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ADDRESS ONLY THE
COMMISSIONER OF INDIAN AFFAIRS

REFER IN REPLY TO THE FOLLOWING:

DEPARTMENT OF THE INTERIOR

Education-
Law and Order.
99808-1911
F H D

OFFICE OF INDIAN AFFAIRS

WASHINGTON

Plural marriages.

FILED BY C. P. F.

Mr. Charles H. Dickson,

Superintendent Leupp Indian School,

Leupp, Arizona.

Sir:

The Office has considered your letters of November 15 and 25, together with inclosure, wherein you report the facts in connection with the marital relations of Joe Williams, an Indian under your jurisdiction.

The following sections of the Statutes of Arizona are quoted for your information:

Section 230 of the Penal Code defines rape as an act of sexual intercourse accomplished with a female not the wife of the perpetrator under either of the following circumstances:

1. Where the female is under the age of seventeen years.
2. Where she is incapable, either through lunacy or other unsoundness of mind, whether temporary or permanent, of giving legal consent.
3. Where she resists, but her resistance is overcome by force or violence.

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4. Where she is prevented from resisting by threats of great bodily harm, accompanied by apparent power of execution, or by an intoxicating, narcotic or anesthetic substance administered by or with the privity of the accused.

5. Where she is at the time unconscious of the nature of the act and this is known to the accused.

6. Where she submits under a belief that the person committing the act is her husband, and this belief is induced by any artifice, pretense or concealment practiced by the accused, with intent to induce such belief.

Section 252 of the Penal Code provides:

Persons being within the degrees of consanguinity, within which marriages are declared by law to be incestuous and void, who shall intermarry with each other or commit fornication or adultery with each other are punishable by imprisonment in the territorial prison not exceeding ten years.

Section 246 provides:

That any person having a husband or wife living who marries any person excepting in the cases specified in the next section, is guilty of bigamy.

Section 247:

The last section does not extend;

1. to any person, by reason of any former marriage, whose husband or wife of such marriage has been absent for five successive years without being known to such person, within that time to be living; nor

2. to any person by reason of any former marriage which has been pronounced void, annulled, or dissolved by the judgment of a competent court or other lawful authority.

Section 248:

Bigamy is punishable by fine not exceeding \$2,000 and by imprisonment in the Federal prison not exceeding ten years.

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Section 236 of the Penal Code:

Every person who takes away any female under the age of eighteen years from her father, mother, guardian or other person having the legal charge of their person, without their consent, for the purpose of prostitution, is punishable by imprisonment in the territorial prison not exceeding five years, and a fine of not exceeding \$1000.

The Federal Statutes which might apply read as follows: *Criminal Code of the United States*

Section 316:

Whoever shall commit adultery shall be imprisoned not more than three years; and when the act is committed between a married woman and a man who is unmarried, both parties shall be deemed guilty of adultery; and when such act is committed between a married man and a woman who is unmarried, the man shall be deemed guilty of adultery.

Section 314:

If any male person cohabits with more than one woman, he shall be fined not more than three hundred dollars, or imprisoned not more than six months, or both.

Section 279:

Whoever shall carnally and unlawfully know any female under the age of sixteen years, or shall be accessory to such carnal and unlawful knowledge before the fact, shall, for the first offense, be imprisoned not more than fifteen years, and for a subsequent offense be imprisoned not more than thirty years.

Section 317:

Whoever, being related to another person within and not including the fourth degree of consanguinity computed according to the rules of the civil law, shall marry or cohabit with, or have sexual intercourse with such other so related person, knowing her or him to be within said degree of relationship, shall be deemed guilty of incest, and shall be imprisoned not more than fifteen years.

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Section 328:

All Indians committing against the person or property of another Indian or other person any of the following crimes, namely- murder, manslaughter, rape, assault with intent to kill, assault with a dangerous weapon, arson, burglary, and larceny, within any Territory of the United States, and either within or without any Indian reservation, shall be subject therefor to the laws of such Territory relating to said crimes, and shall be tried therefor in the same courts and in the same manner and shall be subject to the same penalties as are all other persons charged with the commission of said crimes, respectively; and the said courts are hereby given jurisdiction in all such cases, And all such Indians committing any of the above named crimes against the person or property of another Indian or other person within the boundaries of any State of the United States, and within the limits of any Indian reservation, shall be subject to the same laws, tried in the same courts and in the same manner, and be subject to the same penalties as are all other persons committing any of the above crimes within the exclusive jurisdiction of the United States: PROVIDED, That any Indian who shall commit the offense of rape upon any female Indian within the limits of any Indian reservation shall be imprisoned at the discretion of the court.

Section 276:

Whoever shall assault another with intent to commit murder, or rape, shall be imprisoned not more than twenty years. Whoever shall assault another with intent to commit any felony, except murder, or rape, shall be fined not more than three thousand dollars, or imprisoned not more than ten years, or both. Whoever, with intent to do bodily harm, and without just cause or excuse, shall assault another with a dangerous weapon, instrument, or other thing, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both. Whoever shall unlawfully strike, beat or wound another, shall be fined not more than five hundred dollars, or imprisoned not more than six months, or both. Whoever shall unlawfully assault another, shall be fined not more than three hundred dollars, or imprisoned not more than three months, or both.

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Section 278:

Whoever shall commit the crime of rape shall suffer death.

You should take immediate steps to present the facts in the case of Joe Williams to the proper authorities for prosecution under such sections of law as are applicable to his case. The Office notes that you are of the opinion that it would probably not be advisable to take any stringent action to punish violations in the past.

As a general proposition the Office agrees with you, but in this case, the offense being such an aggravated one, prosecution should be brought about.

It is believed to be high time that the Indians throughout the United States should realize what is meant by, and recognize, the laws and other regulations for the government of mankind.

Where the Indians offend against the laws of either the State or Federal government, they should be punished the same as other persons.

If you are successful in securing a conviction in the case of Williams, it will do more good for the Indians than any amount of moral suasion.

In other cases that may arise you should take the steps necessary to present evidence to the proper officials for such actions as they may deem advisable.

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Keep the Office fully posted with reference to this and all other cases that you may take up.

Respectfully,

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Commissioner.