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Public Law (PL) 280 – Jurisdiction in California Indian Country
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What is PL 280? Public Law 83-280 (commonly referred to as Public Law 280 or PL 280), was originally enacted by Congress in 1953 and did two things to alter the usual allocation of criminal jurisdiction in Indian country. First, on the reservations to which it applied, it took away the federal government's authority to prosecute Indian country crimes based on 18 U.S.C. 1152 (the Indian Country General Crimes Act) and 18 U.S.C. 1153 (the Major Crimes Act). Second, it authorized certain states, California included, to prosecute most crimes that occurred in Indian country. Exceptions were set forth for a few topic areas and on a few reservations, but the main result of PL 280 is that for most reservations in the six states, federal criminal jurisdiction became extremely limited while state jurisdiction was greatly expanded. Although states were delegated criminal and civil jurisdiction, that jurisdiction remained concurrent with some aspects of inherent tribal jurisdiction. However, not all tribes have developed courts and so not all tribes exercise their jurisdiction.

How does PL 280 affect Child Welfare? There continues to be very few Indian children in California under tribal jurisdiction, as only a small number of tribes have tribal courts and social services departments that could provide necessary services, partly due to the size of the tribes and the lack of adequate funding to the tribes for these services. For those tribes that do take jurisdiction, most often the initial contact regarding a family is made to the local child welfare agency who then contacts the tribe to allow them to take jurisdiction. If a tribe is under state jurisdiction (P.L.280), then the protocol would follow state law or if an agreement is in place (either written or verbal), that procedure would take precedent. Prompt action to secure the safety of the child should be the priority.

Many tribes and county child welfare agencies have developed protocols whereby they work together to provide child welfare services. Some tribes have services that can be provided early in the case to allow for the children and families to remain together. Counties are responsible for applying Section 422 protections including the care and supervision of tribal children that remain under the state/county's jurisdiction. For tribes that enter into a Title IV-E agreement with the state, and assume responsibility for the care and supervision of tribal children, the tribe is responsible for applying Section 422(b)(8) protections for those children, including six month periodic review, 12-month permanency hearings, reunification services, services to achieve other permanency goals, pre-placement preventative services, etc.

In PL 280 states, tribes face unique jurisdiction and service responsibility challenges when child protection systems respond to reports of child abuse and neglect. The issue of whether states have concurrent jurisdiction with tribes on tribal lands in P.L. 280 areas has not been fully resolved. Many states believe they have concurrent jurisdiction on tribal lands—a troubling position that some courts have affirmed. Where concurrent jurisdiction has been asserted, jurisdictional authority and service responsibility can be uncertain. This often results in delays in civil (child protection/child welfare) responses to reports of child abuse involving American Indian/Alaska Native children on tribal lands.

Some tribes in PL 280 states have been able to develop intergovernmental agreements to address these jurisdictional and service responsibility challenges. Due to some states'

reluctance or unwillingness to negotiate agreements, many tribes have not been able to develop agreements and confusion continues. Although the Indian Child Welfare Act (ICWA) provides for the re-assumption of civil child welfare and child protection jurisdiction (25 USC § 1918), the current process is very burdensome and can take two or more years to complete.

The California Department of Social Services (CDSS) continues to collaborate with tribes and the state Attorney General's Department of Justice (DOJ) in conducting training sessions regarding the application of PL 280 in California on an as needed basis.

Summary

- PL 280 was created during the "termination era" and affects jurisdiction
- Was adopted because of policies aimed at terminating the obligations that the federal government had to tribes
- Creates jurisdiction confusion in cases
- Some federal laws enacted after PL 280, such as the ICWA (1978) have reduced the amount of jurisdiction available to the states and Indian Nation's jurisdiction over certain child welfare proceedings for Indian children
- Some tribes and county agencies developed protocols to work together in regards to child welfare jurisdiction and services
- PL 280 can create delays in child welfare responses and cases because concurrent jurisdiction affects authority and responsibility
- In California, only the Washoe tribe has formally reassumed jurisdiction pursuant to the ICWA
- PL 280 is a law that can be troublesome, causing confusion and turmoil between the state/counties and the tribes

For further information, please reference the California Courts Public Law 280 Curriculum document at: www.courts.ca.gov/documents/**PL280** Curriculum.pdf

References

CDSS ACL 08-02

https://tm112.community.uaf.edu/unit-2/termination-era-1950s-public-law-280/

www.courts.ca.gov/documents/**PL280** Curriculum.pdf

http://www.nrc4tribes.org/FAQ-Tribal-Child-Welfare-Legal-and-Judicial-Issues.cfm

www.**icctc**.**org**/**Public**%20**Law**%20**280**.pdf