

# **DEMYSTIFYING PUBLIC LAW 280**

**SPECIAL COMMITTEE ON STATE-TRIBAL RELATIONS  
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# Public Law 280 Explained -- Criminal

- Eliminated most federal Indian country criminal jurisdiction (left certain subject-specific offenses)
- Authorized application of state criminal laws (but not regulatory laws) within Indian country in six states
  - “Mandatory” states: AK, CA, MN, NE, OR, WI
  - Several excluded reservations
- Allowed other states to opt in at a later date
  - “Optional” states today: FL, ID (partial), WA (partial)
  - Some states tried to opt in, but later reversed (e.g., NV)

# Public Law 280 Explained -- Criminal

- Traded limited federal law enforcement and criminal justice for more extensive state authority
- Illustration of more extensive state jurisdiction: simple assault of one Indian by another
  - In non-Public Law 280 state, no federal criminal jurisdiction; tribe has exclusive jurisdiction
  - In Public Law 280 state, state has criminal jurisdiction; any tribal jurisdiction must be shared

# Public Law 280 Explained -- Civil

- For some states, authorized their civil courts to hear claims against Indians arising in Indian country
- Obligation to apply tribal law where not in conflict with state law
- Federal civil jurisdiction over reservation claims had previously been very limited, and was not eliminated

# Public Law 280 Explained -- General

- Tribal jurisdiction remains concurrent (shared), but tribes have less jurisdiction that is exclusive
- Retrocession permitted, only on state initiative
- Prompted withdrawal of BIA law enforcement and tribal court funding, though law didn't require it

# Public Law 280 Explained -- History

- Passed in 1953, during “Termination Era”
- More general version of tribe- and state-specific laws passed since WWII
- Overall Purposes of Public Law 280
  - Relieve federal expenses
  - Promote forced assimilation
  - Address “lawlessness” in Indian country

# Public Law 280 Explained -- History

- No provisions for tribal consent or federal funding
- Tribes have complained of inadequate and insensitive service; local governments have complained about inadequate resources
- “Public Law 280 ... is a despicable law....[On Public Law 280 reservations] lawlessness and crimes have substantially increased and have become known as a no man’s land....” Wendell Chino, NCAI President, 1974

# Reach of Public Law 280 and Like Statutes Today

- 23% of reservation-based tribal population in lower 48 states and all Alaskan Natives
- 51% of federally-recognized tribes in lower 48 states, and 70% of all recognized tribes (including Alaska Native villages where Indian country still exists)
- Some jurisdiction (e.g., WA, ID) is partial, and some has been fully or partly retroceded (31 tribes)



# What Public Law 280 Did *Not* Do

- Terminate tribes
  - Federal recognition maintained
  - Trust status of land maintained
  - Federal obligations to provide services maintained (except most law enforcement)
- Authorize jurisdiction over tribes or abrogate tribal sovereign immunity
- Make state regulations applicable to Indians

# What Public Law 280 Did *Not* Do

- Give the state taxing authority over Indians
- Make county and city laws applicable to Indians
- Abrogate tribes' federally protected hunting and fishing rights
- Authorize state jurisdiction over trust lands

# Legal Gaps and Uncertainties

- Can the state pass CRIMINAL laws that are applicable to Indian Country under Public Law 280?
- YES
- Can the state pass CIVIL / REGULATORY laws that are applicable to Indian Country?
- NO

# Legal Gaps and Uncertainties

- It is Criminal/Prohibitory when –
  - Intent of state law is generally to prohibit certain conduct
  - Shorthand Test: the conduct at issue violates the State's public policy
- It is Civil/Regulatory when –
  - State law generally permits the conduct at issue, subject to regulation
- The distinction is unclear, and courts consider a variety of factors (e.g., nature of penalty, number of exceptions, revenue purpose)

# Criminal/Prohibitory vs. Civil Regulatory: Sample Problems

- State Traffic Laws
  - Speeding
  - Driving without proof of insurance
  - Driving with a suspended license
  - DUI

# Practical Consequences of Public Law 280

- Lack of BIA services and funding for tribes in areas of law enforcement and tribal courts to support concurrent jurisdiction; DOJ now assisting
- Fewer/more recent tribal police departments and courts
  - Of 135 tribes subject to mandatory Public Law 280 jurisdiction in lower 48, only 25 had at least one full-time sworn officer and 31 had tribal courts, according to recent BJS report (3 of those “straddlers”)
- Jurisdictional vacuums and “lawlessness”

# Managing Concurrent Criminal Jurisdiction

- Diversion Programs
- Joint Courts (e.g., Leech Lake)
- Under federal law, no double jeopardy protection for prosecutions by separate sovereigns
- State laws sometimes give double jeopardy protection
  - No similar provision in WI law (State v. Bearheart, unpublished 1997 WI Ct of App decision).

# Managing Concurrent Civil Jurisdiction

- Federal and state recognition (“full faith and credit”) laws
- Comity
- Teague Protocol

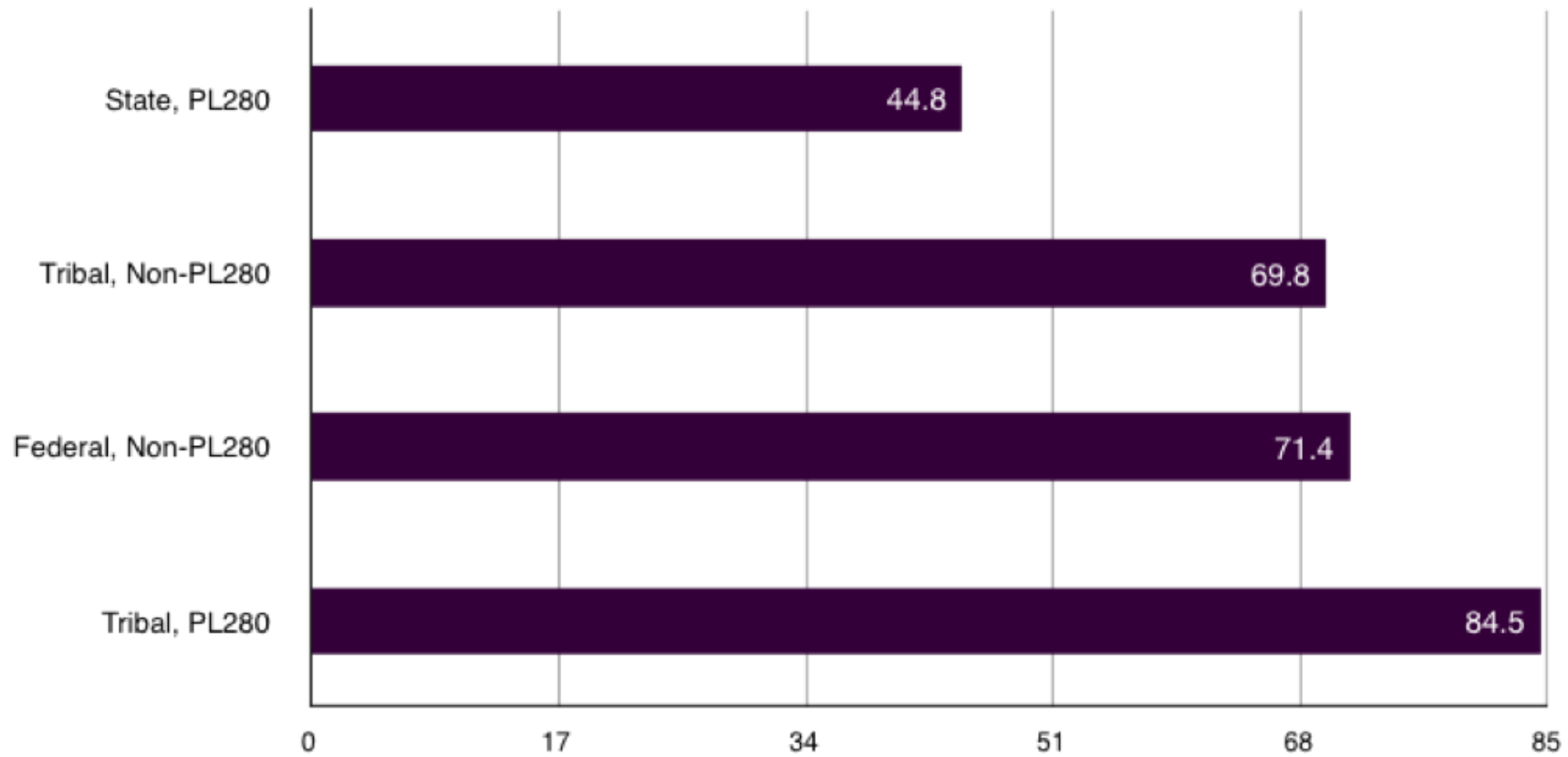


# NIJ Research Project “Captured Justice”

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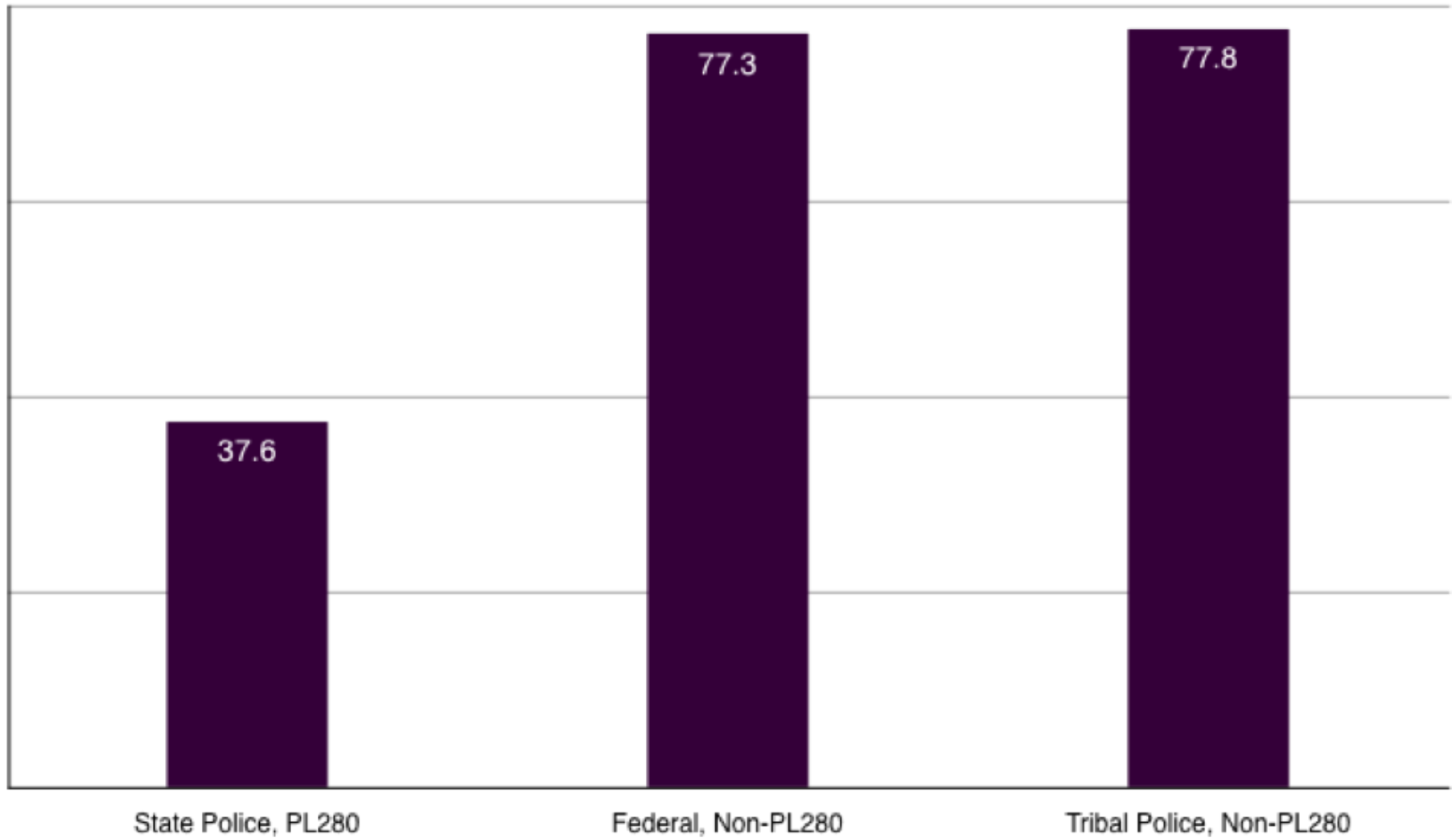
- Site visits to 17 reservations
- One on one interviews (c. 350) with tribal members and officials, tribal, state, and federal law enforcement, and relevant criminal justice personnel
- Data collection on DOI and DOJ funding

## Do Police Respond in a Timely Manner?



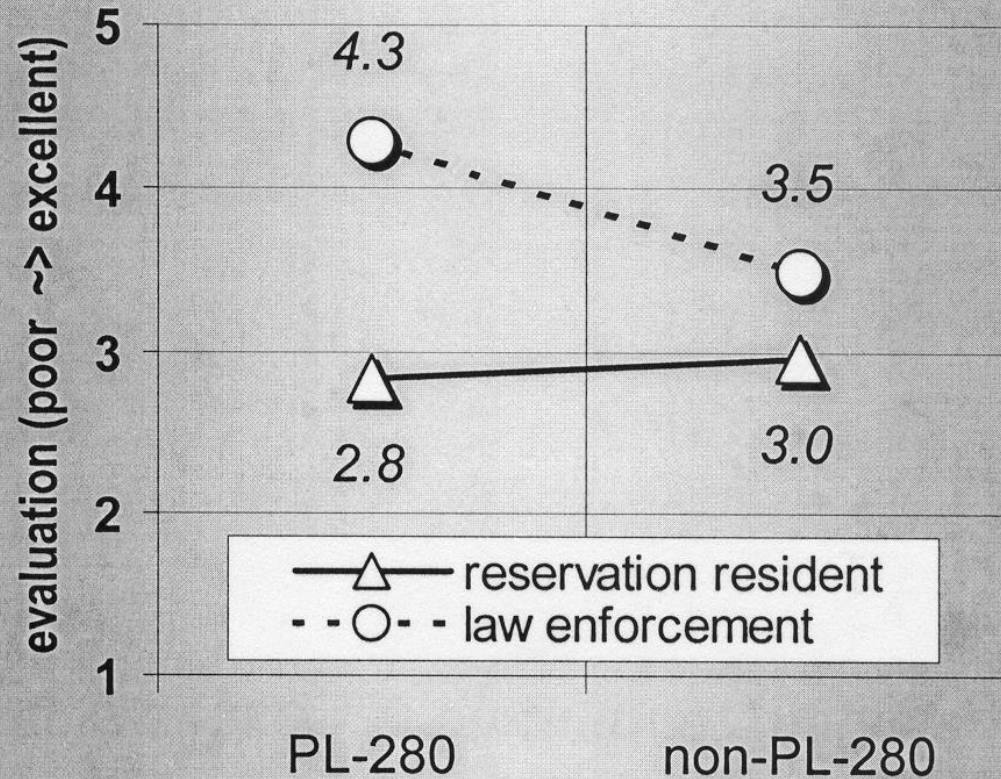
$F=15.8$ ,  $df=1$ , 323,  $p<.0001$

## Does the Reservation Benefit from Patrolling?



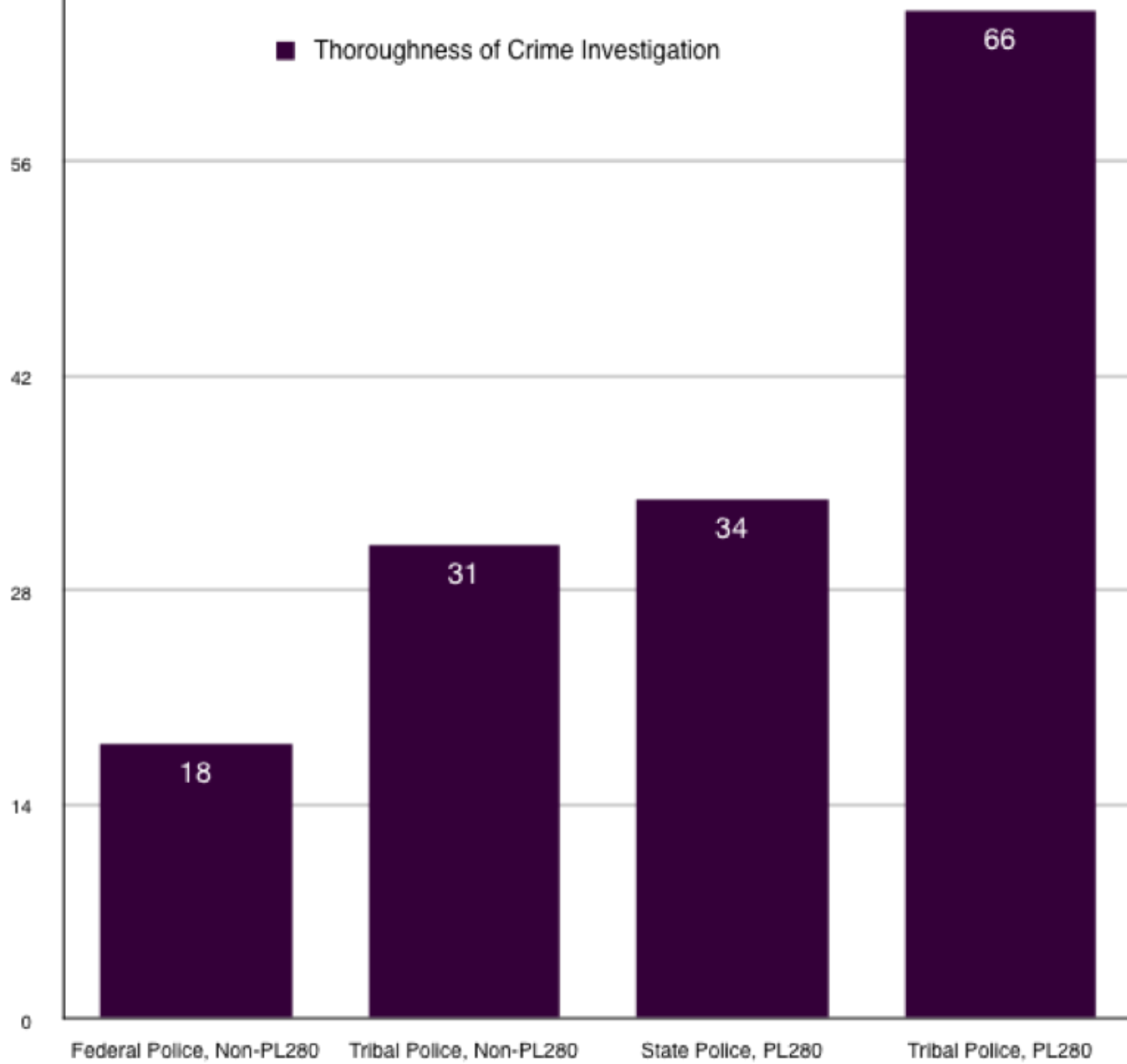
$F=14.11$ ,  $df=2$ , 149,  $p<.0001$

## Thoroughness of crime investigation



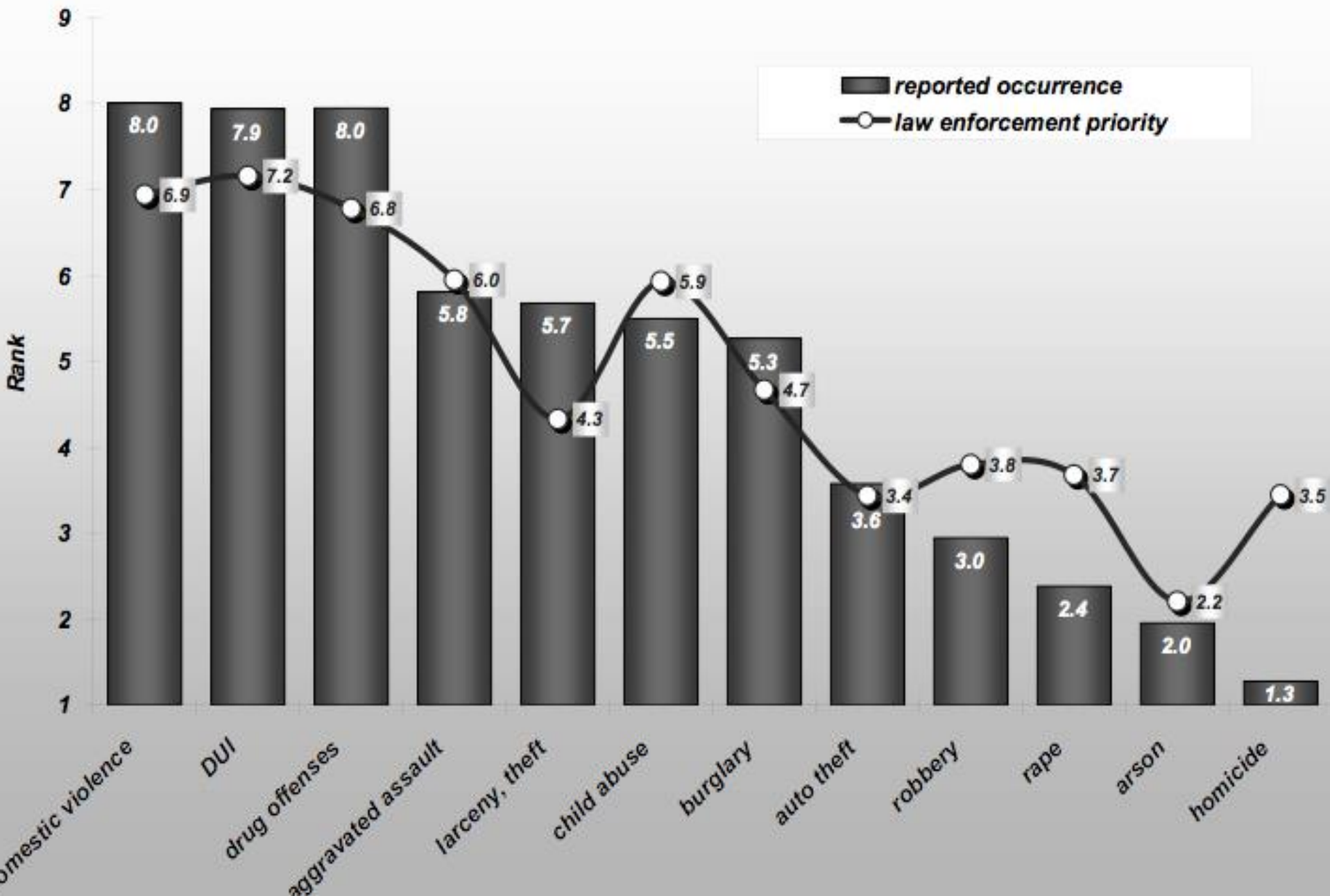
### 2 x 2 ANOVA

|   | <i>F</i> |     |
|---|----------|-----|
| <i>PL-280 v. non-PL-280</i>             | 3.42     |     |
| <i>Res. Resident v. Law Enforcement</i> | 29.12    | *** |
| <i>Interaction</i>                      | 6.55     | **  |



$F=13.26$ ,  $df=3$ ,  $p<.0001$

**Ranking of Crime Frequency & Law Enforcement Priority by All Respondents**



# Law Enforcement Funding Disparities

## Department of the Interior – FY 1998

|                    | PER CAPITA |
|--------------------|------------|
| • Non-PL 280       | \$101.13   |
| •                  |            |
| • Mandatory PL 280 | 40.95      |
| • Nonstraddler     | 19.40      |
| • Optional PL 280  | 86.93      |
| • Like PL 280      | 138.75     |
| •                  |            |

# LE & CJ Funding Disparities

## Department of Justice– FY 1995-2002

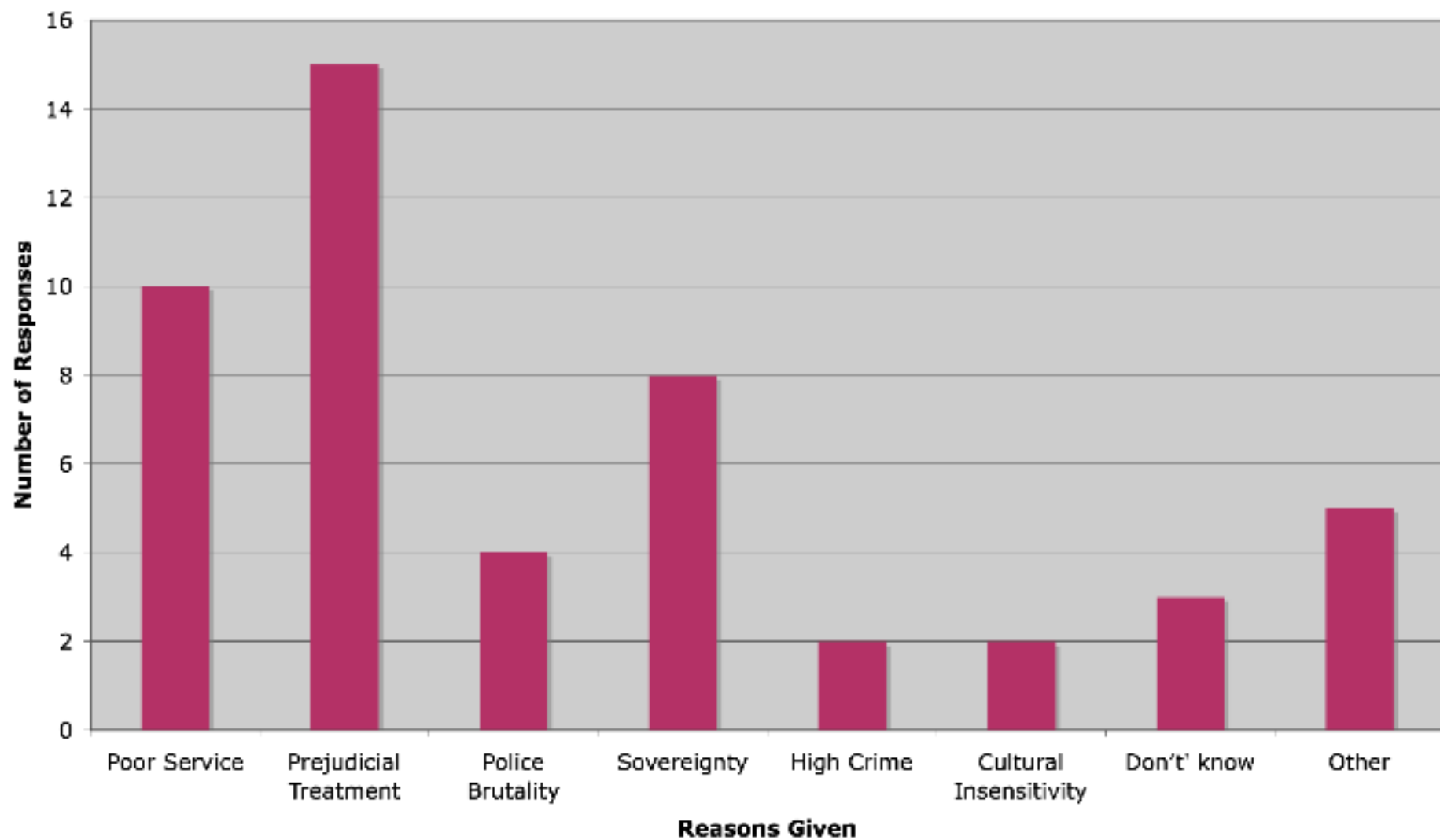
|                    | PER CAPITA |
|--------------------|------------|
| • Non-PL 280       | \$584.03   |
| •                  |            |
| • Mandatory PL 280 | \$533.10   |
| • Nonstraddler     | \$530.37   |
| • Optional PL 280  | \$545.19   |
| • Like PL 280      | \$451.50   |
| •                  |            |



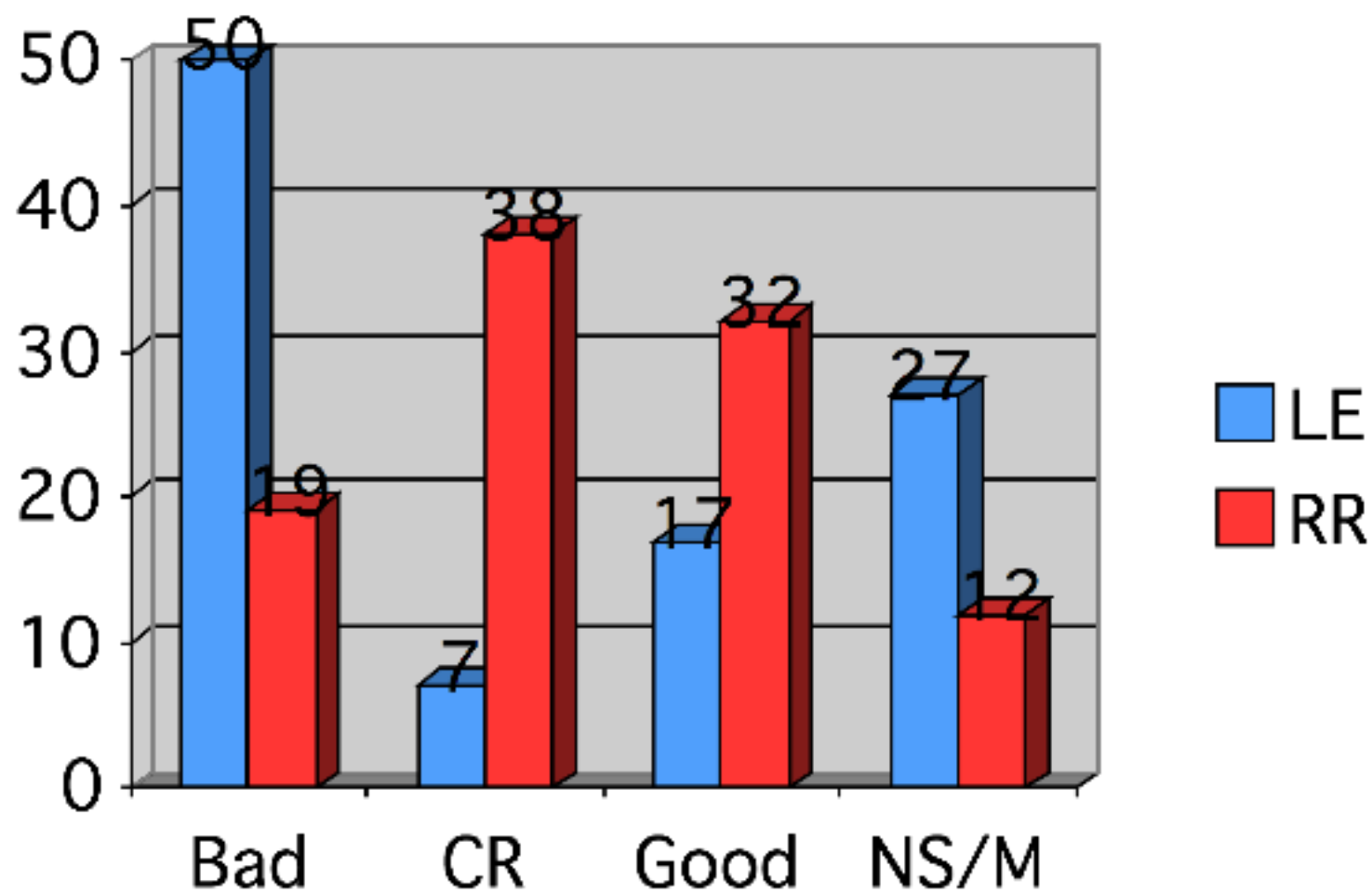
# Ways to Cope with Public Law 280

- State/Federal Peace Officer Status for Tribal Police
- Cooperative Agreements
  - Law enforcement
  - Court relations
- Retrocession
  - Costs and consequences
  - Tribal experiences

**Why Retrocession?  
30 Responses**



## Is Retrocession a Good Idea?



Percentages of Respondents from PL 280 Jurisdictions