

WASHINGTON STATE JURISDICTION IN INDIAN COUNTRY

The 29 federally-recognized Indian tribes in Washington State are subject to a complex system of federal, tribal, and state jurisdiction in "Indian country," a term defined in federal law to include all land in Indian reservations and certain off-reservation land held in trust by the federal government.¹ This summary briefly describes the evolution of Washington State's jurisdiction in Indian country.

(1) 1953: Federal Act Delegating Authority to States (PL 280). US Public Law 83-280 ("PL 280") required some states to assume state criminal and civil jurisdiction in Indian country and granted all other states, including Washington State, the option to do so. PL 280 expressly limited state jurisdiction (now commonly called "PL 280 jurisdiction") only with respect to certain property rights, taxation of property, treaty rights, and hunting, trapping, or fishing rights. However, later federal acts and court rulings further restricted PL 280 jurisdiction.

(2) 1957: State Act Authorizing Voluntary Full PL 280 Jurisdiction. A 1957 state act² directed the governor to assume state jurisdiction "to the extent authorized" by PL 280 ("full PL 280 jurisdiction") over Indian country of a tribe if a tribal governing body requested the state to do so.³ From 1957 to 1959, governing bodies of nine tribes made this request, and governors responded by

issuing proclamations assuming full PL 280 jurisdiction over Indian country of the nine tribes. Later, five of the tribes were partly retroceded PL 280 jurisdiction; four are currently subject to full PL 280 jurisdiction pursuant to the 1957 state act.

(3) 1963: State Act Imposing Mandatory Partial PL 280 Jurisdiction. A 1963 state act assumed mandatory partial PL 280 jurisdiction over all Indian country in Washington.⁴ However, state jurisdiction over Indians on trust or restricted lands in reservations was limited to: (1) compulsory school attendance; (2) public assistance; (3) domestic relations; (4) mental illness; (5) juvenile delinquency; (6) adoption proceedings; (7) dependent children; and (8) operation of motor vehicles upon public streets, alleys, roads and highways.⁵ The 1963 state act also preserved full PL 280 jurisdiction previously assumed pursuant to the 1957 state act, and included an option for a tribe to request more extensive (but not necessarily full) state PL 280 jurisdiction.⁶ Washington thus retained full PL 280 jurisdiction over Indian country of nine tribes that had previously requested state jurisdiction pursuant to the 1957 state act and assumed mandatory partial PL 280 jurisdiction over Indian country of twelve tribes. Later, in response to requests by governing bodies of two tribes newly subject to mandatory partial PL-280

jurisdiction, governors issued proclamations assuming full criminal (but not civil) PL 280 jurisdiction over Indian country of one tribe and full PL 280 jurisdiction over Indian country of the other tribe.

(4) 1968: Federal Act Restricting PL 280 Jurisdiction and Authorizing Retrocession of PL 280 Jurisdiction (ICRA). US Public Law 90-284, the Indian Civil Rights Act of 1968 ("ICRA"), restricted PL 280 jurisdiction by requiring tribal consent for any new assumption of state jurisdiction after ICRA's 1968 effective date.⁷ Washington's PL 280 jurisdiction over Indian country of eight tribes recognized by the federal government after enactment of ICRA is uncertain because of this restriction; none have consented to state jurisdiction. ICRA also authorized the federal government to accept full or partial retrocession by a state of its PL 280 jurisdiction.⁸ Following enactment of ICRA, in response to tribal requests Washington's governor issued proclamations approving partial retrocession of PL 280 jurisdiction over Indian country of two tribes (1968 and 1971, accepted by federal government in 1969 and 1972, respectively). In both cases, the state retained the mandatory partial PL 280 jurisdiction it had assumed over Indian country of all tribes pursuant to the 1963 state act.

(5) 1971: State Act Authorizing Interlocal Cooperation. A 1971 state act amended the state Interlocal Cooperation Act to authorize participation

¹ 18 U.S.C. § 1151.

² Wash. L. 1957, ch. 240, codified in Revised Code of Washington (RCW) ch. 37.12.

³ Wash. L. 1957, ch. 240, § 2.

⁴ Wash. L. 1963, ch. 36, codified in RCW ch. 37.12.

⁵ RCW 37.12.010. The US Supreme Court rejected a challenge to the validity of the statute in *Washington v. Confederated Bands and Tribes of the Yakima Indian Nation*, 439 U.S. 463 (1979).

⁶ RCW 37.12.010 and 37.12.021.

⁷ 25 U.S.C. §§ 1321, 1322.

⁸ 25 U.S.C. § 1323.

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by federally-recognized tribes in interlocal agreements with state agencies and local governments.⁹ Pursuant to this authority and later state acts (including a 2008 state act authorizing tribal police officers to act as state peace officers, pursuant to interlocal agreement), several tribes have entered into interlocal agreements that may enable them to exercise authority concurrently with the state.

(6) 1976-Present: Judicial Decisions Restricting PL 280 Jurisdiction. In 1976, the U.S. Supreme Court ruled that PL 280 did not authorize states to assume general civil regulatory authority in Indian country.¹⁰ The Court later ruled that PL 280 authorized states to assert criminal laws prohibiting conduct but not "civil/regulatory" laws permitting conduct but imposing regulations (such as laws regulating certain gambling activity).¹¹ Lower courts applying these rulings have barred Washington from asserting PL 280 jurisdiction over tribal members in Indian country to enforce laws characterized as civil/regulatory in nature.¹²

(7) 1978: Federal Act Restricting PL 280 Jurisdiction (ICWA). US Public Law 95-608, the Indian Child Welfare Act of 1978 ("ICWA"),¹³ also re-

stricted PL 280 jurisdiction. ICWA authorizes a tribe subject to PL 280 jurisdiction to reassume (contingent upon approval by the federal government) exclusive jurisdiction over child custody proceedings involving Indian children residing or domiciled on a reservation, or who are wards of tribal courts, and concurrent jurisdiction over foster care and parental right proceedings involving other Indian children.¹⁴ In 1980, the federal government approved petitions by four Washington tribes to reassume this jurisdiction, thus restricting Washington's PL 280 jurisdiction in this field.

(8) 1986: State Act Authorizing Partial Retrocession of PL 280 Jurisdiction Over Seven Tribes. A 1986 state act (amended in 1988, 1994, and 1995) authorized the governor to approve requests from seven specified tribes to partly retrocede PL 280 jurisdiction, except for mandatory partial PL 280 jurisdiction assumed under the 1963 state act, contingent upon acceptance by the federal government.¹⁵ In response to tribal requests, governors issued proclamations approving partial retrocession of PL 280 jurisdiction over Indian country of five tribes (1986, 1988, and 1997, accepted by the federal government in 1987, 1989, and 2000, respectively). The two other specified tribes have not been retroceded PL 280 jurisdiction under this process.

(9) 2012: State Act Authorizing Retrocession of Almost All PL 280 Jurisdiction Over Any Tribe. A

2012 state act¹⁶ authorizes the governor to approve a request from any tribe to retrocede almost all PL 280 jurisdiction, contingent upon acceptance by the federal government.

- To start, the governing body of a tribe must submit a retrocession resolution to the governor with information about the tribe's plan to exercise jurisdiction following the proposed retrocession. Interlocal agreements with local governments are encouraged.
- The governor must meet with tribal representatives and consult local elected officials. The legislature may hold hearings and submit recommendations.
- The governor must approve or deny a proposal within a year of receiving it. The deadline may be extended.
- Regarding operation of motor vehicles on public roads, the governor must consider whether there are pertinent interlocal agreements, tribal policing agencies ensuring safe operation, sufficient traffic control devices, and tribal traffic codes and courts.
- Retrocession will not affect state jurisdiction over civil commitment of sexually violent predators, which is retained, or abate court proceedings or state or local government actions filed preceding retrocession.

In July 2012, the Yakama Nation submitted a proposal to Gov. Christine Gregoire requesting retrocession of PL 280 jurisdiction. The proposal is currently being considered by Gov. Jay Inslee, who assumed office in January 2013.

⁹ Wash. L. 1971, ch. 33, codified in RCW 39.34.020.

¹⁰ *Bryan v. Itasca County*, 426 U.S. 373 (1976).

¹¹ *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

¹² See, e.g., *Confederated Tribes of the Colville Reservation v. Washington*, 938 F.2d 146 (1991), cert. den., 503 U.S. 997 (1992) (barring enforcement of state law treating speeding as civil/regulatory offense).

¹³ See 25 U.S.C. § 1901 et seq.

¹⁴ 25 U.S.C. §§ 1911, 1918.

¹⁵ Wash. L. 1986, ch. 267 (amended 1988, 1994, 1995), codified in RCW 37.12.100 et seq.

¹⁶ Wash. L. 2012, ch. 48, codified in RCW 37.12.160 et seq.