorneys making comments on Tribal government. He said he could only speak to the Salish-Kootenai justice system, which outspends Lake County two to one, and cross-deputizes with the Department of Fish, Wildlife and Parks. Mr. Dupuis advised the Committee that Lake County refuses to answer drunk driver calls, and waits for the Montana Highway Patrol to cover them.

Further, he reported that MOD of Polson was against shoreline protection in the mid-70s, and said the tribes have been managing Mission Valley Power since 1988. He stated SB 446, the hunting and fishing compact, had the same opposition and argument. He held up copies of printed flyers that are being circulated in Lake County, and of a letter to the Missoulian. He said the Indian people found the allegations in these flyers to be thinly disguised racism, and compared it to those opposing civil rights legislation in the 1960s.

Further, he stated he did not believe that most people in Lake County are racist, but does know it exists. He said the Tribes are in the best position to decide when to withdraw from PL 280, and asked why the Flatheads should be singled out. He asked if the buffalo bill were going to interim study, and said SB 76 was crammed through without an interim study. Mr. Dupuis asked the Committee to pass the bill.

WITNESS: TRIBAL ATTORNEY, EVELYN STEVENSON

Evelyn Stevenson, Tribal Attorney, said the Indian people have been tried in the non-Indian system, and it is failing them. She said the Tribe is not asking to regulate non-Indians, but is interested only in sovereign power to deal with themselves. Ms. Stevenson told the Committee that the U.S. Attorney says an attorney can handle 177 cases per year, and state statistics show that figure to be a little higher. She stated that, in 1989, 33 felonies were committed by Indians against non-Indians, and that this figure was less in 1990. She further stated that 27 felonies were prosecuted which were committed by Indians, and that there

were 4 felonies with Indian victims which were committed by non-Indians.

Further, she said she heard that law enforcement in Lake County worked well during the past 25 years, and commented that may be a one-sided attitude. She said no one is at fault, but the state system remains foreign to the Tribes. Ms. Stevenson told the Committee that lack of legal representative results in countless guilty pleas. She cited an accident in which the son of her friend was killed and the young woman did not even receive a citation for failure to yield right-of-way. Ms. Stevenson cited a second accident there a tribal girl did not have her lights on bright and was charged with involuntary manslaughter.

Further, she told the Committee that the Lake County jail is overcrowded with Indians. She said it does not meet jail-house review standards, and that health care is a standing question. Ms. Stevenson further advised the Committee that sometimes people are released to go to the doctor so that Indian Health will have to pay. She said the Tribal Council has put \$87,000 into the Drug Task Force, not counting personnel or federal money.

Further, she said a tribal member was killed a few years ago, and that the investigation file is now lost. She said that investigation must now be started over again. Ms. Stevenson advised the Committee that the Tribe has a much better working relationship with Sanders and Missoula Counties, and said she believes that is because people act differently toward Tribal members.

WITNESS: REPRESENTATIVE FRANCIS BARDANOUE

Representative Francis Bardanoue, told the Committee he is the only member of the Montana Legislature who was hear when this compact was entered into. He said he helped then Senator Turnage to pass that legislation for a far different tribe than exists today. He said the evolution of the Tribes since 1963 is almost a revolution.

Further, that he may be criticized for speaking on this bill, as he is not from that area. He stated that the Salish and Kootenai are the only tribes presently in this legal situation with Montana government. Representative Bardanoue said that white and red people lived on the Reservation long before the compact, and that he believes that from the opening of the Reservation to white settlement in 1923 to 1953 people lived in relative peace on the Reservation.

Further, he told the Committee that HB 797 was killed by a narrow margin in the house, and he offered an amendment providing one year to adjust to the situation in 1953. He said one proposed amendment required the County Commissioners to approve

retrocession, and that he feared the Commissioners may not have enough courage to do so. Representative Bardanoue commented that each side can recount horror stories, and he suggested that they each dwell on what they can have rather than on injustices of the past. He asked both sides to lay aside prejudice and fear, and said the earth is a common home for all mankind.

Further, he stated that since the Salish and Kootenai Tribes voluntarily entered into this agreement in 1963, they should be voluntarily allowed to leave it. He stated that, otherwise, they would be held in involuntary servitude and this would be wrong. Representative Bardanoue told the Committee that one of his heroes was Chief Joseph, who surrendered about four miles from his upper ranch, and who said, "Where the sun stands I will fight no more, I will live in peace".

WITNESS: UNIVERSITY OF MONTANA PROFESSOR OF LAW, MARGERY BROWN

Margery Brown, Professor of Law, University of Montana, said the jurisdiction arrangement was worked out in 1963, and provided for retrocession. She said she believes it is significant that three years after this agreement was made that Congress provided for agreements and retrocession. Ms. Brown told the Committee she was speaking as an individual who has been watching for the past 16 years, and said she believes the Tribes are ready to assume this jurisdiction.

Further, she advised the Committee that there is room for inventive retrocession to control gaps in law enforcement concerning Indian/non-Indian crime. She asked what state interest is, and said she found it difficult to believe either long or short term state interest.

WITNESS: ROOSEVELT COUNTY SHERIFF, JOHN GRANGER

John Granger, Sheriff, Roosevelt County, told the Committee he has been sheriff since January 1987, and said he came to share the situation the Fort Peck Reservation faced. He said the County and the Bureau of Indian Affairs (BIA) worked together to overcome White/Indian hurdles. Mr. Granger commented that approximately 80 percent of Roosevelt County is within the boundaries of the Reservation, and that the County is the primary enforcer of drug laws on the Reservation.

Further, he stated that he believes sometimes people don't care to understand, but Roosevelt County and Fort Peck Reservation people have come together more than other reservation areas in the state.

WITNESS: FOR U.S. DEPARTEMNT OF INTERIOR, FAIN GILDEA

Fain Gildea, said she was speaking for Dr. Eddy Brown, U.S. Department of the Interior, and read from prepared testimony in support of HB 797 (Exhibit #4).

WITNESS: BLACKFEET TRIBAL CHIEF, EARL OLD PERSON

Earl Old Person, Chief and Tribal Council Chairman, Blackfeet Tribe, told the Committee he has served on the Council since 1954, and as Chairman since 1964 (with the exception of 2 years). Mr. Old Person said he also represented the Montana/Wyoming Tribes to the National Indian Congress, and was asked to bring their statement endorsing HB 797.

Further, he stated this concept is important to all tribes and tribal leaders. He commented that the Indian people were followers many times as they didn't have ways to deal with issues, but are no longer followers and walk equal. He said Indian people re taking the lead to work with things happening on their reservations.

Further, he advised the Committee that he served in the Montana Legislature in 1959, and said he watched the process. He urged the Committee to work with the Indian Nations and to pass the bill.

WITNESS: FOR STATE BOARD OF PARDONS, RHONDA LANGFORD

Rhonda Langford read a letter from Jim Welch, State Board of Pardons, in support of the bill (Exhibit #5).

Opponents' Testimony:

WITNESS: REPRESENTATIVE JOHN MERCER

Representative John Mercer, District 50, told the Committee he represented both tribal and non-tribal members. He said this problem has not been openly discussed and impacts both tribal and non-tribal members, tourists and summer residents.

Further, he asked that all impacts be carefully weighed. He provided information on PL 280 (Exhibit #6). He explained that the original legislation was introduced in 1961, but did not pass, and was reintroduced in 1963. Representative Mercer told the Committee this legislation was amended to require county consent and to allow

tribes to withdraw, but was further narrowed to the Salish and Kootenai Tribes.

Further, he stated HB 797 gives the exclusive right to the Tribes to get out. He commented that legislation has been in place for 25 years, and now the Tribes want to change it. Representative Mercer said he was impressed by the Tribal Chairman's statement that he would concede some jurisdiction, but he believes that statement should be made at home where all the people live together.

In conclusion, Representative Mercer said the struggle is between the emerging tribal government and state and county governments. He said it is not between people, and that no one is against working it out. Representative Mercer commented that there were no meetings on the Reservation; that the bill was introduced one week; was heard the next week; and passed out the following week. He asked the Committee to remember how the parties got into this agreement, and said the only way to resolve the matter is to put it into an interim subcommittee on Indian affairs.

WITNESS: FLATHEAD COUNTY ATTORNEY, TED LYMPUS

Ted Lympus, Flathead County Attorney since 1979, told the Committee that a small part of Flathead County is inside the Reservation. He said he was asked by opponents to speak on his prosecutor experience under PL 280. Mr. Lympus stated he was also the Deputy County Attorney in Polson from 1972 to 1975. He stated that there is a distinction between law enforcement on the Flathead Reservation and on other reservations. Mr. Lympus explained that determinations at the local level are made by the U.S. Attorney on the other reservations.

Further, he advised the Committee that he recognizes this is an extremely difficult situation. He said he questions whether the Reservation could become a sanctuary for criminals, and also how DUIs would be regulated on Highway 93. Mr. Lympus said he would submit that this is an issue of law and order, of public safety, and or social and economic stability, and not an issue of race or politics. He commented that retrocession could make it that.

WITNESS: GLACIER COUNTY ATTORNEY, JIM NELSON

Jim Nelson, Glacier County Attorney, advised the Committee that Glacier County comprises more than half of the Blackfeet Reservation. He said people suffer in such conflicts, and cases are falling through the cracks concerning who has tribal, state, and federal jurisdiction. He said he feels sorry for these people, and said he was not necessarily for or against the bill, but sees the need to look at the practical realities.

WITNESS: LAKE COUNTY ATTORNEY, LARRY NISTLER

Larry Nistler, Lake County Attorney, said HB 797 allows counties and cities to investigate and prosecute on the basis of the violation rather than on the basis of race. He said he also spoke with the Sanders County Attorney concerning this issue, and called the County Attorney in Grays Harbor County, Washington, who recently had retrocession without a two-year study (Exhibit #8). Mr. Nistler said comparing the Salish and Kootenai to the other Tribes is not appropriate because PL 280 is not in operation on their reservations.

He further stated he had never heard Evelyn Stevenson's concerns before. He stated that, simply put, her statements concerning a murder were not true. Mr. Nistler said he was concerned about the statistics reported by Ms. Stevenson as they don't mesh with those of Mr. Dupuis, or with case statistics in Lake County. He told the Committee that the concern remains that a large number of cases cannot be prosecuted.

Further, he advised the Committee that United States v Greenwalt says reservations have no say in non-Indians against Indians, and that the federal government does. He stated this is not a racial issue, and should be a law enforcement issue.

WITNESS: LAKE COUNTY COMMISSIONER, RAY HARBIN

Ray Harbin, Lake County Commissioner, said the Flathead Area would have three judicial systems, at great cost to the taxpayers, if HB 797 passes (Exhibit #9). He provided a 3'x3' map of Flathead Reservation land status as of 1988. Mr. Harbin thanked the Tribes for the pristine condition of the Mission Mountains, and said the bulk of the valley floor has been in fee status for the past 80 years.

He further advised the Committee that the Flathead Reservation has many more non-Indian people than Indian population. He asked the Committee to keep this in mind, as these people could be greatly impacted by this bill. Mr. Harbin further stated that 3,000 people own property around the edge of Flathead Lake, and probably represent every county in Montana, every state in the Nation, and some foreign countries. He told the Committee the Salish and Kootenai Tribes are very progressive, and that he is in his fifth year as a County Commissioner. He said he has never been approached by the Tribes to discuss this matter.

WITNESS: LAKE COUNTY SHERIFF, JOE GELDRICH

Joe Geldrich, Lake County Sheriff and Coroner, read from a prepared statement concerning the technical problems law

enforcement is facing on the Reservation (Exhibit #10). He said the missing file alluded to by Evelyn Stevenson is on his desk.

WITNESS: MISSOULA COUNTY SHERIFF'S SERGEANT, STAN FULLERTON

Stan Fullerton, Sergeant, Missoula County Deputy Sheriff's Association, urged the Committee to vote against HB 797, and read from a prepared statement (Exhibit #11). He said that several years ago he was assigned to the fugitive section, and received a lead on a Native American in Lame Deer. Mr. Fullerton explained that the information was good, but he didn't hear back from Lame Deer, and then finally was told, "We don't enforce state law". He said he then contacted the U.S. Attorney's office in Billings, and was told they could not make an arrest on a state charge. Mr. Fullerton stated said he asked for an unlawful flight warrant, and was told that the fugitive wasn't across the state line. He said he sees the bill as making his job more difficult, and did not want to offend the Tribes, but did want to make a stand.

WITNESS: ATTORNEY GENERAL, MARC RACICOT

Marc Racicot, Attorney General, told those present he was neither an opponent or a proponent of HB 797. He said the Department of Justice is now beginning to deal with issues which have been germinating over a long period of time, and said this is largely due to waffling federal policy. He said the Department is involved in all kinds of different barriers, and all efforts at resolution are very difficult, as they revolve around jurisdiction and control.

Further, he stated that, as a prosecutor in Montana for 18 years, he has worked with federal, state and tribal law enforcement officers all over, and has found them all to be well-qualified. He said his concern is one of safety and security, and that enforcement of the law transcends every other consideration. Mr. Racicot said perhaps retrocession would offer improvement, but it would need planning.

In conclusion, he said that if HB 797 passes, the Tribes would have to make a decision concerning safety and security. He said there are two other issues: 1) whether there is sufficient allocation of safety and security to residents; 2) it needs the acceptance and affirmation of those on the reservation. Mr. Racicot said he could not tell if retrocession would work, but believes it would further self-determination. He stated he did not have any understanding of the impact of the Tribes in its approach, nor did he have fears not based on safety and security. Mr. Racicot stated it is important to gauge this concept.

WITNESS: U.S. ATTORNEY, DORIS POPPLER

U.S. Attorney, Doris Poppler, told the Committee she wanted to provide the federal perspective of what will happen if retrocession passes. She advised them that she had to go to Washington, D.C., to the U.S. Department of Justice to get permission to speak on federal policy concerning HB 797. Ms. Poppler stated that retrocession from PL 280 would have to be approved by the U.S. Attorney General, and the Secretary of the Interior, and it would present a very serious gap in law enforcement jurisdiction if it were given an immediate effective date.

Further, she provided a jurisdictional chart made prior to Duro v Riena (Exhibit #10a). She said the difference is in determining who is a tribal member on the Flathead Reservation. Ms. Poppler commented that the concerns of the Lake County Sheriff are very true, as all exterior boundaries would be excluded. She explained that the U.S. Attorney's office would be greatly impacted.

Further, she told the Committee there are 11 attorneys in Montana representative 6 reservations, and all federal agencies, civilly and criminally. She further advised the Committee that her request for additional help was denied. Ms. Poppler explained that there are offices in Helena, Butte, Great Falls, and Billings. She said the closest federal judge is Judge Lowell in Helena, who has a very heavy load.

She further commented that she would probably have to open an office in Missoula and place a federal magistrate there. She is very sensitive to the needs of Native Americans, and is unable to meet those needs right now. She explained that the federal system is very slow, and that the grand jury meets only once a month.

Further, she told the Committee that if a non-tribal member is married to and assaults a tribal member wife, she could not meet prosecution needs if HB 797 were to pass. She advised the Committee that one tribe finally exiled an assaulter from its reservation, because it had no other legal recourse. Ms. Poppler said retrocession would affect the FBI, the BIA, Probation, and Alcohol Tobacco and Firearms. Further, that the Missoula County jail does not meet federal standards.

She explained, further, that this bill would have great impact to Indian defendants, if they are convicted in federal court, the courts must use federal sentencing guidelines. The guidelines make use of mathematical formulas and that sentences are without parole. Ms. Poppler said prisoners got to places in the federal penitentiary system in Washington, Illinois, and California. She stated that the federal courts don't bond people out very easily either.

In conclusion, she advised the Committee that if HB 797 passes she would do her best to get the money to meet needs, but she fears

she will not get the dollars she would hope for. Ms. Poppler commended the Tribes for their efforts.

WITNESS: FBI SPECIAL AGENT SUPERVISOR, DON LYON

Don Lyon, Supervisor, Special Agents, FBI, Montana, told the Committee he was neither an opponent nor an opponent of HB 797. He stated that should this legislation pass it would be incumbent upon the FBI to assign two agents to Missoula, and even if he does this, there would still be the problem of getting into federal court in a timely manner.

WITNESS: FEDERAL PROBATION OFFICER, JERRY COOLEY

Jerry Cooley, Federal Probation Officer, Missoula, told the Committee he would provide facts on the impact of the bill. He said he prepares pre-sentencing reports, which he said are essentially a background report for mathematical equations used in sentencing. He advised the Committee that this is the single-most important report in sentencing.

Further, he stated that he does bond investigations prior to initial appearance and also provides supervision. He said that in 1990 his office prepared 50 pre-sentencing reports, and told the Committee there are two probation officers for eight counties.

Further, he said his office did 60 bond investigations, which take about two months to verify and complete. He stated he would need two more probation officers and one more clerical workers at a cost of \$100,000. Mr. Cooley said Probation would also need larger offices and would be required to do more travel. He commented that he believes the system is ill-equipped to handle juveniles, as the only facility meeting federal standards is in Kalispell and costs \$85 per day.

In conclusion, he reported that the Crime Control act of 1984 established the national system, and commented that more people are going to jail for longer periods of time. He said it is a strict, get-tough crime system.

WITNESS: U.S. MARSHALL, DAVE BRADLEY

Dave Bradley, U.S. Marshall, District of Montana, said the bill would raise the need for two more deputy U.S. Marshals in the Missoula Area. He explained that his primary responsibility is to carry out orders of the court, and said finding jail space is hard. He explained that he currently contracts with the Flathead County jail.

WITNESS: SENATOR DICK PINSONEAULT

Senator Dick Pinsoneault, told the Committee he had a letter from Dusty Deschamps, Missoula County Attorney, stating that this issue needs more study and planning (Exhibit #11). He told the Committee he had hoped to get through this hearing without listening to testimony discussing racism.

Further, he said he has worked in tribal court on the Flathead Reservation, and that their judicial system is a model for the rest of the country. He stated that there is no meaningful appeal from tribal court, but the Tribes are "working on this".

Further, he advised those present that he had defended a former Chairman of the Tribal Council for DUI and non-support. He said this case was taken into the judge's chambers, out of public view. If he were racist this could have been headlines in the local paper. Senator Pinsoneault stated he has also worked with federal people all over the country, and commented that the law enforcement system in Montana is not perfect. He provided attachments from : 1) the U. S. Attorney; 2) Sheri Connors-David; 3) The Confederated Salish and Kootenai Tribes of the Flathead Nation; 4) Sam T. Marshall; 5) Sheriffs and Peace Officers Association; 6) Missoula County Deputy Sheriff's Association; 7) his proposed Senate Joint Resolution (Exhibit #12).

Further, he told the Committee, the situation on the Flathead Reservation is unique, but he believes the residents can solve the problem themselves instead of unilaterally. He commented that Evelyn Stevenson has a daughter in medical school, and that he would welcoming his son getting together her. Senator Pinsoneault further commented that the Pablo name goes back a long way with his family. He said his father spoke of the Chairman's grandfather with reverence. Senator Pinsoneault commented that his mother is one of the finest Christian women he had ever met.

In conclusion, he stated that he believes this is a lawyer's bill.* He advised the Committee that he is a law enforcement person, and didn't want an officer to get shot by some red-neck because he or she did not have the authority to arrest someone. Senator Pinsoneault said he asked four lawyers if it would be possible to retroceed and still keep some parts of PL 280. He commented that one lawyer said "yes", one said "no", one said he was "not sure", and one said "maybe". Senator Pinsoneault volunteered to sit on an interim committee to help form a plan for law enforcement that everyone can be proud of.

* and the "young turks" (lawyers) from the Tribes have visions of a big judicial center in Pablo.

WITNESS: FLATHEAD COUNTY COMMISSIONER. HOWARD GIPE

Howard Gipe, Flathead County Commissioner, and Chairman of the reservation counties in MACO (Montana Association of Counties), said he walked out on a conference because there was not equal representation from the reservation counties. He stated he is a retired Highway Patrolman and has worked on four different reservations. Mr. Gipe told the Committee he is concerned about equal enforcement on the reservation.

Further, he explained that his parents moved to Polson, and felt safe under the jurisdiction of the state. He stated there is not equal treatment of Indians or non-Indians on the Reservations. Mr. Gipe said the problems of the early 60s do not exist today, and commented that he believes things are the best they can be, even though they are not perfect.

In conclusion, he told the Committee the Highway Patrol tried to issue citations through the tribal courts in 1963-63, but it didn't work.

WITNESS: POLSON CHIEF OF POLICE, RON BUZZARD

Ron Buzzard, Chief of Police, City of Polson, commented that even city courts would be affected by HB 797.

WITNESS: FOR MONTANA STOCKGROWERS ASSOCIATION, HALE JEDFORD

Hale Jedford, provided testimony at the request of the Montana Stockgrowers Association (Exhibits #13 and #14).

WITNESS: FOR MONTANA FARM BUREAU, BILL COVEY

Bill Covey, Montana Farm Bureau, provided testimony in opposition to HB 797 (Exhibits #15 and #15a).

Questions From Committee Members:

Q: Senator Crippen asked if there was money to meet the demands of the bill.

A: Doris Poppler replied there is not.

Q: Senator Crippen asked if the Department of the Interior has final jurisdiction.

A: Doris Poppler replied that she is concerned, as the Department of Justice funds her office, and the bill would require a new office in Missoula, as well as two attorneys to staff it. She

commented that it would take time to get funding into the Department of Justice, and that new attorneys require background checks which also takes time.

Q: Senator Crippen asked if retrocession is allowed, and would give tribal members jurisdiction over non-tribal members.

A: Ms. Poppler advised the Committee that retrocession would not cover the 13 major felony crimes, and that the federal government would have jurisdiction over them. She explained that the state would have jurisdiction over non-tribal versus non-tribal persons.

Q: Senator Crippen asked if partial retrocession were possible.

A: Doris Popper stated that they should renegotiate their compact rather than retroceed.

Q: Senator Svrcek asked Professor Margery Brown what she found in studying this issue.

A: Professor Brown replied that under retrocession power, 25 USC 1323, the United States is authorized to accept retrocession of any state. She said she studied and found the Tribes are not locked in to total retrocession. She said nothing happens tomorrow; that she believes statute gives clear grounds for retrocession; but not the hand-tailored retrocession offered here.

Q: Senator Svrcek asked Evelyn Stevenson how she envisions partial retrocession.

A: Evelyn Stevenson replied she envisions the courts being in place, and said she was not prepared to answer for all tribal members. She stated that the bill could be amended, and that non-Indians would continue to be prosecuted by Lake County.

Q: Senator Harp told Sheriff Geldrich he had Pat Smith of the Tribes research cross-deputization. He said it is his understanding that former Sheriff Bill Graham made a cooperative agreement which worked well, but this was changed in the mid 70s. Senator Harp asked why the Tribes has cross-deputization with Missoula and Sanders Counties, but not Lake County? He was also concerned with Sheriff Geldrich's statement about dropping this bill.

A: Sheriff Geldrich replied he started in Lake County law endorsement in 1975, and there has not been cross-deputization since that time. He stated that to give an officer authority, but to have no control over that officer is of concern to him.

Q: Senator Harp commented that he did not understand why cross-deputization can't work in Lake County.

A: No response

Q: Senator Doherty asked Sheriff Geldrich why he isn't interested in cross-deputization.

A: Sheriff Geldrich replied he didn't want to be responsible for having no control over those officers. He stated he is speaking about limited agreements on tribal lands.

Q: Senator Doherty: "Are you willing to make a commitment to work with the Tribes".

A: Sheriff Geldrich replied he "would be".

Q: Senator Doherty asked Professor Brown if HB 797 would affect civil cases within the Reservation.

A: Professor Brown replied civil jurisdiction involves eight areas of civil law. She said this is as much on the table as is criminal jurisdiction. Professor Brown stated that in 1976, a U.S. Supreme Court decision regarding the state assuming public law jurisdiction, makes some of those eight civil areas somewhat innocuous. She stated that if retrocession were to pass in its pure form, the Tribes would have jurisdiction over civil Indian v Indian suits.

Q: Senator Doherty asked if those living on the Reservation would not be subject to jurisdiction in tribal courts.

A: Professor Brown replied they would not be subject any more than they are today, and that the only affect would be to preclude tribal members from suing under _____ (inaudible).

Q: Senator Towe asked Sheriff Geldrich if he were in charge of the county jail.

A: Sheriff Geldrich replied he is.

Q: Senator Towe asked the Sheriff if he has seen some of the problems in Lake County. He read some of this information to the Sheriff, and asked if the Sheriff were familiar with these matters.

A: Sheriff Geldrich replied the Lake County jail has a capacity of 50, and averages about 46 inmates per day. He stated that a doctor comes in twice a week, and that menus come from the Montana State Extension Service.

Q: Senator Towe continued to read from the list of problems, and said the perception is that Indians are not treated the same in Lake County.

A: Sheriff Geldrich replied that he has lived on the Reservation since 1957, and is not against tribal members.

Q: Senator Towe asked about the claims of an Indian girl being charged with manslaughter, while a White girl involved in an accident resulting in a death was not cited.

A: Mr. Nistler replied he was unfamiliar with the first case, as he did not prosecute it. He said he didn't know whether or not the girl in that case was a tribal member. Mr. Nistler explained that girl was driving another person's vehicle, was coming down a slope, and accelerated to cross the highway. He said alcohol was involved, and that the girl received a deferred sentence for manslaughter.

Q: Senator Halligan asked Professor Brown if, in her understanding of federal law, she had any experience regarding the role of the U.S. Attorney General.

A: Professor Brown said she had no knowledge of a case of a state retroceding. She commented that the State v Greenwalt is not a retrocession case.

Q: Senator Mazurek asked how partial retrocession would take place. He commented that those involved should begin to discuss the situation now or pass a resolution.

A: Professor Brown replied that if the federal government hadn't permitted retrocession in 1968, this would be a matter between the Tribes and the State. She advised the Committee that the Tribal Council agreed in 1965, and said the state would still have the option not to hold to two years. Professor Brown commented that this provides the only way for the State to retroceed to the federal government.

Q: Senator Halligan asked if the problem couldn't be handled by two U.S. Special Assistant Attorneys in Missoula.

A: Doris Poppler replied those attorneys usually handle misdemeanors and court appearances. She further stated that background investigations of attorneys during the hiring process cost \$6,000 each.

Q: Senator Halligan asked Don Lyon, FBI, to describe the numbers of agents on other reservations.

A: Mr. Lyon replied there are two agents in Glasgow at the Fort Peck Reservation; two agents in Cut Bank at the Blackfeet Reservation; three and one-half agents in Billings at the Crow-Cheyenne Reservation; and one agent in Great Falls at the Rocky Boy Reservation.

Q: Senator Halligan asked if the Tribes are trained to do these investigations.

A: Don Lyon replied that a lot of training has been invested.

Q: Senator Yellowtail asked Lake County Commissioner Ray Harbin, if his attitude would change after a two-year study has been completed. Mr. Harbin replied, "That is an excellent question". He commented that definite strides can be made toward mutual acceptance in this situation.

Q: Senator Yellowtail asked Doris Poppler why she feels her office is not dealing adequately with problems on the reservation. He also asked why the other reservations are not under PL 280 jurisdiction.

A: Doris Poppler replied she has wondered why the other tribes have not come running to get under PL 280. She stated that without it (PL 280), a quick response is nearly impossible. She believes the Flathead Reservation is the best-served reservation in the state.

Q: Senator Crippen commented that earlier testimony by Tribal Chairman Pablo indicated that if there were cross-deputization with Lake County now, this issue would not be before the Committee.

A: Chairman Pablo replied that is partially true, but the bill is also part of the self-determination of the Tribes. He stated that one in ten tribes in the U.S. have elected to become self-governing.

Q: Senator Crippen asked Mr. Pablo if he is willing to give up some self-determination in the form of partial retrocession. He asked the Tribal Chairman what the Tribes have in mind in the way of concessions, and what assurance the Committee has that this will happen.

A: Mr. Pablo replied that the Winnebago and several other tribes have already gone through partial retrocession.

Q: Senator Crippen asked if the Tribes would object to an interim committee.

A: Mr. Pablo replied they would.

Q: Senator Crippen stated that it is hard to understand how all these questions can be answered at this hearing. He further stated that the Legislature represents all members of the Tribes as well as all non-members. He asked if it would not then be better to take the time to examine this issue in order to provide fairness and honesty to the Tribes.

A: Chairman Pablo replied that he had stated that retrocession would not happen overnight. He said he just wanted equal footing at the negotiating table.

Q: Senator Crippen stated that he is not prepared, right now, to give up the responsibilities he just mentioned, even though he agrees with self-determination.

A: Pat Smith, tribal attorney, replied that the 1963 statute does not define the nature of PL 280. He said the retrocession to which the Tribes consented is Tribal Ordinance 48. Mr. Smith stated that if the Legislature allows the tribes the option of withdrawing, Tribal Ordinance 48 could be amended.

Q: Senator Mazurek asked which comes first, the agreement or this bill.

A: Pat Smith replied the abilities of the Tribes to withdraw comes first. He said he envisions negotiation between the Tribes and the government, and would like to get them underway before withdrawing.

Q: Senator Mazurek asked what voice the state would have, assuming HB 797 passes.

A: Pat Smith replied the approach is inter-governmental agreement. He commented that the Department of Interior responded that this is not the request that they act upon, and said the Department of Interior, would consult with the U.S. Department of Justice, and the Assistant Secretary of Indian Affairs. Mr. Smith stated that the next step after the bill is a request by the state to the Department of the Interior.

Q: Senator Mazurek asked what happens if the state refuses.

A: Pat Smith replied that the ultimate decision would be made by the federal government, but everything leading up to that decision is between the state and the Tribes.

Q: Senator Mazurek asked if passing the bill takes the state out of the ball game. He asked what happens if no agreement is reached.

A: Pat Smith replied he believes the Legislature has the authority to amend statute to affect partial state retention of jurisdiction over non-Indian crimes.

Q: Senator Mazurek asked the same question of Attorney General Racicot.

A: Marc Racicot replied he did not know.

Q: Senator Mazurek asked the same question of Representative Mercer.

A: Representative Mercer replied that 2-1-306, MCA, says the Tribes may request to withdraw consent by appropriate resolution. He stated the Governor must issue a proclamation within one year, and that he believes it is up to the state to request it.

Q: Senator Crippen asked if a proviso could be put on the bill.

A: Marc Racicot replied that agreements can be reached right now.

Q: Senator Svrcek said he believes Senator Mazurek's question is very important, and that it has not been answered. He asked where the state is with jurisdiction if there is no agreement. He asked that this be researched.

Closing by Sponsor:

Angela Russell thanked Senator Mazurek and the Committee for the time given the questions she and the Tribes have asked. She said, "let me try to make some comments here, in closing, and I will assure you that it's going to be real rapid. I'm only trying to make one point here."

"Representative Mercer talked about his being a divisive issues; that it was not open and debated and, in fact, he even talked about an unfortunate confrontation. I think what I would say to you, Representative Mercer, you made statements like, "Don't let them stick it to us on the House floor." You also said, "I tell you, this bill will never pass." Am I correct? Now, I would think maybe the Committee would agree with you here, and that's confrontational.

Representative Mercer wants the County approval on retrocession. I agree, one day we've got to report more cooperation. Will that ever be possible?

Representative Mercer incorrectly views this issue as a local issue. In other words, government to government. The Court has

ruled that PL 280 is an issue between the tribes and the state, not local government. I cite a case, and I wrote it down as Santa Rosa Band of Indians v King County. PL 280 only confers jurisdiction on the state, not local government.

I've already mentioned that we have the history of SB 446 from last session. So, local public hearing mandated by the last Legislature on the hunting and fishing agreement, SB 446 was predominated by extremists which led to litigation. It was only after out-of-court settlement discussions took place in a government-to-government fashion, that a final hunting and fishing agreement was reached. That settlement was still opposed by the anti-Tribes extremists.

Ted Lympus talked about the DUI enforcement question. And I guess I need to address the comments that Representative Mercer made on the House floor, too, because we have had a package of bills from the Juvenile and Adult Detention Subcommittee. And remember, there's a comment that Representative Mercer made on these alternative sentences for DUI, and it was something to the effect that, you know, we don't want to give you the perception that we're soft on DUIs. And yet, Mr. Lympus talked about the DUI enforcement question, and talked about how the Tribal Police apprehended an Arlee man on a DUI, and how they got no cooperation from the Lake County Sheriff.

Mr. Lympus also talked about public safety. I would say to you, as committee members, that the Confederated Salish and Kootenai Tribes are very concerned about public safety. Their families are at risk also.

He also talked about social and economic stability. He's concerned about economic and social stability, and perhaps we need to think about that here tonight. I'm sure that Lake County would be adversely affected under retrocession, yet 54 percent of the residents of Lake County aren't Indian people. And it's kind of interesting to note, too, that just before per capita payments are made --and I understand this happens several times on the Flathead Reservation-- there's a 100 percent arrest record of Indian people in Lake County.

Mr. Lympus goes on to talk about race rights as the current tissue. I would say to Mr. Lympus, it has been an issue and it will continue to be an issue.

Glacier County talks about the violence on the reservation. We must remember we're not talking about the Blackfeet Reservation, we're talking about the Confederated Salish and Kootenai Tribes, whose resources are certainly different from other tribes in the State of Montana. You want to talk about cases falling through the cracks, and it seems apparent that Lake County also let some cases fall through the cracks. For example, they did not prosecute a non-Indian who killed an Indian on the Reservation. I would say

there are cases from Lake County that are falling through the cracks, also.

Larry Nistler, you talked about the fact that you were appalled by the problem, and you talked about concurrent jurisdiction. And, I would say, if concurrent jurisdiction is good and desirable, why hasn't Lake County cross-deputized.

There also was discussion about the statistics Miss Stevenson gave, and what Mr. Dupuis gave. I would state that there is no conflict between Mr. Dupuis' statistics and Miss Stevenson's. Mr. Dupuis' figure are derived from the Montana Uniform Crimes Report, and show 203 Indian arrests in Lake County in 1989. Miss Stevenson's figures are taken directly from the Lake County Criminal Register, and indicate that, in 1987, 33 of 8200 violations were felonies where Indians were charged. It is still inexplicable why Indian arrest rate and the Indian jail population has risen out of proportion to the Lake County Indian population.

Retrocession certainly has been discussed, and has been enacted by over 30 tribes within the country. There are different varieties of retrocession. I would say to the Committee that if partial retrocession is just too confusing, then perhaps we should go with the full retrocession.

A Lake County Commissioner has been around our halls for a couple of weeks. And I guess I would respond to a couple of things that he said with this: He showed you a map of fee lands and Indian lands, and I would say that the map of fee lands are still included in Indian country, where the crimes committed make no difference. It's still in Indian country, and would, therefore, still be subject to Indian jurisdiction.

Mr. Harbin, I would like to talk about a reasonable justice system, but, I wonder, reasonable for whom? He said that there is no money savings. Even the State admits there is savings to the County. The fiscal note indicates that the proposed retrocession would result in a cost savings because of the federal assumption of cases now handled by the State.

Other witnesses talked about the interest in law enforcement. and, again, I would plead with all of you that if you are so concerned about law enforcement, good law enforcement, why do you continue to oppose cross-deputization? The Missoula Deputy Sheriff cited some problems with Northern Cheyenne on unlawful flight. Again, we are not talking about Northern Cheyenne, we're talking about the Confederated Salish and Kootenai Tribes. I guess there's kind of a tone here, too, that really sounded very racist to me. He talked about the fact that this would not make law enforcement easier, and I would say to you, why don't we use this as a challenge to work together on cross-deputization? And I think that I would further state that I can't find any problem because I understand that the Confederated Salish and Kootenai Tribes and Missoula County have also had cross-deputization.

The Attorney General talked about safety and security for every resident. And certainly that is a primary concern of the Tribes. He talked about the efficient application of resources that are needed, and I think certainly we have had witnesses here tonight from the Department of the Interior and the federal government that have given their cooperation and support to retrocession.

I was delighted to hear, too, by the Attorney General, that his knowledge of retrocession will give tribes self-determination.

Miss Poppler talked about fairness. There certainly isn't fairness in sentencing in state court. That's very real. All one has to do is take a look at the Indian population over in the state prison and that tells a lot about who's being sent. So we already know there's disparate sentencing, and I would hope that the Senate Judiciary Committee would take a look at a bill to address the disparate sentencing of Indians.

Attorney Stevenson has indicated that additional federal prosecutions would be low, so the additional staff requirement would be minimal.

In most crimes on reservations where tribes have jurisdiction over the Indian defendants, the tribes think they can do a better job with these misdemeanor Indian offenders. I would also say to Miss Poppler, the Government has a trust responsibility to Indian people. And the lack of federal funding is important, but the Government's trust responsibility is of overwhelming importance. Many people on the Flathead and other reservations in the State of Montana moved onto reservations knowing this was Indian country, and just because they moved on doesn't mean there should be a divestiture of that jurisdiction.

And for Senator Pinsoneault, I know that he was a part of the public meeting last week, and I understand that there was not even a courtesy to invite the Tribes to that meeting that was held in Polson. I would like to remind you again that this is a government-to-government issue. It's between the State of Montana and the Tribes, and, yes, Senator Pinsoneault, this is a lawyer's bill, because Senator Pinsoneault, you are the one that had it drafted, and I believe you are a lawyer. Let me ask you, Mr. Pinsoneault, why haven't you, as a Senator, encouraged all parties to sit down and discuss and plan cross-deputization.

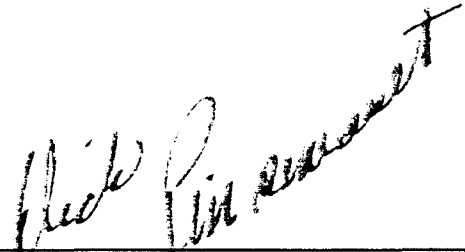
In closing, consider two things: Miss Poppler, is it not a breach of trust and responsibility for all these federal officials appearing here to enhance tribal self-determination?

Retrocession needs to be an issue of fairness, and that's what I would ask you, the Committee, to consider. The Tribes are entitled to withdraw their consent. The Tribes are entitled to resume responsibility for their own people and affairs. And retrocession will save the state and affected counties money. The

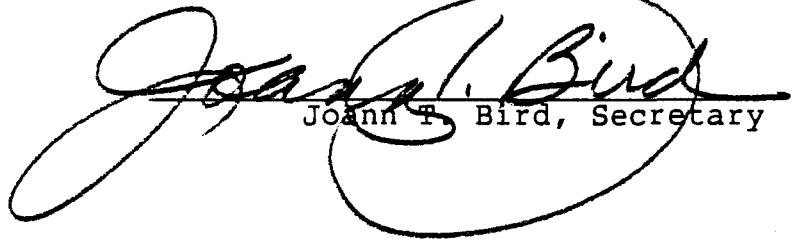
Salish and Kootenai demonstrate their capability to manage their own affairs. I ask you to consider all of the information that has been given you tonight and thank you for a good hearing, and urge your strong support of this measure.

ADJOURNMENT

Adjournment At: 11:20 p.m.



Senator Dick Pinsoneault, Chairman



Joann T. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52nd LEGISLATIVE SESSION -- 1991

Date 3-18-91
7 p.m.

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	/		
Sen. Yellowtail	/		
Sen. Brown	/		
Sen. Crippen	/		
Sen. Doherty	/		
Sen. Grosfield	/		
Sen. Halligan	/		
Sen. Harp	/		
Sen. Mazurek	/		
Sen. Rye	/		
Sen. Svrcek	/		
Sen. Towe	/		

Each day attach to minutes.

4-1
18 Mar 91
HB 797
7 pm

Testimony of Michael T. Pablo
Tribal Chairman of the
Confederated Salish and Kootenai Tribes
of the Flathead Nation

On House Bill 797

March 18, 1991
Senate Judiciary Committee

Mr. Chairman, members of the Committee, my name is Mickey Pablo. I am Chairman of the Confederated Salish and Kootenai Tribes of the Flathead Nation.

It is an honor to testify before you this evening on House Bill 797. The Tribes have mailed to all members of this committee, and to all members of the Montana Legislature, a detailed briefing paper on this bill. I will leave extra copies of the briefing document with the Committee.

The Flathead Nation consented to 280 jurisdiction in 1965, at a time when the tribal government was very small. It consisted of 11 employees. The total tribal budget was less than \$250,000.

Our tribal government is now over 100 times the size it was in 1965. It includes over 1200 tribal employees and our annual budget is 70 million dollars. We believe we are now capable to reassume responsibility for our people.

The opponents to this bill will argue that this legislature should refuse to allow the Tribes to withdraw their consent to 280 jurisdiction, and that the entire matter should be deferred and studied until the legislature meets again.

We strongly disagree. If the Tribes have the right to consent to Public Law 280, they should likewise be afforded the right to withdraw. To deny our government this right is fundamentally unfair. The Tribes' consent to limited Public Law 280 jurisdiction was totally voluntary. Our understanding was that when our government was capable of reassuming its responsibilities, that we would be allowed to do so. Even the hunting and fishing compact we signed with the State of Montana last November allows either party to withdraw by sending a certified letter.

Our Tribes have a good working relationship with the counties on the Reservation--but not, unfortunately, with Lake County. For example, for more than 15 years, Lake County has refused to cross-deputize with our law enforcement. As recently as last week, we held a meeting with them on the subject of cross-deputization. Their idea

of a compromise was to suggest that they might be willing to talk about cooperating with tribal law enforcement--but only near tribal housing projects, and only in return for the Tribes dropping our support for this bill. When we informed them that we wanted to negotiate on Reservation-wide cooperation and cross-deputization--like used to exist with Lake County and which is common place in Indian Country--Sheriff Geldridge informed us that Lake County was not ready for that because the county would not accept an Indian arresting a non-Indian.

The Tribes already have cross-deputization with the State of Montana under the new wildlife compact and have been cross-deputized with Sanders County for a long time. Under cross-deputization, any law enforcement officer can arrest any lawbreaker and turn the offender over to the appropriate jurisdiction. With or without Public Law 280 jurisdiction, Indian tribes can not assert criminal jurisdiction over non-Indians. Therefore, it should not make any difference whether the officer making the arrest is red or white--or tribal, state, or county.

Passage of House Bill 797 only initiates the retrocession process. In order for retrocession to occur, the following steps must occur. First, after discussions and negotiations with affected governments, the Tribes would submit a formal notice to Montana's Governor that the Tribes withdraw their consent. Second, within one year of the date of receiving the request, the Governor must submit, by proclamation, his request to retrocede to the federal government. Finally, the Interior Department and the U.S. Justice Department would then review the request to ensure that there are adequate federal resources in place. There is no time limit on the federal government on when they must act on a state request for retrocession.

This procedure ensures that the retrocession process will be studied carefully. The Tribes are committed to working with all affected governments. We are open to any necessary cooperative agreements, and we will work to ensure that adequate federal resources are in place before the federal government makes its decision on whether to accept the state request for retrocession.

In this regard, I would like to submit for the record a copy of a letter this Committee has received from Senators Daniel Inouye and John McCain. As you may be aware, they are the ranking senators on the Senate Select Committee on Indian Affairs, and Senator Inouye is a senior member of the Committee on Appropriations. In this letter, these senators pledge their support in securing the necessary federal resources to make the Flathead retrocession a success.

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Because Tribes do not have criminal jurisdiction over non-Indians, retrocession primarily affects Indian people. In recent weeks, there has been concern that, after retrocession, non-Indians committing crimes against Indians would be prosecuted by federal courts rather than state courts. It has also been alleged that, on some Indian reservations, misdemeanor crimes by non-Indians against Indians are not always prosecuted by the U.S. Attorney's office. We believe the latter concern can be fixed by ensuring that there are sufficient federal resources to prosecute these crimes. Nevertheless, the Tribes would like to advise this Committee that we would be willing to allow the State to continue to maintain criminal jurisdiction over non-Indians that commit crimes against Indians if that will facilitate passage of this bill. We are willing to make this concession only after considerable deliberation, and after concluding that this approach is consistent with our goal of tribal self-determination.

In closing, the Tribes are ready to reassume responsibility for our people. We will commit whatever tribal resources are necessary to make retrocession a success. We pledge to work with the U.S. Attorney and others to ensure that adequate federal resources are in place before retrocession goes into effect. It should also be of interest to you that the fiscal note concludes that this bill will save the state and affected counties money.

We desire a continued, positive, government-to-government relationship with the State of Montana. If the State kills this bill, our confidence in our government-to-government relationship with the State of Montana will be shaken, and we will take that into consideration in future negotiations and interactions with the State. We believe the present Public Law 280 arrangement on the Flathead is not working for us and is contrary to federal Indian policy. We fear its continuation will likely lead to conflicts and litigation between our governments over Public Law 280. We urge your support for a cooperative resolution of this issue.

Thank you.

DANIEL H. MOYNE, MAYAN, CHAIRMAN
JOHN HIGGINS, ARIZONA, VICE CHAIRMAN

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JOHN HIGGINS, ARIZONA, VICE CHAIRMAN
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FRANK M. HURKOWSKI, ALASKA
THOMAS COCHRAN, MISSISSIPPI
JAMES GORTON, WASHINGTON
JOE V. BOWEN, NEW MEXICO
NANCY LAYTON, KANSAS
JOHN NICHOLS, OKLAHOMA

JACQUELINE H. ZELL
STAFF DIRECTOR, SENATE
DANIEL H. MOYNE, MINNESOTA

United States Senate

SELECT COMMITTEE ON INDIAN AFFAIRS

WASHINGTON, DC 20510-8430

March 12, 1991

The Honorable R.J. Dick Finsonneault
Chairman
Senate Judiciary Committee
Montana State Legislature
State Capitol
Helena, Montana 59620

Dear Mr. Chairman:

We are advised that the Montana legislature is considering legislation which would authorize the State of Montana to retrocede Public Law 93-280 jurisdiction on the Flathead Indian Reservation. We are writing to provide some background on both Federal-Indian law and policy and to provide assurances with respect to future Federal funding. It is not our intention to interfere in any respect with the deliberations of the legislature or the tribes with regard to the retrocession issue.

As you are well aware, Public Law 93-280 was enacted in 1953 pursuant to Federal-Indian policy which was designed to encourage the termination of Indian reservations. Unfortunately, the termination era in Federal-Indian policy has proven to be a tragic failure, resulting in the destabilization of tribal governments, tribal economies, and tribal cultures. Although Indian self-determination has become the official policy of the United States since the early 1970's, it has only been within the last few years that the Congress has acted to remove all vestiges of the termination policy by repealing House Concurrent Resolution 108.

Today, the Federal government supports the self-governance of Indian tribes, and Federal programs are designed to foster and protect the integrity of sovereign tribal governments. Despite the concerted efforts to terminate their reservations, tribes have made a remarkable comeback in the last twenty years -- they have stable tribal governments, capable tribal judicial systems, and effective law enforcement systems. Tribal governments provide a wide array of services and programs to tribal citizens and reservation residents, and have assumed many of the responsibilities for the provision of programs and services that were formerly administered by the Federal government. We know the Confederated Salish and Kootenai Tribes as tribes that have proven themselves

Ex #2
18 Mar 91
7 PM
HB 777

EX 2
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HB 797

to be fully capable of assuming all aspects of governmental functions.

Withdrawal from the requirements of Public Law 83-230 will require the United States to reassume those responsibilities which were transferred to the State of Montana in 1963. Federal law requires that the Secretary of the Interior, in consultation with the U.S. Department of Justice, must approve all requests for retrocession of Public Law 83-280 jurisdiction. There will also need to be an assessment of the Federal resources required to reassume criminal jurisdiction over Federal offenses on the Flathead Indian Reservation.

As the Chairman and Vice-Chairman of the Select Committee on Indian Affairs, and as a senior member of the Committee on Appropriations, we want to assure you that you may rely upon our support in securing the necessary resources associated with a reassumption of jurisdictional responsibilities. Further, we wish to pledge our support in making the Federal-Tribal reassumption of criminal jurisdiction on the Flathead Indian Reservation a success.

We hope that this information may be useful to the members of the Montana Senate as they take up consideration of this important issue.


JOHN MCCAIN
Vice-Chairman

Sincerely,

DANIEL K. INOUE
Chairman

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18 Mar 91
HB 797^{7pm}

Statement in Support of House Bill No. 797
Before the Senate Judiciary Committee
Montana Legislative Assembly

By Margery H. Brown
March 18, 1991

Chairman Pinsonneault and Members of the Committee:

House Bill No. 797 is a simple and straightforward approach to a jurisdictional issue in Indian law that has implications for the federal government, the State of Montana, four county governments, especially Lake County, and most specifically -- the Confederated Salish and Kootenai Tribes of the Flathead Reservation.

As clearly set out in the background paper prepared by the Confederated Salish and Kootenai Tribes for this Committee and all legislators, Public Law 280, the backdrop for 2-1-306 MCA -- emerged from Congress in 1953, as one expression of the termination policy then current. We know that the roots of Public Law 280 traced primarily to California and a perceived need to strengthen law enforcement on Indian reservations in that state. Public Law 280 mandated that initially five, and after Alaska statehood, six willing states assume criminal and civil jurisdiction over most -- but not all -- reservations in the listed states. Exceptions were specific reservations in Minnesota, Oregon, Wisconsin, and Alaska where tribal law enforcement was functioning well.

Public Law 280 also authorized all other states -- the so-called optional states -- to assume jurisdiction in Indian Country as provided in the Act. In time, nine states, including Montana, took up that invitation.

The basic jurisdictional authorizations by Congress for assumption by the states on reservations to which the Act was applied were these:

- criminal jurisdiction over offenses committed in Indian Country by or against Indians to the same extent that a state had jurisdiction over offenses committed elsewhere in the state
- the criminal laws of a state were to have the same force and effect in Indian Country as elsewhere in the state
- states were to have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in Indian Country to the same extent that a state has jurisdiction over other civil causes of action
- the civil laws of a state of general application to private persons or private property were to have the same force and effect within Indian Country as elsewhere in the state

Public Law 280 expressly prohibited state jurisdiction over such matters as adjudicating rights in trust property, or encumbering or taxing that property, and Congress also stated that nothing in Public Law 280 deprived any Indian or tribe of rights

under treaties and statutes to hunt, trap and fish and control the regulation of those rights.

Significantly, when state criminal jurisdiction was extended to a reservation under Public Law 280, the two principal federal criminal states applicable in Indian Country -- the Federal Enclaves Act, 18 U.S.C.A. 1152, and the Major Crimes Act, 18 U.S.C.A. § 1153 -- no longer applied. While federal criminal authority was supplanted by the state, nothing in Public Law 280 diminished tribal jurisdiction.

Between 1953 and 1968, the optional Public Law 280 states could have assumed jurisdiction on Indian reservations through their unilateral action. To their credit, most of the nine optional states worked out a means to gain tribal consent before extending state jurisdiction to reservations under the Act. Most of the optional states also fashioned particular adaptations of Public Law 280, and in time the courts gave their blessings to these arrangements, and to a state's electing either constitutional revision or statutory law in applying Public Law 280 to Indian Country.

The agreement that the State of Montana and the Confederated Tribes of the Flathead Reservation reached in 1963-65 was part of those developments. The state's position in 2-1-301 - 306 MCA was that it would assume such civil and criminal jurisdiction over the people and lands of the Flathead Indian Reservation as might be requested by the Tribal Council. Under the statute, the Tribal Council could withdraw its consent to be subject to the criminal and/or civil jurisdiction of the state for a period of two years after Public Law 280 jurisdiction was assumed by the state.

House Bill 797 removes that 2-year limitation on withdrawal of tribal consent, and permits the Confederated Salish and Kootenai Tribes now and in the future to withdraw their consent to Public Law 280 jurisdiction. As amended, House Bill 797 would provide for a one-year period in which the governor would act on the Tribes' request. Because of changes in federal law in 1968, that action would entail formally requesting that the United States (through the approval of the Secretary of the Interior) accept the retrocession of the state's Public Law 280 jurisdiction.

As you well know, the only Public Law 280 agreement in Montana is the jurisdictional framework set forth in Ordinance 40-A (revised) enacted by the Tribal Council of The Confederated Salish and Kootenai Tribes in 1965. It pertains to criminal law and jurisdiction and to eight civil law subjects, and states expressly that concurrent jurisdiction on all of the matters remains with the Flathead Tribal Court.

Three years after this jurisdictional agreement took effect, Congress responded to criticism by both tribes and states and made these amendments to Public Law 280 as part of the Indian Civil Rights Act of 1968:

- Thereafter, no state could assume Public Law 280 jurisdiction without the consent of the tribe or tribes concerned, and
- A method was provided for states to return Public Law 280 jurisdiction to the federal government. The United States was authorized to accept

retrocession by any state of all or any measure of the criminal or civil jurisdiction acquired by that state under either the mandatory or optional provisions of Public Law 280.

In 1976 -- in *Bryan v. Itasca County*, 426 U.S. 373, -- the United States Supreme Court made clear that the civil laws of a state that can be applied in Indian Country under Public Law 280 are not state civil regulatory or tax laws, but are instead the civil law that courts apply to decide cases before them. Two years later, in *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), the United States Supreme Court held that tribal courts do not have criminal jurisdiction over non-Indian defendants.

Since the *Oliphant* decision, in cases arising on the Crow and Blackfeet reservations in Montana, the United States Supreme Court has refused to extend the rule of *Oliphant* to tribal court civil jurisdiction over non-Indians. The Court has described the vital role played by tribal courts in self-government, and the consistent encouragement given by the federal government to their development. [See *National Farmers Union Ins. Companies v. Crow Tribe of Indians*, 471 U.S. 845 (1985), and *Iowa Mutual Insurance Company v. LaPlante*, 480 U.S. 9 (1987).]

The growth and development of the tribal justice system of the Confederated Salish and Kootenai Tribes is described in the briefing document before you and in testimony to this Committee today. I have had the opportunity to observe this tribal court over the past decade and a half as it expanded its staff and resources, benefitted from the permanency of seasoned judges, and provided a respected forum in discharging its responsibilities in both criminal and increasingly complex civil matters.

I believe that the tribal justice system of the Confederated Salish and Kootenai Tribes is well prepared to handle increased responsibilities if the State of Montana seeks and obtains retrocession of Public Law 280 jurisdiction on the Flathead Reservation. It is well to note, as the briefing document emphasizes, that once retrocession is accomplished, the same jurisdictional framework will be in effect on the Flathead Reservation as prevails on each of the other six Indian reservations in Montana.

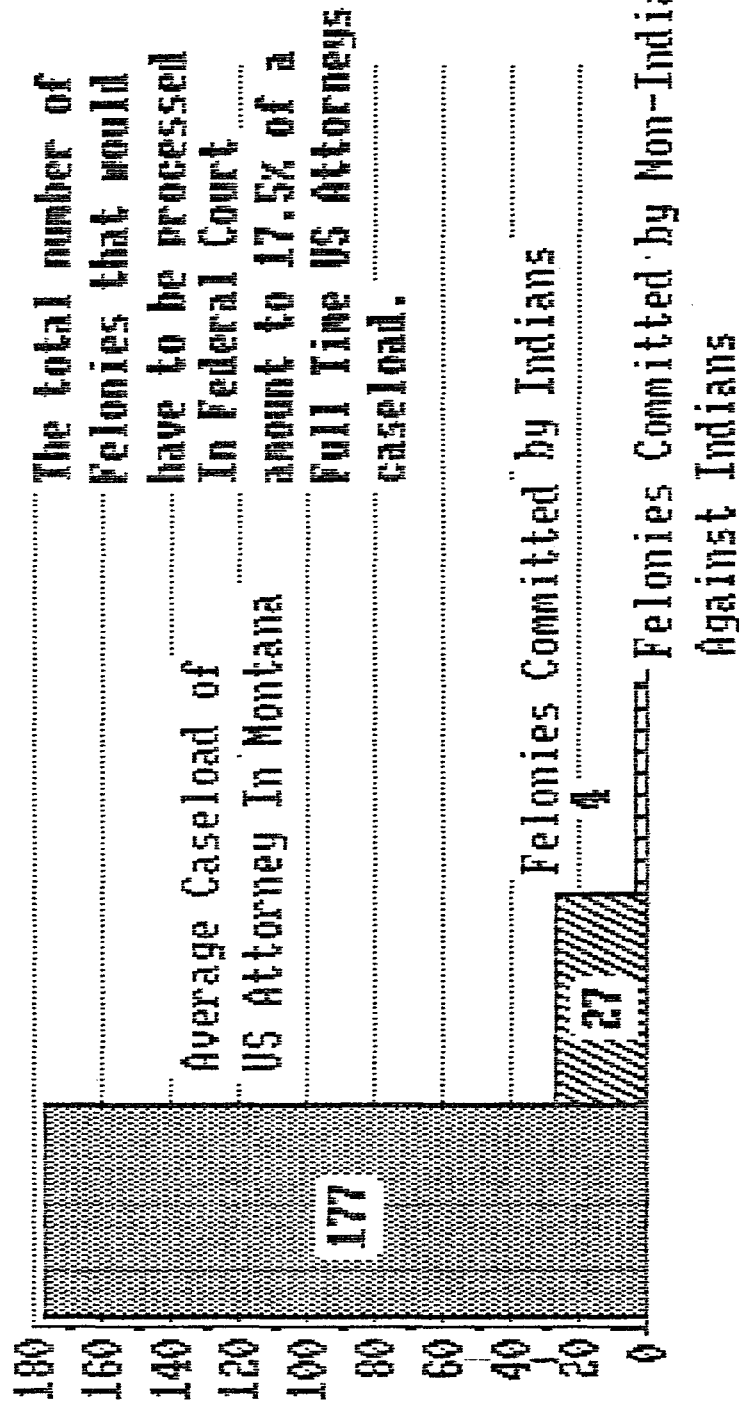
The basic guidelines of that jurisdictional framework result from Congressional enactments dating back to 1790, 1817, 1854, and 1885, and United States Supreme Court decisions dating from the late nineteenth century (for criminal jurisdiction) and 1959, 1985, and 1987 (for civil jurisdiction).

If retrocession is accomplished, criminal jurisdiction on the Flathead Reservation will be divided between federal, tribal, and state authority as follows:

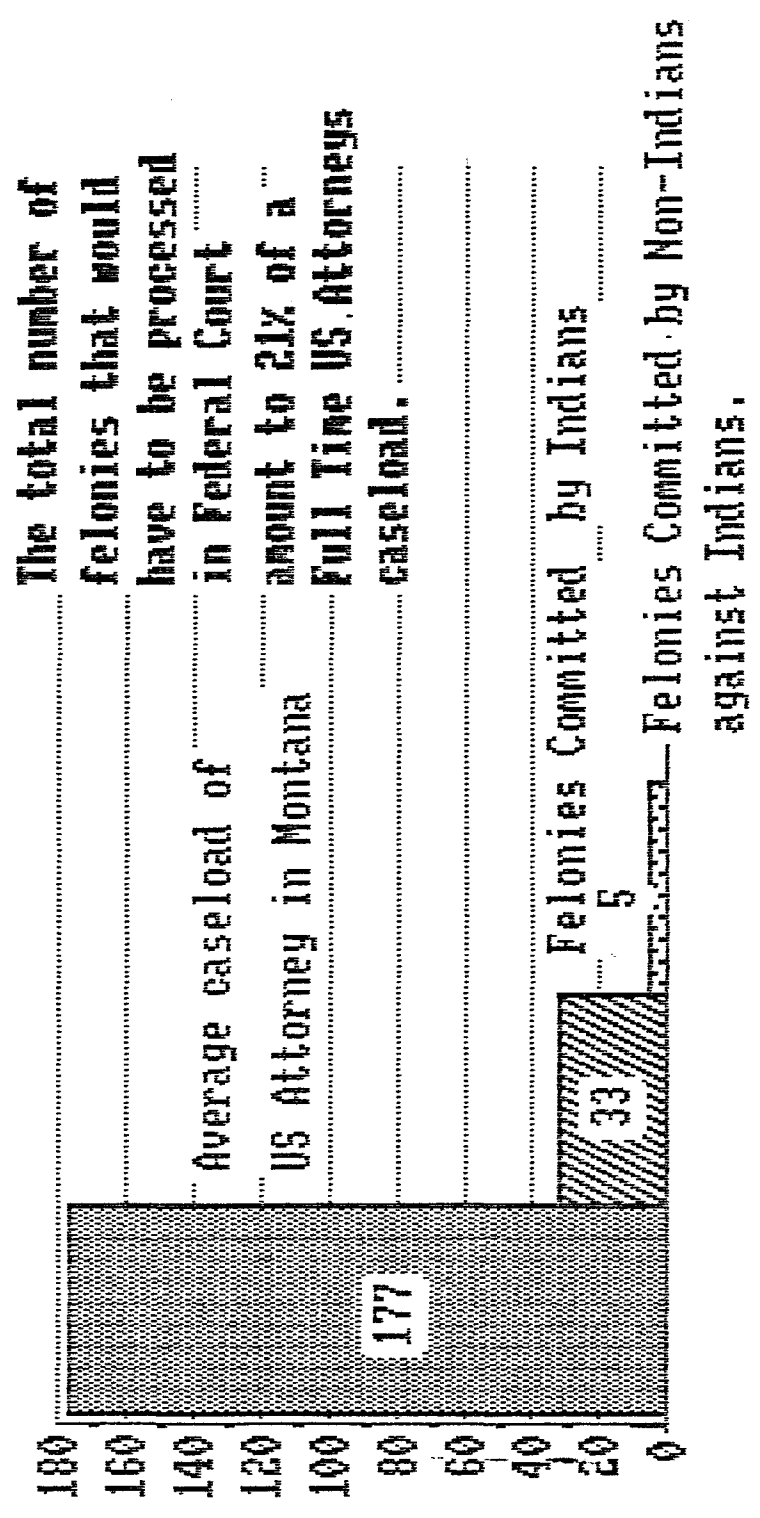
- Under the Federal Enclaves Act, § 18 U.S.C.A. 1152, federal jurisdiction will extend to offenses committed by non-Indians against Indians and to offenses not covered by the Major Crimes Act committed by Indians against non-Indians except for Indians committing such offenses who have been convicted and punished by the tribes. (The Assimilative Crimes Act, § 18 U.S.C.A. 13, in combination with the Federal Enclaves Act, § 18 U.S.C.A.

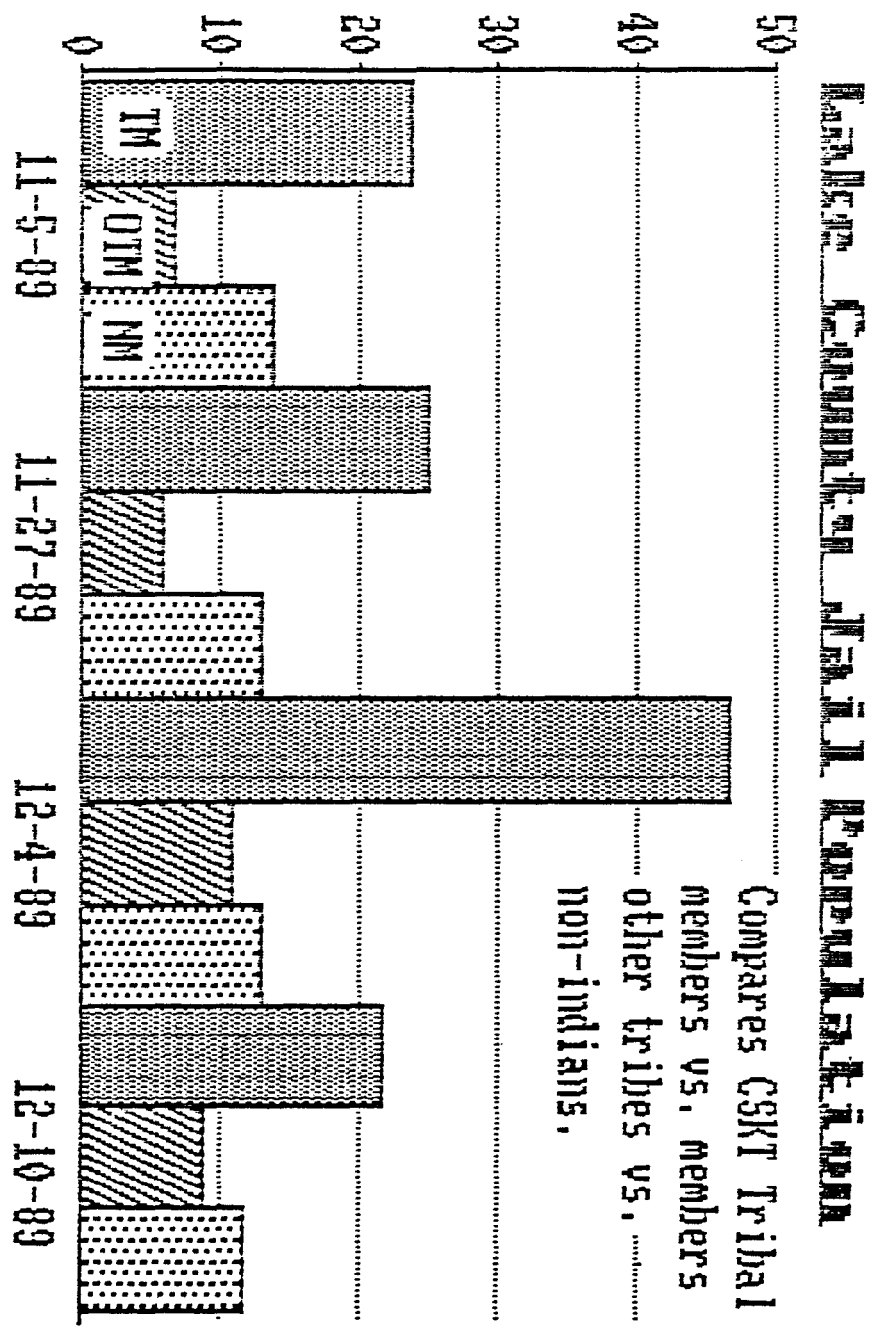
As noted above, another aspect of the 1968 Congressional legislation was to require tribal consent for any future assumption of Public Law 280 jurisdiction. The only post-1968 application of Public Law 280 of which I am aware occurred in Utah, and Utah fashioned its legislation along lines similar to House Bill 797 -- binding itself to retrocede Public Law 280 jurisdiction when a tribe requested it by a majority vote at a special election.

A final comment -- which also cuts against the implications of the newspaper headline. If the Confederated Salish and Kootenai Tribes do withdraw their consent to the Flathead Public Law 280 agreement under an amended 2-1-306 MCA, and Montana obtains federal approval for retrocession of the jurisdiction it obtained on the Flathead Reservation in 1965, there will be no termination of the need for the state, the tribes, and the federal government to work together to obtain an excellent system of law enforcement on the Flathead Reservation. Federal resources and increased tribal resources will be added to the collective law enforcement and adjudicatory institutions at work. The tribal justice system will be able to perform a role that is crucial to the self-government of the Confederated Salish and Kootenai Tribes, and for which it is fully prepared, as a result of two and a half decades of planning, and careful growth and development.

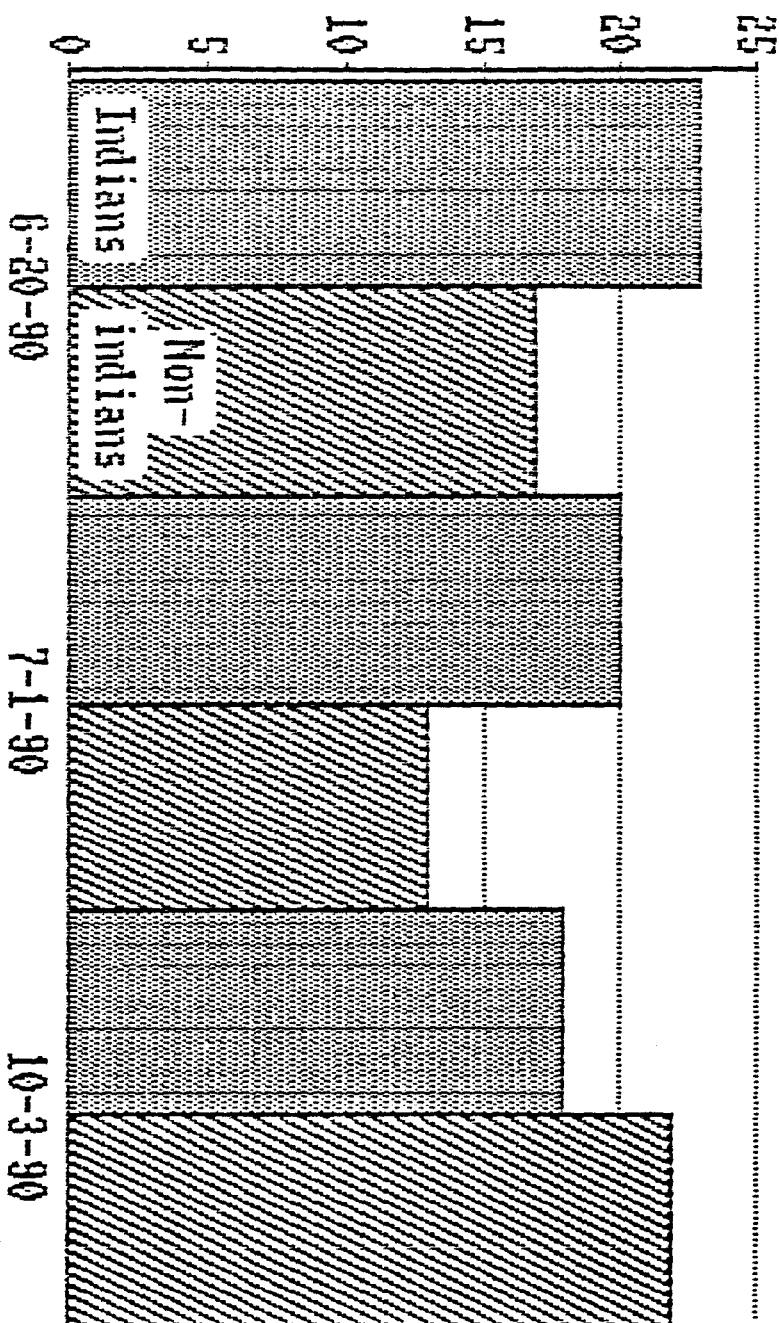
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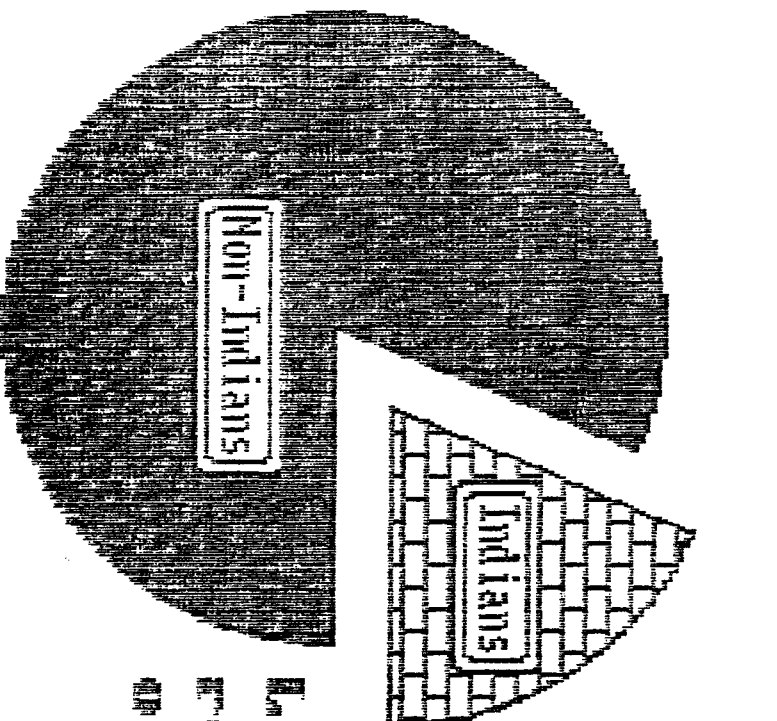
Native Community Felonies 1983







INDIAN COUNTRY FOOD RECEPTION

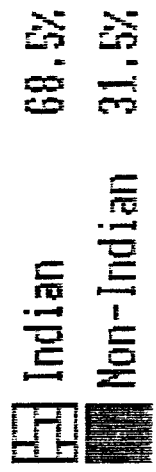




	Indian	2,737	19%
	Non-Indian	11,955	81%

Lake County population
comparisons from 1990 Census
PL-171 File.

Non-Indian
Indian



Average daily jail population ratios developed by averaging randomly selected jail rosters from 1989 through 1991.

Source: Lake County Jail Rosters.

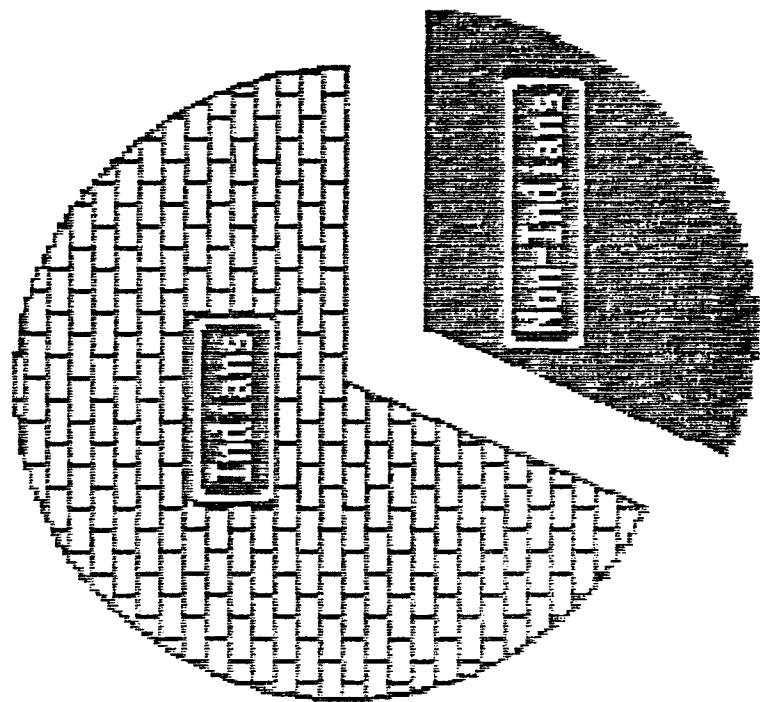
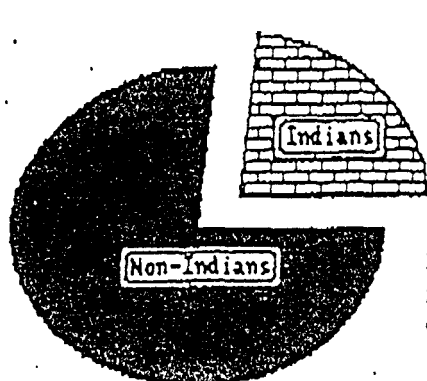


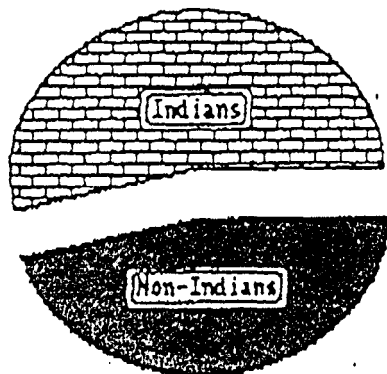
Exhibit # 3a HB 797
3/18/91 7 pm



Indian	4468	24%
Non-Indian	14,426	76%
	18,895	100%

Lake County population
comparisons from 1990 Census
PL-171 File.

**Lake County
residents 18 years
old or older.**

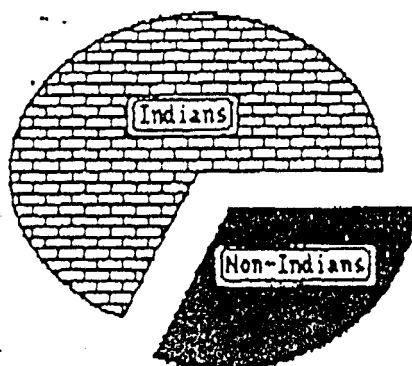


Indian	203	54%
Non-Indian	172	46%

Total: 375 100%

**Montana Uniform
Crime Reports
Indian Arrest
Data 1989.**

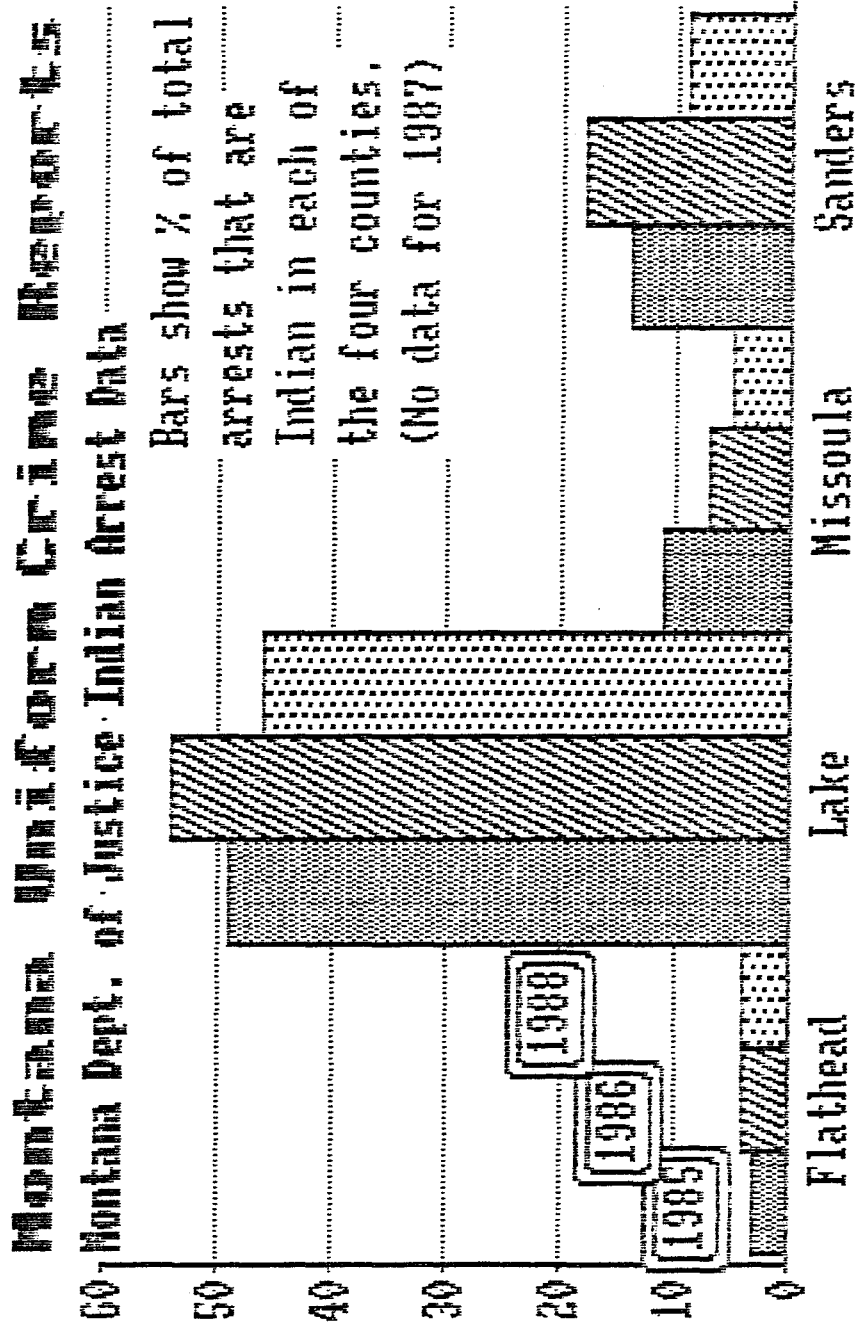
Montana Dept of Justice





Indian	68.5%
Non-Indian	31.5%

Average daily jail population
ratios developed by averaging
randomly selected jail rosters
from 1929 through 1991.

Source: Lake County Jail
Rosters.

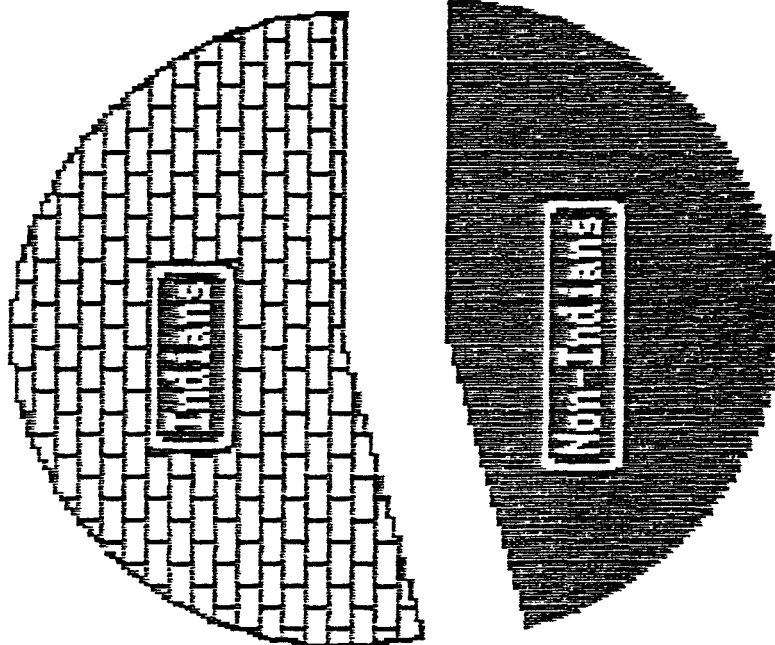


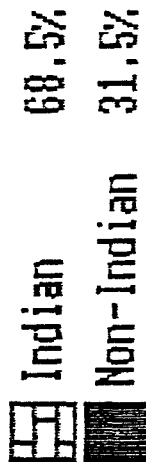
	Indian	203	54%
	Non-Indian	172	46%

Total: 375 100%

Montana Department of
Justice
Indian Affairs
Data 1988.

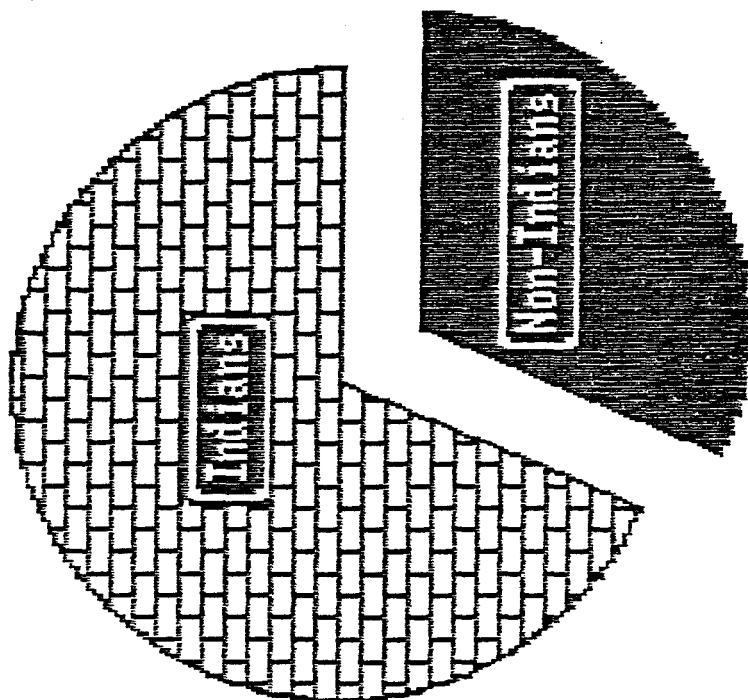
Montana Dept. of Justice

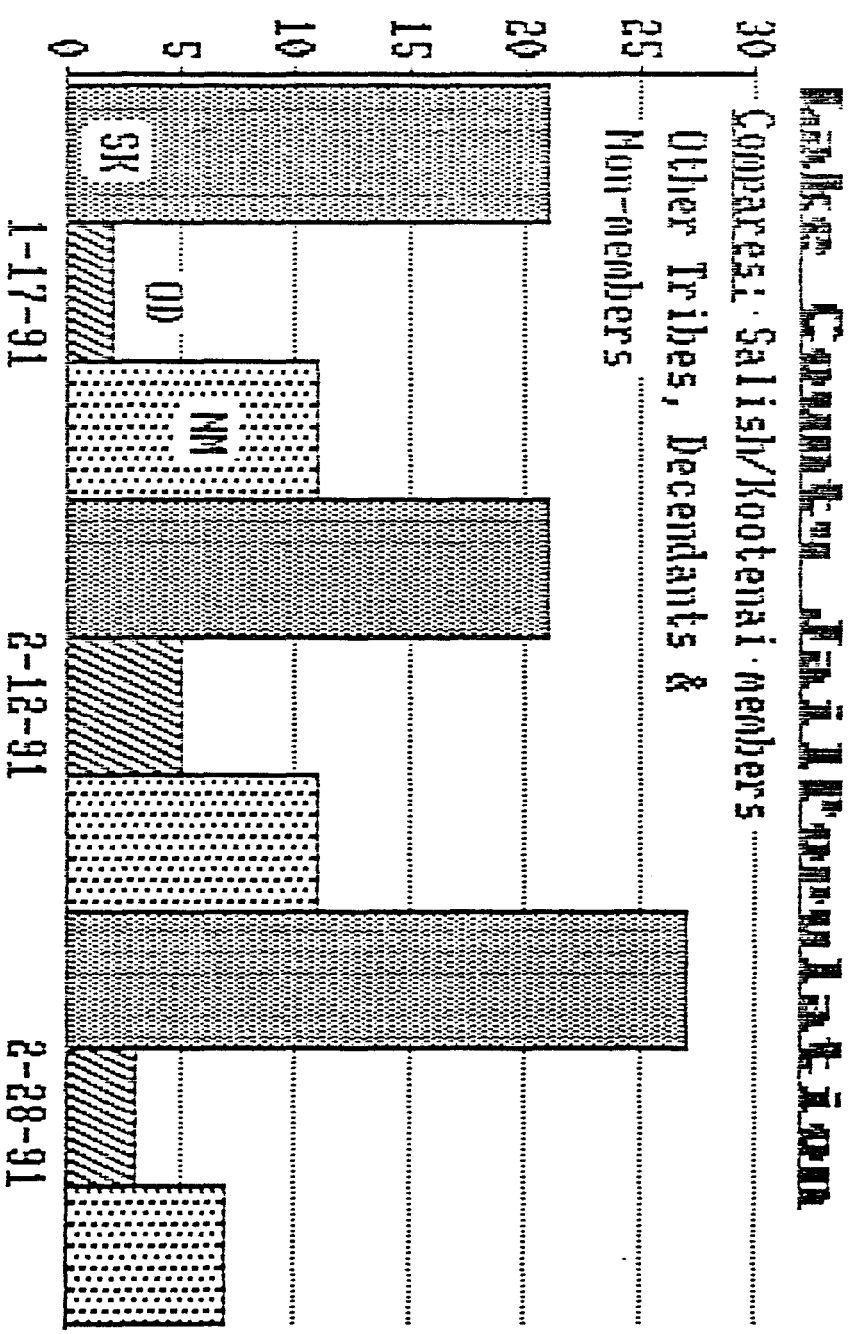




Average daily jail population ratios developed by averaging randomly selected jail rosters from 1989 through 1991.

Source: Lake County Jail Rosters.







United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

EX #4
18 Mar 91 7pm
AB-797

**STATEMENT OF FAIN P. GILDEA, OFFICE OF THE
ASSISTANT SECRETARY - INDIAN AFFAIRS, UNITED
STATES DEPARTMENT OF THE INTERIOR, WASHINGTON,
D.C., BEFORE THE SENATE JUDICIARY COMMITTEE,
52ND MONTANA LEGISLATURE, HELENA, MONTANA ON
HOUSE BILL 797**

GOOD EVENING MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. I AM VERY HAPPY TO BE HERE TO PRESENT THE VIEWS OF THE ASSISTANT SECRETARY FOR INDIAN AFFAIRS AND THE DEPARTMENT OF THE INTERIOR ON HOUSE BILL 797, WHICH WOULD AUTHORIZE THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD INDIAN RESERVATION TO WITHDRAW THEIR CONSENT TO STATE JURISDICTION UNDER PUBLIC LAW 280. THE DEPARTMENT OF THE INTERIOR URGES FAVORABLE ACTION ON HOUSE BILL 797.

THE SALISH AND KOOTENAI TRIBES HAVE ACHIEVED REMARKABLE SUCCESS UNDER INDIAN SELF-DETERMINATION, A SERIES OF FEDERAL LAWS AND POLICY INITIATIVES ENCOURAGING INDIAN TRIBES TO ASSUME RESPONSIBILITY FOR THE ADMINISTRATION AND MANAGEMENT OF THEIR OWN AFFAIRS. THE SALISH AND KOOTENAI TRIBES HAVE DEMONSTRATED THEIR COMMITMENT TO SELF-GOVERNANCE AND RETROCESSION IS ^{AN} IMPORTANT AND NECESSARY STEP FOR THEM TO REALIZE THIS GOAL.

THE ^{Department} ~~ADMINISTRATION~~ SUPPORTS RETROCESSION FOR THE SALISH AND KOOTENAI TRIBES AND RECOGNIZES THE NECESSITY FOR FEDERAL SUPPORT AS RETROCESSION PROCEEDS. FEDERAL INDIAN POLICY HAS NEVER BEEN MORE

Ex 4
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HB 797

UNIFIED. ALL THREE BRANCHES OF THE FEDERAL GOVERNMENT SUPPORT AND
RECOGNIZE A GOVERNMENT TO GOVERNMENT RELATIONSHIP ^{Between} ~~Among~~ INDIAN
TRIBES, THE STATES AND THE UNITED STATES. SUPPORT FOR THE SALISH
AND KOOTENAI TRIBES IN PARTICULAR IS EVIDENT. THE SALISH AND
KOOTENAI TRIBES WERE INCLUDED AS ONE OF TEN TRIBES SELECTED BY THE
CONGRESS OF THE UNITED STATES TO PARTICIPATE IN THE SELF GOVERNANCE
DEMONSTRATION PROJECT AUTHORIZED BY THE CONGRESS AND APPROVED BY
THE BUSH ADMINISTRATION IN THE 1988 AMENDMENTS TO THE SELF-
DETERMINATION ACT.

RETROCESSION IS DESIRABLE FOR MANY REASONS, BUT PERHAPS ONE OF THE
MOST IMPORTANT RESULTS OF RETROCESSION IS THE COOPERATION AND
UNDERSTANDING IT FOSTERS ^{Among} ~~BETWEEN~~ TRIBAL, STATE AND FEDERAL LAW
ENFORCEMENT AUTHORITIES, AS WELL AS AFFECTED COMMUNITIES. THERE
HAVE BEEN APPROXIMATELY THIRTY RETROCESSIONS SINCE 1968, AND, AS
WITH THE COLVILLE TRIBE IN THE STATE OF WASHINGTON, GREATER
UNDERSTANDING AND RESPECT BETWEEN COMMUNITIES IS THE TYPICAL
RESULT.

THE DEPARTMENT REQUESTS FAVORABLE CONSIDERATION OF HOUSE BILL 797,
AND EXTENDS ITS COMMITMENT TO SECURE AN ORDERLY TRANSFER OF
JURISDICTION AS RETROCESSION PROCEEDS.

THANK YOU FOR YOUR CONSIDERATION. I WILL GLADLY ANSWER ANY
QUESTIONS YOU MAY HAVE.

EX #5
18 Mar 91 7pm
HB 797

2321 Wylie Street
Missoula, MT 59802
March 13, 1991

Judicial Committee
Montana State Legislature
Helena, Montana

Dear Members:

As a ten-year member of the Montana State Board of Pardons, I saw many Indian inmates come up for parole hearings. For the most part, I saw before me a very presentable, clearminded human being clutching a sheaf of certificates which represented successful completion of drug and alcohol programs, perhaps a GED, letters of acceptance into education programs on the outside, job assurances, a suitable living program. This person, as likely a woman as a man, had a dream of rejoining family (often a wife or husband and children or extended family), getting an education, a good job, and providing a decent living for that family, becoming a productive citizen within the Indian community as well as society at large.

Three months, six months, a year later, this person was back for a parole revocation hearing. Usually the parole was revoked for technical violations or a new felony or felonies and the violator was returned to the prison population. Why? What had gone wrong out there?

The answers were often manifold: The job didn't pan out, the education program wasn't geared to this individual's specific needs, the living situation on the reservation wasn't a good one, peer pressure (it's hard to just say no when your friends and family are drinking or doing drugs). But most often it was failure of will (weakness, if you wish) that led them back to prison.

What could have been done? What can be done to keep these people from a lifelong involvement with the prison system? What can be done to keep young people from ever entering this system?

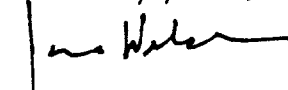
Probably the easiest answer is--give young Indian people a sense of purpose in life, a means to fulfill the potential they exhibit at a very young age before they have a chance to travel that all too familiar reservation path toward self-destruction. I should point out here that Indians aren't the only people I saw as a parole board member who were bent on self-destruction. It is a problem for all people of all races and nationalities; however, the problem seems particularly acute among Indians.

The Salish and Kootenai people on the Flathead Reservation are determined to solve this age-old problem through a unique reservation program (already in place) that would stop young people from ever entering the criminal justice system. Or if they became involved in said system, it would provide an opportunity to get out and stay out.

Since most crime among Indian people begins with alcohol and drugs, it is important to eliminate a perceived need for these substances. This can only be done through education, prevention and intervention, through rehabilitation and followup programs specifically geared toward Indians. The Flathead Tribes have these programs. If instead of getting lost in the state criminal system, young offenders could face tribal justice and attendant rehabilitative programs, they would have a real chance at changing their lives for the better. A culturally appropriate approach to law enforcement and rehabilitation will be much more effective than the present system.

As a practical matter, this approach to "the Indian problem" will provide the state with considerable savings. This is no small matter, given the financial shape the state is in. I urge the Montana State Legislature to support the Salish-Kootenai Tribes' decision to retrocede from Public Law 280 jurisdiction.

Sincerely yours,


James Welch

MONTANA CODE ANNOTATED

Ex #6
18 Mar 91
HB797

TITLE 2 GOVERNMENT STRUCTURE AND ADMINISTRATION

CHAPTER 1 SOVEREIGNTY AND JURISDICTION

Part 3 Jurisdiction on Indian Lands

2-1-301. Assumption of criminal jurisdiction of Flathead Indian country. The state of Montana hereby obligates and binds itself to assume, as herein provided, criminal jurisdiction over Indians and Indian territory of the Flathead Indian reservation and country within the state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd congress, 1st session).

2-1-302. Resolution of Indian tribes requesting state jurisdiction – governor's proclamation – consent of county commissioners. (1) Whenever the governor of this state receives from the tribal council or other governing body of the Confederated Salish and Kootenai Indian tribes or any other community, band, or group of Indians in this state, a resolution expressing its desire that its people and lands be subject to the criminal or civil jurisdiction, or both, of the state to the extent authorized by federal law and regulation, he shall issue within 60 days a proclamation to the effect that such jurisdiction applies to those Indians and their territory or reservation in accordance with the provisions of this part.

(2) The governor may not issue the proclamation until the resolution has been approved in the manner provided for by the charter, constitution, or other fundamental law of the tribe or tribes, if said document provides for such approval, and there has been first obtained the consent of the board of county commissioners of each county which encompasses any portion of the reservation of such tribe or tribes.

2-1-303. Date of assumption of jurisdiction – application of state law in Indian country. Sixty days from the date of issuance of the proclamation of the governor as provided for by 2-1-302, the state of Montana shall assume jurisdiction over offenses committed by or against Indians in the lands prescribed in the proclamation to the same extent that this state has jurisdiction over offenses committed elsewhere within this state. The criminal and/or civil laws of this state shall have the same force and effect within such lands as they have elsewhere within this state.

2-1-304. Rights, privileges, and immunities reserved to Indians. Nothing in this part shall:

(1) authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States;

(2) authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto;

(3) confer jurisdiction upon the state of Montana to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein; or

(4) deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under federal treaty, agreement, statute, or executive order with respect to hunting, trapping, fishing, or the control, licensing, or regulation thereof.

2-1-305. Indian culture protected. Nothing in this part shall deprive the Indian tribe, band, or community from carrying on its age-old tribal dances, feasting, or customary Indian celebrations or in any way try to destroy the Indian culture.

2-1-306. Withdrawal of consent to state jurisdiction. Any Indian tribe, community, band, or group of Indians that may consent to come within the provisions of this part may within 2 years from the date of the governor's proclamation withdraw their consent to be subject to the criminal and/or civil jurisdiction of the state of Montana, by appropriate resolution, and within 60 days after receipt of such resolution, the governor shall issue a proclamation to that effect.

2-1-307. Service of process. All legal process of the state, both civil and criminal, may be served upon persons and property found on any Indian reservation in all cases where the United States has not exclusive jurisdiction.

OFFICE OF
GLACIER COUNTY ATTORNEY

14 EAST MAIN STREET
P. O. BOX 428
CUT BANK, MONTANA 59427

PHONE: 406-873-2278

FAX: 406-873-2643

JAMES C. NELSON
COUNTY ATTORNEY

LARRY D. EPSTEIN
DEPUTY COUNTY ATTORNEY

Remarks of Glacier County Attorney James C. Nelson to the
Senate Judiciary Committee, in re: HB-797, March 18, 1991

Subject: Proposal to return Criminal Jurisdiction to the
Flathead Tribe in Lake, Missoula and Sanders Counties

Members of the committee:

My name is James Nelson and I am the County Attorney of
Glacier County, a position I have served in for the past 12
years. As you are aware, a very large portion of Glacier
County lies within the exterior boundaries of the Blackfeet
Indian Reservation. The Blackfeet Tribe has never ceded
criminal jurisdiction to the State of Montana. I have been
asked this evening to relate our experience with this split
jurisdiction to this Committee.

Nearly every day, our office and the law enforcement personnel
of Glacier County and the Blackfeet Reservation are faced with
the jurisdictional problems that arise as the result of this
patchwork of jurisdiction. Currently, on the Blackfeet
Reservation, all misdemeanor prosecution and traffic offenses
involving enrolled members of the Blackfeet Tribe or any other
federally recognized tribe, whether as victim or as
perpetrator, must be handled by the Bureau of Indian Affairs
officers stationed on the Reservation or the Federal Bureau of
Investigation officers assigned to the reservation. The BIA
contingent on the Blackfeet Reservation is underfunded and
understaffed due to BIA budgetary restraints and cutbacks at
the federal level, a situation that will continue for the
foreseeable future. The FBI maintains a 2-3 man office for
the Blackfeet Reservation to investigate serious violations of
the law and to work with the U.S. attorneys office.

Depending on the nature of the crime, prosecution of an
offense is handled by Tribal Court lay-prosecutors or a
centralized BIA criminal prosecution registry in Denver, or in
the case of serious offenses, by the U.S. Attorneys offices in
Great Falls, Helena or Billings. Investigation and
prosecution of crimes involving non-indians, members of non-
recognized tribes or of Canadian tribes as both victim and
perpetrator is handled by the Glacier County Sheriff's office
and my office. You can appreciate that sorting out tribal
affiliations, membership and identifying the victim and
perpetrator in each crime can create a jurisdictional
nightmare, and often this is the case. In many instances,
officers from both state and federal agencies respond to a

Ex #7
18 Mar 91
1873797

-2-

call where they are not certain at the outset who has jurisdiction.

With the tribe in charge of criminal prosecutions, Federal law provides that the State will not be able to prosecute any crime on the reservation where the Defendant is an Indian, the victim is an Indian or an Indian or tribal property is involved. In many, if not most instances, crimes committed by non-Indians which fall into one of these categories (Indian victim or Indian property) are likely not to be prosecuted at all. Tribal courts do not have jurisdiction over non-Indians and, unless the offense is serious--generally, a felony class--the federal government will decline prosecution because of budgetary or manpower constraints or because of their internal operating criteria for prosecutions.

A common example of this problem is the case of domestic abuse committed by a non-Indian against his or her Indian spouse. In such a case it is highly unlikely the offense will ever be prosecuted due to the nature of the offense. Similarly, if a Non-Indian sells a small amount of marijuana to an Indian, the offense will likely not be prosecuted in the Federal system and cannot be prosecuted in the tribal court or the State courts.

To make matters even worse, the jurisdictional problems become even more complex when crimes are committed by persons with Indian blood who are not members of any tribe, who are the descendants of enrolled members of a federally recognized tribe or who are members of a tribe that is not federally recognized. As I mentioned earlier, Canadian Indians who commit crimes on a reservation present additional jurisdictional problems. The nuances and problems faced by police officers, sheriff's departments, BIA and tribal officers in the field and by State and Federal prosecutors are literally endless.

Several years ago I prosecuted a person who claimed membership in the Little Shell Band of the Turtle Mountain Reservation, a tribe that does not enjoy federal recognition. The Defendant and two members of the Blackfeet Tribe broke into a residence on the Blackfeet reservation in Browning, and beat and stabbed the occupant and his wife. The Tribal members were convicted in Federal court and served less than two years of a 5 year sentence. The non-tribal member was convicted in Glacier County District Court of Aggravated Burglary, kidnapping and

felony assault and sentenced to 35 years in the state prison. That Defendant, in reflecting upon the much lighter sentences received by his cohorts in Federal Court, appealed his conviction on the basis that he was an Indian and that the State Court in Glacier County therefore did not have jurisdiction to try him for these offenses. The Montana Supreme Court held that the definition of Indian, for criminal jurisdictional purposes must include a significant amount of Indian Blood and enrollment in a federally recognized tribe or social recognition as an Indian. The Defendant then took his case on a petition for habeas corpus to Federal Court, where it is still pending.

The point to be noted in all of this is that none of these criminal jurisdiction problems would have even been raised and justice would have been uniformly and evenly applied had the State simply had criminal jurisdiction over all parties to the offense.

In the event the proposed legislation passes and the Flathead tribe once again has criminal jurisdiction over Indians on its reservation, I would expect that similar problems would obtain for law enforcement and the Courts serving those counties within the Reservation boundaries.

My office and the Glacier County Sheriff's office enjoy an excellent working relationship with the federal and Indian agencies providing law enforcement to the Blackfeet reservation within Glacier County. In spite of cooperation, we are all faced with jurisdictional problems nearly every single day in cases ranging from serious assaults to minor traffic offense tickets issued by the Montana Highway patrol. The Flathead reservation, with several sizable incorporated communities on the reservation would present equal or even more difficult problems for police officers and prosecutors.

In our experience, the citizens of Lake County, Indian and non-Indian alike would see an immediate and very direct decline in the quality of prosecution and law enforcement for many offenses committed on the reservation in the event this legislation passes. The federal guidelines for sentencing and the confusion regarding jurisdiction with regard to each criminal offense is such that everyone working in the criminal justice system and everyone served by the system would suffer a reduction in the service provided by law enforcement, the prosecution and courts.

-4-

There is hardly a day goes by that I do not receive complaints from Indian residents of the Reservation about problems created by patchwork criminal jurisdiction. Too many offenses simply fall through the cracks with the result that the Reservation community is not well served. If this legislation passes and criminal jurisdiction is retroceded to the Tribe, it will be Indians who will suffer the most. I urge you to not to approve this proposed legislation.

Thank you.



H. STEWARD MENEFEE
Grays Harbor County Prosecuting Attorney

P.O. Box 550 County Courthouse
Montesano, Washington 98563
(206) 249-3951
SCAN 234-5231

EX#8
18 Mar 91
HB797
CHIEF CRIMINAL DEPUTY
Gerald R. Fuller

SENIOR DEPUTY
Jennifer L. Wieland

DEPUTIES
James G. Baker
James P. Hagarty
Loren D. Oakley
Richard L. Suryan
David B. Trefry
Joseph F. Wheeler

March 14, 1991

Mr. Larry Nistler
Lake County Attorney
Lake County Courthouse
606 3rd Avenue
Polson, MT 59860

Dear Mr. Nistler:

In response to your request about possible impacts upon your office as a result of the retrocession of full criminal and civil jurisdiction under Public Law 280, I would describe the results of retrocession as confusion, delay and frustration. This applies equally to tribal authorities as well as the local State jurisdictions.

If your reservation is similar to those found in Grays Harbor County, you will have a checkerboard pattern of land ownership involving both land held by non-Indians in fee and trust lands held by Indians or the tribe. As a result of the Federal Court's case by case analysis of jurisdictional questions arising on reservations under these circumstances, the question of jurisdiction is a complicated mixture of place, person, time, action and culture. It is very difficult to establish bright line rules of jurisdiction for your police, fire, ambulance or regulatory agencies. Since jurisdiction is basically established on a case by case basis, you will have to make your decision on each case based upon the interplay of all of those ingredients.

The complexity of the jurisdictional questions are, I think, clearly demonstrated by the inability of the United States Supreme Court to achieve any kind of real consensus in the case of Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation, _____ U.S. _____, 109 S.Ct. 2994 (1989). I think that a thorough reading of that opinion and all the diverse opinions that it generated indicates that even the nine justices in the United States Supreme Court are having great difficulty in deciding what should be very basic and very easy questions of jurisdiction. I believe that confusion is further demonstrated in the area of

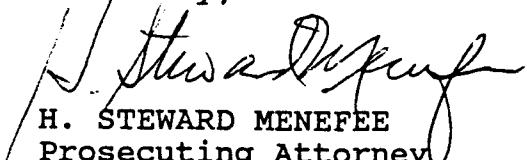
Mr. Larry Nistler
March 14, 1991
Page 2

criminal jurisdiction by the recent U.S. Supreme Court case Duro v. Reina, _____ U.S. _____, 110 S.Ct. 2053 (1990). In the Duro case, the Court seemed to recognize there may be a jurisdictional void, at least as to misdemeanors, on a reservation where a crime involves an Indian from a tribe other than the tribe governing that particular reservation.

As a practical matter, the patterns of shared or partial and fragmented jurisdiction that results from congressional inactivity and judicial tinkering has produced a totally unworkable jurisdictional system. This is true for both tribal and local jurisdictional entities. I would suggest that an attempt be made to resolve, by agreement between the State and the tribe, as many of these jurisdictional questions as possible prior to the retrocession of PL 280 jurisdiction.

I hope this has been of some assistance to you in outlining the long-term problems that your office will be faced with along with other local jurisdictional agencies.

Sincerely,


H. STEWARD MENEFEE
Prosecuting Attorney
for Grays Harbor County

HSM/kah

COUNTY COMMISSIONERS

MIKE W. HUTCHIN
District One

RAY HARBIN
District Two

GERALD L. NEWGARD
District Three

TREASURER
PATRICIA J. COOK

CLERK AND RECORDER
SURVEYOR
RUTH E. HODGES

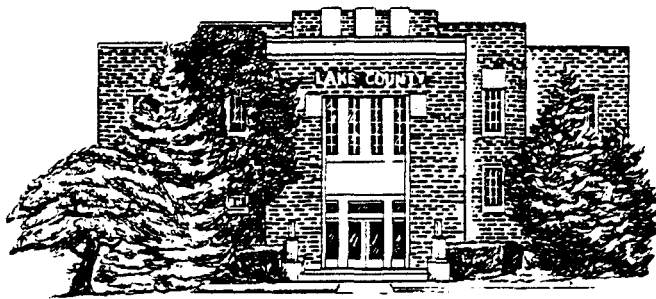


Exhibit # 8 HB 797

3/18/91 7 pm

SHERIFF AND CORONER
JOE GELDRICH

CLERK OF COURT
KATHERINE E. PEDERSEN

SUPERINTENDENT OF SCHOOLS
JOYCE DECKER WEGNER

COUNTY ATTORNEY
LARRY J. NISTLER

JUSTICE OF THE PEACE
CHUCK WHITSON

LAKE COUNTY

PHONE 406/883-6211 • 106 FOURTH AVENUE EAST • POLSON, MONTANA 59860

March 14, 1991

Senate Judiciary Committee
Capitol Station
Helena, MT 59620

Chairman Mazurek and
Members of the Senate Judiciary Committee:

HB 797 requesting retrocession from PL 280 is not in the best interests of Lake County and we go on record opposing it. Lake County has been and is willing to cooperate on issues of mutual interest. At a recent luncheon meeting in January with some of the Tribal Councilmen and Commissioners, the county raised the issue of law enforcement but no further discussion took place. Instead HB 797 was introduced without public input in Lake County and subsequently has passed the House.

HB 797 we feel creates a potential void in the justice system. The State would be relinquishing criminal jurisdiction for tribal members to the Tribe and Federal governments. This may sound good on the surface but many acts involving non-Tribal/Tribal parties could not be prosecuted in Tribal court, nor in State court and there is no guarantee of prosecution by the Federal Court system.

PL 280 is serving the public's interest. Lake County has asked the Tribe to appoint a public defender for its tribal members but had shown no interest in participating until this last week. Lake County is willing to cooperate and initiate a working agreement to assist enforcement efforts of holding tribal members for tribal disposition to encourage concurrent jurisdiction.

The Tribe wants to determine its own destiny, to be self-governing-self determined, but we feel that passing HB 797 is a step backwards for Lake County probably also the Tribe. We feel we can work together under PL 280. The Tribe feels it demonstrates that they are able to implement effective justice and we believe they have the opportunity with PL 280 in place.

Senate Judiciary Committee
Page 2

After several weeks of fact finding and asking questions the Board of Lake County Commissioners would respectfully request you vote NO on HB 797 and support a resolution which proposes a two-year study. Some key points that support and summarize our position follow.

1. Public hearings on the matter have not been held within Lake County and the Reservation to ascertain the people's concerns. The only public meeting held was sponsored by the Lake County Commissioners and was more informational than for public comment.

2. This action impacts the Federal government dramatically with additional case load and it is our concern that there will not be adequate federal money and staff to handle the additional case load.

3. Lake County and the Flathead Reservation are significantly different than the other six Reservations in Montana. The population on the Reservation here is approximately 80% non-member and 20% member. The county seat lies within the Reservation boundaries. We have three incorporated communities and three unincorporated communities within the boundaries. The land ownership is 60% to 70% non-member and state-owned.

4. The questions about retrocession's impacts are numerous and complex. The fact that this bill was introduced quietly without local input or knowledge and considering it's impact both socially and economically, we feel it quite necessary to have ample time to gather more facts and to study this matter in depth. This time might possibly allow some solutions to surface which will solve the problem without reetrocession.

Please consider these thoughts and support a resolution for a two-year study of the matter before passing HB 797.

BOARD OF LAKE COUNTY COMMISSIONERS


Gerald L. Newgard, Chairman


Ray Harbin, Member


Mike W. Hutchin, Member

JOY M. DELONG
Commissioner

CHERIE HOOTEN
Commissioner

NORMAN E. RESLER
Commissioner

DIXIE VAUGHT
Clerk & Recorder

ARLENE H. WILLHITE
Treasurer - Supt. of Schools

ATRICIA N. ELDRIDGE
Assessor

Exhibit # 8 HB 797
3/18/91 7 pm

LISA FERKOVICH
Clerk of District Court

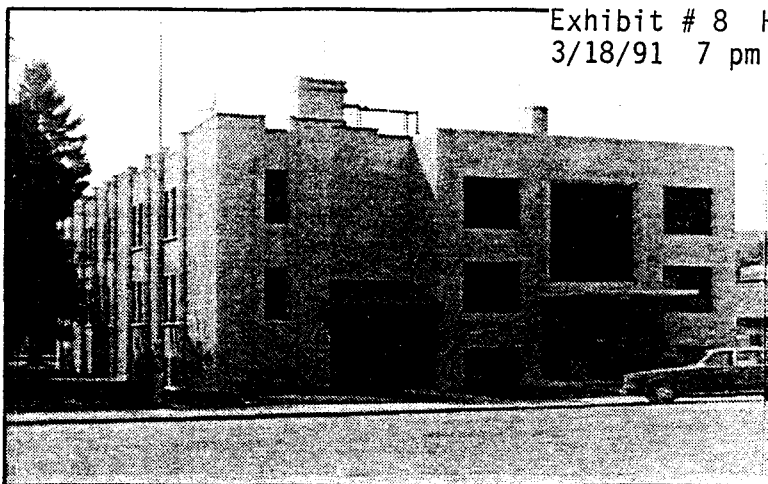
ROBERT SLOMSKI
Attorney

WILLIAM J. ALEXANDER
Sheriff

DIANNE K. FRANKE
Administrator

MARK A. DENKE
Coroner

ROBERT BEITZ
Justice of the Peace



COUNTY OF SANDERS

STATE OF MONTANA

P.O. Box 519
Thompson Falls, Montana 59873

March 13, 1991

Montana Legislators
Capitol Station
Helena, Montana 59620

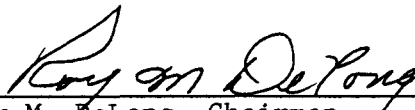
RE: House Bill 797


The Sanders County Commissioners want to inform you that they are opposed to the passage of House Bill 797, an act authorizing the Salish-Kootenai Tribes to withdraw their consent to Public Law 280 jurisdiction.

Sanders County has had a good working relationship with the Tribe using the cross deputizing of our law enforcements to curtail any jurisdictional issues. We believe it would be to the best interests of everyone concerned to continue under this present law enforcement arrangement.

If there is misunderstanding and apprehension concerning this matter, it might have been avoided if the Tribe and our legislators would have discussed this bill thoroughly with us before it became legislation.

Sincerely,


Roy M. DeLong, Chairman


Norman E. Resler, Commissioner


Cherie Hooten, Commissioner

RD/NR/CH/pi

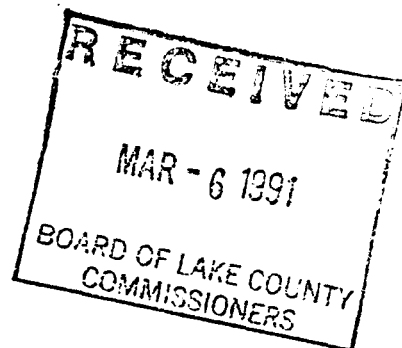
109 Second Avenue Southwest

C I T Y O F
R·O·N·A·N

Ronan, Montana 59864

Exhibit # 8 HB 797
3/18/91 7 pm

(406) 676-4231



March 5, 1991

To:

Lake County Representatives and Senators
Lake County Commissioners

From:

Ronan City Council

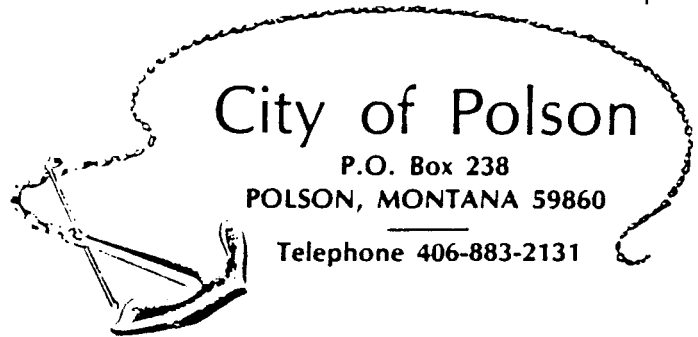
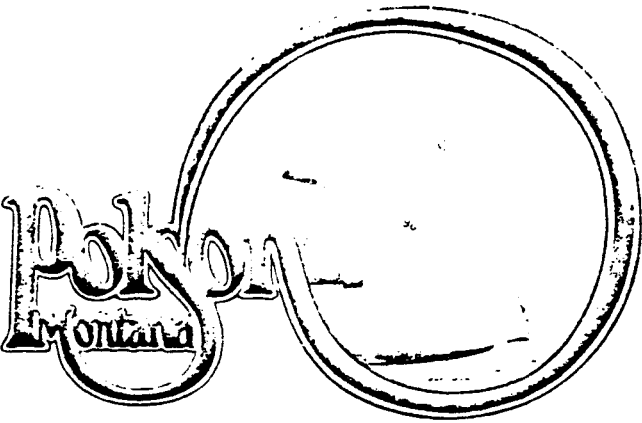
Re: Retrocession of Criminal Jurisdiction

The Ronan City Council wishes to record our opposition to retrocession of criminal jurisdiction on the Flathead Reservation. Retrocession, as proposed, would adversely affect both tribal and non-tribal persons within the jurisdiction of the City. The adverse impacts we foresee are on public safety, community relations, and city revenue. Representatives of the Council would be available to testify at any hearing scheduled on the matter and fully explain our position.

Sincerely,

George J. Atkinson
George J. Atkinson
Mayor





March 7, 1991

Senator Ethel Harding
Senate Office Building
Capitol Station
Helena, MT 59601

Dear Senator Harding:

I am writing in opposition of HB 797. Segregation of jurisdiction would require duplicated services throwing the present judicial system in Lake County into chaos. "If it's not broken, don't fix it."

I don't think the total cost of implementing HB 797 has been firmly looked at.

1. The Tribes will need to build and maintain a jail facility.
2. People on the Reservation, Indian as well as Non-Indian, deserve to have Federal Judges handling cases located on the Reservation. Also, an FBI Agent, Federal Marshall and staff should be located on the Reservation to handle these cases and not in Missoula or Kalispell as quoted in the press.

I have a first class Police Department in the City of Polson and I doubt anyone can point out an incident when they didn't treat all people equal.

Sincerely,

James W. Jones
Mayor

MAR 6 7 1

Town of **HOT SPRINGS**

HOT SPRINGS, MONTANA

Phone 406 741-2353

P.O. Box 359

3-6-91

To: Montana Legislators, Sanders County Commissioners

From: Town Council of Hot Springs

Re: Retrocession of Criminal Jurisdiction on Flathead Reservation

The Town Council of Hot Springs wishes to express our opposition to retrocession of criminal jurisdiction here on the Reservation. Our concerns are for public safety, community relations and financial stability. We are available for additional comments at your convenience.

Sincerely,



Vivran V. Balison

Mayor

VVB/db

Katherine E. Pedersen
CLERK OF DISTRICT COURT
Lake County Courthouse
106 4th Avenue East
Polson MT 59860
(406) 883-6211, ext. 310
March 5, 1991

Senate Judiciary Committee
Richard J. Pinsoneault, Chairman
Capitol Station
Helena MT 59620-0002

RE: HB 797, Confederated Salish & Kootenai Tribe retrocession

Dear Committee Members:

As Clerk of District Court for Lake County, I urge you all to defeat this bill in committee.

The immediate problem it would cause in criminal cases is determining the race of the alleged criminal. Federal law says you can't ask a person his or her race. Don't forget that about 80% of the population of this reservation, most of which is Lake County, is non-Indian. So we certainly have non-Indian defendants who would be offended to be asked their race.

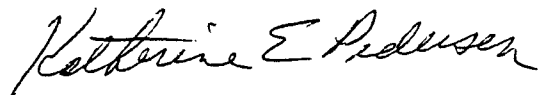
The Clerk's office in Glacier County told me that many criminal cases are delayed by appeals to the Supreme Court before the cases even get to an entry of plea or go to trial. Defendants challenge jurisdiction of the state court by claiming they are Indian when the county attorney claims they are not. This leads to a great deal of delay, which is unfair to the defendant and the alleged victims of a crime, and puts an extra burden on the Supreme Court.

Tribal members are already being treated unfairly in civil cases in state court. We had a civil case (Liberty v. Jones, 1989) in which both parties are members of the S & K tribe. The defendant moved for dismissal for lack of jurisdiction of the state court. Judge McNeil granted the dismissal, stating "This Court finds it disturbing that the race of the parties is any consideration at this time in this country in deciding whether a District Court of the State of Montana has subject matter jurisdiction. Under the present status of the law, the Court must hold that it lacks subject matter jurisdiction solely because the defendant is a tribal member." The ruling was upheld by the Supreme Court. Isn't that a violation of Mr. Liberty's civil rights, to be denied access to the state court if he wants it?

Senate Judiciary Committee
Page 2
March 5, 1991

This is a local issue that directly affects the residents of the reservation and cannot be called a "government to government" issue entirely. Please, give us all, Indian and non-Indian, time to work this out to everyone's satisfaction and do not pass the bill. Let us all have some input to any changes before the matter is presented to the legislature again.

Sincerely,

A handwritten signature in cursive script that reads "Katherine E. Pedersen". The signature is written in dark ink and is positioned below the word "Sincerely,".

Katherine E. Pedersen
Clerk District Court

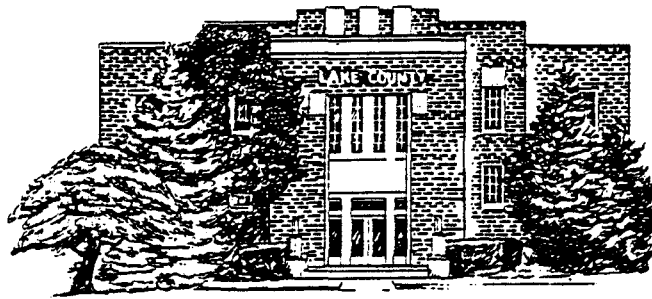
Patricia J. Cook
Lake County Treasurer

HB-797 - Authorizing the Confederated Salish and Kootenai Indian Tribes to adopt a resolution withdrawing their consent to be subject to state jurisdiction.

As Lake County Treasurer, I have the following concerns as to how HB-797 affects the treasurer's office if it should pass.

- (1) NSF checks are currently turned over to the County Attorney for processing. Tribal NSF checks could no longer be handled by the county attorney. In Roosevelt County, the treasurer has to turn tribal NSF checks over to the tribal court accompanied by a county claim for payment to the tribal court for processing fees as in a surcharge. This money to handle the claim comes from the treasurer's budget. Why should the county have to pay for handling the bad tribal checks?
- (2) Property values in Browning decreased and businesses closed according to the Glacier County Treasurer due to jurisdictional problems. If property values decrease for fee lands within the boundaries of the reservation here in Lake County, there will be a substantial loss in revenue. The county cannot continue to provide services unless that revenue is replaced and the replacement will most likely come in the form of higher tax levies.
- (3) Currently the Sheriff is required to seize and sell personal property when a Writ of Execution is turned over to him by the Treasurer for delinquent taxes on personal property. Although some tribal members do not pay personal property taxes, currently taxes have to be paid when tribal members assume personal property belonging to a non-tribal member before the ownership is transferred as in a mobile home. The Sheriff would no longer be able to seize the property to satisfy the tax lien.
- (4) Currently, Highway Patrol citations are all handled through Justice Court. 50% of these fines are distributed to the county general fund and 50% goes to the state. No citations could be issued by the highway patrol to tribal members on the reservation resulting in a significant revenue loss to both county and state.
- (5) Vehicles owned by tribal members would not necessarily be registered if driven within the boundaries of the reservation. Although members do not need to pay taxes or fees in lieu of taxes, other monies going to the county and state would also not be collected.
- (6) The insurance requirement on vehicles owned by tribal members would be unenforceable. The Treasurer's Office is required to get owner signatures for certification of insurance as required in 61-6-302 M.C.A. Apparently the insurance certification would not apply to tribal members.

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COUNTY COMMISSIONERS
MIKE W. HUTCHIN
District One
RAY HARBIN
District Two
GERALD L. NEWGARD
District Three
TREASURER
PATRICIA J. COOK
CLERK AND RECORDER
SURVEYOR
RUTH E. HODGES



LENORE A. ROAT
SHERIFF AND CORONER
JOE GELDRICH
CLERK OF COURT
KATHERINE E. PEDERSEN
SUPERINTENDENT OF SCHOOLS
JOYCE DECKER WEGNER
COUNTY ATTORNEY
LARRY J. NISTLER
JUSTICE OF THE PEACE
CHUCK WHITSON

LAKE COUNTY

PHONE 406/883-6211 • 106 FOURTH AVENUE EAST • POLSON, MONTANA 59860

To: Lake County Commissioners

From: Joyce Decker Wegner *jdw 3/6/91*
Lake County Superintendent of Schools

Re: HB 797 - Retrocession of PL 280 Flathead Indian Reservation
Possible Impact on Lake County Education

Persons/Departments Contacted:

Bob Halgren, Supt. #30
Bud Veis, Supt. #23
Steve Gaub, Supt. #7-J
Larry LaCounte, Supt. #8-J
Renae Roullier, Tribal Social Services
Roberta Snively, Bighorn County Superintendent
Rodney Svee, Hardin Superintendent
Linda Davis, Lake County Nurse
Dave Weld, Linderman Principal
Glennadene Ferrell, Retired Co. Supt.
Darryl Omsberg, Glacier County Supt. Schools
Carmen Marceau, Glacier County Elementary Principal
Lorene Knudson, Roosevelt County Supt./Clerk of Court
Beda Lovitt, Attorney for the Office of Public Instruction

Areas of Possible Concern

Truancy:

Lake County school districts are presently satisfied with tribal truant officers. Other counties contacted reported no problems with truancy as districts appoint appropriate officers. Systems are in place. In some cases tribal decisions are more stern (Rocky Boy). Concern for the education and attendance of the children is apparent.

Child Abuse:

To-date Lake County school districts report that they are satisfied with tribal handling of abuse cases. Roosevelt, BigHorn, and Glacier reported cooperation between courts.

Health & Immunization:

Good cooperation and working relationship at present in all counties contacted.

Nepotism:

Currently the hiring by trustees of relatives is illegal, but legislation removing restrictions has been presented this session. Glacier County Superintendent reported concerns over nepotism if that law is removed. Four Browning tribal trustees were removed from office for attempting to hire close relatives. Presently school laws that prohibit nepotism are adhered to. School law prevails over public schools.

County Superintendent of Schools Hearings Process:

Big Horn County Superintendent reported concerns over hearings when tribal and non-tribal trustees are involved. Some cases have gone against non-tribal trustees while the tribal trustee has not been prosecuted. Consequently, there has been a decline in the interest of non-tribal people to run in trustee elections. Otherwise, school teachers and school staff have exhausted the administrative process utilizing county and state educational hearings. Overall, Superintendent Snively reported, "You don't know how lucky you are."

Contests over jurisdiction have been costly to school districts, as per The Sage Case, a tort case, that was finally settled in U.S. Supreme Court. The Sage boy broke his leg on school property. Tribal grandparents sued the school district and won in tribal court. The school board chairman (tribal member) put the decision in a desk drawer and it was left there for over 30 days. The district's insurer refused to accept tribal jurisdiction and the district instituted suit against the insurance company. The original issue was buried in the jurisdictional hassle at great expense to the district.

Roosevelt County Superintendent (Non-Tribal) reported that school litigation came through the County Superintendent's Office. She reported no problems, good cooperation between agencies, and cross-deputization that was effective.

Glacier County Superintendent reported good cooperation. All publicly accredited school issues or issues involving public school monies are handled in his court. School law prevails over public schools.

An attorney for the Office of Public Instruction (OPI) stated that to her knowledge no cases before OPI have contested the question of tribal jurisdiction in a school administrative hearings process. So far any impact has fallen in legal areas outside of the Office of Public Instruction.

Jdw
3/6/91

Tuition For Out-of-District Placements:

This is already an area of strong concern because of the complexity and cost of the current process. The problem is not over tribal/non-tribal jurisdiction, but keeping communications clear between all the various agencies involved, the ethical and legal handling of the student's rights, legal residency definitions, and monetary concerns by the overload placed on districts. Reform legislation is pending. A Seminar on mutual problems and concerns was held with all agencies represented Monday, February 25, 1991. Cooperation and input from all agencies was excellent.

General:

The issue of Lake County schools dealing with tribal/non-tribal labels is mute. In reality reservation schools have already adjusted to those definitions of students. Various federal and tribal programs require such definition. Cases are determined by, "What is best for the student? Is the student tribal or non-tribal? Which are the most beneficial services for the individual student involved?"

Other counties contacted replied similarly. In Lake County, cooperation is already established and is a reality in the public schools. Glacier County reported that some districts have benefitted from the influx of federal dollars. Programs brought in with tribal/federal monies are matched by local districts so that all students, regardless of membership, are eligible for the program. Superintendent Omsberg said, "We are here for all the kids--not just the selected few, so districts kick in the money to cover non-tribal costs."

Reports from the Crow Reservation differ depending upon the stability of the government. Cooperation is dependent on changes in administration at tribal and school levels. Superintendents are concerned over the lack of civil rights for tribal members. "You will have more hassles. If the tribal government is stable, issues will be dealt with -- if not chaos." Yet superintendents stay on because of the needs of the people, higher salaries, the challenges present, and the dedication of the people. The "hoops" reservation administrators have to jump through may be different than other places, but seem to be worthwhile. Differences are dependent upon the differences in tribal governments involved -- differences are great between tribes. Superintendents all remarked that perhaps we would see little change because of the progressiveness of the Salish and Kootenai government and the cooperation with the schools already established.

John
3/6/91

In Conclusion:

After extensive talks with the above mentioned people of various viewpoints, I have come to the conclusion that The Office of County Superintendent of Schools may be only lightly impacted by retrocession of PL 280. Public schools fall under state jurisdiction and are separate from tribal jurisdiction in most cases affecting this office. While separate systems may be "confusing, and even foolish, the reality is that they are workable." Reports suggested limitations, pros and cons, and concerns, but never problems that could not be solved through cooperation, dialogue, and establishing good relationships. The opposition to HB797 stems from other areas, perhaps more directly impacted, than education. Lake County district superintendents had personal concerns as citizens, but not as educators or school administrators. They attested to the reality of systems in place that deal satisfactorily with reservation realities in Lake County.

Respectfully submitted,



Joyce Decker Wegner
County Superintendent of Schools

Youth Court Services

Twentieth Judicial District

Exhibit # 8 HB 797
3/18/91 7 pm

C. B. McNEIL
DISTRICT JUDGE

BARBARA A. MONACO
CHIEF JUVENILE PROBATION OFFICER

LAKE & SANDERS COUNTIES

LAKE COUNTY COURTHOUSE
106 FOURTH AVENUE EAST
POLSON, MONTANA 59860-2171
(406) 883-6211 EXT. 205

HOUSE BILL 797

To Whom It May Concern:

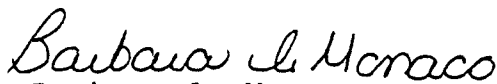
In regards to House Bill 797 and the impact passage would have on juvenile delinquency, issues are multiple.

Some principal areas of specific concerns are: Placement of delinquent youth at Montana's two youth correctional facilities, Pine Hills School and Mountain View School, for commitment and evaluations of delinquent youth; Detention of delinquent youth, both at a state level and local level, for evaluation and for the purpose of insuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition.

A chief issue specific to all adolescents living on the Flathead reservation are the major limitations that House Bill 797 would place upon city and county law enforcement: the investigation of crimes and subsequent arrests of perpetrators. These restrictions would severely limit law enforcement on the Flathead reservation. Law enforcement actions could become selective based on race of the victim and perpetrator rather than the crime.

The impact of House Bill 797 and the passage could cause long term negative results that would impact all adolescents on the reservation.

Sincerely,



Barbara A. Monaco
Chief Juvenile Probation Officer

BAM/bjh

Polson City Police
P.O. Box 238
Polson, Montana 59860
406-883-4321

March 8, 1991

Senator Dick Pisoneault
Chairman
Senate Judiciary Committee
Capitol Station
Helena, MT 59601

RE: HB 797

Dear Senator Pisoneault:

I am writing to you in opposition of HB 797. I am Chief of Police in the City of Polson. As a Police Officer I feel it is the responsibility of the Police Department to protect life and property as well as the prevention of crime. In accomplishing these objectives it is not our duty nor our intent to ask the race of those involved. We do our best to handle all cases equally.

Presently we enforce all state law, including traffic violations, as well as city ordinances handled here in city court. I can only imagine the problems that will result if city officers do not have the authority to enforce such law over tribal members within our jurisdiction. There is tribal housing within the city limits as well. Often, city officers are the first to respond to problems in this area and as such need to have authority to be effective in such situations.

Thank you for listening.

Sincerely,

Ron Buzzard
Ron Buzzard
Chief of Police
City of Polson

RB/jhd

Montana Magistrates Association

March 6, 1991

The Honorable Richard Pinsoneault, Chairman of the Senate Judiciary Committee and respected Committee Members:

I would like to express some of my concerns with House Bill 797, both as a judge in Lake County and as the Western Vice President of the Montana Magistrates Association. Lack of jurisdiction over tribal members has created problems for those judges whose jurisdictions are on reservations or whose jurisdictions border reservations.

To begin, I would like to capsule the working relationship that I have with the Confederated Salish and Kootenai Tribes. I am grateful for the programs that the Tribes have to offer and I am an advocate for the Tribal Drug and Alcohol Program and the Blue Bay Healing Center. I have referred many people to those programs with great success. I have written letters of support for those programs and for the Salish and Kootenai College and feel that the college has done very well in its short existence.

We in St. Ignatius have a good working relationship with the Tribal Law and Order Department and have cross deputized three of their law enforcement officers: Dave Morigeau, Bill Dupuis, and Mike McElderry. Judge Dupuis has honored my warrants of arrest and has authorized the Tribal Police to make arrests based on those warrants. I have also written letters of support for the Tribal Law and Order in the past to obtain federal money for their program, especially in the area of drug investigation.

My Court has shared information with the Tribal Adult and Juvenile Probation programs and I feel that that type of sharing enables both jurisdictions to maintain a better perspective on the people going through our courts. If a pattern is developing, then we are in a better position to deal with the problem and can create a sentence that is more likely to bring about rehabilitation of that person, rather than treating each incident within each judicial system as an isolated event. I regularly send lists to the surrounding jurisdictions, Tribal, County, and City, indicating those people who have outstanding warrants of arrest from my Court and those who are on probation. The probation list includes the offense that was committed, the disposition, the conditions of probation and the duration of probation. By the same token, I receive probation lists from the Tribal and County Probation programs.

I feel that retrocession from Public Law 280 would be a giant step backwards for all the residents of Lake County and the Flathead Reservation. I feel that with the sharing that is going on that we have too much to offer one another. Together we make this a great place to live and can touch the lives of those around us in a positive manner. I feel that "180 on 280" flies

Montana Magistrates Association

in the face of the U.S. Supreme Court decisions of the last twenty years in their effort to achieve integration. This retrocession is an effort to segregate, not integrate. It is an effort to split us apart, not bring us together. Also, the federal courts have maintained that where there is not a specific federal law or prohibition, then the reservations must follow or comply with state laws. The most recent example of this is the federal interpretation of the gambling laws on the reservations in Montana.

I know that the Tribes feel that they have not had a part in the "concurrent" jurisdictions here on the reservation. I do not feel that is the case in St. Ignatius or in my Court. I would like to propose an increased Tribal participation in my Court by allowing the Tribal Court Advocates or Tribal Attorneys to represent those Tribal members who appear before me on charges where jail or a large amount of restitution is a possibility. That way tribal officials could participate in the Court proceedings and, in the event of a conviction, they would be there for a recommendation in sentencing. I feel that often times a more meaningful sentence with rehabilitative measures could result, benefiting not only the defendant, but the society in which he lives.

I remember when Virgil Randall, the Special Investigator for the B.I.A., lived here. He would often comment that with all the "badges" here on the reservation, we should have the cleanest reservation of any area of the country, but then he would lament that nobody seems to work together. That comment made a great impression on me and I have strived to network my Court and to have as much interaction with various Tribal agencies as possible so that this can be a "clean" place to live, because together we have too much to offer each other and apart we have too much to lose.

The concerns that I hear from judges on or near other reservations deal with the large number of crimes that go unprosecuted. Judge Ron Johnson from Wolf Point tells of the number of domestic abuse crimes that go unpunished. He says that typically the victim is of Tribal descent and the perpetrator is nontribal. Because the victim is a Tribal member, the State cannot prosecute the case and because the offense is a misdemeanor, the federal government does not have the time or the resources to prosecute. He is frustrated and feels that justice in the State of Montana is not equal and fair in these types of situations. He also tells about the crimes committed by Tribal members against nontribal members and for one reason or another these crimes do not seem to get prosecuted in Tribal Courts.

Other judges talk about reservations becoming havens for people for whom they have issued warrants. They relate how they try to work with the various Tribal Police Departments and Courts, but their warrants are ignored and not honored. It was because of situations like these that I had the Montana Magistrates

Montana Magistrates Association


Association form a Tribal Cooperation Committee in the fall of 1990 to see if we could work out some of the problems that our courts experience with Tribal jurisdictions.

There is a lot of work to do and this is a new committee. We have had a few correspondences with each other and are trying to formulate positive working relationships and respect for Tribal jurisdictions. We here in western Montana have been fortunate to have Judge Gary Acevedo from the Confederate Salish and Kootenai Tribal Court meet with us at our District meeting at Allentown. He has also been invited to attend the March 19th meeting. With this type of dialogue, I cannot help but think that things can only get better.

I would also like to remind the members of the committee that the Flathead Reservation is unique in Montana and in the United States in that it is an open reservation. For whatever reason, the U.S. Government opened the reservation for homesteading in 1910. Presently, approximately 75% of the people who live on the reservation are nontribal members. It seems contrary to common sense to throw away a system that has worked for all these years. There may be some areas that need extra attention, but I feel that we have the resources and the people here on the Flathead Reservation to work out a common approach whereby all the residents of the Reservation will benefit. To do otherwise would be an affront to the residents of Lake County and clearly would not reflect the greatest good for the people of Lake County, both Tribal and nontribal.

I would like to thank you for your time and consideration on this matter before us here today in Lake County and on the Flathead Reservation.

Respectfully,



Craig L. Hoppe
Western Vice President, Montana Magistrates Association
Lake County Justice of the Peace/St. Ignatius City Judge

JUSTICE OF THE PEACE

RON JOHNSON
WOLF POINT, MONTANA 59201

Exhibit # 8 HB 797
3/18/91 7 pm

March 7, 1991

Senator Thomas E. Towe
P.O. Box 30457
Billings, Montana 59107

Dear Senator Towe,

As you may be aware, Wolf Point is within the exterior boundaries of the Fort Peck Indian Reservation.

I am a retired Highway Patrol Sergeant and I have spent my entire career in Wolf Point and have been a Justice of the Peace for Roosevelt County since 1987.

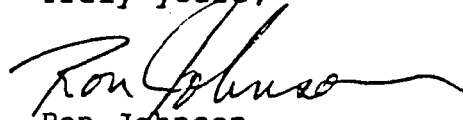
There are a few problems with Tribal jurisdiction I feel you should be aware of.

- 1). This reservation has no size and weight laws, which means that a person of the tribe could move any size house down the highway without permits or permission from anyone;
- 2). He could operate any vehicle at whatever weight he wants without regard to the damage this would cause to the road surface;
- 3). There are no vehicle registration laws, which could be a real good deal for persons with stolen vehicles;
- 4). The Montana Supreme Court ruled in State vs Greenwalt, that a non-indian cannot be prosecuted in State Courts for a crime committed against an Indian person. Example: A white man who commits domestic abuse against his Indian wife can only be taken in to Federal Court, however, Doris Poplar the U.S. Attorney has declined any of this type of prosecution in this area. Therefore, these crimes fall through the cracks, and nothing is ever done;
- 5). Traffic violations are never reported to the state, and a tribal member could receive an unlimited number of DUI violations and as far as the state is concerned, he has a clear record;
- 6). Tribal law only requires a valid driver's license. It could be from anywhere in the world;

7). There are no liability insurance laws in the tribal codes, so, come on to the reservation at your own risk.

Senator, I have just touched on a few of the many problems H.B.797 would create. I would urge you to take a very close look at this bill.

Truly yours,

A handwritten signature in cursive script, appearing to read "Ron Johnson", written in dark ink.

Ron Johnson
Justice of the Peace
Roosevelt County

RJ/tjh

GLACIER COUNTY ATTORNEY

14 EAST MAIN STREET
P. O. BOX 428
CUT BANK, MONTANA 59427

PHONE: 406-873-2278

JAMES C. NELSON
COUNTY ATTORNEY

FAX: 406-873-2643

LARRY D. EPSTEIN
DEPUTY COUNTY ATTORNEY

February 14, 1991

Larry Nistler
Lake County Attorney
Lake County Courthouse
Polson, Mt.

Dear Larry:

In a conversation with Jim Nelson, Glacier County Attorney, this morning, you indicated that legislation has been introduced in the Montana Legislature providing for repeal of the grant of criminal jurisdiction on the Flathead Reservation to the State of Montana, enacted many years ago pursuant to U.S. Public Law 280.

As someone with property interests in Lake County, on the Flathead reservation, and as a deputy County Attorney with 15 continuous years experience as a prosecutor in Glacier County, working with the jurisdictional problems created by the non-P.L. 280 status of the Blackfeet Reservation, I urge you to work to defeat this proposal. Passage of this legislation and the resulting jurisdictional morass would result in decline of property values, incredible criminal law jurisdictional problems, unequal treatment for victims and criminals and overall loss of effective law enforcement now enjoyed by all citizens and visitors in Lake County, Indian and non-Indian, alike.

Currently, on the Blackfeet Reservation in Glacier County, all misdemeanor prosecutions and traffic offenses involving enrolled members of the Blackfeet Tribe or any other federally recognized tribe, whether as victims or perpetrators, must be handled by Bureau of Indian Affairs Law Enforcement officers stationed in Browning or the FBI. The BIA contingent is underfunded and understaffed due to BIA budgetary restraints and cutbacks. The FBI also maintains a 2-3 man office for the reservation to handle serious violations of the law with respect to tribal members.

Prosecution of crime on the Blackfeet Reservations is handled by Tribal Court prosecutors, a centralized BIA registry in Denver or the U.S. Attorney's offices in Great Falls, Helena or Billings, depending on nature of the crime, the tribal affiliation of the parties, etc. All non-Indian matters are handled by the Glacier County Sheriff's office and our office. Sorting all this out is, as you can appreciate, a jurisdictional nightmare. In your County, you would also have local city police departments in Ronan and Polson to add to the confusion.

Larry Nistler
Page Two
February 14, 1991

Once the tribe takes over criminal prosecutions, I believe that you will find that the law provides that the State will not be able to prosecute any crime on the reservation where the defendant is an Indian or where the victim is an Indian or where Indian property is involved. Crimes committed by non-Indians which fall into one of those categories (Indian victim or Indian property) are likely not to be prosecuted at all. Tribal courts do not have criminal jurisdiction over non-Indians, and unless the offense is fairly serious -- usually of a felony class -- the federal government will decline prosecution because of budgetary or manpower constraints or because the offense does not fit their internal operating criteria for prosecutions.

To give you an example, if a non-Indian commits domestic abuse against his Indian spouse, it is highly unlikely that the offense will ever be prosecuted. Similarly, if a non-Indian sells a small amount of marijuana to an Indian, again, the offense will likely not be prosecuted.

To make matters worse, the jurisdictional morass is complicated when crimes are committed by persons with Indian blood who are not members of any tribe, but who claim Indian status. Canadian Indian, likewise, present similar problems of jurisdiction. The nuances and problems generated are literally endless.

I would expect that a similar result would obtain from passage of this proposed legislation. You can be sure that the U.S. Attorney's budget does not include staff and an attorney for assignment to the reservation. Further, either the BIA or the Tribe would take over criminal law enforcement with respect to "Indian" crimes on the reservation. All non-Indian matters would still be handled by your office and your local law enforcement. I can assure you from this office's perspective that you are facing a jurisdictional problem on a daily basis even if you have the excellent tribal-county cooperation such as we enjoy here in Glacier County with BIA and U.S. law enforcement agencies.

I urge you to contact other reservations with respect to the problems presented to local law enforcement in the absence of Public Law 280 jurisdiction. I feel you will receive similar input from other County Attorneys facing these problems. I also suggest you lobby for defeat of this proposed legislation. Let me know if Jim Nelson and I can assist you in this regard.

Larry Nistler
Page Three
February 14, 1991

Our office speaks from experience when we advise you that the citizens of Lake County, Indian and non-Indian alike would see an immediate and very direct decline in the quality of prosecution and law enforcement if this legislation passes and as a consequence, a sharp reduction in investment (both business and personal), property values and the overall quality of life enjoyed by all who live in Lake County within the exterior boundaries of the Flathead Reservation. Many residents of Glacier County, enrolled Blackfeet and non-Indian alike, would agree.

If I can be of any further assistance or support, or if you need specific examples of the problems presented on the Blackfeet reservation, please give our office a call. Good Luck.

Sincerely,



LARRY D. EPSTEIN

LDE:mjp

BIG HORN COUNTY

OFFICE OF THE COUNTY ATTORNEY



Drawer H
(406) 665-2255

HARDIN, MONTANA 59034

February 21, 1991

Larry Nistler
Lake County Attorney
Lake County Courthouse
Polson, MT 59860

Re: Criminal Jurisdiction

Mr. Nistler:

You recently inquired of my office as to whether Big Horn County suffers difficulty by virtue of the fact that State criminal jurisdiction does not extend to tribal members residing within the exterior boundaries of an Indian reservations located within the County. The answer must be a resounding yes.

As you may be aware, Big Horn County is the second largest Montana County in geographical area. We almost wholly contain the Crow Indian Reservation, in addition to which a small portion of the Northern Cheyenne Reservation is located in the County. Alcohol is prohibited by law on both reservations. Both reservations have a tribal court system in place. Each system addresses a myriad of problems occurring within the exterior boundaries. These include, but are not limited to, domestic relations problems, civil actions, juvenile matters, sanity matters, and misdemeanor criminal violations.

Aggrieved individuals can, and do, seek civil redress in the state court system, provided that the transaction of which the individual complains occurred outside of the exterior boundaries of the reservation. Even in such an instance, the parties seeking relief must obtain a judgment within the state system, at which point he must bring an action on the judgment within the tribal court system. This can be a prolonged process and often does not yield the desired relief. However, the far greater problem lies in the arena of criminal jurisdiction.

The State of Montana does enjoy criminal jurisdiction, as long as the criminal offense is perpetrated by a non-Indian individual against a non-Indian victim or is a "victimless" crime perpetrated by a non-Indian. This is virtually the extent of our criminal jurisdiction in Big Horn County "Indian Country." If the crime is committed by a

Larry Nistler
February 21, 1991
Page 2

tribal member against a tribal member and is a misdemeanor, the tribal courts have jurisdiction. If the crime is a "major" crime, it is prosecuted by the United States Government. Likewise, virtually all other crimes are federal - either by virtue of the Assimilative Crimes Act or by virtue of the General Crimes Act. This jurisdictional morass is confusing at best and, even if otherwise workable, results in many crimes not being prosecuted. Generally speaking, the United States Government has more than it can address in terms of prosecuting felonies. Many of the misdemeanors are not pursued.

Of course, this jurisdictional scheme results in a number of inequities. One such inequity seems to arise on a fairly frequent basis in Big Horn County and relates to Montana's nepotism law. Approximately one year ago, Attorney General Marc Racicot issued an opinion stating that the State's nepotism laws do indeed apply to schools located within the exterior boundaries of an Indian Reservation. However, the opinion continues, stating that the State of Montana has no jurisdiction to criminally pursue nepotism violations committed by tribal members in such schools. According to the opinion, the violations should be prosecuted at the federal level by virtue of the Assimilative Crimes Act.

Big Horn County has several schools and school districts located within the exterior boundaries of the Crow Indian Reservation. Some of these districts have Boards of Trustees or administrations composed of tribal members. While a number of nepotism violations have been reported to my office, I am powerless to do anything about these nepotistic situations. The United States Government has likewise failed to act. I cannot say whether this failure results from United States prosecutors having too much to do, or whether it results from a question as to whether the United States has jurisdiction over this type of criminal offense. At any rate, the situation remains uncorrected in Big Horn County.

Problems also regularly present themselves in regard to those offenses over which the State of Montana does have jurisdiction. For example, any number of crimes do occur in Big Horn County outside the exterior boundaries of any reservation. In the event that a tribal defendant is charged, there is no problem as long as the individual is immediately apprehended. However, upon numerous occasions, the tribal defendant returns to the Crow Indian Reservation or to the Northern Cheyenne Reservation. Both tribes do have extradition procedures in place. However, to the best of my knowledge, the respective procedures are not used. We, in the interim, are unable to execute upon any criminal process within the exterior boundaries. The State is simply left to wait until such time as the tribal perpetrator chooses to venture outside of the exterior boundaries.

Larry Nistler
February 21, 1991
Page 2

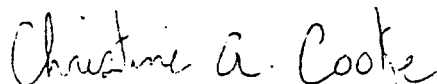
Yet another problem arises when it must be determined whether an individual is an Indian or non-Indian for the purpose of criminal prosecution. At this point, there is some discrepancy between the enrollment list maintained by the Bureau of Indian Affairs and the list of individuals who are recognized by Tribal Resolution as being enrolled. As I previously stated, Montana does have the criminal jurisdiction over non-Indian individuals acting within the exterior boundaries in certain instances. We have encountered situations in which the defendant states to the federal law enforcement officers that he is not enrolled. Hence, they decline to make an arrest, believing they have no jurisdiction to do so. On the other hand, the defendant has related to Big Horn County law enforcement officials that he is a tribal member by virtue of a tribal resolution. This type of situation often results in everyone being unsure about where jurisdiction may properly lie.

With the foregoing in mind, you can well imagine what a nightmare resulted from the United States Supreme Court decision in Duro v. Reina during the summer of 1990. In essence, Big Horn County was placed in the untenable position of determining whether the individual in question was an enrolled member of our resident tribes. This knotty problem presented an impossible task, given the number of Indian festivities which occur in Big Horn County. Such events are generally well attended by members of numerous tribes, located throughout the United States. Again, because no one was sure who had jurisdiction, the ball was dropped upon more than one occasion. Of course, this situation has been rectified - at least temporarily - by federal legislation.

These are but a few examples of some of the problems that arise in Big Horn County. It certainly seems to me that the continued existence of Public Law 280 in Lake County would aid in the delivery of justice to one and to all.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Christine A. Cooke
County Attorney
Big Horn County

CAC:jp

GREGORY P. MOHR

Richland County Justice of the Peace

*123 West Main - Sidney, MT 59270
(406)482-2815*

March 12, 1991

Lake County Commissioners
C/O Gerald L. Newgard
Chairman
106 Fourth Avenue East
Polson, Montana 59860

Dear Mr. Newgard:

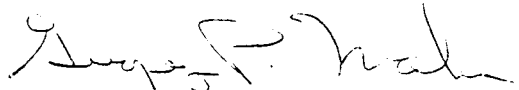
This letter is in support of the stand the Lake County Commissioners, as well as the criminal jurisdiction system in Lake County take on HB 797, dealing with the Flathead Tribal Members being able to retrocede from Public Law 280.

The criminal justice system in the State of Montana has long been based on just exactly what it stands for, criminal justice. It has never been guided by race. Public Law 797 would do exactly that and create a racial law enforcement system. I don't know of any system in force now or in the past that has ever been successful in this way. The problems that are encountered by other jurisdictions with the six other reservations in the State of Montana would soon become a problem in Lake County.

As judges in the State of Montana, we are interested in justice. Justice doesn't know the color of a man's skin, which religion he practices, social status or anything of that nature. If HB 797 were to pass, this would be created.

I have sent letters to several of the Senators on this committee, asking them not to pass HB 797 and I would again urge Senator Pinsoneault, Senator Yellowtail, Senator Harding, Senator Brown, Senator Crippen, Senator Doherty, Senator Grosfield, Senator Halligan, Senator Harp, Senator Mazurek, Senator Rye, Senator Svrcek and Senator Towe to not pass HB 797. If I can be of further assistance, please feel free to contact me.

Sincerely,



Gregory P. Mohr
Justice of the Peace/City Judge
President-Montana Magistrates Assoc.

GPM/bp

Association of Montana Highway Patrolmen



Friday, March 8, 1991

Mr. Richard Pinsoneault
Chairman of the Senate Judiciary Committee

Dear Mr. Pinsoneault:

I am a Montana Highway Patrolman based in Missoula and am the President of the Association of Montana Highway Patrolmen. On behalf of the Association, I strongly urge you to oppose House Bill 797.

Retrocession from Public Law 280 by the Confederated Salish and Kootenai Tribes would gravely reduce the ability of our patrolmen to enforce traffic laws on Highways 93 and 35 in Lake County.

In 1990, more than 3400 highway patrol citations were filed in Lake County Justice Court. Under Public Law 280, patrolmen are able to respond to all accidents, radar and stop traffic offenders and process all D.U.I. drivers without regard to the race of the driver or the race of any victims of traffic accidents. House Bill 797 would require the patrolman to make these racial determinations before proceeding with any investigation. If the patrolman determined that he lacked jurisdiction, he could do nothing more than remain at the scene until an Indian patrolman arrived.

Another potentially larger problem for patrolmen working the boundaries of the reservation in Missoula, Sanders and Flathead counties will be the need to extradite tribal members off the reservation to appear on tickets issued to them. For example, a tribal member cited for D.U.I. in Missoula, who returns to his home on the reservation may refuse to appear on the citation. In that case, an extradition proceeding would have to be initiated, and a warrant served on him by a tribal officer.

The present system of traffic law enforcement is highly effective and should not be dismantled. I urge you to vote against House Bill 797.

Sincerely,

Cal Wylie
President of the Association of
Montana Highway Patrolmen

March 12, 1991

Senator Richard J. Pinsoneault
Senate Judiciary Committee
Capitol Station
Helena, MT 59620

Dear Senator Pinsoneault:

As Realtors in Lake County, we would like to strongly urge you to vote "NO" on HB 797. We have a good law and order system here in Lake County and on the Flathead Indian Reservation where the law enforcement officers are working well together, as it should be. We see this Bill as being extremely devisive. Let's not change a system that is working well presently without more study and careful examination of the facts.

As Realtors, we support an educated decision on this legislation which is impossible without further study on how the proposed changes would impact the future of all that are involved.

Respectfully submitted,

Sunette Ashcraft

Robert Weber
William R. Ingram
Harold M. Sweeney

Roger Carlson
Scott Paul Young

Frank Brennan

Alan H. Thott

Rocky Rosatti
Wong Young

CC: County Commissioner Mike Hutchins

Bruce Campbell
Jack Drake

Kathleen Dennis

Greg D.

Edmund H.

John H.

J. Ben Clinton

C. J. Cedarstrom

William O.

Andy Schultz

D. R. R.

James R. Matson

Luon Stoggen

Ken Donora

Marva Christian
Sheri Connors-Davies



March 6, 1991

Sen. Dick Pinsoneault
Capitol Station
Helena, MT 59620

Re: HB 797

Dear Dick;

In addition to your letter of February 27, 1991, I have received volumes of materials from the tribes, several personal visits from Evelyn Stevenson, the tribal atty., and a couple of phone calls from Larry Nistler. I have also discussed this matter with our Sheriff and Fred Van Valkenburg.

As you probably know, Fred favors this bill. When I was first approached by Evelyn I told her I was neutral since the impact on Missoula County is minimal no matter what happens.

Afterwards I studied her materials and changed my mind. Now I believe that this entire matter deserves more study and planning. There are simply too many problems to resolve and questions to answer before we proceed to abolish concurrent jurisdiction. There's no need to rush into this. Lets get the details worked out first and then act, if it's appropriate.

If I can I'd be happy to testify to the above. April 5th looks O.K. right now.

Sincerely,

Robert L. Deschamps, III
Missoula County Attorney

RLD/ejl

cc: Larry Epstein
Ted Lympus
Robert Slomski
Larry Nistler
Doug Chase

Exhibit #1



Office of Sheriff

Lake County

JOE GELDRICH, SHERIFF

MIKE WALROD, UNDERSHERIFF

106 Fourth Avenue East
Polson, Montana 59860

Telephone: 406-883-4321
FAX: 406-883-3622

March 11, 1991

Mr. Richard Pinsoneault,
Chairman of the Senate Judiciary Committee
State Capitol
Helena, Montana 59601

Dear Mr. Pinsoneault:

As Sheriff of Lake County, I strongly urge you to oppose House Bill 797.

Retrocession from Public Law 280, by the Confederated Salish and Kootenai Tribes, would create a "Jurisdictional Nightmare" for both City and County law enforcement officers in Lake County.

Every call for service received at Lake County 9-1-1 Center would have to be carefully screened to determine the following;

- (a) Are you a tribal member?
- (b) Did the crime take place on Indian land?
- (c) Are any suspects tribal members?

If the answer to any of the above questions are yes, then the Bureau of Indian Affairs would have to be dispatched.

Every investigation, or any suspected crime, taking place in the officers presents would be seriously hampered. The officer would have to make a racial determination before proceeding with the investigation.

The difference between the Federal and the State Courts are considerable. Under the present system, we use this to our advantage, but if P.L.280 was lost, we would lose this option. There would be many crimes that would go unprosecuted and the less serious felony crimes would be reduced to misdemeanors.

Concurrent Jurisdiction has worked on the Flathead Reservation for over 26 years, let's not be too quick to replace a system that has served all the citizens in Lake County well.

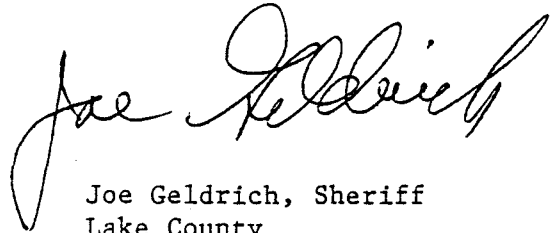
Maybe the system needs a little fine-tuning, maybe we can get it to work better. I have recently instituted talks with the Tribes about our law enforcement relationship. I have some ideas that I would like to discuss with the Tribes about sharing some of the law enforcement responsibilities.

Continued - Page (2)
Richard Pinsoneault,
Chairman of the Senate Judiciary Committee

Hopefully we can reach a satisfactory solution that will be better for all the people of Lake County, without losing P.L.280.

I would support a two year interim study on this issue.

Respectfully,

A handwritten signature in cursive script, appearing to read "Joe Geldrich". The signature is written in dark ink and is positioned above the printed name.

Joe Geldrich, Sheriff
Lake County

JG/as

HB 797
Angela Russell Sponsor

March 18, 1991

Ex #9
18 Mar 91
HB 797 7pm
Ray Harbin

MEMBERS OF THE COMMITTEE:

I APPEAR BEFORE YOU TONIGHT REPRESENTING THE BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY.

WE OPPOSE HB 797 FOR SEVERAL REASONS, PRIMARILY BECAUSE WE HAVE A SYSTEM IN PLACE NOW THAT PROVIDES REASONABLE JUSTICE UNDER ONE SYSTEM FOR ALL THE CITIZENS OF OUR AREA.

THIS BILL WOULD REPLACE THAT SINGLE SYSTEM WITH NOT TWO, BUT THREE SYSTEMS AT ENORMOUS COST TO THE TAXPAYERS.

THE THREE SYSTEMS WILL BE RACIALLY ORIENTED AS WELL.

IT WILL NOT SAVE MONEY, RATHER IT WILL COST MORE.

THE COMMENT HAS BEEN MADE MANY TIMES THAT THIS TRIBE ONLY WANTS THE SAME AS THE OTHER SIX TRIBES IN MONTANA.

(MAP)

(CHART)

HOMESTEADED FEE LANDS AND VERY HIGH NON-TRIBAL RESIDENCE COMBINE TO MAKE THIS RESERVATION VERY DIFFERENT FROM ANY OTHER IN MONTANA AND PERHAPS THE NATION.

I HOPE THESE ILLUSTRATIONS HAVE HELPED YOU UNDERSTAND THE VERY UNIQUE CHARACTER OF THE FLATHEAD RESERVATION.

AGAIN, WE OPPOSE THIS BILL AND WOULD ENCOURAGE YOU TO CONSIDER A RESOLUTION TO STUDY THIS ISSUE IN GREAT DEPTH BEFORE MAKING A DECISION WITH SUCH PROFOUND IMPACTS ON THE RESIDENTS OF THE FLATHEAD RESERVATION.

Ex# 10
18 Mar 91
HB 797

Office of Sheriff

Lake County



JOE GELDRICH, SHERIFF

MIKE WALROD, UNDERSHERIFF

106 Fourth Avenue East
Polson, Montana 59860

Telephone: 406-883-4321
FAX: 406-883-3622

Monday, March 18, 1991

SENATE JUDICIARY COMMITTEE

As Sheriff of Lake County, I strongly urge you to oppose HB 797.

Retrocession from PL -280, by the Confederated Salish and Kootenai Tribes, would create a "Jurisdictional Nightmare" for the City, County and State Law Enforcement officers working in Lake County.

For example, every call for service received at the Lake County 9-1-1 Center would have to be carefully screened to determine the following:

- a) Are you a tribal member?
- b) Did the crime take place on Indian land?
- c) Are any suspects tribal members?

If the answer to any of the above questions are yes, then the B. I.A. or F. B. I. would have to be dispatched.

Traffic Law Enforcement is highly effective in Lake County, our D. U. I. conviction rate is 3 times the State average. The State average is 8 convictions per 1000 population. Lake County's rate is 24 convictions per 1000 population.

Traffic problems that I understand that exist on the other closed

March 18, 1991

Reservations in Montana are:

- a) Vehicles owned by Tribal members driving on the Reservation are not registered.
- b) Vehicles operated by Tribal members on the Reservation are not required to be insured.
- c) Tribal members move any sized load on the highways, and haul loads of any weight on Reservation highways.

In the area of Criminal Law Enforcement I believe we would take a giant step backward, if we were to lose concurrent jurisdiction.

For example, small sales of drugs involving Tribal members would not be prosecuted as Felony Criminal Sales as is now done in State Court. The Federal System require large amounts before they will prosecute.

Burglarys and low felony amount thefts would not be prosecuted as Felonys in the Federal System.

Misdemeanor crimes committed by non-members against Tribal members, Domestic Abuse, Assaults would go unprosecuted.

The main proplem that would face local and county officers as I see it would be that the officer is forced to make a racial determination before he can attempt to handle a situation.

But the proponents of H.B. 797 say this can be solved with cross-deputization. Cross-deputization is not done on the majority of the closed Reservations in Montana for the same basic seasons. To give somebody the authority in criminal matters but then you have absolutely no control over them is not reasonable.

Page 3

March 18, 1991

In an effort to try and save our concurrent jurisdiction, I've talked to the Tribes about a way to expand their authority on the Tribal land on the Reservation.

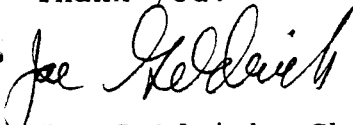
Proponents of H. B. 797 say, that if passed would save the County thousands of dollars. I believe the only saving to my office would be in lowering the cost of food supplies in the Jail. It would not mean any savings in personnel costs.

Proponents of H. B. 797 say, the Tribes will build a 65 bed Jail to help their members with more alcohol programs. We have many programs operating in our Jail now. We have had an A. A. program meeting weekly for several years in our Jail. We allow Tribal Alcohol Counselors and Lake County Chemical Dependency workers access to the Jail at any time. We have a County work program allowing non-violent offenders to work out their sentences, living at home in lieu of sitting out the time in Jail. This has worked very well instilling basic work habits with participating inmates. We have 4 electronic home arrest monitors that allow offenders the opportunity to keep their jobs, and be confined to their homes when not working.

Concurrent jurisdiction has worked in Lake County for 26 years. Let's not be too quick to replace a system that has worked.

I urge to to vote no on H. B. 797.

Thank you.


Joe Geldrich, Sheriff
Lake County, Montana



Ex # 10

3-18-91

HB 797

James R. Dupont

Sheriff-Coroner

Flathead County

406-756-5668

Fax 406-756-5693

March 15, 1991

Mr. Chairman:

Members of the Committee:

For the record, my name is Jim Dupont. I am the Sheriff of Flathead County. I wish to join with Sheriff Joe Gelerich in opposition to H.B. 797.

Since Flathead County shares a portion of the Reservation with Lake County, I can only foresee additional problems in carrying out my functions in law enforcement should this bill pass.

The current jurisdiction has worked well both here and in Lake County and I find it very difficult to propose a change to a process which is working well.

Sincerely,

James R. Dupont, Sheriff/Coroner
Flathead County

JRD:aml

CRIMES IN THE INDIAN COUNTRY ^{1/}
18 U.S.C. Section 1151, et seq.

EX # 10a
18 Mar 91
HB 797

OFFENDER

VICTIM

APPLICABLE LAW

Indian

Indian

For crimes by an Indian ^{2/} against another Indian, enumerated in the Major Crimes Act, (Title 18 U.S.C. §1153) ^{3/}, federal jurisdiction is exclusive. For all other crimes by an Indian against another Indian in Montana Indian Country, tribal jurisdiction is exclusive (exception - Flathead Reservation which has accepted state jurisdiction).

Indian

Non-Indian

If a major crime, as listed in Title 18 U.S.C. §1153, will be prosecuted in federal court. For all crimes except burglary, involuntary sodomy, felonious sexual molestation of a minor, and incest, prosecution is under Title 18 U.S.C. §1153 plus substantive federal law (e.g., 113). The exceptions are prosecuted under Title 18 U.S.C. §1153, but the offenses are defined and punished in accordance with the laws of the state.

If the offense is not a major crime, tribal court has jurisdiction. Federal court has jurisdiction under the Assimilated Crimes Act of nonmajor crimes if the tribe has not "punished" defendant. Section 1152 plus substantive federal offense (e.g., 113); §1152 plus 13 (Assimilated Crimes Act) plus state law if no federal statute for the offense.

Indian

Victimless

Tribal court has jurisdiction. Federal court has jurisdiction under the Assimilated Crimes Act if the assimilated state law is prohibi-^{4/}tory rather than regulatory. Tribal self-government exception to federal regulation accepts purely intramural matters, such as tribal membership and domestic relations, from the general rule which subject Indian tribes to other applicable federal statutes.

OFFENDER	VICTIM	APPLICABLE LAW
		Tribal sovereignty is not a shield against a grand <u>6</u> /jury investigation and subpoena.
4. Non-Indian	Indian	<p>Federal court has jurisdiction under the Assimilated Crimes Act and General Crimes Act. Section 1152 plus substantive federal offense (e.g. 113); §1152 plus 13 (Assimilated Crimes Act) plus state law if no federal statute for the offense.</p> <p>State court has no jurisdiction.</p> <p>Tribal court has no jurisdiction.</p>
5. Non-Indian	Non-Indian	Exclusive state jurisdiction. <u>9</u> /
6. Non-Indian	Victimless	<p>State-no federal jurisdiction (e. traffic violations, gambling and disorderly conduct.) <u>10</u></p> <p>If the crime directly threatens the Indian community, the crime is no longer victimless and reverts to federal jurisdiction.</p>

FOOTNOTES

Exhibit #10a HB 797
3/18/91 7 pm

NOTE: THE ABOVE GUIDELINES NOT APPLICABLE TO THE FLATHEAD RESERVATION WHICH HAS ACCEPTED STATE JURISDICTION.

1/ Indian Country: for purposes of criminal jurisdiction, "the term 'Indian Country' means (a) all land within the limits of any Indian Reservation under the jurisdiction of the United States Government, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, (c) all Indian allotments, the Indian titles to which have not been extinguished." Generally Montana Indian Country includes federal reservations and fee land, U.S. v. John, 437 U.S. 634 (1978), State ex rel Irvine v. District Court of Fourth Judicial District in and for Lake County, 239 P.2d 272, dependent Indian communities (U.S. v. Levesque, 681 F.2d 75) and Indian allotments to which title has not been extinguished, U.S. v. Ramsey, 271 U.S. 467 (1926).

2/ Indian: no single definition answers this question. Most legal consequences are controlled by the "role" of the tribe. However, for criminal jurisdiction the term "Indian" can also be found from a definition of a person who has some Indian blood, and is also regarded as an Indian by his community. (U.S. v. Curnew, 85-1869 (8th Cir. 1986) U.S. v. Dodge 538 F.2d 770 (8th Cir. 1976), Cooper v. U.S., 429 U.S. 1099 (1977); Turtle Mountain Band of Chippewa Indians v. U.S., 490 F.2d 936; Dillon v. Montana 451 F.Supp. 168 (reversed on other grounds) 634 F.2d 463 (9th Cir. 1980). The individual need not be formerly enrolled in a recognized tribe to be regarded as an member for federal jurisdictional purposes. U.S. v. Broncheau, 597 F.2d 1260 (9th Cir.) certiorari denied 444 U.S. 859 (1979).

3/ Major Crimes: murder, manslaughter, kidnapping, maiming, rape, involuntary sodomy, felonious sexual molestation of a minor, carnal knowledge of a female, not his wife, who has not attained the age of 16 years, assault with intent to commit rape, incest, assault with intent to commit murder, assault with dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and felony under Section 661 of this Title within Indian Country ---.

4/ U.S. v. Marcyres, 557 F.2d 1361.

5/ Donovan v. Couer D'Alene, 751 F.2d 1113 (9th Cir. 1985).

6/ U.S. v. Boggs, 439 F.Supp. 1050 (D.C. Mont. 1980).

7/ State v. Greenwalt, 663 P.2d 1178.

8/ Oliphant v. Suquamish Tribe, 435 U.S. 191 (1978).

9/ U.S. v. McBrattney, 104 U.S. 621 (1882); Draper v. U.S., 164 U.S. 240 (1896).

10/ Ne York ex rel Ray v. Martin, 376 U.S. 496 (1966).

Crime	By Indians agaist Indians or Indian property	By Non-Indians against Indians or Indian pro- perty (Assim. Crimes S.13 T18)	By Indians against Non- Indian or Non- Indian property	By Non-Indian against Non- Indian or Non- Indian property
Murder	U.S. Court only T 18 §1153 T 18 §1111	U.S. Court only T 18 §1152 S.1111 of T 18	U.S. Court only T 18 §1153 T 18 §1111 S.1111 of T 18	State court only
Manslaughter	U.S. Court only T 18 §1153 T 18 §1112 S.1112 of T 18	U.S. Court only T 18 §1152 S.1112 of T 18	U.S. Court only T 18 §1153 S.1112 of T 18	State court only
Rape	U.S. Court only T 18 §2031 S.1153 of T 18	U.S. Court only T 18 §1152 T 18 §2031	U.S. Court only T 18 §1153 T 18 §2031	State court only
Incest	U.S. Court only S.1153 of T 18 MCA 45-5-613	U.S. Court only T 18 §1152 MCA 45-5-613	U.S. Court only T 18 §1153 MCA 45-5-613	State court only
Assault with intent to kill or rape and assault with danger- ous weapon or resulting in serious bodily in- jury	U.S. Court only T 18 §1153 T 18 §113 S.113 of T 18	U.S. Court only T 18 §1152 S.113 of T 18	U.S. Court only T 18 §1153 S.113 of T 18	State court only
Arson	U.S. Court only T 18 §1153 S.81 of T 18	U.S. Court only T 18 §1153 S.81 of T 18	U.S. Court only T 18 §1153 S.81 of T 18	State court only

Crime	By Indians against Indians or Indian property	By Non-Indians against Indians or Indian pro- perty (Assim. Crimes S.13 T18)	By Indians against Non- Indian or Non- Indian property	By Non-Indian against Non- Indian or Non- Indian propert
Burglary	U.S. Court only S.1153 of T 18 MCA 45-6-204	U.S. Court only T 18 §1152 MCA 45-6-204	U.S. Court only S.1153 of T 18 MCA 45-6-204	State court onl
Larceny	U.S. Court Tribal Court has Jur. for theft T 18 §1153 S.661 of T 18	U.S. Court T 18 §1152 S.661 of T 18	U.S. Court Tribal Court has Jur. for theft T 18 §1153 S.661 of T 18	State court onl
Carnal know- ledge of fe- male under 16 yrs. of age	U.S. Court T 18 §1153 T 18 §2032	U.S. Court T 18 §1152 S.2032 of T 18	U.S. Court T 18 §1153 T 18 §2032	State court onl MCA 45-5-504
Sodomy	U.S. Court T 18 §1153 MCA 45-5-505 MCA 45-2-101	U.S. Court T 18 §1152 MCA 45-5-505 MCA 45-2-101	U.S. Court T 18 §1153 MCA 45-5-505 MCA 45-2-101	State court onl
Felonious sexual mol- estation of a minor	U.S. Court T 18 §1153 MCA 45-5-502 MCA 45-2-101	U.S. Court T 18 §1152 MCA 45-5-502 MCA 45-2-101	U.S. Court T 18 §1153 MCA 45-5-505 MCA 45-2-101	State court onl
Assault ex- cept with dangerous weapon, assault with intent to kill, or rape assault resulting in serious harm	In Tribal Court only. Tribal Law	U.S. Court T 18 §1152 T 18 §113	Tribal Court where it is violation of Tribal Law. U.S. Court if not punished in Tribal Court. T 18 §113 or State Statute	State court onl

Crime	By Indians agaist Indians or Indian property	By Non-Indians against Indians or Indian pro- perty (Assim. Crimes S.13 T18)	By Indians against Non- Indian or Non- Indian property	By Non-Indian against Non- Indian or Non- Indian property
Misbranding	Tribal Court only Tribal Law	U.S. Court T 18 §13 MCA 45-6-327	Tribal Court Tribal Law U.S. Court has Conc. Jur. if not punished in Tribal Court. T 18 §13 MCA 45-6-327	State court only
Receiving stolen pro- perty not U.S. govt. property or property in- terstate	Tribal Court only Tribal Law T 18 §1152 T 18 §662	U.S. Court T 18 §1152 T 18 §662	Tribal Court Tribal Law U.S. Court has Conc. Jur. if not punished in Tribal Court. T 18 §1152 T 18 §662	State court only
Extortion (not inter- state nor mail)	Tribal Court only Tribal Law	Same as above T 18 §13 MCA 45-5-203	Same as above T 18 §13 MCA 45-5-203	State court only
Reckless driving (re- sulting in property damage)	Same as above	State Court U.S. Court T 18 §13 MCA 61-8-301 & 715	Same as above except T 18 §13 MCA 61-8-301 & 715	Same as above
Malicious mischief	Same as above	U.S. Court T 18 §1152 T 18 §1363	Same as above T 18 §1152 T 18 §1363	Same as above

Crime	By Indians against Indians or Indian property	By Non-Indians against Indians or Indian pro- perty (Assim. Crimes S.13 T18)	By Indians against Non- Indian or Non- Indian property	By Non-Indian against Non- Indian or Non- Indian property
Trespass	Same as above	Same as above except U.S. Court T 18 §1165 (for hunt- ing & fishing) Other T 18 §13 & MCA 46-6-203	Same as above except T 18 §13 MCA 46-6-203	Same as above
Maintaining a public nuisance	Same as above	Same as above except U.S. Court T 18 §13 MCA 45-8-111	Same as above except T 18 §13 MCA 45-8-111	Same as above
Cruelty to animals	Same as above	Same as above except U.S. Court T 18 §13 MCA 45-8-211	Same as above except T 18 §13 MCA 45-8-211	Same as above
Adultry	Same as above	NA	NA	NA
Fornication	Same as above	NA	NA	NA
Illicit cohabitation	Tribal Court only	NA	NA	NA
Prostitution	Same as above	U.S. Court T 18 §13 MCA 45-5-601	Tribal Court Tribal Law U.S. Court T 18 §13 MCA 45-5-601	State court only

Crime	By Indians agaist Indians or Indian property	By Non-Indians against Indians or Indian pro- perty (Assim. Crimes S.13 T18)	By Indians against Non- Indian or Non- Indian property	By Non-Indian against Non- Indian or Non- Indian property
Giving veneral dis- ease to another	Same as above	Same as above except U.S. Court T 18 §13 MCA 50-18-112	Same as above except T 18 §13 MCA 50-18-112	Same as above
Failure to support wife or dependent persons	Same as above	Same as above except U.S. Court T 18 §13 MCA 45-5-64	Same as above except T 18 §13 MCA 45-5-64	Same as above
Failure to send chil- dren to school	Same as above	Same as above except U.S. Court T 18 §13 MCA 45-5-622	Same as above except T 18 §13 MCA 45-5-622	Same as above
Contributing to juvenile delinquency	Same as above	Same as above except U.S. Court T 18 §13 MCA 45-5-623	Same as above except T 18 §13 MCA 45-5-623	Same as above
Bribery (except sub- stantive Fed crime as set for T 18 §201-224)	Same as above	Same as above except U.S. Court T 18 §13 MCA 45- -	Same as above except (official & political)	Same as above
False arrest	Same as above	NA	NA	NA
Embezzlement (Except sub- stantive Fed crime) Bank, P.O., U.S. Govt. funds	Same as above	Same as above except U.S. Court T 18 §13 MCA 45-6-301	Same as above except T 18 §13 MCA 45-6-301	State court onl

Crime	By Indians agaist Indians or Indian property	By Non-Indians against Indians or Indian pro- perty (Assim. Crimes S.13 T18)	By Indians against Non- Indian or Non- Indian property	By Non-Indian against Non- Indian or Non- Indian property
Fraud (Not against U.S. Govt. or mail fraud)	Same as above	Same as above. T 18 §13 State definition MCA 45-6-301 et. seq.	Same as above T 18 §13 State definition MCA 45-6-301 et. seq.	Same as above
Forgery (Not U.S. Govt. check)	Same as above	Same as above except T 18 §13 MCA 45-6-325	Same as above except T 18 §13 MCA 45-6-325	Same as above
Violations of livestock laws	Tribal Court Tribal Order	U.S. Court Any violation of Federal, State, or Indian laws	Tribal Court if violation of Tribal Law U.S. Court has Conc Jur. for violation U.S., State, or Tribal laws if not punished in Tribal Court	State Court

CRIMES NOT AGAINST SPECIFIC PERSONS OR AGAINST SPECIFIC PROPERTY

Exhibit #10a HB 7
3/18/91 7 pm

CRIME	COMMITTED BY INDIANS	COMMITTED BY NON-INDIANS
Carrying concealed weapon	If violation of tribal ordinance, Tribal Court. If not punished in Tribal Court, U.S. Court has Conc. Jur. (Assim. Crimes)	State Court and U.S. Court have Conc. Jur. State Court should prosecute.
Disorderly conduct or disturbing the peace.	Same as above.	Same as above
Game Violations	Tribal Court if violations of tribal law U.S. Court has Conc. Jur. of CFR or tribal law violations if not punished by Tribal Court. U.S. Court has exclusive jur. of State or Federal violations not covered by CFR or tribal law.	U.S. Court and State Court have Conc. Jur. of violation of state law. U.S. Court has jur. of violation of tribal or Federal law.
Gambling violations	Same as above. If state law prohibitory and not regulatory.	Same as above
Vagrancy	Same as above	Same as above
Speeding and other traffic violations incl drunken driving (when no damage to individuals or property other than defendant).	Same as above	Same as above
Civil Rights violation	U.S. Court S.241 etc. T 18	U.S. Court S.241 etc T 18

CRIMES NOT AGAINST SPECIFIC PERSONS OR AGAINST SPECIFIC PROPERTY

CRIME	COMMITTED BY INDIANS	COMMITTED BY NON-INDIANS
State income tax or other state cr. tax laws	U.S. Court (Assim. Crimes)	State Court should prosecute. U.S. Court has Conc. Jur. under Assim. Crimes Sec.
Perjury	Tribal Court when committed in Tribal court. U.S. Court when committed in U.S. Court before U.S. Commissioner or Judge	When committed in Tribal Court prosecution must be in U.S. Court (Assim. Crime) or State Court. When committed in U.S. Court, U.S. Court has jur.



March 6, 1991

EX-# 11
18 Mar 91 1pm
HB 797

Sen. Dick Pinsoneault
Capitol Station
Helena, MT 59620

Re: HB 797

Dear Dick;

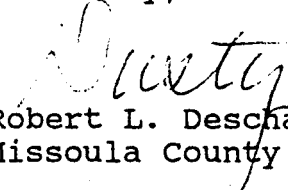
In addition to your letter of February 27, 1991, I have received volumes of materials from the tribes, several personal visits from Evelyn Stevenson, the tribal atty., and a couple of phone calls from Larry Nistler. I have also discussed this matter with our Sheriff and Fred Van Valkenburg.

As you probably know, Fred favors this bill. When I was first approached by Evelyn I told her I was neutral since the impact on Missoula County is minimal no matter what happens.

Afterwards I studied her materials and changed my mind. Now I believe that this entire matter deserves more study and planning. There are simply too many problems to resolve and questions to answer before we proceed to abolish concurrent jurisdiction. There's no need to rush into this. Lets get the details worked out first and then act, if it's appropriate.

If I can I'd be happy to testify to the above. April 5th looks O.K. right now.

Sincerely,


Robert L. Deschamps, III
Missoula County Attorney

RLD/ejl

cc: Larry Epstein
Ted Lympus
Robert Slomski
Larry Nistler
Doug Chase

Exhibit 12, attachment 1 consists of the same chart submitted in Exhibit 10a.

March 6, 1991

The Honorable Senator Pinsoneault
Capital Station
Helena, MT 59620

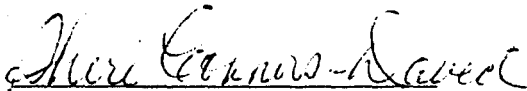
Dear Senator,

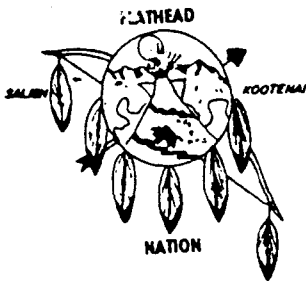
Last week I had the good fortune to attend a meeting regarding HB797 at the court house in Polson. I was distressed that so little room for attendees was provided and so little notice was given for a bill that appears will have far reaching effects on ALL of the residents on the Flathead Reservation.

I left the courthouse confused, as did most of those I talked too. We have many questions, which by the very confessions of those speaking, cannot be answered without substantial further study and consideration. Many of us feel that something is being "slipped by us" because ther has to date been so very little information provided regarding the ramifications of this bill.

For this reason I am writing to ask you to vote NO! on HB 797 until ALL of the residents of this reservation have a chance to consider the possible results.

Respectfully yours,


Sheri Connors-David



**THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION**

P. O. Box 278
Pablo, Montana 59855
(406) 675-2700
Fax (406) 675-2806



Joseph E. Dupuis - Executive Secretary
Vern L. Clairmont - Executive Treasurer
Bernice Hewankorn - Sergeant-at-Arms

February 11, 1991

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TRIBAL COUNCIL MEMBERS:
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Elmer "Sonny" Morigeau, Jr. - Secretary
Joe Dog Felsman - Treasurer
Louis Adams
Lloyd Irvine
Patrick Lefthand
Henry "Hank" Baylor
Antoine "Tony" Incashola
John "Chris" Lozeau

In 1963 Montana passed legislation in accordance with a 1953 federal law known as Public Law 280. Pursuant to this legislation Montana enacted enabling legislation allowing the State to assume criminal and limited civil jurisdiction over Indians on reservations with tribal consent. The Tribes enacted Ordinance 40A in 1965 granting Tribal consent to a state assumption of jurisdiction. Utilizing enactments of both the Tribe and the State, the Confederated Salish and Kootenai Tribes and the State of Montana entered into a concurrent jurisdiction agreement.

You, the Tribal membership have expressed concerns over this arrangement since its commencement over twenty-five years ago. The Tribal membership has repeatedly asked the Tribal Council to seek retrocession, thereby, ending any state authority over Indians in the criminal and civil areas conveyed to Montana by the Tribes and the federal government.

The Tribal Council has been working for some time to correct this situation. The membership has become dissatisfied with the implementation of this agreement and its disparate impact on Indians. The Tribes have launched a legislative effort during the current Montana Legislative session for the passage of a bill allowing for the Tribes' withdrawal from this P.L. 280 agreement.

I am hopeful that the following pages will help explain what "retrocession" means for the Flathead Reservation.

Sincerely,

Michael T. Pablo
Chairman of the Tribal Council

military pensions, Social Security, Supplemental Security Income (SSI), General Assistance (GA), Aid to Families with Dependent Children (AFDC or ADC), Emergency Assistance (EA), Medical Assistance (Medicaid), and Food Stamps.

The right to a free public education will not be affected by retrocession.

Access to hospitals and medical care will not be affected by retrocession.

Responsibility for road maintenance should remain as it is after retrocession.

TAXATION

The authority to tax, whether it is tribal, state or federal authority, will not be changed by retrocession.

HUNTING AND FISHING

The State/Tribal agreement relating to the authority to regulate hunting and fishing on the Reservation will not be affected by retrocession, nor will it affect Treaty hunting and fishing rights.

VOTING

Voting rights will not be affected by retrocession.

CRIMINAL JURISDICTION

After retrocession the responsibility for police protection of Indian people on the Reservation will shift to the Tribe and the federal government.

Law enforcement for non-Indians on the Flathead Reservation will primarily remain the responsibility of the state. The Supreme Court of the United States ruled in 1978 that non-Indians can never be brought before a tribal court for criminal offenses. Non-Indians will continue to go to state and federal courts for criminal offenses.

Crimes committed by Indians on the Reservation will be prosecuted in tribal or federal court, depending on the crime. Tribal court criminal jurisdiction is limited to crimes punishable by up to one year in jail and/or up to a \$5000 fine. Indians accused of major crimes will be prosecuted in federal court. Crimes committed by Indians off the Reservation will continue to be prosecuted in state or federal court, depending on the crime.

With respect to criminal matters, the Tribe proposes entering into cross-deputization and hot-pursuit agreements with the state to enhance the enforcement of tribal and state laws regarding the operation of motor vehicles on public highways on the

Sam T. Marshall
P. O. Box 568
Polson, Montana 59860

Attachment #4

Exhibit #12 HB 797
3/18/91 7 pm

March 13, 1991

Senator Dick Pinsoneault
Montana State Capitol
Helena, MT 59620

RE: Law Enforcement Issue; House Bill 797

Dear Senator Pinsoneault:

First of all, as always, my thoughts and prayers go for you and your legislative associates during this legislative session. I realize your difficult tasks and pray that the Holy Spirit is present with you in trying to discern and act upon the bills presented this session.

I am writing this letter with regard to House Bill 797. As you are already aware, HB 797 is a bill written to effectively destroy concurrent jurisdiction over criminal matters on the Flathead Indian Reservation located in Lake and Sanders Counties.

Presently the state district courts provide for jurisdiction over all citizens living on the reservation in criminal matters, with the Salish and Kootenai Tribes providing jurisdiction over its own members on civil matters and misdemeanor criminal matters.

My great, great grandmother was full blood Cherokee Indian from the Tennessee Valley, so I am not a member of the Confederated Salish and Kootenai Indian Tribes of the Flathead Indian Reservation. However, my shock and disbelief in HB 797 is *this bill adversely affects all citizens living on the reservation*. This bill does not benefit anyone; Indian, White, Black or otherwise.

More importantly, this bill deprives tribal members of *all legal remedies* where a criminal offense is committed against them by a non-member and such aggression is considered a misdemeanor or "low profile" felony.

Also, clearly and soundly placed in our United States Constitution is a provision for the separation of powers; separation of the Executive, Judiciary and Legislative branches of government. The Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation have no separation of powers. The Tribal Council controls all facets of the Indian reservation. This lack of separation is an idea that clearly can go sour.

Clearly some compromises can be made with the law enforcement issues on the Flathead Indian Reservation. I have heard citizens mention cross-deputization, allowing members and non-members a choice in which court -- tribal

court or state court -- they would like to have their case heard.

I noticed in our local newspaper the Lake County Leader the Editor took the time to interview county attorneys from the counties of Big Horn, Hill, Rosebud, and Glacier where retrocession has occurred. David Rice, Hill County attorney, has been involved with legal matters on the Rocky Boy's Reservation for 18 years. He said the Flathead Indian Reservation's present status as an open reservation with "checkerboard" land ownership makes PL 280 "the only legitimate way to do business." Mr. Rice criticized federal offices for not being more aggressive: "We have seen a real lack of interest by the federal government in pursuing minor issues on the reservation."


The Crow Reservation's population is comprised of 74 percent tribal members. The Blackfeet Reservation's population is comprised of 82 percent tribal members. The Northern Cheyenne Reservation is comprised of 90 percent tribal members. The Fort Belknap Reservation's population is comprised of 93 percent tribal members. Rock Boy's Indian Reservation is comprised of 96 percent tribal members. *The Flathead Indian Reservation is comprised of 24 percent tribal members; 76 percent being non-tribal members.*

Glacier Deputy County Attorney Larry Epstein indicated that crimes against Indians or Indian-owned property on the Blackfeet Reservation are frequently not prosecuted in tribal court, since it does not have jurisdiction over non-Indians. Only the most serious of felony offenses will be pursued by the federal courts because of budget and manpower constraints.

Those cases that "slip through the cracks" on the Blackfeet Reservation are a non-Indian committing domestic abuse against his Indian wife, or a non-Indian selling a small amount of marijuana to an Indian, Mr. Epstein said.

Thousands of jobs will be affected through this law enforcement issue. A vote for its passage is a vote to slowly destroy the Mission Valley because if lawlessness occurs, such as the misdemeanor offenses perpetrated against the tribal members previously cited, such stature discourages positive growth and encourages all residents of the Flathead Reservation to move elsewhere.

Members of the Confederated Salish and Kootenai Tribes lose an extraordinary amount of protection with this bill. Please vote no when HB 797 is introduced before the Senate Judiciary Committee.

Sincerely,

Sam T. Marshall
A Concerned Citizen

PRESIDENT

Bob Butorovich
Butte, MT 59701
782-4224

PAST PRESIDENT

Jim Dupont, Deputy Sheriff
Kalispell, MT 59901
752-8161



SECRETARY-TREASURER

Tony Harbaugh, Sheriff
1010 Main Street
Miles City, MT 59301
Office: 232-2237
Home: 232-6299

OFFICIAL PUBLICATION
"THE MONTANA SHERIFF AND PEACE OFFICER"

Sheriffs and Peace Officers Association

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Missoula, MT 59801

Bill Fleiner 443-1010
Helena, MT 59601

March 12, 1991

TO WHOM IT MAY CONCERN:

I am writing this letter in opposition to House Bill 797.

On February 28, 1991, the Montana Sheriffs and Peace Officers Association Board of Directors met in Helena, Montana, and the majority of the Board voted to oppose the bill.

If further information is needed, feel free to contact me.

Respectfully,

A handwritten signature in cursive script, appearing to read "Robert Butorovich".

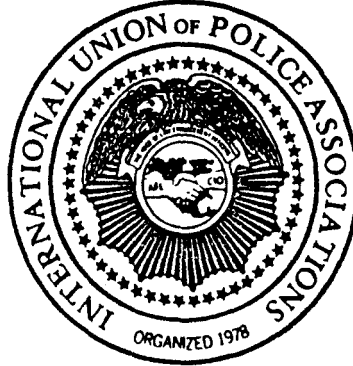
Sheriff Robert Butorovich, President
MONTANA SHERIFFS AND PEACE OFFICERS ASSOCIATION

js

MISSOULA COUNTY
DEPUTY SHERIFF'S ASSOCIATION

Box 4724

Missoula, MT 59806



March 13, 1991

Senator Dick Pinsoneault
Capitol Station
Helena, Montana 59620

Re: house bill #797 tribal retrocession

Dear Sir:

I am writing this letter on behalf of the Missoula County deputy sheriff's association regarding the proposed retrocession of the Flathead Reservation from state criminal jurisdiction.

It is the official position of our association to oppose this particular legislation. We do not feel a change from state to federal jurisdiction would be of particular benefit to local law enforcement, or the public in general.

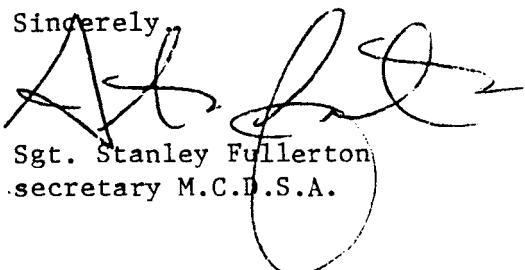
While our cooperation with the Confederated Salish and Kootenai tribal police has been good in the past, we have also not been put in the position where our authority to act has been in question.

We can only speak to problems we have encountered over the years in dealings with other tribal police agencies in the state. To be quite frank they have ranged from a simple hassle to total non-cooperation.

As for the federal government picking up the slack of local law enforcement, again we feel there is room for debate. It has been our experience that the federal criminal system just does not have the same priorities that local agencies have (or what the public expects to have).

It is our feeling that this proposal deserves very careful study of all the potential impacts, long before it is considered for passage.

Sincerely,


Sgt. Stanley Fullerton
secretary M.C.D.S.A.

cc: Sheriff Doug Chase
Sheriff Joe Geldrich
Larry Nistler
Ted Lympus
Sheriff Jim Dupont

SENATE JOINT RESOLUTION NO. _____

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE INDIAN AFFAIRS COMMITTEE TO STUDY THE JURISDICTIONAL RELATIONSHIP BETWEEN THE STATE OR ITS POLITICAL SUBDIVISIONS AND THE SEVERAL INDIAN TRIBES LOCATED WITHIN THE STATE OF MONTANA IN ALL RESPECTS AND REQUIRING THE COMMITTEE TO REPORT ITS FINDINGS TO THE 53RD LEGISLATURE.

WHEREAS, numerous disputes and difficulties have arisen over a long period of time between the state of Montana or its political subdivisions and Indian tribes over the scope of their respective civil and criminal jurisdictions; and

WHEREAS, such disputes have, in some instances, precipitated lengthy and costly litigation; and

WHEREAS, jurisdictional questions, even if not precipitating litigation, have caused disagreement between tribes and state and/or local governments and among the Indian and non-Indian citizens of Montana; and

WHEREAS, many of those disagreements are capable of resolution when the parties involved possess a thorough understanding of the rights, responsibilities, and positions of tribal, state and local governments as established by state and federal law; and

WHEREAS, it is in the best interests of all Montanans that state, local and tribal governments avoid unnecessary conflict over jurisdictional issues.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

The Indian Affairs Committee be assigned during the interim between the 52nd and 53rd Legislatures to:

(1) examine the principal types of jurisdictional disputes which have arisen between state, local and tribal governments since 1980;

(2) examine the major litigation which has resulted from such disputes;

(3) evaluate existing case law to determine those legal standards used in resolving such disputes;

(4) determine any modifications in state statutes it believes necessary to render them consistent with controlling federal law; and

(5) determine any modifications in state statutes which, while not required to avoid conflict with controlling federal law, are deemed appropriate for the purpose of reducing jurisdictional conflict between the state or its political subdivisions and Indian tribes or otherwise facilitating delivery of governmental services.

BE IT FURTHER RESOLVED, that the Indian Affairs Committee report its findings to the 53rd Legislature and present options for legislative consideration if the Committee determines that options are necessary.

-End-



State of Montana
Office of the Governor
Helena, Montana 59620
406-444-3111

EX#13
18 Mar 91 7p
#B797

STAN STEPHENS
GOVERNOR

March 11, 1991

Mr. Jim Peterson
Executive Vice President
Montana Stockgrowers' Association
P.O. Box 1679
Helena, Montana 59624

Dear Mr. Peterson:

This letter follows our recent conversation regarding a proposal to establish a Governor's Indian Advisory Council.

Several months ago, the Montana Stockgrowers Association requested this office explore the possibility of establishing an advisory council to discuss and share information on Indian and non-Indian issues. Membership on the committee would include representatives of the seven Indian Tribes, the U.S Attorney's office, the Montana Attorney General, the Governor's office, the Indian Coordinator and other entities having common interests. The council would provide an opportunity for tribes, local, county, and state and federal government to share issues and solutions in many areas including jurisdiction, transportation and economic development with recommendations to tribal councils and the Governor. It would provide a forum for private individuals, both Indian and non-Indian to improve governmental relationships.

Montana Indian Coordinator Kathleen Fleury is soliciting suggestions and input on the workability of such a council.

Even though the concept has been discussed, no formal action has been taken until such time as the respective tribal councils and/or chairpersons' input is considered.

We look forward to continued progress in this matter.

Respectfully,

A handwritten signature in dark ink that reads "Rick Bartos".

RICK BARTOS
Chief Legal Counsel

March 14, 1991

Ex #14
18 Mar 91
HB 797 7pm

Dear Sir:

I have lived on the Crow Indian Reservation my entire life, fifty-two years. There is no Crow/State Agreement under PL 280.

Law enforcement on the Crow Indian Reservation for both tribal and non-tribal population is virtually non-existent. I really believe the Indians suffer more than the non-Indians as a result.

To cite an incident which occurred a few years ago, a non-Indian, ranch manager was run down and badly beaten by four (4) Indians. When the County Deputy arrived, he said, I have no jurisdiction, and left. When the Bureau of Indian Affairs police officers arrived, they took a few notes and left also. Nothing was ever done about the incident.

Another incident occurred when a non-Indian lady, who lived alone, was raped and abused for several hours. The County Sheriff never even investigated the matter because it happened on the reservation and he declared he had no jurisdiction upon it. I really don't know what the B.I.A. police officers did concerning the investigation or evidence, but as usual, nothing was done and of course justice was not served.

Many times, the B.I.A. police will answer a call and collect some information on a criminal offense, but there is never any follow-up. Unfortunately, many times families of the officers are involved and/or tribal politics, hence the investigation is dropped or incompleated.

It is my feeling that in place of repealing PL 280 on the Flathead Reaservation, you should be attempting to induce the other tribes to adopt PL 280.

Respectfully,


CITIZEN'S RIGHTS ORGANIZATION

Ex # 5
18 Mar 91
HB 797 7 pr

March 18, 1991

Montana Legislature
Senate Judiciary Committee
Helena, MT 59910

Re: HB 797 (Retrocession of Public Law 280, Flathead Reservation)

The following is a basic summary of the proposed retrocession of PL 280 on the Flathead Reservation:

Who wants it and why? -- The Salish and Kootenai Tribal leaders -- According to them it is a self-determination issue providing them more autonomy over their tribal members. The Tribal leaders also claim that Tribal members are not treated properly in State courts.

Who opposes HB 797 and why? -- Nearly everyone else but the Tribal leaders including:

Citizens who understand the issues involved -- very nearly all non-tribal and many, many Tribal, except those who are directly beholden to the Tribal leaders for jobs, special interests, etc., do oppose.

All non-tribal law enforcement groups - city, counties, and federal (many unofficially, off the record.) Federal officers, both tribal and non-tribal who work on reservations that have retroceded PL 280, say that law enforcement suffers adversely from retrocession.

The State Attorney General has stated that retrocession produces a gap in law enforcement.

The citizens, both tribal and non-tribal, on other reservations are particularly adamant that law enforcement suffers from retrocession.

The why of all of the opposition stems, primarily, from the fact that the federal government has not, and evidently will not, fulfill the responsibilities it has when retrocession takes place. It is a fact of life that on the Crow, the Rocky Boy, the Blackfeet reservations, and others, the federal government just does not have the resources to do the job now being done by the State and local law enforcement agencies.

Summary -- It is unrealistic to assume the "feds" will pick up their responsibilities on the Flathead Reservation when they have not done so on other reservations in Montana and in other States. This will be even more true in view of the effort by Congress to hold the federal budget down and reduce the national debt.

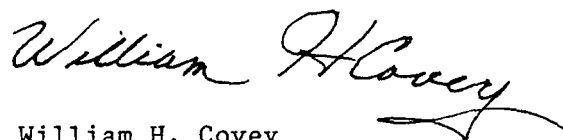
It is unfair and short sighted to ignore the plight of those (both tribal and non-tribal citizens) who feel the emotional, economic and often physical impacts of lawlessness caused by retrocession, merely to placate a very nebulous self-determination claim by tribal leaders.

Ex 15
3 / 18 / 91 7pm
HB 797

Page 2 - HB 797 - William H. Covey

A vote for HB 797 is a vote for lawlessness -- that is the message from the people who have experienced retrocession in Nebraska, North and South Dakota, the Lake States, in Montana and other states.

Please vote "NO" on HB 797.



William H. Covey
1468 Meadowlark Lane
Big Arm, MT 59910

CX #15a
18 Mar 91
7pm
HB 797

March 18, 1991

Montana State Senate Judiciary Committee
Chairman, Senator Dick Pinsoneault
and Committee Members

As a non-tribal Lake County resident, I have had no qualms about purchasing merchandise or services from, or selling to anyone I wished to, on the reservation. But, if PL 280 were retroceded I would be compelled to purchase or sell only off the reservation, as I have no way of knowing who is or is not a tribal member. I would be discriminating if I were to ask and that is illegal. Warrantees and minor liability claims would be a problem, as would using checks or credit cards between myself and tribal members or their businesses. They would have no recourse, nor would I.

Rentals, leases, property sales between tribal and non-tribal would be a problem. What about burglaries, vandalism, assault, truancy, child abuse, auto accidents or anything else of that nature? Law enforcement of all of the above is a problem on reservations that do not have PL 280. Please realize there are numerous mixed marriages and families, tribal/non-tribal business partners, as well as business transactions of all types between tribal and non-tribal people on the reservation.

Also, why should we all not be subject to, or have the advantage of United States laws, law enforcement and civil rights. We are all United States citizens.

I must conclude by asking members of the committee to "table" HB 797. This bill has nothing to do with Tribal Government self-determination -- it would only cause confusion, hamper the economy and many good relationships that presently exist on the Flathead Reservation.

If passed, this Bill will prove to be a detriment to both tribal and non-tribal members living on the reservation, as well as anyone doing business on or visiting the reservation.

Thank you.



Gene Covey
1468 Meadowlark Lane
Big Arm, MT 59910

note - Salish

Ex. 16

3-18-91 7pm

HB 797

BRIEFING DOCUMENT:

**PUBLIC LAW 280 AND RETROCESSION
AFFECTING THE FLATHEAD INDIAN RESERVATION**



Prepared by

The Confederated Salish and Kootenai Tribes
of the Flathead Nation

February 1991

COMMITTEE ON

DATE

18 Mar 91 7pm 10 of 5

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Carol McCue	St Kitts	HB 797	X	
Antonia Dupuis	self	HB 797	X	
Katherine E. Pedersen	Clerk of Court, Lake	HB 797		X
Bill Covey	SELF - Lake Co.	HB 797		X
Bernice H. Homan Korn	Confederated Salish & Kootenai	HB 797	X	
Shannon Burke	CS & KT	HB 797	X	
Francis Auloh	CS & KT	HB 797	X	
George A. Homan Korn	CS & KT	HB 797	X	
Lillian Thurston	CS & KT		X	
Francis S. Auloh	CS & KT	HB 797	X	
Patricia A. Lefthand	CS & KT	HB 797	X	
Earl K. Lefthand	CS & KT	HB 797	X	
Shannon Burke	CS & KT	HB 797	X	
John Shultz	CS & KT	HB 797	X	
Francine Dupuis	CS & KT	HB 797	X	
D. Fred M. H.	Confederated Salish & Kootenai	HB 797	X	
Sheryl H. Irvine	CS & KT	HB 797	X	
Helene C. Jeffers	C.R.O.	HB 797		X
Joyce Decker Wegner	Lake Co. Supt. School	HB 797		X
Michael J. Pabla	CS & KT	HB 797	X	
Lorna Frank	Mt. Farm Bureau	HB 797		X
Emileyn Stevenson	CS & KT Tribes	HB 797	X	
Lester Kallowat	CS & KT	HB 797	X	
CAROL MOSHER	MT. CATTLEWOMEN			X
Jim Jensen	SELF	797	X	
Bill FEINER	Mount. Sheriff's & Peace Offic Assoc	HB 797		X

(Please leave prepared statement with Secretary)

DATE

18 Mar 91 7pm

COMMITTEE ON

Senate Judiciary

2015

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Georgia Dies	MT. How. Inland Coalities	HB 797	✓	
Greg A. Monier	CSKT	HB 797	✓	
Martina Savage	self	HB 797	✓	
Kathy Jorassian	CSKT	HB 797	✓	
Mona Elk Shoulder	self	HB 797	✓	
Kris Gay - Yellowtail	SELF - C	HB 797	✓	
Albert C. Coye	CSKT	HB 797	✓	
Tom Antista	CSKT	HB 797	✓	
Sue Antista	CSKT	HB 797	✓	
Glenn Hamann	CSKT Tribes	HB 797	✓	
Kelley Zapata	Self	HB 797	✓	
Wesley Hamann	CSKT	HB 797	✓	
John Q. Boring	Roosevelt County Sheriff	HB 797	✓	
Nancy Agnew	self	HB 797	✓	
Thomas Barty	self	HB 797		✓
Roy H. Hinkle	LAKE County	797		✓
Mark K. K. K.		HB 797		✓
JOHN A. MERCER	STATE REP House Dist 50	HB 797		✓
Arthur M. Hurling	State Sen - District 25	HB 797		✓
Fawn P. Gilded	US Dept of the Interior	HB 797	✓	
HOWARD W. Gipe	Platteau County - mace	HB 797		✓
Bill Swaney	CSKT	HB 797	✓	
Konnie Gettman	CSKT	HB 797	✓	
Majel Todd	Indian Law Clinic "LLP"	HB 797	✓	

(Please leave prepared statement with Secretary)

DATE

18 Mar 91 7 pm 0065

COMMITTEE ON

Senate Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Mary L. Parker	Confederated Salish & Kootenai Tribes	HB 797	✓	
Thomas Langford	Gros Ventre (Ft. Belknap)	HB 797	✓	
Bryce M. Wilden	NATIVE AMERICAN LAW STUDENTS ASSOC.	HB 797	✓	
Ruth Whiting	CSKT	HB 797	✓	
Angelina M. Coker	C. S. H. T.	HB 797	✓	
Edward A. Samoil	B.T.A.	HB 797	✓	
Wayton Matt	Confederated Salish & Kootenai Tribes	HB 797	✓	
John Shaw	Confederated Salish & Kootenai	HB 797	✓	
Grace L. Phillips	Confederated Salish & Kootenai	HB 797	✓	
Bennie Powell	Confederated Salish & Kootenai	HB 797	✓	
Bradford Swartz	" " "	HB 797	✓	
Chas L. Jellies	CSKT Tribal Member	H 797	✓	
Les Clacment	CSKT Tribal Police officer	H 797	✓	
David Morigean	CSKT Tribal Police Officer	HB 797	✓	
Ronald L. McCREA	CSKT Tribal Police	HB 797	✓	
John Tozani	CSKT Tribal Council	HB 797	✓	
Hank Braylor	CSKT Tribal Council	HB 797	✓	
Ellen Swartz	CSKT member	HB 797	✓	
Eleanor Hughes	Lincoln Co Senator	HB 797		
Jo Hallacher	Missoula Co	HB 797	✓	
Christina Modders	Medicine Lake Indian Co.	HB 797		
April C. Fane		HB 797	✓	
Antoine Inneshele	CS & KT	HB 797	✓	
Ray C. Banta	CSKT	HB 797	✓	
Brenda C. Desmond	self	HB 797	✓	
Steve J. Ashley	CSKT Tribal member	HB 797	✓	

(Please leave prepared statement with Secretary)

DATE 3-15-91 7pm

COMMITTEE ON Judiciary

VISITORS' REGISTER

H.B. 797

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Paddy Trusler	LAKE County	797		X ^{AS} _{Propose}
Robert Dupuis	CITIZEN	797		X
Ruth Hodge	Citizen	797		X
Enore Boat	Lake County	797		X
Wm Do Jini	Citizen	797		X
Mike Hutchin	LAKE County Commissioner	797		X
Patricia Cook	Lake County Treasurer	797		X
SAM T. Marshall	Citizen	797		X
La Helwind	Lake Co. Sheriff	797		X
Ted L. IMPUS	Flathead County Attorney	797		
Lina Johnson	Citizen	797		X
Merlin Cooper	Citizen	797		X
Diana Tucker	Lake County Citizen	797		X
Shirley Tucker	" " "	"		X
Cornie Williams	Lake Co. Citizen	797		X
Bud Williams	Lake County	797		X
Glenn Lume	Citizen	797		X
Sharon Whiting	Pulson High School	797		X
John K. Shepard	" " "	797		X
James C. Nelson	Gloce County Atty	797		X
Ronald E. Buzzard	PULSON POLICE CHIEF	797		X
T.S. Fullerton	MSLA Deputy Asst	797		X
Whitby Gamm	myself	797		X
Jim E. Gray	APL Citizens Equal	797		X
Gene Gray	myself	797		X
Angela Russell	HD 99	797	X	

(Please leave prepared statement with Secretary)

DATE

18 Mar 91 7pm

COMMITTEE ON

Senate Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Bob Dewar	H.D #9	H.B 797	✓	
Rhonda Yorkford		HB 797	✓	
Stan Bradshaw	Self	HB 797	✓	
Earl Old Person	Blackfoot Tribe	HB 797	✓	
Larry Treit	Senate Dist 11	H.B 797		
David Harold Cline			✓	
Sandra Peric		HB 797	✓	
Mary Stasse	4/4 Hnd. Flathead ^{tribe} Kootenai	HB 797	✓	
Audrey A. Brown	Self. (Law student) ^{LM}	HB 797	✓	
Lee McLaughlin	Self	HB 797	✓	
Karen M. Velle	Self (C.C. Student)	HB 797	✓	
Nusan Coughlan	Self			
Terry Tanner	Flathead Culture Comm	HB 797	✓	
Larry Strick	Senate Dist-35 Butte	HB 797	✓	
Catherine Ross	Self	HB 797		✓
Lina Mercer	Self	HB 797		✓
Cindy Smith	Self	HB 797		
Rebecca French	Self	HB 797		
Pam Hackley	Self	HB 797	✓	
Eileen Shore	Self	S 797	✓	
Joseph H Dupuis	CS & KT	HB 797	✓	
Ronald L. Math	CS & KT	HB 797	✓	
Fred Du Charne	CS & KT	HB 797	✓	
Michael G. Kenkel	CS & KT	HB 797	✓	
Vernon L. Christopher	CS & KT	HB 797	✓	
Cathy Dupuis	CS & KT	HB 797	✓	

(Please leave prepared statement with Secretary)