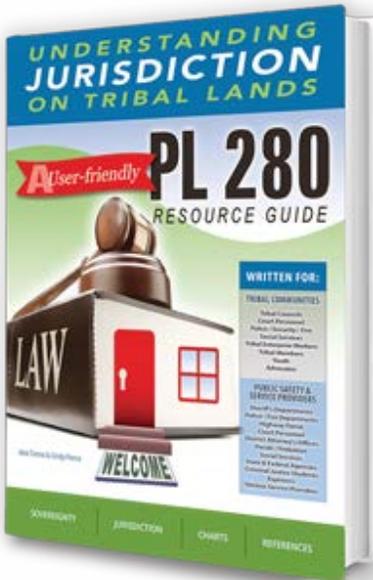


Public Law 280

Applying a Federal Mandate in State Jurisdictions



An interactive article - excerpts from "A User-friendly PL 280 Resource Guide"



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Public Law 280 (PL 280) impacts over half of all the federally recognized Indian tribes in the lower 48 states. In 1953, through the enactment of PL 280, the United States Congress clearly manifested their intention of transferring specific federal responsibility over to several of the states. Yet, even with Congress' clear intent on wanting to transfer jurisdiction, the actual verbiage of PL 280 is poorly written and "admittedly ambiguous." [1]

With over fifty years of legal cases under its belt, PL 280 is still far from being crystal clear in its application. However, over the years these legal cases have clarified one important thing: the specific scope of authority Congress intended the states to have.

In order to understand this scope of authority, it is important to recognize that PL 280 consists of *three* parts. These three parts, or sections, serve as road signs for us, directing us on how to interpret their intent. The three sections are:

- 1) A criminal section
- 2) A civil section
- 3) Informational sections

“[W]hen a State seeks to enforce a law within an Indian reservation under the authority of Pub. L. 280, it must be determined whether the state law is criminal in nature, and thus fully applicable to the reservation, or civil in nature and applicable only as it may be relevant to private civil litigation in state court.”
California v. Cabazon Band of Mission Indians, 480 US 202, 208 (1987)

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We usually read the text of PL 280 as one complete piece, but when the proper divisions are not made, especially between the criminal and civil sections, it can become very confusing. The easiest way to keep track of these three parts is to look at the heading of each section. The criminal section of PL 280 is categorized under *Title 18* of the United States Code. Title 18 is the federal penal code covering crime and criminal procedure. In the original 1953 statute, PL 280 explained exactly where to place the criminal section:

“State jurisdiction over offenses committed by or against Indians in the Indian country ... Title 18, United States Code, is hereby amended by inserting ... a new section, to be designated as 1162 ... ”

The second part of PL 280, the civil section, would not naturally fall under Title 18 (the federal penal code). Rather, the civil section is categorized under *Title 28* of the United States Code. 28 USC is dedicated to federal “Judiciary & Judicial Procedure.” Again, the original 1953 PL 280 specified where its civil section was to be placed:

“Title 28, United States Code, is hereby amended by inserting ... a new section to be designated as 1360, as follows: State civil jurisdiction in actions to which Indians are parties ... ”

Lastly, the informational sections of PL 280 are categorized under *Title 25* of the United States Code. Title 25 is entitled “Indians.” There are six informational sections of PL 280 having to do with federal or tribal consent or the breaking down of any legal issues/barriers in relation to this federal law.

Determining state jurisdiction under the authority of PL 280 really comes down to two choices. State jurisdiction will either be for the purpose of dealing with crime or for dealing with private (non-criminal) “civil causes of action between Indians or to which Indians are parties.” As we already discussed, the informational sections simply cover tribal and federal consent or dealing with any legal barriers. So, in other words, all state *jurisdictional authority* on Indian lands will fall within either the criminal section or the civil section of PL 280.



The criminal section of PL 280 clearly says that criminal laws are to have “the same force and effect” in Indian country as a PL 280 State enforces their criminal laws “elsewhere within the State.” However, this does not mean *everything* a State enforces throughout the State is applicable on tribal lands.

This is where it becomes extremely helpful to understand the historic evolution of criminal jurisdiction in Indian country. From the very beginning of the United States’ government-to-government relationship with Indian tribes, each tribe’s internal mechanism for governing their own people and territories, regarding *regulatory* law, was left to the tribe. *Regulatory law encompasses all law that is established for the purpose of the general welfare and safety of citizens living in a specified area.*

For example, if there are areas where it is determined unsafe for citizens to drive their vehicles over a certain speed, then regulatory laws are put in place and enforced for the general safety and welfare of all citizens. These laws are not intended to stop people from driving, but rather to regulate the driving behavior for the safety of all. Some regulatory laws are also enacted for general revenue such as permits and licensing laws.

Although these laws are important, they are not considered *criminal* laws of the State. *Criminal law is that which society totally prohibits (behavior which is fully restricted) and does not merely regulate for safety.* The essence of a State’s criminal public policy is protection of the community from serious harm. “[A]ll laws implicate some public policy,” but “public criminal policy goes beyond merely promoting the public welfare. It seeks to protect society from serious breeches in the social fabric which threaten grave harm to persons or property.” [2]

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“... Public Law 280 does not authorize states generally to assert civil regulatory powers over Indian reservations.”

United States v. Dakota, 796 F.2d 186 (6th Cir. 1986)

Congress never intended a state to “be able to implement all its regulatory provisions on Indian reservations and thereby destroy the strong concept of tribal sovereignty.”

United States v. Marcyes, 557 F.2d 1361 (9th Cir. 1977)

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The distinction between regulatory law and criminal law is sometimes difficult to determine, requiring close scrutiny. The courts, while grappling with this difficulty, created a *two-part label system* to help the interpretation and application of PL 280. For better, or worse, the labels of “civil/regulatory” versus “criminal/prohibitory” were created by the courts. [3]

Congress did not intend state regulatory laws to be enforced upon tribal lands. Because of sovereignty, each tribe’s government has the authority to determine the rules and regulations governing their jurisdiction – for the common good and safety of their community. [4]

Endnotes

[1] *United States v. Dakota*, 796 F.2d 186 (6th Cir. 1986)

[2] *State v. Stone*, 572 N.W. 2d 725, 730 (1997)

[3] “[T]he criminal/prohibitory – civil/regulatory dichotomy was originally developed to aid in the interpretation of Public Law 280.” *United States v. Dakota*, 796 F.2d 186, 14 (6th Cir. 1986)

[4] PL 280 did not divest the tribes of their concurrent jurisdiction (criminal and civil tribal laws).