

MCT CONSTITUTIONAL REFORM COMMITTEE

Date: 11/7/23 Time: 6 PM

Facilitator: Carol J.

Present: Raymond B., Julie H-C

NEW BUSINESS:

1. The tax-exempt letter Raymond provided was addressed to the Department of the Treasury Internal Revenue Services (see attached).
2. We discussed the Tribal Tax agreements with the State. Fond du Lac entered into an agreement on 1/1/1996, amended it on 7/31/2019, and in 2013 wrote an addendum and a Resolution 1196/13 (§ 256.9658 Chapter 297).
3. General assembly
 - a. There is no need for the General Assembly to have public meetings.
 - b. Gets policies from the Central Council, the general assembly distributes the workload, and writes the laws.
 - c. The final laws and rules are reviewed internally.
 - d. The final documents are then sent to the Grand Council for approval and publication.
4. We reviewed White Earth's proposed Constitution.
5. We discussed whether the Recall and Removal would be the same for Council members as with the Judges.
6. Hold off on Administrative and Supervisory until we review and firm up the General Assembly, Citizen Councils, and Tradition and Customs Dispute Resolution. Then, we can talk about implementation.
7. Marcie said John Lemire asked if the bands were doing something about retrocession. None of the drafting committee members knew. Carol researched the issue and found that the Lac Courte Oreilles tribe in Wisconsin started the process in 2022.
8. Attached is a review of Public Law 280.
9. Next Convention 11/20/23 Zoom Only

Next Meeting: No Meeting on 11/14/23 at 6 PM.

Public Law 83-280

It was passed in 1953. Congress granted extensive criminal and civil jurisdiction over Indian Country within its borders. The law allowed states to assume criminal and civil authority on reservations without tribal consent.

P.L. 280's criminal provision (18 U.S.C. § 1162) took federal criminal jurisdiction under the Indian Country Crimes Act (aka General Crimes Act) and the Major Crimes Act out of Indian Country in 5 the following states (commonly referred to as the "mandatory states"):

1. California
2. Minnesota
3. Nebraska
4. Oregon
5. Wisconsin

Issues with Public Law 280

The Public Law 280 does not take into consideration Tribal sovereignty.

Tribal consent was not required before the State accepted mandatory criminal jurisdiction under P.L. 280.

The delegation was unfunded. The Federal government did not allocate money to states with their assumed authority.

The federal law delegated federal authority over tribal affairs to state authority. The State shared this authority with county governments to enforce state laws on tribal lands.

State officials enforced state law, and the tribal law was ignored or neglected.

PROBLEMS WITH THE SYSTEM

- State and local law enforcement
- A safe haven for criminals

- Tribes are not capable of effective justice systems
- Bureau of Indian Affairs
- Do not fund law enforcement and courts in PL 280 states—there is no funding.
- Department of Justice
- U.S. Attorneys do not want to take on the work

1968 Amendment-RETROCESSION

In 1968 Congress amended the law to include:

1. Retrocessions, a provision allowing states to return all or some jurisdiction over Native Americans to the federal government,
2. Indian Civil Rights Act (ICRA), which now requires tribal consent before the federal government may transfer its jurisdiction to a state.

Also, the ICRA provides the method for states to return (retrocede) P.L. 280 jurisdiction to the federal government. The State can retrocede all or any part of the criminal or civil jurisdiction acquired pursuant to PL 280 (25 U.S.C. § 1323).

There is no provision for tribal consent to a state seeking retrocession or for a tribe to initiate and pursue retrocession.

If a tribe wants to influence the process, it must do so by political means.

The Secretary has discretion on whether to accept or reject a state's retrocession request.

Jurisdiction without P.L. 280

State steps out of Indian Country, and criminal jurisdiction becomes federal and tribal, Except For crimes committed by non-Indians against non-Indians.

Indian Country Crimes Act (aka General Crimes Act), 18 U.S.C. 1152, extends all general criminal laws of the United States to "Indian Country."

Its primary purpose is to prosecute non-Indians committing major crimes against an Indian (exclusive federal).

Non-major crimes committed by Indian defendants against non-Indians are concurrent with the federal and tribal unless tribes prosecute first.

Major Crimes Act, 18 U.S.A. 1153, 14 major crimes applicable in “Indian Country” where the defendant is an Indian regardless of who the victim is. Concurrent federal and tribal jurisdiction;

Ex Parte Crow Dog-Indian murdered another Indian, no jurisdiction under General Crimes Act—needed new federal criminal statute.

Who has jurisdiction?

1. Is the perpetrator Indian or non-Indian?
2. Is the victim Indian or non-Indian?

Did the crime occur? If so where

1. “Indian Country”
2. reservation
3. allotment
4. Independent Indian community?

HOW IT WORKS

NON-INDIAN CRIME:

Felony Crimes---committed by non-Indians fall exclusively to the federal government.

Misdemeanor---federal and may be no prosecution.

INDIAN CRIME:

Felony Crimes---maybe federal prosecution (concurrent federal and tribal unless tribe prosecutes first)

Misdemeanor---exclusively tribal jurisdiction

Failure of the federal government to prosecute non-Indians, even if major, under the Indian Country Crimes Act is a problem seen in non-PL 280 states.

The Tribal Law and Order Act of 2010 (TLOA) devotes considerable provisions to the “declination” process.

The tribe is left with prosecuting the majority of crimes occurring in its reservation.

Examples of Crimes Left to the Tribe

- D.U.I.
- Drug-related crimes (possession, distribution, manufacturing, etc.)
- Domestic Violence (VAWA –criminal jurisdiction of non-Indians)
- Assault (can be major or misdemeanor)
- Trespass
- Breaking and Entering

Exhibit 2. Indian country criminal jurisdiction as conferred PL 280		
Offender	Victim	Jurisdiction
Non-Indian	Non-Indian	State jurisdiction is exclusive of Federal and tribal jurisdiction.
Non-Indian	Indian	Mandatory State has jurisdiction exclusive of federal and tribal jurisdiction. Optional State and Federal Government have jurisdiction. There is no tribal jurisdiction.
Indian	Non-Indian	Mandatory State has jurisdiction exclusive to the Federal Government but not necessarily of the tribe. Optional State has concurrent jurisdiction with the Federal courts.
Indian	Indian	Mandatory State has jurisdiction exclusive of the Federal Government but not necessarily of the tribe. Optional State has concurrent jurisdiction with tribal courts for all offenses and concurrent jurisdiction with the Federal courts for those offenses listed in 18 U.S.C. 1153.
Non-Indian	Victimless	State jurisdiction is exclusive, although Federal jurisdiction may attach in an optional State if it impacts individual Indian or tribal interest is clear.
Indian	Victimless	There may be concurrent State, tribal, and, in an Optional State, Federal jurisdiction. There is no State regulatory jurisdiction.
Source: U.S. Department of Justice, "Jurisdictional Summary," U.S. Attorneys' Manual, Title 9, Criminal Resource Manual 689. Retrieved October 24, 2004, from the World Wide Web: www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/crm00689.htm		

What Tribes Will Need

- Court system to address the volume of cases;
- Court administrative capacity—jury trials, filing system,
- Prosecutors Public Defenders (keep it under one year)
- Probation Officer and department
- Criminal Codes

LAW ENFORCEMENT DEPARTMENT

- Trained officers
- Officer equipment (vehicles, radios, firearms, etc.)
- Department with radio communication system
- Dispatch
- Evidence room
- Holding cell
- Booking system
- Ability to incarcerate both short and long-term!
- Pre-trial detention * Misdemeanor sentences of 6 -12 month sentences
- Long-term prison sentences.
- Public Safety Commissioner
- Courtroom space
- Bureau of Prisons---pilot project of holding 100 beds for Native American inmates sentenced by tribal courts under enhanced sentencing provisions of the amended ICRA