Public Law 280: Issues and Concerns for Victims of Crime in Indian Country

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Public Law 280: Issues and Concerns for Victims of Crime in Indian Country

Public Law 83-280 (commonly referred to as Public Law 280 or PL 280) is a federal statute enacted in the 1950s termination era through which states were given greater authority over Indian reservations. Public Law 280 was a transfer of legal power (jurisdiction) from the federal government to state governments that significantly changed the division of legal authority among tribal, federal, and state governments. Congress gave six states (five states initially - California, Minnesota, Nebraska, Oregon, and Wisconsin; and then Alaska upon statehood) extensive criminal and civil jurisdiction over tribal lands within the affected states (the so-called "mandatory states"). Public Law 280 also permitted the other states to acquire jurisdiction at their option.

Public Law 280 has generally brought about (1) an increased role for state criminal justice systems in "Indian Country" (a term which is specifically defined in federal statutes[1]), (2) a virtual elimination of the special federal criminal justice role (and a consequent diminishment of the special relationship between Indian Nations and the federal government), (3) numerous real and perceived obstacles to individual Nations in their development of tribal criminal justice systems, and (4) an increased and confusing state role in civil related matters. Consequently, Public Law 280 presents a series of important issues and concerns for Indian Country crime victims and for those involved in assisting these crime victims.

Public Law 280, however, is a complicated statute which has been very controversial since the time of its enactment in 1953. It has often been misunderstood and misapplied by both federal and state governments. Moreover, the practical impact of Public Law 280 has gone way beyond that which was legally required, intended, and contemplated.

[1] 18 U.S.C. 1151 defines "Indian Country" as "(a) all Indian lands within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

1. What is Public Law 280?

Public Law 83-280, the 280th Public Law enacted by the 83rd Congress in 1953[2], was a substantial transfer of jurisdiction from the federal government to the states in Indian Country. This transfer of jurisdiction was required (or mandatory) for the states specifically mentioned in the Act and Public Law 280 also permitted other states to acquire jurisdiction. Indian Nations, on the other hand, had no choice in the matter. The Indian Nations which were affected by Public Law 280 had to deal with greatly increased state power and state control over a broad range of reservation activities without any tribal consent.

Before Public Law 280 was enacted, the federal government and Indian tribal courts shared jurisdiction over almost all civil and criminal matters[3] involving Indians in Indian Country. The states had no jurisdiction. With the enactment of Public Law 280, affected states received criminal jurisdiction over reservation Indians. Furthermore, Public Law 280 opened state courts to civil litigation that previously had been possible only in tribal or federal courts. In the affected states, the federal government gave up control over crimes in Indian Country (those involving Indian perpetrators and/or victims). Indian Nations lost control over many criminal and civil matters within their respective territories due to the policies of the federal and state governments.

2. Why was Public Law 280 Enacted?

Practically every analysis of Public Law 280 begins with a reference to the pendulum of federal policy swing between (1) Indian self-determination with an emphasis upon respecting tribal sovereignty and tribal self-government and (2) Indian "termination" with an emphasis upon "terminating" Indian Nations in order to assimilate their members into the dominant society. Public Law 280 was enacted in the 1950's - a period of termination and assimilation in Indian Country - and it must be examined and understood within the context of the time period in which it was enacted. Public Law 280 was enacted in 1953 at the height of the post-World War II assimilationist period which included (1) the adoption in 1953 of House Concurrent Resolution 108 which established tribal termination as the official federal policy and singled out specific Indian Nations for termination, and (2) the implementation of the Bureau of

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[2] Act of August 15, 1953, ch. 505, 67 Stat. 588-590 (now codified as 18 U.S.C. 1162, 28 U.S.C. 1360 and other scattered sections in 18 and 28 U.S.C.).

[3] Criminal matters are generally illegal (or criminal) acts which involve a violation of the government's criminal laws whereas civil matters are generally actions between private parties brought to enforce a right or gain payment for a wrong.

Indian Affairs "relocation" program to encourage Indians to leave the reservations and seek employment in various metropolitan centers[4]

The federal courts have generally held that Congress may "authorize" states to exercise jurisdiction in Indian Country. Public Law 280, however, differed from earlier grants of jurisdiction to the states in that it allowed every state to assume jurisdiction at their own option at any time in the future. Most previous grants of jurisdiction to the states[5] had been limited to some or all the reservations in a single state. They also had generally followed consultation with the individual state and the affected Indian Nations.

Public Law 280 itself began as an attempt to confer jurisdiction only on the state of California. Its scope, however, was substantially broadened in the course of the process which led to its adoption by Congress. The Senate Report of the bill[6] indicates that alleged lawlessness on the reservations and the accompanying threat to state citizens living nearby was the foremost concern of Congress when they passed Public Law 280 in 1953. Instead of enhancing tribal criminal justice systems, Congress chose to adopt a policy which had the effect of radically shifting the balance of jurisdictional power towards the states and away from the federal government and Indian Nations.

3. Why is Public Law 280 Controversial?

From the beginning, Public Law 280 was unsatisfactory to both states and Indian Nations. Public Law 280 inspired widespread criticism and concern from Indians and non-Indians alike. Disagreements arose immediately concerning the scope of powers given to the states and the methods of assuming that power.

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[4] These termination and relocation policies were implemented by Bureau of Indian Affairs Commissioner Dillon S. Myer who had overseen the internment of Japanese-Americans during World War II.

[5] Act of June 8, 1940, ch. 276, 54 Stat. 249 (criminal jurisdiction to Kansas); Act of May 31, 1946, ch. 279, 60 Stat. 229 (criminal jurisdiction to North Dakota over the Devils Lake Reservation); Act of June 30, 1948, ch. 759, 62 Stat. 1161 (criminal jurisdiction to Iowa over the Sac and Fox Reservation); Act of July 2, 1948, ch. 809, 62 Stat. 1224 (criminal jurisdiction to New York) (codified at 25 U.S.C. sec. 232 [1970]); Act of Oct. 5, 1949, ch. 604, 63 Stat. 705 (civil and criminal jurisdiction to California over Agua Caliente Reservation); Act of Sept. 13, 1950, ch. 947, 64 Stat. 845 (civil jurisdiction to New York); (This list does not include the earliest jurisdictional grants to the states, especially the jurisdiction assumed early this century by the State of Oklahoma - It is important to note that Oklahoma Indian Nations were not directly impacted by Public Law 280 and Oklahoma did not take any affirmative legislative action under Public Law 280.)

[6] S.REP.No. 699, 83d Cong., 1st sess. 5 (1953).

Indian Opposition

Indian opposition to Public Law 280 has focused upon the one-sided process which imposed state jurisdiction on Indian Nations and the complete failure to recognize tribal sovereignty and tribal self-determination. Public Law 280 required neither the consent of the Indian Nations being affected nor even consultation with these Indian Nations. When he signed it into law, even President Eisenhower expressed misgivings about the lack of tribal consent and urged immediate amendment of the law to require tribal referenda - no such amendment passed Congress until 1968.

State Dissatisfaction

State dissatisfaction has focused upon the failure of the Act to provide federal funding for states assuming authority under Public Law 280. The states were handed jurisdiction, but denied the funds necessary to finance it (in today's language - an "unfunded mandate").

Furthermore, Public Law 280 has been criticized as a source of lawlessness rather than as a remedy. Professor Carole Goldberg, the preeminent legal authority on Public Law 280, has made a compelling case that Public Law 280 is a law which was allegedly designed to cure the problem of "lawlessness" on reservations, but which has actually worsened the problem of lawlessness. As Professor Goldberg has stated[7]:

> … Public Law 280 has itself become the source of lawlessness on reservations. Two different and distinct varieties of lawlessness are discernible. First, jurisdictional vacuums or gaps have been created, often precipitating the use of self-help remedies that border on or erupt into violence. Sometimes these gaps exist because no government has authority. Sometimes they arise because the government(s) that may have authority in theory have no institutional support or incentive for the exercise of that authority. I will call this kind of lawlessness the "legal vacuum" type. Second, where state law enforcement does intervene, gross abuses of authority are not uncommon. In other words, power is uncabined by the law that it is supposed to constrain it. I will call this kind of lawlessness the "abuse of authority" type.

[7] Carole Goldberg-Ambrose, *Planting Tail Feathers: Tribal Survival and Public Law 280* (UCLA American Indian Studies Center, 1997), p. 12.

4. How has Public Law 280 been Amended since it Became Law in 1953?

Congress amended Public Law 280 in 1968[8] - fifteen years after it was originally enacted. These 1968 amendments added a tribal consent requirement and authorized states to give back (or retrocede) jurisdiction to the federal government.

The tribal consent requirement, however, only applied to future transfers of jurisdiction to the states under Public Law 280. It did not apply to transfers of jurisdiction which had already taken place prior to 1968. Not surprisingly, not a single Indian Nation has consented to state jurisdiction since these 1968 amendments were enacted.[9]

The 1968 amendments also included a section which enables any state which had previously assumed jurisdiction under Public Law 280 to offer the return (or retrocession) of all or any measure of its jurisdiction to the federal government by sending a resolution to the Secretary of the Interior. The Secretary then has the discretion (or choice) to accept or reject the return of jurisdiction. Under this amendment, however, Indian Nations do not have a formal role in the retrocession process although Indian Nations have attempted to do so informally. The amendments did not contain any mechanism by which Indian Nations could initiate return jurisdiction on their own or force this retrocession on an unwilling state.

5. Which States are Affected by Public Law 280?

Mandatory States

Public Law 280 conferred criminal and civil jurisdiction on six specifically listed states (the so-called mandatory states) as follows:

- California — *All Indian country*
- Minnesota — *All Indian country, except the Red Lake Reservation*
- Nebraska — *All Indian country*
- Oregon — *All Indian country, except the Warm Springs Reservation*
- Wisconsin — *All Indian country*

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[8] These amendments were part of the 1968 Civil Rights Act. They are now codified at 25 U.S.C. sec. 1321-26.

[9] At least two Indian Nations have been forced to accede to Public Law 280 jurisdiction since 1968 through Congressional recognition legislation which provided that Public Law 280 would apply to their reservation either "notwithstanding the provisions" of the 1968 amendments (Mashantucket Pequot Nation in Connecticut, Public Law 98-134) or "as if they had consented" to it (Ysleta Del Sur Pueblo in Texas, Public Law 100-89).

- Alaska[10] *All Indian country, except Metlakatla criminal jurisdiction*

The original exceptions of the Red Lake, Warm Springs, and Metlakatla Reservations were for Indian Nations which not only successfully demonstrated that they had satisfactory law enforcement mechanisms in place, but successfully objected to being subjected to state jurisdiction. However, most Indian Nations which objected in 1953 were not successful in being excluded from the application of Public Law 280.

A few mandatory states have successfully returned (or retroceded) jurisdiction back to the federal government since the 1968 amendments, including the following:

1) Wisconsin retroceded jurisdiction over the Menominee Reservation in connection with the Menominee Restoration Act (Public Law 93-197).
2) Nebraska retroceded jurisdiction over the Winnebago and Omaha Reservations.
3) Oregon partially retroceded jurisdiction over the Umatilla Reservation.

Optional States

Public Law 280 also authorized any non-mandatory state to assume civil and/or criminal jurisdiction over Indian Country within its borders. These non-mandatory states had the option of taking partial jurisdiction without tribal consent until after the 1968 amendments were enacted. In some instances, these transfers of jurisdiction under Public Law 280 have also been returned (retroceded) back to the federal government, overturned by the courts, or have never been implemented. The optional states fall into two categories - states with disclaimers in their state constitutions limiting state jurisdiction over Indian Country and states without these state constitutional disclaimers.

For the optional states without disclaimers in their state constitutions, the procedure for accepting Public Law 280 was straightforward. The following states without disclaimers assumed Public Law 280 jurisdiction either in whole or in part over Indian Country within their states:

- *Nevada* - 1955 (Nevada Revised Statutes section 41.430).
- *Florida* - 1961 (Florida Statutes Annotated section 285.16).

[10] There were only five mandatory states in the original version of Public Law 280. Alaska was added later by the Act of Aug. 8, 1958, Pub. L. 85-615, 72 Stat.545, in connection with its admission to the Union.

- *Idaho*[11] - 1963 (subject to tribal consent)(Idaho Code sections 67-5101/3).
- *Iowa* - 1967 (Iowa Code Annotated sections 1.12-14).

There were eight optional states with disclaimers in their state constitutions limiting state jurisdiction over Indian Country within their state borders. Congress assumed that these states would have to remove (or repeal) these disclaimers by constitutional amendment before Public Law 280 jurisdiction could be validly transferred. Six of the eight states with disclaimers have enacted legislation claiming full or partial Public Law 280 jurisdiction. Yet five of the six states - Washington, Montana, Arizona, North Dakota, and Utah - have not amended their state constitutions and, consequently, their claims of jurisdiction are subject to legal challenges. The following states with disclaimers have assumed jurisdiction either in whole or in part over Indian Country within their states:

- *Washington*[12] - 1957 and 1963 (Washington Revised Code section 37.12.010)
- *South Dakota* - 1957 and 1961 (civil and criminal actions on highways only) (South Dakota Compiled Laws Annotated sections 1-1-17, 1-2-21).
- *Montana* - 1963 (Montana Revised Code Annotated section 83-802).
- *North Dakota* - 1963 (subject to tribal consent)(North Dakota Cent. Code section 27-19-02).
- *Arizona* - 1967 (air and water pollution)(Arizona Revised Statutes Annotated sections 36-1801, 36-1856).
- *Utah* - 1971 (Utah Code Annotated sections 63-36-9 to 63-36-21).

6. What is the Effect of Public Law 280 in Criminal Actions?

The impact of Public Law 280 is most straightforward with regard to criminal actions. It is important, however, to examine separately the legal impact and the practical impact of Public Law 280.

Legal Impact

[11] Idaho and Washington asserted jurisdiction over compulsory school attendance, public assistance, domestic relations, mental illness, juvenile delinquency, adoption proceedings, dependent children, and operation of motor vehicles over public roads.

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The main legal impact of Public Law 280 concerning criminal jurisdiction is that it, (1) extended state criminal jurisdiction and the application of state criminal laws onto Indian reservations within the affected states, and (2) eliminated special federal criminal jurisdiction over reservation areas in the affected states. In essence, the criminal jurisdiction sections of Public Law 280 shifted the special federal criminal jurisdiction over reservation areas to the state. The grant of criminal jurisdiction to the states was broader ("to the same extent that such State has jurisdiction over offenses committed elsewhere within the State") than the limited federal criminal jurisdiction which existed prior to Public Law 280 and, consequently, it expanded the realm of non-Indian control over reservation activities. Exhibit #2 sets out the differences in criminal jurisdiction between states with Public Law 280 and states without Public Law 280.

Practical Impact

The practical impact of Public Law 280 has generally been much greater than the Act itself legally required. Public Law 280 did not eliminate tribal criminal jurisdiction - in fact, it did not make specific reference to tribal jurisdiction at all. Consequently, most courts and attorneys generally have found that Indian Nations retain their inherent sovereign authority with regard to criminal jurisdiction.

Thus, although states were delegated broad criminal jurisdiction, that jurisdiction remained concurrent (running together) with the inherent tribal criminal jurisdiction. The federal government, however, viewed Public Law 280 as a license to drop financial and technical support for tribal self-government and tribal governmental institutions in the Public Law 280 states. The Bureau of Indian Affairs (BIA) used it as an excuse for redirecting federal support on a wholesale basis away from Indian Nations in the "Public Law 280 states" and towards all other Indian Nations. The most striking illustration of this redirected federal support concerns the funding of tribal law enforcement and tribal courts. In many Public Law 280 states, the BIA refused to support tribal law enforcement and tribal courts on the grounds that Public Law 280 made tribal criminal jurisdiction unnecessary.[13]

As a result of the decision to drop federal support for tribal law enforcement and tribal court systems in Public Law 280 states, many Indian Nations in Public Law 280 states still do not have functioning criminal justice systems. The situation has been changing in recent years. An increasing number of Indian Nations in Public Law 280 states are developing criminal justice systems. In some instances, Indian Nations are creating law enforcement and court systems in connection with a formal Public Law 280 retrocession process. In most instances,

[13] Carole Goldberg-Ambrose, *Planting Tail Feathers: Tribal Survival and Public Law 280* (UCLA American Indian Studies Center, 1997), pp. 8-12.

however, Indian Nations are simply asserting their concurrent criminal jurisdiction.

Exhibit #2:
Criminal Jurisdiction on Indian Reservations
(Indian Country)

	States without PL 280	**States with PL 280**
Tribal	Over Indians, subject to limits on punishment in Indian Civil Rights Act (ICRA)	Over Indians, subject to limits on punishment on Indian Civil Rights Act (ICRA)
Federal	Over major crimes committed by reservation Indians (Major Crimes Act); Over interracial crimes: Indian v. non-Indian (General Crimes Act); Over special liquor, gaming and other offenses; Otherwise, same as off-reservation	Same as off-reservation
State	Only over crime committed by non-Indians against other non-Indians	Over Indians and non-Indians generally with exceptions found in PL 280

7. What is the Effect of Public Law 280 in Civil Actions?

The civil jurisdiction impact of Public Law 280 is less straightforward than the criminal jurisdiction impact. In general, it authorized the application of general state adjudicatory jurisdiction (jurisdiction of courts to judge or adjudicate cases) to reservations in the affected states, but it did not authorize state civil regulatory jurisdiction (jurisdiction of government administrative agencies to regulate conduct - see following section). Since federal courts were not authorized to hear many civil actions, Public Law 280 did not transfer federal civil jurisdiction. Instead, it authorized the state to intervene in civil matters (and individuals to file actions in state courts) which had previously been under exclusive tribal jurisdiction and, consequently, greatly expanded the realm of non-Indian control over reservation activities. Exhibit #3 sets out the differences in civil jurisdiction between states with Public Law 280 and states without Public Law 280.

The practical impact of Public Law 280 with regard to civil jurisdiction was much more substantial than legally required by the Act itself. Public Law 280 did not eliminate tribal civil jurisdiction. However, as a result of

the decision to drop federal support for tribal governmental institutions, many Indian Nations in Public Law 280 states were unable to operate court systems. In recent years, an increasing number of these Indian Nations are again developing court systems. It is important to note that many of these developing tribal courts are initially asserting civil jurisdiction, especially over Indian Child Welfare and child protection matters. The development of criminal justice systems is often delayed due to the high cost of law enforcement and detention facilities required for a fully functional tribal criminal justice system.

Exhibit #3:
Civil Jurisdiction on Indian Reservations (Indian Country)

	States without PL 280	**States with PL 280**
Tribal	Over Indians and non-Indians with limitations	Over Indians and non-Indians with limitations
Federal	Same as off-reservation (diversity of citizenship, federal question, etc.)	Same as off-reservation (diversity of citizenship, federal question, etc.)
State	None, except some suits with non-Indians or on fee lands	Over suits involving Indians or non-Indians generally with exceptions found in PL 280

8. What are the Limitations on Public Law 280?

There are a number of important limitations on the application of Public Law 280, including the following:

(a) *Trust Status*: Public Law 280 specifically provided that it did not affect the trust status of Indian lands. It also did not terminate the trust relationship, end tribal sovereign immunity, or exclude Indians in affected states from receiving benefits under federal Indian programs.

(b) *Limits to State Authority*: States may not apply laws related to such matters as environmental control, land use, gambling, and licenses if those laws are part of a general state regulatory scheme. Public Law 280 gave states only law enforcement and civil judicial authority - not regulatory power. It also denied states power to legislate certain matters, particularly property held in trust by the United States and reserved hunting and fishing rights. The state generally cannot tax on Indian reservations. The U.S. Supreme Court[14] has interpreted Public Law 280 as a law designed only to open state courts to civil and criminal actions involving reservation Indians and

[14] *Bryan v. Itasca County*, 426 U.S. 373 (1976).

not to subject reservations to the full range of state regulation. Finally, there are some matters considered so central to the very definition of the Indian Nations - such as enrollment and certain domestic matters - that state courts may be excluded from hearing such matters.

(c) *Municipal and County Laws*: Public Law 280 may have established that only statewide laws are applicable to reservation Indians - excluding municipal and county laws. Courts have generally excluded the application of local laws since Public Law 280 was not intended to deny Indian Nations their basic governmental functions.

(d) *Later Federal Laws*: Some federal laws enacted after the 1953 enactment of Public Law 280 have reduced the amount of jurisdiction available to the states and simultaneously increased tribal sovereignty and/or federal power. For example, the 1978 Indian Child Welfare Act (Public Law 95-608) gave Indian Nations exclusive jurisdiction over certain child custody proceedings involving Indian children, and the 1988 Indian Gaming Regulatory Act (Public Law 100-487) makes enforcement of state gaming laws a federal rather than a state responsibility.

9. How Does Public Law 280 Affect Indian Country Crime Victims?

There are many ways in which Public Law 280 may affect crime victims in Indian Country, including the following:

(a) *Federal Role Eliminated:* In states without Public Law 280, the federal criminal justice system has a special role in Indian Country - crimes are often investigated by the Federal Bureau of Investigation and the Bureau of Indian Affairs; major crimes and interracial (Indian v. non-Indian) crimes are prosecuted through the United States Attorney's offices; the federal victim witness coordinator is actively involved in these federal cases; etc. In states with Public Law 280, this special federal role is eliminated.

(b) *Greatly Expanded Role of State Criminal Justice System:* In states without Public Law 280, the role of the state criminal justice system in Indian Country is generally limited to non-Indian v. non-Indian crimes only. In states with Public Law 280, the role of the state criminal justice system in Indian Country is essentially the same as outside Indian Country. The prior federal role has been transferred to the state, but the grant of criminal jurisdiction to the states is even greater than the prior federal role. Consequently, Public Law 280 significantly expanded the realm of non-Indian control over reservation activities.

(c) *Limited Tribal Criminal Justice Systems in Public Law 280 States:* As a result of the limited federal support for tribal law enforcement and tribal court systems in Public Law 280 states, many Indian Nations in Public Law 280 states still do not have functioning criminal justice systems. There may not be any tribal law enforcement or tribal court system. If a tribal court does exist, it may only exercise jurisdiction over civil actions. If a tribal criminal justice system does exist, it may be informal and/or have only very limited resources available.

(d) *Possible Choice of Criminal Justice System:* Due to the concurrent jurisdiction of the tribal and state criminal justice systems under Public Law 280, it is possible that a victim of crime may face a choice of criminal justice systems (assuming that there is a functioning tribal criminal justice system) or the possibility of two prosecutions by the separate sovereigns (state and tribal).

(e) *Lawlessness of the "Legal Vacuum" Type:* Public Law 280 has often created what Professor Goldberg identified as lawlessness of the "legal vacuum" type. The jurisdictional vacuums or gaps caused by Public Law 280 have often precipitated the use of self-help remedies that border on or erupt into violence. These self-help remedies have developed because, (1) no government (either tribal or state) has authority, (2) the perception exists that no government has authority, and/or (3) the government has authority in theory but no institutional support or incentive for the exercise of that authority.

(f) *Lawlessness of the "Abuse of Authority" Type:* Public Law 280 has often created what Professor Goldberg identified as lawlessness of the "abuse of authority" type. There have been many instances in which state law enforcement has intervened, but gross abuses of authority have occurred (power is unleashed by the law that is supposed to constrain it).

(g) *Mistrust and Hostility between Tribal and State Officials/Communities:* On many reservations, Public Law 280 has contributed to a continuing history of mistrust and hostility between tribal and state officials/communities. The controversy surrounding Public Law 280 has contributed to this situation, including the state dissatisfaction with the lack of federal funding and the tribal opposition to the broad unilateral imposition of state law. Furthermore, a common Indian perception in many Public Law 280 states is that state law enforcement claims that they have no authority whenever the Indian Nation asks them to intervene ("legal vacuum" lawlessness), but that state law enforcement claims that they have this authority whenever the Indian Nation does not want them to intervene ("abuse of authority" lawlessness). Obviously, this

situation can present many problems for Indian Country crime victims.

10. How Do I Determine the Impact of Public Law 280 on an Individual Reservation?

There are a series of questions which need to be answered in order to determine the impact of Public Law 280 upon individual states and reservations, including the following:

(a) Is the state one of the mandatory Public Law 280 states?
The mandatory Public Law 280 states are California, Minnesota, Nebraska, Oregon, Wisconsin, and Alaska (see Exhibit #1). The mandatory states were provided with full transfer of jurisdiction under Public Law 280.

(b) Is the state one of the optional Public Law 280 states and, if so, was it a partial or a full assumption of jurisdiction?
There are 10 optional Public Law 280 states - Nevada, Florida, Idaho, Iowa, Washington, South Dakota, Montana, North Dakota, Arizona, and Utah. Unlike the mandatory states, these optional states were able to assume Public Law 280 jurisdiction either in whole or in part. Consequently, it is important to determine the specific application of jurisdiction by the individual state. (In addition, there have been other federal laws granting state jurisdiction for individual reservations or states - see footnotes 3 and 7).

(c) Has the state returned or retroceded Public Law 280 jurisdiction or is it otherwise no longer in effect?
A number of both the mandatory and optional states have retroceded (or returned) jurisdiction back to the federal government since the 1968 Public Law 280 amendments. In addition, some assertions of jurisdiction have been overturned by the courts or were never implemented.

(d) Is the specific reservation affected?
In many states, Public Law 280 has been applied to some reservations, but not to other reservations. Even if the state is listed as either a mandatory or an optional Public Law 280 state, it may not apply to all of the reservations within that state.

(e) An increasing number of Indian Nations in Public Law 280 states have developed court systems, but the situation varies substantially from state to state and from tribe to tribe. Tribal courts now exist in most of the optional Public Law 280 states. The development of tribal court systems in the mandatory states has generally been more difficult,

especially in California and Alaska. The existence of a tribal court system greatly increases the available remedies and services for crime victims.

(f) Does the tribal court assert both civil and criminal jurisdiction?
Many of the tribal courts which are being developed in Public Law 280 states initially assert only civil jurisdiction due to the high cost of law enforcement and detention facilities. The rights of a crime victim and the services available to that crime victim may be limited if the only tribal court option is a civil action (for example, a civil domestic violence action does not generally have as much impact as a criminal action since options such as mandatory arrest policies may not be available).

(g) Are there tribal law enforcement services and facilities?
Many Indian Nations in Public Law 280 states have limited law enforcement services and facilities. The rights of a crime victim may be limited if these services/facilities are non-existent, limited, or severely rationed due to budgetary limitations.

(h) What is the relationship between the tribal criminal justice system and the state criminal justice system?
The relationship between the tribal criminal justice system and the state criminal justice system can have a significant impact upon the rights of Indian Country crime victims, but this relationship varies substantially from state to state. Some Public Law 280 states have been willing to retrocede Public Law 280 jurisdiction. In some states, this relationship has been particularly difficult, especially in California and Alaska. In other states, the tribal and state justice systems have been able to establish very productive relationships. For example, tribal and state courts in Wisconsin have generally established good working relationships. In fact, the Wisconsin Court of Appeals held that once an Indian Nation has a domestic abuse ordinance in place and a tribal court to enforce it, then the tribal court has exclusive jurisdiction despite Public Law 280.[15]

Public Law 280 Resources

Goldberg-Ambrose, Carole. *Planting Tail Feathers: Tribal Survival and Public Law 280* (UCLA American Indian Studies Center, 1997).
This is the most comprehensive resource available on Public Law 280 written by the preeminent Public Law 280 scholar. It is available for $15.00 per copy from the UCLA American Indian Studies Center (310-825-7315). Information is also available online at www.sscnet.ucla.edu/indian/pubs/gen.books

[15] *St. Germain v. Chapman*, 178 Wis. 2d 869 (1993).

Goldberg, Carole. *"Public Law 280: The Limits of State Jurisdiction over Reservation Indians",* 22 U.C.L.A. L.Rev. 535 (1975).
This is the preeminent law review article on Public Law 280 (It is reprinted as Chapter 2 in Planting Tail Feathers: Tribal Survival and Public Law 280 above).

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