



Policy Basics: Jurisdiction in Indian Country

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This report is part of an ongoing project that introduces readers to foundational topics in Indian Country. Other policy basics in this series cover land, Tribal sovereignty, citizenship, and taxation. This report focuses on criminal jurisdiction.

This report is not a comprehensive overview of all **jurisdiction** matters. Rather, its purpose is to introduce the complexities surrounding mainly criminal jurisdiction in Indian Country. This report does not cover jurisdiction in terms of land use or hunting and fishing rights. We recommend contacting the Department of Fish, Wildlife, and Parks for questions regarding hunting and fishing regulations on Tribal lands. For a general overview of land use in Indian Country, refer to our report titled "Policy Basics: Land Status in Indian Country."

Questions about jurisdiction run central to many aspects of Tribal-State relations. The State-Tribal Relations Committee (STRC) began its work in the late 1970s to study jurisdiction issues.¹ The STRC is composed of state representatives and senators, with equal representation of political parties. The committee acts as a liaison with Tribal governments in Montana, encourages Tribal-State and Tribal-local government cooperation, conducts interim studies as assigned, and may propose legislation and report its activities, findings, and recommendations to the Legislature.²

Decades after the STRC began its work, jurisdiction remains relevant. Economic development, for example, is closely linked to the governance of land and natural resources. Determining which unit of law enforcement responds to crimes of Missing and Murdered Indigenous People depends upon the Indian status of the victim and the alleged perpetrator, as well as the location of the crime. Non-Tribal governments challenge the exclusive right of Tribal governments to levy taxes within the jurisdictional bounds of Indian Country. While these examples are simplified, complexities around jurisdiction in Indian Country are vast and may contribute to a delayed response, miscommunication between authorities, and policy gaps.

General Overview of Criminal and Civil Jurisdiction in Indian Country

To begin, it is important to note that Tribal jurisdiction stems from the legal principle that Tribal Nations retain their sovereignty and nationhood status, which pre-date the establishment of the United States and include inherent powers of self-governance and self-determination.

Today, Tribal governments have both civil and criminal jurisdiction over their Tribal citizens. **Civil jurisdiction** is divided between regulatory/legislative and adjudicatory authority. It refers to a government's ability to regulate conduct through methods including taxation, zoning, and traffic law enforcement, and a court's power to decide cases between private parties and impose orders.³ **Criminal jurisdiction** refers to a government's ability to regulate activity by enacting and enforcing laws.⁴ This area concerns a government enforcing the law related to a party's alleged criminal behavior.

Like other governments, Tribal governments use their jurisdictional authority to carry out several governmental activities, such as education, health care, and infrastructure. The ability to exercise jurisdiction is critical for self-determination, as it allows a government to raise revenue through taxation, administer justice, conduct elections, protect the environment and natural resources, and more.

Before colonization, the jurisdiction of Tribal Nations reached far and wide. With the advancement of settler colonialism, the extent of Tribal jurisdiction today is less than it was in the past. Currently, a patchwork of law governs jurisdiction in Indian Country, with federal, state, county, and Tribal governments all sharing some level of jurisdictional authority. Determining who exercises that authority depends on several factors, including the activity's location, the citizenship status of the persons involved (i.e., Tribal citizen, non-Tribal citizen Indian or non-Indian), and the activity itself. Understanding these factors helps to determine whether jurisdiction is Tribal, state, federal, or a combination of them.

In general, the boundaries of Indian Country define the reach of Tribal authority. While Indian Country generally refers to Tribal governments, communities, cultures, and peoples, it is also a legal term for the area over which the federal government and Tribal Nations exercise primary jurisdiction.⁵ This area is where Tribal sovereignty is strongest, and state authority is most limited.⁶

Within Indian Country, the U.S. Supreme Court has increasingly limited Tribal authority over non-Indians and land owned by non-Indians.⁷ The court has defined a Tribe's inherent sovereign powers as not extending to the activities of nonmembers except for:

- The actions of nonmembers in consensual relations with the Tribe or its members, such as commercial dealings, contracts, leases, and other arrangements; or
- The conduct of nonmembers on fee land within a reservation when the conduct threatens or directly affects the Tribe's political integrity, economic security, or health and welfare.

Tribal Nations generally do not have criminal jurisdiction over non-Indians. The state has jurisdiction over criminal matters in Indian Country that involve only non-Indians.⁸ These complexities around jurisdiction in Indian Country can lead to confusion around who is responsible for carrying out the law and where someone should turn for help.⁹ To demonstrate the complexities of jurisdiction in Indian Country, Table 1 provides an overview of *criminal* jurisdiction. (Questions of jurisdiction in civil law also vary and involve similar levels of complexity.)

Table 1. Breakdown of Federal, State and Tribal Jurisdiction in Indian Country

Identity of Alleged Defendant	Identity of Alleged Victim	Major Crimes as Defined by the Major Crimes Act*	All Other Crimes
Indian	Indian	Federal** and Tribal	Tribal
Indian	Non-Indian	Federal** and Tribal	Federal*** and Tribal
Non-Indian	Indian	Federal*** and State****	Federal and State (and sometimes Tribal****)
Non-Indian	Non-Indian	State	State
Indian	Victimless/ Consensual	Not Applicable	Federal and Tribal
Non-Indian	Victimless/ Consensual	Not Applicable	State

* Major crimes include: murder, manslaughter, kidnapping, maiming, felony sexual abuse, incest, assault with intent to commit murder, assault with a dangerous weapon, assault against a person under 16, felony child abuse or neglect, arson, burglary, robbery, larceny.
 ** Under Public Law 83-280, in Montana, the state has concurrent jurisdiction with the CSKT over felony crimes committed by Indians and the CSKT has reassumed exclusive jurisdiction over misdemeanor crimes committed by Indians.
 *** The federal government has jurisdiction for other crimes under the General Crimes Act.
 **** Under the Violence Against Women Act (VAWA), a Tribe may opt into assuming jurisdiction over non-Indians for Assault of Tribal Justice Personnel, Child Violence, Dating Violence, Domestic Violence, Obstruction of Justice, Sexual Violence, Sex Trafficking, Stalking, and Criminal Violations of Protection Orders. However, the Tribe must agree to provide certain procedural processes for the defendant.
 ***** The US Supreme Court recently held in *Oklahoma v. Castro-Huerta*, 597 U.S. (2022) that the state has concurrent jurisdiction with the federal government to prosecute crimes committed by Non-Indians against Indians in Indian country.

State Jurisdiction in Indian Country

As a general principle, the federal government has ultimate power over Tribal Nations, which preempts the assertion of state power over Tribal Nations. However, exceptions exist like Public Law 280 (PL 280), originally enacted in 1953 by Congress, which relinquished federal jurisdiction and mandated six states to assume civil and criminal jurisdiction over those Tribal citizens.¹⁰ Mandated Public Law 280 was a “Termination Era policy,” an attempt to appease unfounded white fears about “lawlessness” within reservation boundaries and reduce Tribal control over the criminal justice system.¹¹ The Tribal Nations that lost the most land during Allotment also lost limits on their ability to make key public safety decisions for their people. Tribes in these states had no consent in the matter. However, Montana was granted “optional PL 280 status,” which only the Confederated Salish Kootenai Tribe (CSKT) in Montana consented to in 1963.¹² In 1968, PL 280 was amended to require a Tribe’s consent and allow states to request to retrocede from jurisdiction.¹³ In 2021, Montana passed HB 656, specifically allowing Lake County to withdraw from enforcement of criminal jurisdiction on behalf of the state.¹⁴ Many Tribes have opposed PL 280 because it is considered a threat to their sovereignty, and states have opposed PL 280 because they have not received adequate funding to assume authority.

CSKT has concurrent jurisdiction with the state over felony crimes committed by American Indians and, in some instances, the federal government over offenses allegedly committed by nonmember Indians (*United States v. Lara*).¹⁵ *Concurrent jurisdiction* refers to when more than one court has the legal authority

to handle a case.¹⁶ CSKT holds exclusive jurisdiction over misdemeanor crimes committed by American Indians.¹⁷ However, in April 2024, Lake County (one of the four counties within the CSKT reservation) opted to withdraw from PL 280 in order not to continue to assume costs for prosecuting felonies of Tribal citizens, leading the Governor to initiate a request for retrocession to the federal government. *Retrocession* means returning jurisdiction from the state to the federal government. The Secretary of Interior will determine whether to accept or reject the request from the Governor of Montana. (This is not to say that the CSKT does not incur its own costs in felony investigations, as they conduct the majority of criminal investigations on the reservation.)¹⁸

Another general principle of jurisdiction is that Tribal Nations do not hold jurisdiction over non-Indians; only the state and federal government do; however, exceptions exist. For instance, under the Violence Against Women Act (VAWA), a Tribe may opt into assuming jurisdiction over non-Indians for Assault of Tribal Justice Personnel, Child Violence, Dating Violence, Domestic Violence, Obstruction of Justice, Sexual Violence, Sex Trafficking, Stalking, and Criminal Violations of Protection Orders.¹⁹ The Tribe, however, must agree to provide certain procedural processes for the defendant. Another example where Tribes can act in place of the state because they “retain inherent authority to protect public safety” comes from the *United States vs. Cooley* case, where “Indian Tribal law enforcement officers may stop, search, and temporarily detain a non-Indian motorist traveling on a public highway within an Indian reservation if the officer has a reasonable suspicion that the motorist has violated or will violate federal or state law.”²⁰ The Blackfeet and Ft. Peck reservations have Cross-Deputization Agreements with the State of Montana allowing for Montana Highway Patrol and county officers to be “appointed as commissioned law enforcement officers of the Tribes and that certain officers of the Tribes will be appointed as commissioned law enforcement officers of the local jurisdictions and MHP “so that they may enforce the law where there is a gap between respective criminal jurisdictions.”^{21 22}

Until the recent Supreme Court decision in *Oklahoma v. Castro-Huerta* (2022), the federal government had held exclusive jurisdiction over non-Indian crimes inflicted on American Indians.²³ Now, states have concurrent jurisdiction with the federal government to prosecute crimes committed by non-Indians against American Indians in Indian Country. Even though The *Oklahoma v. Castro-Huerta* decision applies to all states, the decision came largely as a result of *McGirt v. Oklahoma* (2020), which held, “For purposes of the Major Crimes Act, land throughout much of eastern Oklahoma reserved for the Creek Nation since the 19th century remains a Native American territory.”²⁴ Victor Manuel Castro-Huerta, a non-Indian who committed a crime against an American Indian, attempted to challenge his conviction by the State of Oklahoma in court because, technically, where the crime took place was now still considered to be Indian Country, meaning the state was out of its jurisdiction to convict him.²⁵

State jurisdiction is full of its own complexities and ever-evolving case matters regarding Indian Country.

Issues Involving Jurisdiction

Jurisdictional considerations are at the core of many aspects of Tribal-State relations. Issues range from taxation and economic development to public safety and natural resource management.

Allotment

Authority over Tribal lands is critical to Tribal Nations in exercising self-governance and self-determination.²⁶ Because allotment, or the federal policy that sought to eliminate Tribal sovereignty, abolish reservations, and assimilate American Indians into non-Indian society, opened reservation lands to non-Tribal jurisdictions, those non-Tribal jurisdictions often conflict with Tribal interests and sovereignty. The checkerboard-like pattern of various land types and ownerships, including ownership by

non-Indians on “fee land” within reservation lands, makes it difficult for Tribal Nations to assert their regulatory and legal control. The pattern of scattered, fractionated, and intermixed land ownership creates challenges, as different governing authorities – including state, county, federal, and Tribal – claim authority to regulate, tax, or carry out various activities within reservation boundaries. Jurisdictional matters on checkerboard lands demand a high level of coordination and the development of cooperative agreements between different jurisdictions.

Taxation

Tribal self-sufficiency and self-government depend upon a Tribal Nation’s ability to raise revenue and regulate its territory, and the power to tax plays an essential role in this. Over time, state and local governments have successfully challenged in court Tribal governments’ once-exclusive right to levy taxes within their reservation boundaries to the point that Tribal taxation authority is greatly diminished today. As a result, Tribal governments must provide many of the same services as other levels of government without the usual tax revenue on which other governments rely.²⁷

Missing and Murdered Indigenous People

Montana is among the top five states in the country for Missing and Murdered Indigenous Women (MMIW) cases.²⁸ Until the Violence Against Women Reauthorization Act, jurisdictional authority to criminally prosecute non-Indians was mainly left up to the federal government to follow through with prosecution, but even that was not always a reliable avenue for justice to be upheld for the MMIW in many communities. These jurisdictional gaps protected non-Indians while compromising the safety of American Indian people. A 2010 survey, by the National Institute of Justice in consultation with the U.S. Department of Justice’s Office on Violence Against Women, found that of the American Indian women who experience violence in their lifetime, 97 percent experience violence by non-American Indian offenders.²⁹ The Violence Against Women Reauthorization Act of 2013 partially corrected this problem by providing Tribal Nations with special domestic violence criminal jurisdiction over non-Indians, but as mentioned before, Tribal Nations must provide specified rights for the defendants in such cases.³⁰

The complicated jurisdictional web is at the core of the issue, as complexities may delay a jurisdiction’s response and contribute to a lack of resources. Missing persons investigations require a high level of coordination and resources. Missing persons located on reservation land can require working across multiple jurisdictions.³¹

Jurisdictional Complexities in Indian Country Demand Coordination

Because the complexities surrounding jurisdiction in Indian Country are vast and may contribute to a delayed response, miscommunication between jurisdictions, and policy gaps, jurisdictional matters demand attention and coordination.

¹ Legislative Services Division and Margery Hunter Brown Indian Law Clinic, “[Tribal Nations in Montana: A Handbook for Legislators](#),” Nov. 2020.

² Montana State Legislature, “[2023-2024 State-Tribal Relations](#).”

³ Legislative Services Division and Margery Hunter Brown Indian Law Clinic, “[Tribal Nations in Montana: A Handbook for Legislators](#),” Nov. 2020.

⁴ Legislative Services Division and Margery Hunter Brown Indian Law Clinic, “[Tribal Nations in Montana: A Handbook for Legislators](#),” Nov. 2020.

⁵ National Congress of American Indians, “[Tribal Nations and the United States: An Introduction](#),” Feb. 2020.

⁶ Legislative Services Division and Margery Hunter Brown Indian Law Clinic, “[Tribal Nations in Montana: A Handbook for Legislators](#),” Nov. 2020.

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- ⁷ Legislative Services Division and Margery Hunter Brown Indian Law Clinic, "[Tribal Nations in Montana: A Handbook for Legislators](#)," Nov. 2020.
- ⁸ National Congress of American Indians, "[Tribal Nations and the United States: An Introduction](#)," Feb. 2020.
- ⁹ U.S. Commission on Civil Rights, "[Broken Promises: Continuing Federal Funding Shortfall for Native Americans](#)," Dec. 2018.
- ¹⁰ U.S. Dept. of Interior, "[What is Public Law 280 and where does it apply?](#)," Aug. 19, 2017.
- ¹¹ Native Governance Center, "[It's Time To End Public Law 280](#)," Aug. 9, 2021.
- ¹² Montana Legislature Office of Research & Policy Analysis, "[State-Tribal Relations Committee Report: Montana and Public Law 280](#)," April 2024.
- ¹³ Goldberg, C. & Valdez Singleton, H., "[Research Priorities: Law Enforcement in Public Law 280 States](#)," July 2005.
- ¹⁴ Montana Legislature Office of Research & Policy Analysis, "[State-Tribal Relations Committee Report: Montana and Public Law 280](#)," April 2024.
- ¹⁵ Legislative Services Division and Margery Hunter Brown Indian Law Clinic, "[Tribal Nations in Montana: A Handbook for Legislators](#)," Nov. 2020.
- ¹⁶ Cornell Law School, "[Legal Encyclopedia: Concurrent Jurisdiction](#)," Accessed July 2024.
- ¹⁷ Montana Legislature Office of Research & Policy Analysis, "[State-Tribal Relations Committee Report: Montana and Public Law 280](#)," April 2024.
- ¹⁸ Official Website of Confederated Salish & Kootenai Tribes, "[CSKT Statement Regarding Public Law 280](#)," March 5, 2024.
- ¹⁹ U.S. Dept. of Justice, "[2013 and 2022 Reauthorizations of the Violence Against Women Act](#)," April 23, 2023.
- ²⁰ Congressional Research Service, "[Supreme Court Rules on Authority of Tribal Police to Stop Non-Indians](#)," June 11, 2021.
- ²¹ Attorney General Alliance, "[COOPERATIVE AGREEMENT PROVIDING FOR CROSS-DEPUTIZATION OF LAW ENFORCEMENT OFFICERS OF THE ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION, THE CITY OF WOLF POINT, THE CITY OF POPLAR, THE MONTANA HIGHWAY PATROL, AND ROOSEVELT COUNTY](#)," Accessed July 9, 2024.
- ²² Montana Legislative Services Division, "[Transportation Interim Committee Exhibit 6 \(2021-2022\): COOPERATIVE AGREEMENT BETWEEN BLACKFEET TRIBE AND STATE MONTANA HIGHWAY PATROL](#)," Accessed July 9, 2024.
- ²³ SCOTUSblog Coverage, "[Oklahoma v. Castro-Huerta](#)," June 29, 2022.
- ²⁴ SCOTUSblog Coverage, "[McGirt v. Oklahoma](#)," July 9, 2020.
- ²⁵ Fletcher, Matthew L.M., "[In 5-4 ruling, court dramatically expands the power of states to prosecute crimes on reservations](#)," June 29, 2022.
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