

Promising Strategies

Promising Strategies: Public Law 280

March 2013
(Updated August 2013)



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A product of the

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Introduction

Public Law 280¹ (PL 280), enacted by Congress in 1953, gives certain named states criminal and civil jurisdiction on reservations and withdraws most of the federal government's responsibility for criminal jurisdiction in Indian Country. PL 280 also allowed other states to opt into this jurisdictional arrangement, although since 1968 the states have only been able to do so with the affected tribes' consent. PL 280 did not eliminate any tribal jurisdiction over criminal or civil matters. States that are covered by PL 280, either because they were named in the original act or they subsequently opted in, can ask to be removed from PL 280 jurisdiction, a process known as "retrocession."

In PL 280 jurisdictions, the concurrent jurisdiction of state and tribal courts over criminal prosecutions and civil actions arising in Indian Country creates many interactions and complications. Tribal and state authorities encounter one another across an array of issues, including government-to-government recognition, concurrent jurisdiction, cross-jurisdictional enforcement of domestic violence orders of protection, cross-deputization, and civil commitments. Tensions and misunderstandings have been common features of tribal and state policing relations in the past, sometimes erupting in jurisdictional conflicts. The different cultures, legal traditions, political systems, histories, and economic positions of state and tribal governments, courts, and police have contributed to these challenges. PL 280 jurisdictions have worked best when state authorities recognize tribal governments in government-to-government relations, respect concurrent jurisdiction, and work cooperatively with tribal governments, police, and courts. When states do not recognize tribal government authority, try to enforce state law over tribal communities, and do not communicate or work cooperatively with tribal government and tribal communities, tribal communities tend to express significant dissatisfaction with state policing and court services.

Selection Criteria and Methods

The 10 programs featured in this publication were selected according to the following criteria:

- ◇ **INNOVATIVE:** The programs are distinctive and involve innovative processes that appear to present promising solutions to everyday challenges affecting Indian Country justice. The programs contain a coherent strategy or vision that promises to improve a significant aspect

¹ Public Law 83-280, (18 U.S.C. § 1162, 28 U.S.C. § 1360), formal title: "An act to confer jurisdiction on the States of California, Minnesota, Nebraska, Oregon, and Wisconsin, with respect to criminal offenses and civil causes of action committed or arising on Indian reservations within such States, and for other purposes." This law, commonly referred to as PL 280, was the 280th public law passed by the 83rd Congress.

of justice relations.

- ◇ **REPLICABLE:** The programs can be replicated or adapted in other tribal communities, their approaches can be used in other settings, and the level of investment needed to achieve similar outcomes and sustain the programs is not insurmountable.
- ◇ **SUSTAINABLE:** The programs can be sustained when external funding sources are expended and when the programs are not dependent upon any one person for its continued success.
- ◇ **CULTURALLY COMPATIBLE:** The programs, as situated within a broader justice system, are in accord with the current beliefs, understandings, values, and future goals of the community.
- ◇ **COMMUNITY COMPONENT OF SERVICES:** The programs are intended to strengthen the relationship of the Indian person to his or her community. The programs are well received and have support from the surrounding community and tribal government.
- ◇ **RESPECT FOR AND ENHANCEMENT OF TRIBAL AUTHORITY:** The programs demonstrate respect for the jurisdiction of native nations and states and promote tribal administration of justice in tribal territory.
- ◇ **FAIRNESS:** The programs uphold non-arbitrary, just, impartial, and nondiscriminatory treatment of all persons.
- ◇ **INTERGOVERNMENTAL COOPERATION:** The programs achieve benefits of coordinated, consensual, and mutually respectful relations between tribal and nontribal justice agencies.
- ◇ **MANAGEMENT EFFECTIVENESS:** Once program goals are established, the programs are carried out so that goals will be achieved (e.g., appropriate rules, lines of responsibility, personnel selection, communication, and allocation of resources).

In addition, when looking at the group of promising strategies that were selected, the following criteria to examine the group as a whole were used:

- ◇ **CULTURAL DIVERSITY:** The programs include a variety of different cultural backgrounds. Each program has unique cultural aspects and traditions.
- ◇ **GEOGRAPHIC DIVERSITY:** The selected tribal programs represent a variety of different locations and jurisdictional circumstances within the United States.

With these criteria in mind, government publications, law review and newspaper articles, award programs such as Harvard University's Honoring Nations, and web resources were reviewed to determine the most appropriate strategies. Program contacts were identified, and interviews were conducted with leaders and key participants for each program.

Common Themes

These 10 Promising Strategies come from PL 280 states (California, Minnesota, Oregon, and Wisconsin), PL 280-like states (Alaska and Maine), and two states with a partial PL 280 regime (Idaho and Washington). They address topics as diverse as traditional peacekeeping, gaming funding support of county and tribal police departments, retrocession, tribal legislative representatives, intertribal courts, multijurisdictional cross-deputization, tribal police authority to enforce state laws, state recognition of tribal sovereignty, and legislative committees dedicated to tribal–state relations and tribal issues. Nonetheless, certain common features do help explain their effectiveness in achieving good tribal–state court relations.

First, these Promising Strategies reflect strong and persistent leadership from state and tribal authorities, often leading to institutionalization of ongoing tribal–state relations and programs. The governor of Wisconsin issued statements of state recognition of tribal sovereignty and willingness to work within government-to-government administrative and legal frameworks. In Wisconsin, the legislature created a special committee including citizens, tribal members, and legislators to improve tribal–state relations, hear Indian concerns and voices, and provide programs to address Indian issues. In Oregon, the governor and state Supreme Court supported cross-deputization of tribal police officers in an effort to enforce state laws. If tribal police officers in Oregon are trained to state peace officer standards, then they are qualified to enforce state laws on and off reservations. The Oregon Supreme Court found that tribal police officers could pursue nontribal members off reservation if in hot pursuit. In Maine, federal and state courts supported tribal sovereignty. The state government has been more reluctant to acknowledge tribal governments, but a longstanding tradition of accepting tribal legislative representatives in the Maine House of Representatives has created access, voice, and influence for tribes, as well as opportunities for mutual education and cooperation.

Second, these Promising Strategies typically follow from sustained educational efforts to explain tribal sovereignty and PL 280 to state police officers and judges. The Wisconsin Tribal Judges Association holds regular conferences for educating nontribal judges about tribal history, rights, and PL 280. A Minnesota coalition for protecting battered Indian women emphasizes teaching police officers and district attorneys about PL 280, tribal courts, tribal jurisdiction, and methods of cross-jurisdiction recognition. Maine tribal legislative representatives use persuasion and education of nontribal legislators about many issues, including jurisdictional parity, recognition of tribal government powers, and tribal legal history. Greater information and knowledge about tribal powers and jurisdiction have helped nontribal police and courts to work in more cooperative ways with tribal justice systems. Policing cross-deputization agreements often emphasize community education about tribal and county/state laws and about policing procedures and protections.

Third, these Promising Strategies focus on providing effective and comprehensive justice services. Without a tribal court system or police department, tribal communities in PL 280 jurisdictions are hard-pressed to exercise concurrent criminal jurisdiction. Interlocal agreements for police cross-deputization and intertribal courts help fill service vacuums experienced by reservation communities. Agreements between county and tribal police departments for cross-deputization of tribal police officers make better use of scarce resources, free up more police officers for duty, and improve public safety on and off reservations. For example, cross-deputization agreements between local counties and the Hopland Reservation Police Department and Hoopa Valley Tribal Police Department increased police coverage, helped engage crime, and provided better services and protection of reservation and nonreservation residents. Intertribal court systems in Washington and California provide alternative court facilities for tribal members. Many tribes are too small to develop a tribal court, and hence coalitions of tribal courts provide economies of scale that make provision of tribal court services possible. Tribal members are afforded more court options and more culturally compatible court procedures through intertribal courts. The Minnesota program to protect Indian women from domestic violence focuses on creating common procedures, protection orders, and statewide contact information about Indian courts and police departments for use by county and state judges and police officers. Increased education, more complete information, and better economies of scale help tribal and nontribal agencies provide more and better-informed services to tribal and nontribal communities.

Fourth, some Promising Strategies affect tribal members by providing culturally compatible policing and court alternatives. The Kake Peacemaking Court provides village members with a culturally compatible alternative to Alaska state courts. Peacemaking focuses on restoration of the community, perpetrator, and victim. The Wisconsin Tribal Judges Association has introduced statewide more traditionally compatible peacemaking court alternatives within tribal reservation communities. The peacemaking courts are not designed to replace state or tribal courts but to provide an alternative legal method to tribal citizens. Police cross-deputization agreements often include additional training for nontribal police officers to learn more about Indian history, policies, laws, and culture, as well as the powers of tribal governments.

Fifth, many Promising Strategies strongly favor cooperation between tribal and county/state governments. States like Oregon and Wisconsin explicitly recognize tribal sovereignty and work in government-to-government relations. Wisconsin tribal-county policing grants enhance cooperation between tribal and county police departments for providing services to reservation communities. A special Wisconsin legislative committee focuses on tribal-state relations, reviews bills and laws, and conducts research on policy issues affecting tribal communities and tribal-state relations. The Maine tribal legislative representatives work directly with Maine

legislators and the governor's office to work out agreeable solutions to tribal issues and tribal-state relations. The interlocal policing agreements are premised on the view that cooperative policing arrangements, sharing information and resources, and cross-deputization will enhance policing capabilities and provide greater and more culturally appropriate services to tribal communities. Increasingly, tribal communities have achieved greater tribal recognition through government-to-government agreements with county and state government and agencies. The Kake and Wisconsin peacemaking courts and the Southern California Intertribal Court work closely with state courts and are designed to provide alternatives to those tribal members who are willing to accept more traditional forms of court decision making. More beneficial outcomes appear possible when tribal and county/state governments recognize and respect each other's government sovereignty and cultures and agree to cooperate.

Sixth, most Promising Strategies promote enhancement of tribal government powers. Cross-deputization, intertribal courts, legislative representatives, easier retrocession procedures, and traditional court systems invite state recognition of tribal sovereignty and express greater capabilities of tribal government administration and jurisdictional powers. Despite the fact that the state government in Maine has been reluctant to recognize government-to-government relationships with tribes within the state, the presence of tribal representatives in the state legislature creates an opportunity for tribes to educate elected representatives about the policy, cultures, and powers of tribal government. Without such a presence, tribes would have much less of a voice in the political process. Kake and Wisconsin peacemaking courts and the intertribal court systems increase options for tribal members to resolve civil and criminal issues under the auspices of tribal government. Cross-deputization agreements memorialize the recognition of tribal government powers by state and county governments and agencies. Explicit recognition of tribal government sovereignty through gubernatorial executive orders, state and federal court decisions, and state legislative acts recognize tribal government powers and set the stage for tribal and state cooperation.

Conclusion

Through these Promising Strategies, confrontation between tribal and state governments has given way to enhanced understanding, negotiation, and cooperative action. Through networks of relationships and innovative programs, they have knit together tribal and state justice systems and government-to-government relations while respecting cultural and institutional differences. Through ongoing dialogue and creative responses to common concerns, current Promising Strategies hold promise of more innovative and constructive joint endeavors.

Note on this Publication

The organization of the 10 promising strategy sites in this publication is no indication of a ranking or any other such ordering. There are many promising strategies throughout Indian Country in addition to those listed here, and this listing is in no way presented as exhaustive. Many of the sites highlighted here build upon the successes of previous efforts in Indian Country. One of the goals of this publication is to highlight relatively recent efforts and not to give an historical account of the past efforts. Sites highlighted in this publication were selected based on the authors' research and knowledge, with input from Bureau of Justice Assistance (BJA) tribal technical assistance project partners, including the Tribal Judicial Institute at the University of North Dakota, School of Law; Fox Valley Technical College; and the National Tribal Judicial Center at the National Judicial College. In addition, the criteria used to select sites were reviewed and vetted through BJA partners.

This publication is part of a larger project funded by BJA focusing on collaborations among tribal–state-federal partners. In addition to this publication, the Tribal Law and Policy Institute (TLPI) has developed a companion document describing promising strategies with tribal–state courts. Under this grant, TLPI has also launched a significantly enhanced and updated Walking On Common Ground web site (www.WalkingOnCommonGround.org). This site provides resources for promoting and facilitating tribal–state-federal collaborations, including an interactive map with cooperative agreements searchable by topic. It also provides electronic versions of this publication, the tribal–state court publication, and additional promising collaborative strategy publications to come in the near future.

1. Kake Peacemaking Court System

Start Year: 1999

Service Area: Organized Village of Kake (Keex' Kwaan)

Population: 557 (2010 U.S. Census Population)

Budget: A line budget item as part of the Organized Village of Kake government; Additional income from fees and fines from court actions

Sources:

www.kakefirstnation.org/

www.innovations.harvard.edu/award.s.html?id=6164

Contact: Mike Jackson, Magistrate, (907) 785-6471, ext. 124

Program Description

In 1999, the Organized Village of Kake (OVK), a Tlingit village in Southeast Alaska with an Indian Reorganization Act government, adopted the Keex' Kwaan Judicial Peacemaking Code. The code established the Kake Peacemaking Court System, which consists of Kake Peacemaking Circle, Keex' Kwaan Peacemaking Panel, the Keex' Kwaan Appellate Court, and Kake Youth Circle Peacemaking. The code says that peacemakers are community volunteers and are appointed by the OVK Council to serve three-year renewable terms. Persons with felony convictions or more than two misdemeanor cases are not eligible to serve as peacemakers. A pool of a dozen peacemakers is available to take up cases.

There are multiple ways for a case to enter into the Kake Peacemaking Court System, which usually addresses minor violations or misdemeanor cases. Petitions are filed with the court

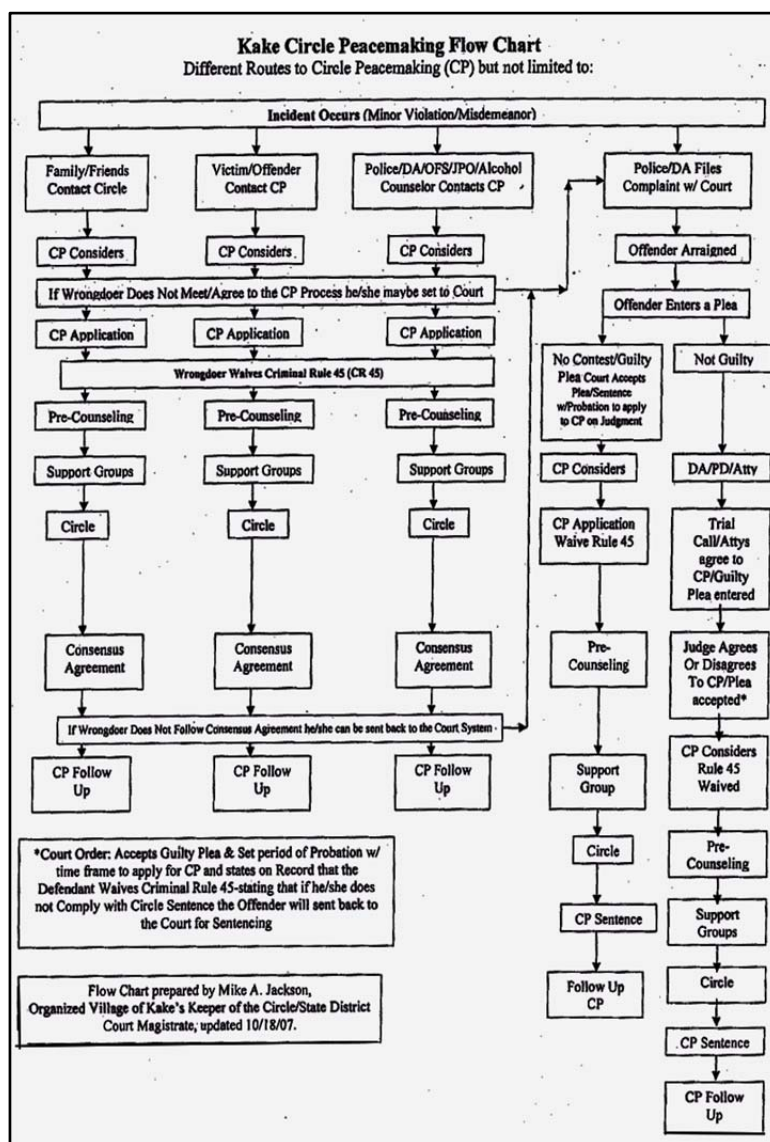


Image: Source:

(http://www.kakefirstnation.org/OVKTribalCourts/flow_chart_CPM.pdf)

clerk of the Kake Peacemaker Court. Petitions can be initiated by family and friends of a victim or offender, by either a victim or offender, or by the police, district attorney, junior police officer, Office of Family Support, or alcohol counselor. Upon receiving the petition, a review team of peacemakers considers whether to accept the proposed case. If the case is accepted, then the review team decides whether to send the case to the peacemaking circle or to a peacemaking panel.

If a wrongdoer does not meet with the peacemaker court or does not agree to peacemaking procedures, the case is referred to Alaska State Court. In state court, the police and district attorney will file a complaint. A defendant can return to Kake Peacemaking Court if the offender decides to plead no contest or guilty. If the state court agrees, the offender can petition the Kake Peacemaking Court for sentencing. The peacemaker court will consider the offender's petition for taking the case. If the peacemaker court accepts an offender's case, then the offender must waive Alaska Criminal Rule 45, the right to a speedy trial. If a defendant enters a plea of not guilty in state court, and later in the trial the defendant agrees to a guilty plea, then the judge can consider whether to accept sentencing through the Kake Peacemaking Court. If an offender does not comply with peacemaking rules or decisions, the offender is returned to state court.

When the peacemaker review team accepts a petition to use the peacemaker court, the review team decides on the appropriate format: either panel or circle. **Panels** are formed by at least three peacemakers who elect a presiding peacemaker and alternate by consensus. The presiding peacemaker manages the hearing of the case, and participants can speak only at the direction of the presiding peacemaker. All parties are informed of court procedures and their rights in the hearing. Petitioners and defendants may present evidence and witnesses during the hearings. The peacemakers may question anyone in the court room, and all parties are given an opportunity to speak. Decisions by the peacemaker panels are made by consensus. If there is no consensus, then decisions on sentencing are made by majority rule among the panel members. When a case involves extreme legal complications or significant conflicts of interests among the standing Kake peacemakers, then the reviewing peacemakers can choose the panel format and utilize visiting judges. Visiting judges can be judges from other tribal courts or attorneys with bar certification. At least one member of a three-member peacemaker panel must be a member of Kake. Parties can be referred to the peacemaking circles to address specific issues.

The review team may suggest a peacemaking **circle** for sentencing or other solutions, if the team decides that it is the most appropriate format. Peacemakers are assigned to circles by OVK staff. The offender must waive Criminal Rule 45, if they have not already done so. Circle participants are informed of their rights, circle procedures, and the goals of the circle

sentencing method. Support groups, such as family members and social service counselors, are invited to provide council and advice to the participants. The circles are led by the Keeper of the Circle, a peacemaker who is recognized by the OVK Council. The rules of circle peacemaking follow traditional patterns. Participants have to show respect for each other, and each participant is allowed to speak and give voice to his or her ideas and feelings about the case. Only one person speaks at a time. The speaker holds a talking stick while speaking and none can interrupt. Speaking continues with the goal of participants arriving at an agreement or common ground. After everyone has been heard, the keeper moves the discussion toward possible solutions and sentencing for the case. Decisions are made by consensus. The Keeper of the Circle maintains order during the speaking but does not have a deciding vote. If consensus is reached, the agreements of the circle are written out as Consensus Agreements or Orders of the Keex' Kwaan Tribal Court. If a consensus cannot be reached, the case may be referred to a peacemaking panel. The keeper may set a time to revisit the case and evaluate the progress of the proposed solution or sentence, or the keeper may instead outline a specific follow-up plan that can be monitored by justice services staff. The peacemaker sessions usually start and end with prayers led by a participating elder.

The Kake Peacemaking Court sets the orders or sentences for the panel and circle cases: "The Peacemakers shall seek a holistic plan for the wrongdoer and shall consider the rights and wellness of any victims." Sentencing can include fines up to \$5,000, a work sentence, community service, impounding of vehicles, banishment, drug and alcohol treatment, counseling by elders, traditional activities, apologies, or restitution. Banishment is temporary and used to protect village members from harm. "Restitution is defined to include payment in money, repairing property, and apologies." A person found to have violated village ordinances may be ordered to "participate in seasonally appropriate traditional activities such as fish camps, trapping, hunting, culture camps, and other tribally sponsored or approved traditional activities." Wrongdoers may be asked to make a public apology to the entire village. Apologies can be written, spoken, or both. Peacemakers may "counsel persons brought before them in a helpful spirit."² The court may bring village elders to the court to counsel people.

The Keex' Kwaan Appellate Court does not rehear cases but will review whether proper procedures were upheld in peacemaking circles or panels. Kake Youth Circle Peacemaking is conducted by the youth coordinator and assisted by volunteer youth from the Kake community. The Kake Youth Circle Peacemaking follows protocols similar to those used to conduct the adult circle peacemaking cases.

² All quotes are from the *Keex' Kwaan Judicial Peacekeeping Code: Organized Village of Kake*. The code can be found at the web address http://www.kakefirstnation.org/OVKTribalCourts/judicial_peacemaking_code.pdf

Cultural Compatibility

As Kake is a Tlingit Village, the Peacemaking Court follows protocols similar to traditional Tlingit dispute resolution. Traditionally, house-clan leaders and elders within the village came together and discussed disputed issues. The contemporary court reflects this traditional approach, with respected village elders providing direction to the OVK Council and community participation. When possible, decisions are made by consensus and all parties have an opportunity to express their views. The goal is to restore peace and goodwill, and heal the community and individuals.

Community Component

A strong emphasis is put on supporting village and traditional clan law and norms. Community members, tribal government workers, and volunteers dedicate their time to supporting peacemaking circles and panels. Community and individual restoration are primary goals. Families and support agencies are invited to participate in the peacemaker process. The goal is to heal perpetrators and victims, as well as restore agreeable family and village social relations.

Enhancement of Tribal Authority

The tribal government authorizes and funds the peacemaker court. Active community member participation and use of the peacemaker court indicates support for tribal government courts. The Kake Peacemaking Court System is recognized by state courts, which can defer cases to the peacemaker court or take cases that have not worked out in peacemaker courts. The State of Alaska recognizes the Kake Peacemaking Court System and the authority of the Kake tribal government to manage cases and make sentencing and court decisions.

Fairness

The peacemaker procedures emphasize fairness for defendants and victims. Peacemaker circle decisions are made through a process of consensus formation. Family members, community members, social service agencies, police officers, and other members of the community can participate in a peacemaker panel or circle proceedings. Peacemaker panels make decisions by consensus among a panel of assigned peacemakers. If there is no consensus, then cases are referred to state courts or peacemaker panels may decide by majority among the panel of peacemakers. Efforts are made to develop decisions that have consensus support among the participating community members and peacemakers. Court decisions are fair when there is consensus community support and the principles of community and individual restoration are upheld.

Intergovernmental Cooperation

The Kake Peacemaking Court System complies with the American Indian Civil Rights Act for search warrants and limitations on sentencing. The state criminal courts work closely with the Kake Peacemaking Court System. Defendants in state courts have the option of petitioning the court for referral to the Kake Peacemaking Court System. If the state court judge agrees to the petition, then the judge will petition the Kake Peacemaking Court System to hear the case. District attorneys, Alaska state police officers, and social service organizations can petition the Kake Peacemaking Court on behalf of a defendant or victim. Judges from other villages or jurisdictions are welcome to participate in the Kake Peacemaking Court System if appropriate or if the case has broader legal implications beyond the OVK.

Fostering Management Effectiveness

Decisions of the Kake Peacemaking Court System are monitored through additional meetings or for compliance of a plan outlined in a Kake court order. All court decisions and sentencing are followed up, and completion of obligations and restitution are verified. Defendants who do not comply with sentencing obligations or the rules of the peacemaking court are referred to the state court system.

Keys to Success

The Kake Peacemaking Court System is community-based and culturally compatible with village values and ways of life. The State of Alaska court system recognizes and cooperates with the OVK and the Kake Peacemaking Court System. Stable funding comes from tribal government budgets. The village community believes that the Kake Peacemaking Court is a viable system that offers an alternative to the Alaska state courts for many cases.

“The Keex’ Kwaan’ Peacemaking Court’s purpose is to protect the health, safety, and welfare of the Keex’ Kwaan people. The Court may address problems through a fair and consistent application of written laws and Keex’ Kwaan cultural values and traditions. Keex’ Kwaan’s Core Tribal values, passed on today orally (unwritten) are the ‘Laws of the Land’ that has held our association of Clans together for thousands of years to form Keex’ Kwaan.”

—Kake Tribal Code

2. Joint Powers Policing Agreement Between the Hoopa Valley Tribe and the County of Humboldt

Start Year: 1995

Service Area: Hoopa Valley Reservation

Population: 2,633, according to 2000 Census

Budget: Supported by Humboldt County and Hoopa Valley Tribal Government funds

Sources: Joint Powers Agreement between the Hoopa Valley Tribe and the County of Humboldt



Humboldt County Sheriff's Northern Division Hoopa Station. Source:

<https://co.humboldt.ca.us/sheriff/contenttemplate.asp?page=stations/hoopa.htm>

www.walkingoncommonground.org/state.cfm?topic=12&state=ca

Contact: Ed Guyer, eguyer@hoopa-nsn.gov

Program Description

Before 1995, the Hoopa Valley Tribal Police had a verbal agreement with the Humboldt County Police Department that recognized as state police officers any Hoopa Valley police officers who completed the California Police Academy training. In 1995, the tribe and Humboldt County created a written Joint Powers Agreement, which is revised periodically. The tribe and the county found that the safety and the health of reservation residents were enhanced through close cooperation and continuous communication between the Hoopa Valley Tribal Police and the Humboldt County Sheriff's Office. County police did not have enough resources to ensure public safety on the Hoopa Valley Reservation and containment of crimes such as drug dealing, burglaries, car thefts, adolescent crime, and domestic violence.

The Joint Powers Agreement established a series of joint programs and activities such as public service education about policing and justice, cross-deputization, cultural and diversity training, police training, equipment sharing, 24/7 policing of the reservation, shared record keeping and reporting, data collection and analysis, and open lines of communication. Public service programs include providing information to reservation residents about the duties of law enforcement officers, crime prevention techniques, civil rights of citizens, and other

information. Hoopa Valley Tribal Police officers are cross-deputized with the county police after completing California state police officer training and receiving approval by the sheriff. The tribe cross-deputizes county police officers after completion of a course in Hoopa tribal law and history. When funding is available, county police officers are encouraged to complete a course in cultural and racial diversity, with emphasis on Hoopa tribal culture. The county and tribe offer and provide funding for training courses for officers who are seeking cross-deputization. Cross-deputized officers share county and tribal equipment (except patrol cars) and joint substation police facilities. County and tribal police departments conform to each other's protocols for reporting arrests, investigations, and so forth.

The county and tribe have the objective to provide enough officers to ensure 24/7 police staffing for the Hoopa Valley Indian Reservation. The Humboldt County Sheriff's office makes police staff assignments to the reservation in order to ensure public safety. The sheriff's office and tribal police meet once a month to review staffing assignments and levels and to communicate about general operations. Meetings of the police chiefs are a high priority.

The primary task of the Hoopa Valley Tribal Police is the protection of property and natural resources, but it will also assist county officers with investigations, misdemeanor arrests, felony backup, and prisoner transportation whenever possible. Tribal police are authorized to support civil and criminal investigations on the reservation and, upon request from the county, to assist in off-reservation investigations. The county and tribe agree to hold each other harmless related to the performance of police duties. Any disputes to the agreement are resolved by a mutually agreed-upon mediator.

Cultural Compatibility

County officers are required to participate in courses on cultural and racial training, which include Hoopa tribal history, culture, and law. County police become more knowledgeable about Hoopa Valley Reservation government, community, and social conditions. Cooperative actions between tribal and county police help educate nontribal police about how to enforce laws in culturally compatible ways.

Community Component

Community members receive greater security and protection. Tribal and county police offer public education programs that inform community members about police techniques, law enforcement, and civil rights. The education programs increase community and police interaction and communication.

Enhancement of Tribal Authority

The joint agreement requires the county to recognize tribal government and the tribal police department. Many counties in California will not formally recognize tribal police officers and often do not communicate or conduct business with tribal police. The Joint Powers Agreement recognizes the power of the tribal government to maintain a tribal police force and to enter into government-to-government agreements for enhancing public safety and full delivery of policing coverage to the reservation community.

"Just response times alone are cut by three quarters, sometimes it takes 15 minutes for us to get to a call, where it would take them a minimum of an hour to get here."

—Ed Guyer,

Hoopa Valley Tribal Government

Intergovernmental Cooperation

County and tribal police are sharing duties, equipment, police substations, and arrest and investigation duties. Regular monthly communication helps each police department remain mutually informed and enables ways to address problems or fine-tune delivery of policing services to the reservation community. Greater tribal and county cooperation increases public safety within the reservation community.

"It's widely accepted in Humboldt County that Tribal Police are peace officers and they're peace officers of the county."

—Ed Guyer,

Hoopa Valley Tribal Government

Fostering Management Effectiveness

The joint agreement specifies rules for cross-deputization, investigations, indemnification, insurance, training, sharing of equipment and facilities, reporting procedures, duty assignments, regular lines of communication, information sharing, and record keeping. The uniform methods of management strengthen cooperative actions among tribal and county police departments. Tribal police officers are cross-deputized and assist county police in providing full police coverage to the reservation community.

"[C]onsistent with important principles of Hoopa Tribal sovereignty and self-governance, it is the desire and the policy of the Tribe and County that the Tribe exercise authority respecting the protection of persons and property on the Hoopa Valley Indian Reservation."

—Joint Powers Agreement

Keys to Success

The county police department and government recognize the jurisdiction and concurrent jurisdiction of the Hoopa Valley Tribal Government and Tribal Police Department. The county and tribe are willing to assume liability responsibilities. Tribal government resources contribute to the cost of providing full police coverage to the Hoopa Valley Reservation. Cooperation and

sharing of resources provides greater capability for providing public safety to the reservation. An on-reservation police substation and tribal police force help provide faster and culturally compatible policing services.

3. Intergovernmental Policing Agreement Between the Hopland Band of Pomo Indians and Various Federal and County Agencies

Start Year: 2009

Service Area: Hopland Band of Pomo Indians Reservation (2,000 square acres) and Hopland Band members off reservation

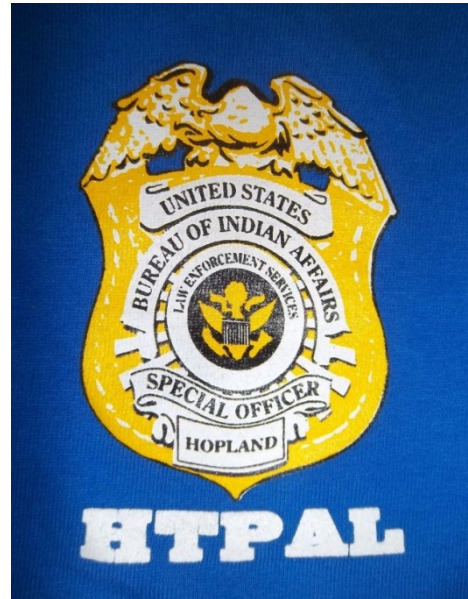
Population: 350

Budget: Tribal government budget and resources from gaming casino

Sources:

[www.hoplandtribe.com/index.php?option=com_content
&view=article&id=56&Itemid=59](http://www.hoplandtribe.com/index.php?option=com_content&view=article&id=56&Itemid=59)

Contact: Chief of Police John Larsen,
jlarsen@hoplandtribe.com



Source: <http://hoplandpolice.com/photos.php>

Program Description

On reservations subject to PL 280, law enforcement agreements are most often an arrangement between tribal and state/county law enforcement. The Hopland Band took a unique approach by entering an agreement with federal officials. An intergovernmental agreement with federal agencies enables officers of the Hopland Reservation Police Department to receive certification as federal officers with Special Law Enforcement Commissions. The Bureau of Indian Affairs' Office of Law Enforcement Services provides complete screening and training that meets or exceeds the State of California Peace Officer Standards and Training. As tribal and federal police officers, Hopland police officers enforce applicable California and federal laws, including citing and releasing state offenders. In addition to the Special Law Enforcement Commission agreement, the Hopland Band has negotiated additional intergovernmental policing agreements with the Mendocino County Sheriff's Office, and District Attorney's Office, the U.S. District Court, the U.S. Attorney's Office, the U.S. Marshal's Office, and the U.S. Department of Justice's Federal Bureau of Investigation. These additional agreements establish protocols and procedures for arrests, investigations, and prosecution of criminal matters occurring on the reservation or involving members of the Hopland Band of Pomo Indians.

The capability of Hopland police officers to issue citations has enhanced greater cooperation between the district attorney's office and tribal law enforcement. Criminal laws are enforced and investigations conducted by Hopland tribal police officers. Greater efficiencies have been gained through less travel time and fewer costs when compared to booking and release procedures carried out by county jails. Previously, arrested Hopland tribal members had to be taken by tribal police to Mendocino County jail, when in many instances the offense required only a citation and promise to appear in court. With the county agreement to recognize Hopland tribal police officers with federal police officer status, tribal police officers can cite and release tribal members on or off the reservation for appropriate offenses.

Enhancement of Tribal Authority

State, county, and federal agencies recognize Hopland Tribal Police officers and acknowledge their contributions to law enforcement. The ability to cite and release tribal members for state offenses on and off the reservation provides for greater tribal authority over members and better ensures the safety and well-being of the community. Without this ability, tribal police are less likely to garner the respect so crucial in maintaining law and order within the community. The agreements among county, federal, and tribal agencies affirm tribal sovereignty through active and effective government-to-government agreements and continued cooperation.

Intergovernmental Cooperation

The extensive network of federal, state, and county agreements, as well as federal police officer status enables greater enforcement of tribal, federal, and California state laws on the Hopland Pomo Reservation. Off-reservation cases involving tribal members' criminal issues can be supported by the Hopland tribal police as backup. Resources and cooperation from a coalition of federal, state, and tribal entities are marshaled to enhance public safety for the reservation and county communities. Extensive training at the federal and state levels produces well-trained tribal officers.

Keys to Success

Tribal funding supports a tribal police force that is recognized by and cooperates with county police. Hopland tribal police officers are trained to meet extensive federal and state standards. Tribal officers who complete the training are recognized as federal police officers and are able to enforce federal, tribal, and state laws on the reservation. Agreements among federal, state, county, and tribal agencies and governments affirm tribal government sovereignty and concurrent PL 280 jurisdiction.

4. State Peace Officer Status to Tribal Police in Oregon

Start Year: 2011

Service Area: Oregon State Tribal Communities

Sources:

<http://newsok.com/ore.-lawmakers-give-tribal-police-full-authority/article/feed/272362>

Contact: Chief of Police, Carmen D. Smith,
(541) 553-3272

Program Description

In 2011, Oregon lawmakers and the state Supreme Court granted tribal law enforcement officers the power to pursue suspects and make arrests off the reservation. Tribal police officers are accorded the same off-reservation policing powers as county and state police officers. The Oregon Legislature and an executive order from the governor in 1996 had already gone on record for recognizing the sovereignty of federally recognized tribal governments and outlined the goal of working cooperatively with tribes on a government-to-government basis. With those policies as a foundational philosophy for working with tribes, the Oregon Supreme Court ruled that tribal police officers are empowered to make an arrest off the reservation if they are giving chase and intending to make an arrest. The case arose from an incident during 2005 in which a Warm Springs Reservation police officer began chasing a suspect within the Warm Springs Reservation but was not able to subdue the suspect within the confines of the reservation. The tribal police officer caught and arrested the suspect in Jefferson County, which is off the reservation. The defendant argued that the Warm Springs police officer did not have authority to make an arrest off the reservation. Further complicating the issue was the fact that the pursuing tribal police officer had not attended a state-approved police academy and was not certified by the sheriff to make arrests in Jefferson County. Most tribal police officers have the same training as nontribal police officers in Oregon.

The Oregon Court of Appeals ruled that tribal police officers did not have arrest authority off the reservation, but the Oregon Supreme Court reversed the decision and ruled that tribal police officers did have authority to make arrests off the reservation. After the Oregon Supreme Court decision, the Oregon Legislature passed legislation to regulate the powers and administration of tribal police officers making off-reservation arrests. This state law grants tribal



The Warm Springs Reservation Chief of Police Carmen D. Smith poses for a portrait in his office. He is pleased that Senate Bill 412 was signed into law on July 28, 2011. The bill expands tribal police powers to enforce state laws. (Source: Dania Maxwell, The Oregonian, July 26, 2011).

police limited off-reservation authority and required tribal police officers to obtain certified police training from the Oregon Department of Public Safety Standards and Training. The tribe and tribal police departments must also agree to state-approved rules for insurance, tort liability, and evidence. Many, if not most, tribal officers in Oregon already have training equivalent to Oregon State Police training standards. Furthermore, many tribal police departments have procedures for obtaining evidence and maintaining public records, as well as other procedures that are similar to nontribal police departments and in accordance with Oregon law.

The new law gives tribal police officers Oregon state peace officer status. Tribal police are empowered to arrest non-Indians on the reservation for violation of state law and to continue pursuing a suspect onto off-reservation jurisdiction and take action on crimes committed in their presence. The governor supported the bill against opposition that argued that the bill provided enhanced powers to tribal police. The governor, however, argued that compatible training was the key issue and not tribal jurisdiction or powers. If the tribal police officers have training that is the same as other Oregon police officers, then they are qualified to enforce state law as long as they are managed by a federally recognized tribal government.

Enhancement of Tribal Authority

The Oregon court and legislative actions empower tribal police officers to arrest nontribal members for violation of state law. Since the *Oliphant* decision³, tribal police have not been empowered to arrest non-Indians on the reservation for violation of federal, state, or tribal law. Tribal communities complained that the prohibition against tribal arrest of wrongdoers on the reservation greatly impaired the ability of tribal governments to manage law and order within their communities. With the new law, tribal police and tribal governments are better empowered to maintain order on reservations, although restricted to enforcing state laws over non-Indians on the reservation. Tribal police departments are also put on more equal and cooperative footing with county police departments and officers when enforcing state laws.

³ [*Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191](#) (1978). Tribal courts no longer have criminal jurisdiction over non-Indians, unless Congress delegates such power to them.

Intergovernmental Cooperation

The new law enables county and tribal police officers to cooperate and serve as backup to each other when enforcing state laws. Tribal police officers and nontribal officers can cooperate when making arrests and taking law enforcement actions on and off the reservations. Tribal police officers are empowered to enforce state laws on the reservation. The cooperation of tribal and county/state police may lead to more collaborative relationships between police forces and reservation community members and to more and better service to tribal communities.

Fostering Management Effectiveness

The new state law enforces common procedures and training on tribal police departments to conform to Oregon State Police procedures and training. The common and compatible training and procedures will enhance cooperation and delivery of police services to tribal communities. Tribal police can now enforce state laws and manage nontribal wrongdoers, thereby providing greater public safety to tribal communities. More police officers, uniform policing procedures, and greater cooperation between tribal and county police departments will facilitate better and more responsive public safety for reservation and non-reservation communities.

Keys to Success

The event that affirmed tribal police authority, if properly trained, to enforce state laws over non-Indians came from a legal decision by the Oregon Supreme Court. The Oregon governor was also supportive of empowering tribal police officers to enforce state laws, if properly trained and affiliated with a federally recognized tribe. The Oregon Legislature and an executive order recognizing the sovereignty of federally recognized tribal governments and outlining the goal of working cooperatively with tribes on a government-to-government basis, may have laid the foundation for the decision. After the state Supreme Court decision, a coalition of legislators within the Oregon Legislature wanted to write laws that further regulated and defined tribal police officer

"Before, we would go through the state academy just like [nontribal police officers], we have the same training as [nontribal police officers], we do everything the state asks us to do because we are all state certified officers here. This [bill] makes us equal with the state."

— **Carmen D. Smith,**
Warm Springs
Reservation Police Chief

"Our goal for both agencies was to bridge the gap, so we could work together," said Starla Green [patrol officer, and a former tribal police officer at Warm Springs Reservation] "Sometimes in the morning my only backup is Warm Springs, and so now with the new senate bill that came through they can come off the reservation and assist us. Just like any jurisdiction around the state. "

— **Dania Maxwell,**
Reporter for *The Oregonian*,
August 13, 2011

certification as state peace officers and their authority to arrest non-Indians in violation of state laws on and off the reservations. Tribal governments and tribal police departments welcomed the new authority. Tribal police departments now have more possibilities for cooperation with county police departments. Tribal police departments are enabled to provide more comprehensive public safety to reservation communities.

5. Intertribal Court of Southern California



Intertribal Court of Southern California, Rincon Indian Reservation, California.
Source: <http://icsc.us/en/>.

Start Year: 2001

Service Area: 11 tribes are involved: Jamul Indian Village, La Jolla Band of Luiseno Indians, Los Coyotes Band of Mission Indians, Manzanita Band of Kumeyaay Nation, Mesa Grande Band of Mission Indians, Pauma Band of Luiseno Indians, Rincon Band of Luiseno Indians, San Pasqual Band of Digueno Mission Indians of California, Santa Ysabel Band of Digueno Indians, Sycuan Band of the Kumeyaay Nation, and Viejas Band of Kimeyaay Indians. Additional tribes are members with a more limited subject matter.

Budget: Tribal funds and Department of Justice grants

Sources: <http://icsc.us/>

www.signonsandiego.com/uniontrib/20060528/news_1mi28tribal.html

www.nctimes.com/news/local/article_cc63b370-3480-57e1-b930-80526b0cb737.html

Contact: Temet Aguilar, taguilar@icsc-court.us

Program Description

For more than 50 years, many of the tribal leaders of Southern California dreamed of having their own court system. Tribal councils have become increasingly busy. In the past, tribal councils and general councils acted as judicial bodies for tribal laws and actions. Economic and political growth required greater equality and fairness in the resolution of disputes within the tribal communities. The Southern California Tribal Chairman's Association was awarded a planning grant from the Department of Justice in 2002 to provide financial support for the establishment of an independent intertribal court system that would enhance the capabilities, autonomy, and sovereignty of participating tribal nations.

The Intertribal Court of Southern California (ICSC) serves the tribal nations of San Diego County. There are 11 participating tribal nations, some of which are small and could not support a court

system on their own. Additional tribes participate, but with a more limited subject matter. Each participating tribal nation has its own court within the sovereignty of its own tribal government. One representative, appointed by the tribal council, from each member tribe composes the Judicial Council, which is the governing body of the ICSC. The Judicial Council meets once a month and has responsibilities to review budgets, hire staff, enter into agreements, and review policy.

The ICSC builds upon the successes of earlier intertribal courts, such as the Northwest Intertribal Court System (NICS), which was created in 1979 when a nonprofit consortium of nine small tribes pooled their resources to establish an independent court system that handles an array of civil and criminal matters. (See www.nics.ws/.)

Working from a model similar to that of NICS, the ICSC offers efficient and economic court capabilities to a group of tribal nations through a single cost-effective and shared judicial administration. The court provides a fair, culturally compatible, and independent judicial venue for resolving disputes and civil infractions. The court provides services to manage disputes over tribal enrollment, hears Indian child welfare cases, and deals with issues such as trespassing and simple assaults. Disputes over housing, environmental issues, land use, and torts are also reviewed by the intertribal court. A circuit court format is used whereby a judge travels from one reservation to the next to preside over assigned cases. The judge makes rulings based on tribal laws, ordinances, customs, and historical precedent. The court acknowledges tribal law and culture and gives respect and deference to tribal traditions and norms.

The ICSC provides the administrative organization of the court for all participating tribes. The court consists of administrative staff, clerks, bailiffs, and computerized case management. Education programs, free attorney referral services, mediation, and arbitration forms of dispute resolution are offered to the participating tribal nations. Special education and technical assistance subjects are crafted to fit the needs of contemporary tribal communities. Tribal members and leaders are offered seminars on Indian law, as well as information on making wills and trusts. In addition, training is provided to tribal law enforcement.

Cultural Compatibility

The ICSC respects the tribal laws and cultures of each participating tribal nation. The ICSC is a tool for preserving culture and tradition through recognition of common tribal laws and legal practice. The ICSC judges enforce the laws and procedures of each member nation when hearing cases. Judges travel to hear cases on location at each participating reservation and support the ways and values of the host tribal community when hearing and deciding cases.

Community Component

The intertribal court provides tribal community members with an alternative to state courts. Community members are offered more familiar ways to resolve some state and tribal judicial issues. The ICSC provides the member tribal community with information and education programs that improve understanding of the court and its goals. If arrested or cited, tribal community members can consult with ICSC staff to gain information about their best way to proceed in state or intertribal court.

Enhancement of Tribal Authority

“The ICSC is an ‘independent judiciary’ within Indian Country. Its purpose is to preserve the integrity, autonomy and sovereignty of the Native American communities it serves in a culturally sensitive and traditionally aware environment” (Source: <http://icsc.us/en/about-us/intertribal-court>). Member tribal governments through the ICSC enter into government-to-government agreements with state courts over the management of agreed-upon cases.

Fairness

“Returning justice and fair play to reservations has long been the dream of tribal elders. Today, this court allows tribal governments to enforce public safety and community standards while ensuring the right of every individual to their day in court,” said Anthony Brandenburg, Chief Judge of the ICSC. The intertribal court follows procedures and laws that are compatible with community ordinances, history, values, and norms, and are reflective of traditional understandings of individual and community justice. The organization and judges for the ICSC generally are external to each member nation, and they are therefore less prone to bias from families and powerful political interests within the tribe. Tribal communities generally favor tribal courts but want them to be fair and not influenced by community politics or family ties and relations. ICSC judges are appointed by the Tribal Judicial Council, which is made up of representatives from member tribes.

Intergovernmental Cooperation

Chief Judge Brandenburg says, “The Sheriff and District Attorney’s Offices and the local judicial community have been supportive and really are partners in providing comprehensive public safety.” Developing strong and open personal relations with county officials, sheriffs, county judges, prosecutors, and police officers has fostered open discussion, if not agreement and cooperation, on many issues of mutual interest. The ICSC takes up cases in tribal law and misdemeanors that might fall into state court jurisdiction, often by decriminalizing actions such as trespassing or vandalism and re-incorporating such infractions into tribal civil law with

possible sentences such as material restoration or community service.

Fostering Management Effectiveness

The ICSC has established a uniform judicial administration for the participating tribal nations. The intertribal court provides judges, court administration, court clerks, bailiffs, and case management services to member nations. The operations of an independent court administration help ensure efficient, cost-effective, and unbiased dispute resolution that supports tribal government and community goals and relations.

Keys to Success

The ICSC is a culturally compatible independent circuit intertribal court. The member nations collectively share expenses, and the ICSC solicits supporting grants. The intertribal court is a long-wanted and needed alternative to state courts. The initiation of the court grew from political support from regional tribal leaders, the Southern California Tribal Chairman's Association, and tribal governments. Local county courts and police departments are willing to cooperate with and participate in ICSC proceedings. Many Southern California tribes are too small to maintain a court. The ICSC fills a vacuum and provides tribal members with an alternative choice for some cases.

"It's a matter of sovereignty: that's what we are doing right here, right now, making the positive changes we want, through our own tribal government, law enforcement personnel, and our own courts. It's an example of our people once more exercising control over our lives and land. It's our own leaders starting this, creating it, enforcing it and enhancing it. True change comes from within."

—Temet Aguilar,
Tribal Court Administrator

"We have before us an opportunity to clear up the gray areas and the void of local tribal authority created by Congress with passage of Public Law 280. . . . Public Law 280 has hampered the ability of both the tribes and state law enforcement to provide for the necessary adoption and enforcement of community standards of peace and safety. But we are all working together to change that."

—Anthony Brandenburg,
Chief Judge

6. Memorandum of Understanding, Protection of Battered Indian Women in Minnesota

Start Year: 1993

Service Area: State of Minnesota

Budget: \$200,000, based on grants

Sources:

<http://www.walkingoncommonground.org/state.cfm?topic=38>

Contact: Rebekah Moses, Program Manager of Minnesota Coalition for Battered Women, rmoses@mcbw.org



Source:

http://brainerddispatch.com/stories/021701/new_0217010050.shtml

Program Description

After years of collaboration, in 1993, an agreement to protect battered Indian women in Minnesota was signed by 12 organizations and agencies, including the Minnesota Chippewa Tribe, Gender Violence Institute, Minnesota Coalition for Battered Women, Cass County Sheriff's Department, and Cass County Attorney's Office. Each of the battered women's programs had been working with tribal, county, and state police as well as county and city prosecutors to make the justice system more accessible to indigenous women and children on and off the reservation.

The coalition's primary goal is to improve legal protections and safety for battered Indian women by promoting best practices, policies, and procedures. A primary goal is to increase use of uniform procedures and aid to battered Indian women across the criminal justice system and across the various jurisdictions in Minnesota. To achieve this goal, the coalition convened a statewide body of criminal justice system representatives that reviews criminal justice efforts and identifies promising practices across Minnesota. The coalition program provides technical assistance and training for police, prosecutors, tribes, courts, and others regarding best practices and effective models.

In reviewing Minnesota's criminal justice efforts, it became clear that serving battered Indian women includes a number of unique issues that complicate the delivery of legal protections and services. First, there is a severe lack of data about domestic violence in Indian communities, and subsequently a lack of knowledge of where and how to deliver services.

Second, Indian women face greater and more unique types of violence, further complicated by the intersection of violence with the human trafficking of young Indian women in Minnesota. These issues are not well-known outside tribal communities. Third, and at the core of the criminal justice system, tribal police officers often do not have the resources to combat this violence. Tribal police officers often do not have access to state and federal databases. Furthermore, in a PL 280 state—with the exception of two reservations—municipal, county, state courts and state police are only beginning to recognize and cooperate with tribal police and courts.

Recognition of Tribal Government

The coalition aims to first draw attention to the existence of tribal governments and tribal police, and thereby empower all criminal justice systems. In statewide meetings of criminal justice representatives, a tribal judge made presentations that informed the group of tribal justice history, concurrent jurisdiction, PL 280 rights, and responsibilities of prosecutors, judges, and police. The PL 280 information was often new to state representatives and shed light on the understanding of PL 280 and tribal jurisdictional issues.

Additionally, many of the county police officers and police chiefs had not recognized tribal police as police officers. At one point, county officers arrested White Earth Tribal police officers for impersonating a police officer. The coalition provided information to the statewide group of justice representatives clarifying that Minnesota statutes already recognized tribal police officers who have been certified by the Minnesota Board of Peace Officer Standards and Training. The tribal and nontribal police departments were encouraged to begin cooperation and establish working relations between tribal and nontribal courts and police departments.

Moving toward better recognition and cooperation, the coalition program has trained about 2,000 police officers. The training sessions focus on the practical implications of understanding tribal jurisdiction, PL 280, and federal jurisdictions. Police are taught to give full faith and credit to tribal protection orders. To facilitate full faith and credit, tribal judges have been presented with options to use protection order formats that are similar to state protection orders.

The training sessions and information distributed have resulted in more understanding of PL 280 and more accepting attitudes toward tribal police and courts. The program has facilitated interaction, communication, and knowledge about tribal courts and tribal police, resulting in more efforts to cooperate and honor tribal police authority and court orders. The project staff believe it is possible to significantly improve court and police services in PL 280 jurisdictions, especially concerning domestic violence infractions. The police and courts need simple, accurate, and complete information about the practical implications of PL 280. Police need tangible tools and examples that are translated into direct policing procedures and action

models. Concrete procedures, tasks, orders, and policies facilitate greater use, understanding, and productivity among police officers. This kind of cooperation, coordination, and mutual understanding is crucial to improve outcomes for battered native women.

Enhancement of Tribal Authority

The coalition provided information that supported and informed Minnesota police and court judges about tribal government jurisdictions, tribal police, and tribal courts powers under PL 280. Tribal governments do not simply exist; they have particular authority to execute arrests and protection orders. A series of working conferences provided state court judges with a greater understanding of tribal government powers and jurisdiction. The coalition advocated for greater cooperation, mutual respect, and recognition among tribal and state court and police departments.

Intergovernmental Cooperation

The coalition introduced information that created better understanding and cooperation among tribal and nontribal courts and police departments. The coalition argued that battered Indian women in PL 280 jurisdictions will receive better justice protection and services if tribal and nontribal agencies, governments, and jurisdictions are cooperative, mutually recognize jurisdictions, and share similar forms, information, and protection order procedures.

Fostering Management Effectiveness

The coalition program introduced uniform rules, documentation, and protection orders to help tribal and nontribal police and courts more effectively communicate and process domestic violence cases and actions across tribal and nontribal jurisdictions. Applicable Minnesota statutes empowering tribal law enforcement authority in Minnesota, tribal-state police department cooperative agreements, tribal chairman lists, tribal police department addresses, names of tribal judges and prosecuting attorneys, counties where tribal jurisdiction applied, and tribal full faith and credit ordinances were made available to state/county courts and police departments on forms compatible with statewide justice data procedures. The coalition provided contact information and encouraged more regular relations and cooperation for processing battered Indian women cases.

“Reducing domestic violence in Public Law 280 jurisdictions is a solvable issue. Trainers and practitioners need to have clarity on what. What is it? What do you do with what you know? Knowledge and understanding need to be translated into clear topics, accurate and precise materials that are easy to use.”

—Shellene Johnson,
Minnesota Coalition for
Battered Women

Keys to Success

The coalition primarily embarked on an education mission to inform state courts and police departments about PL 280, tribal sovereignty, and uniform methods of sharing and using information. Tribal and state courts were encouraged to communicate and establish working collaborations for processing battered Indian women cases. Through conference meetings, the coalition emphasized early development of agreements and consensus before taking on specific actions or tasks. Providing information and history and establishing social contacts between tribal and state court judges and justice personnel were prerequisites to conducting administrative relations. The more educated the state judges were and the more they knew about PL 280 and tribal jurisdictions, the better they were equipped to work cooperatively with tribal courts and tribal police. Unifying procedures, forms, and rules in tribal courts and police departments so that they conform to state standards provided state courts and police with procedures and information in a familiar format.

7. Washington State Joint Executive-Legislative Workgroup on Tribal Retrocession

Start Year: 2011

Service Area: Washington State Indian Reservations

Population: Federally recognized tribes under PL 280 in Washington State

Budget: Part of budget for Washington Legislature; no additional impact

Sources:

www.leg.wa.gov/jointcommittees/JELWGTR/Pages/default.aspx

www.yakima-herald.com/stories/2011/09/10/tribes-work-to-undo-state-s-right-of-authority

Contact: Robert T. Anderson, Professor of Law/Director Native American Law Center, University of Washington School of Law, boba@uw.edu



Yakama Nation Tribal Council Chairman Harry Smiskin, center, listens to a presentation during a Joint Executive-Legislative Workgroup regarding tribal retrocession during a work session at the Yakama Nation Cultural Heritage Center on September 16, 2011. At left is 49th District Senator Craig Pridemore and at right is 38th District Representative John McCoy, who is chairman of the group (Source: Andy Sawyer, Yakima Herald-Republic).

Program Description

During the 2011-12 legislative session, a bill (HB 1448-2011-12) was introduced into the Washington State Legislature that would require the state, upon tribal request, to surrender civil jurisdiction under PL 280 over Indians and Indian territory, reservations, country, and land. A second bill (HB 1773-2011-12) was introduced that provided for retrocession of criminal jurisdiction over Indians and Indian territory, reservations, country, and lands to the federal government. Both bills were taken up by the House Committee on State Government and Tribal Affairs, where the bills were read and hearings held. The new bills would enable Indian tribes in Washington State to pass a resolution requiring the governor to surrender state powers under PL 280 back to the federal government. If the U.S. Secretary of Interior agreed, then the federal government would reassume responsibility for civil and criminal jurisdiction over the requesting tribe's reservation and lands. A premise of the bills was that Washington State tribal governments had not been given a choice regarding whether to accept state jurisdiction over

civil and criminal issues on their reservations. Washington was an optional PL 280 state and some tribes in the state have achieved various levels of partial retrocession.

The bills did not pass the legislature, because the implications of retrocession were too complicated. The governor, speaker of the house, attorney general, and others thought the retrocession plan needed more study. The leadership authorized organization of the Joint Executive-Legislative Workgroup on Tribal Retrocession to study retrocession and report back to the Washington State Legislature. The workgroup was composed of a variety of interested citizens; state administrators in education, social, and health services; U.S. and county attorneys; tribal chairs and police chiefs; the chief of the state patrol; county commissioners; state legislators; a representative from the governor's office; and Indian law experts.

The Joint Executive-Legislative Workgroup on Tribal Retrocession was tasked with considering and reporting on a bill to make retrocession easier for tribes in Washington, with one option being for the workgroup to propose a bill to the Washington State Legislature that would enable tribes to secure retrocession without having to go through the governor's office or receive permission from the state. The workgroup held public hearings in which information on tribal sovereignty and PL 280 was presented. At one meeting, the workgroup met at the Yakima Reservation, which is actively supporting the retrocession bills. The hearing enabled all interested parties and groups to present information about the implications of retrocession and the method of bypassing state consent. The hearings have been helpful, with many respectful and analytical presentations. The presentations have included comments on the implications of civil and criminal retrocession. Civil retrocession would return to tribal governments greater responsibility for programs addressing mental health, education, public assistance, juvenile delinquency, dependent children, adoption, and the Indian Child Welfare Act, as well as change in social service administration relations with cities, counties, and the state. Criminal retrocession would return administration of criminal courts and policing to federal jurisdiction. Federal agencies, including the Department of Interior, would assume responsibility for funding tribal criminal courts and police. If federal funding is available, tribal governments could apply for and secure federal funding for tribal administration of tribal courts, police, and jails.

In February 2012, as a result of this workgroup, the Washington State Legislature passed RCW 37.12.160, which lays out a process by which tribes can seek retrocession from the state. Craig Bill, director of the Governor's Office of Indian Affairs and a member of the working group, said: "This is seen as a substantial change by a lot of people. . . . What this really does is it gives tribes an opportunity to be put back in the position they should have been before (state) jurisdiction."

Enhancement of Tribal Authority

The Washington State retrocession bills enable tribal governments to quickly retrocede from PL 280 jurisdiction and return management of criminal justice and civil powers to the federal government. If tribal governments choose, they could receive funding and subcontract civil and criminal justice programs from the federal government. Many tribal governments believe civil and criminal retrocession will lead to better funding and tribal government management of social service programs and criminal and civil jurisdiction. Under this new process, tribal governments under PL 280 jurisdictions will be given straightforward methods for choosing criminal and civil retrocession and withdrawing from state administration.

Intergovernmental Cooperation

The workgroup included representatives from a variety of statewide government entities, including tribal governments. The diverse workgroup membership helped create a broad consensus about the wisdom and implications of tribal retrocession from PL 280. The state, local, and tribal workgroup developed a plan that includes the views, information, and interests of state and tribal stakeholders.

Keys to Success

Most federally recognized tribes in Washington State were not given a choice regarding whether to accept state civil and/or criminal jurisdiction under PL 280. Tribal communities have made the argument that tribes should have direct ways to retrocede from PL 280 jurisdiction. The governor, attorney general, and Washington State legislative leadership created a joint tribal–state workgroup to review and report the complexities of PL 280. Usually the state legislature must approve retrocession petitions, but state political leadership is willing to review the retrocession issue and consider the proposal for giving tribal governments the choice to directly request the governor to ask the Department of Interior for retrocession.

The support of state political leadership and the efforts of tribal governments combined to create a workgroup to review and report on the wisdom of simplifying retrocession procedures. The workgroup strives to educate the members about the history, issues, and benefits involved with PL 280 for tribal and state communities. The meetings include presentations, analysis, and testimony about the legal, political, and financial implications of retrocession. The workgroup

“The exercise of state jurisdiction has been detrimental to tribal government, in the sense of not providing services very well, sometimes providing them in a racially discriminatory manner, and it has undermined tribal self-determination. I think it is critical that tribes be given the option of taking back the job of being the sole government within their reservations, and providing law enforcement as well as all the social services and government programs.”

—**Bob Anderson**,
Professor of law at the
University of Washington

made a joint tribal–state proposal for guiding tribal governments that want to petition for civil and criminal retrocession and this resulted in successful legislation.

8. Wisconsin Joint Legislative Council's Special Committee on State-Tribal Relations

Start Year: Evolved out of a 1957 committee; received current name in 1999

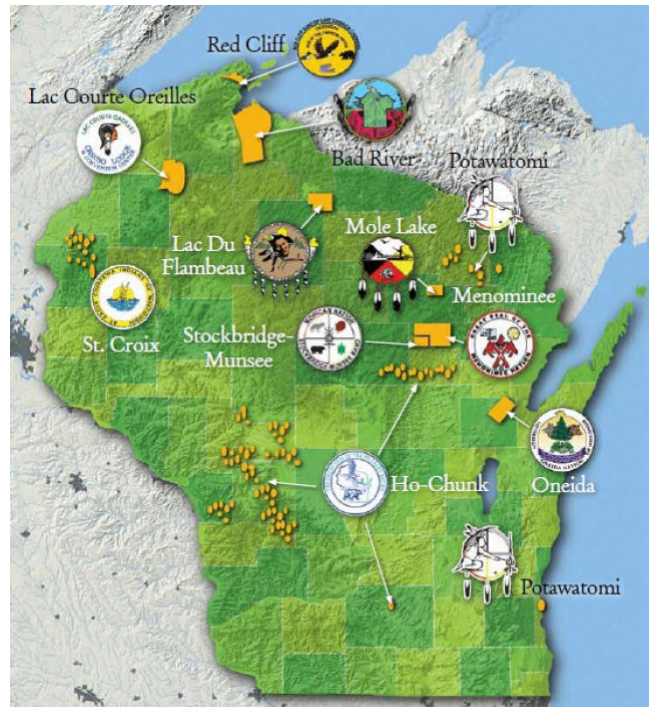
Service Area: State of Wisconsin and all Indian tribes in the state

Budget: Part of the State of Wisconsin's legislative budget

Sources:

<http://legis.wisconsin.gov/lc/committees/study/2010/STR10/index.html>

Lovell, David, "Wisconsin's American Indian Study Committee: A Legislative Forum on State-Tribal Relations" (June 26-28, 2000), Presented at the National Congress of American Indians' 2000 Midyear Session, Juneau, AK.



Source: <http://mywisconsinspace.com/2011/07/map-of-native-american-reservations-in-wisconsin/>

Contact: Director Terry C. Anderson, (608) 266-1304 or Terry.Anderson@legis.wisconsin.gov

Program Description

Wisconsin's Special Committee on State-Tribal Relations is a permanent committee of the Joint Legislative Council established under state law (s. 13.83 [3], Stats). Dating back to the 1950s, this body evolved out of the Committee on Menominee Indians, which originally focused on state policies related to the termination of the federal recognition of the Menominee Indian Tribe but has taken various forms since then. In 1999, Wisconsin Act 60 gave the special committee its current name and mission. The special committee is directed by statute to "study issues related to American Indians and the American Indian tribes and bands in this state and develop specific recommendations and legislative proposals relating to these issues." The special committee tackles problems that are seen as politically difficult and that require a high degree of knowledge of a specific subject (i.e., tribal jurisdiction).

The membership of the committee consists of legislative members from the Wisconsin Senate and Assembly and tribal members selected from names submitted by the federally recognized American Indian tribes and bands in Wisconsin or the Great Lakes Inter-Tribal Council. In 2011,

the special committee had 12 members, including 2 state senators, 3 state representatives, and 7 tribal representatives. These tribal members consisted of representatives from 7 different tribal communities: the Menominee Indian Tribe of Wisconsin, Red Cliff Band of Lake Superior Chippewas, Lac du Flambeau Band of Lake Superior Chippewa Indians, Bad River Band of Lake Superior Chippewa, Oneida Tribe of Indians of Wisconsin, Stockbridge-Munsee, and Lac Courte Oreilles.

The special committee is assisted by the Technical Advisory Committee (TAC), which is composed of a representative from each of the following state departments: Health Services, Children, and Family; Workforce Development; Justice; Natural Resources; Public Instruction; Revenue; and Transportation. The TAC provides information and writes analyses and reports about issues studied by the special committee. In addition, three members of the Joint Legislative Council's staff are assigned to the special committee: a senior analyst, staff attorney, and support staff person.

The special committee's primary role is to develop legislative proposals on limited topics, which it recommends to the Joint Legislative Council for introduction to Wisconsin's legislature. Issues addressed by the committee are often driven by tribal leaders, who submit recommended topics for committee review. The special committee has studied numerous topics over the years. These studies have resulted in legislation on topics as diverse as tribal burial sites, state court provision of full faith and credit to tribal court orders, economic development on reservations, Indian health issues, and the enforcement of state laws by tribal law enforcement officers. The committee was also the impetus for the innovative county-tribal cooperative law enforcement program that provides funding for states and tribes entering into cooperative agreements, which is also highlighted in this publication. (See #8, Wisconsin State Gaming Appropriations and Policing Grants, page 30.)

In addition to conducting studies, the special committee also fine tunes existing law by correcting oversights that might have left tribes out of government-to-government discussions. For example, when entering into cooperative agreements for implementing a state recycling law, it was discovered that Wisconsin municipalities did not have the authority to enter into cooperative agreements with Indian tribes. The committee developed legislation to address this issue. The committee also scrutinizes the diligence of state agencies in implementing or enforcing legislation that affects tribes. The committee also reviews the state oversight and funding for programs such as the County-Tribal Cooperative Law Enforcement Program.

Enhancement of Tribal Authority

In the State of Wisconsin, the Special Committee on Tribal-State Relations and state legislature recognize and respect the sovereignty of federally recognized tribal governments. The special

committee addresses issues of mutual concern and ensures respect to tribal sovereignty in Wisconsin legislative acts. Tribal representatives are included in the committee and have input in decision making about funding, programs, and other issues that affect tribal communities and tribal-state relations. Often matters addressed by the committee are driven by tribal leaders, and thus they tend to focus on the most relevant and pressing concerns to local tribal governments. By recognizing tribal governments as sovereign entities, the state enables tribes to fully participate in government-to-government relations. The special committee is one means by which joint programs and legislation can be developed and proposed for creating better tribal-state relations and helping to ensure better well-being for state citizens.

Intergovernmental Cooperation

In the special committee, tribal members and state elected leadership collaboratively address tribal and mutual issues and enhance tribal-state relations by affirming government-to-government relations. Tribal governments, tribal community members, and tribal leaders are invited to participate in the study and development of legislative proposals that address issues of economic, political, social, and cultural concern. Tribal members write letters to the special committee recommending changes in the law affecting target populations and issues like transportation for elders, taxation, and public safety. The special committee enables tribal government and state leaders to consult on many issues and develop and refine legislation based on tribal participation and consent.

Keys to Success

The special committee strengthens relations between the state and tribal governments by including native viewpoints in the legislative process, hence providing better and more culturally informed solutions that benefit tribal and nontribal communities within the state.

"The resolution affirms state (Wisconsin) recognition of the sovereign status of federally recognized American Indian tribes and bands as separate and independent political communities within the United States to the full extent provided by federal law. It also encourages all state agencies, when engaging in activities or developing policies affecting American Indian tribal rights or trust resources, to do so in a knowledgeable manner that is respectful of tribal sovereignty. It encourages all state agencies to continue to reevaluate and improve the implementation of laws that affect American Indian tribal rights. Lastly, it encourages future governors to reaffirm and continue the policies specified in Governor (James) Doyle's Executive Order #39 (2004) which includes a recognition of the government-to-government relationship between the state and tribes and a direction to cabinet agencies to consult with tribal governments, when feasible and appropriate, regarding state actions anticipated to directly affect a tribe or its members."

**—Joint Legislative Council
Prefatory Note**

9. Wisconsin State Gaming Appropriations and Policing Grants

Start Year: 1999

Service Area: Wisconsin

Budget: \$2 million, gaming revenues

Sources: <http://legis.wisconsin.gov/lfb/2007-09budget/Budget%20Papers/135.PDF>

<http://legis.wisconsin.gov/lc/committees/study/2006/STR/files/Zimmerman.pdf>

Contact: Wisconsin Department of Justice,
(608) 266-1221 or
leg.council@legis.state.wi.us

Program Description

In 1955, in response to new obligations created by PL 280, the Wisconsin Legislature enacted funding support for counties with law enforcement obligations on reservations within their boundaries. The counties applied for the funds and were required to show need. From 1955 to 1985, qualifying counties were eligible for a maximum allocation of \$2,500. During the 1980s, maximum funding was increased to \$7,500 and two pilot programs were funded to support cooperative law enforcement relations between counties and tribes.

In 1999, Wisconsin Act 9 shifted funding for the cooperative county–tribal law enforcement program to tribal gaming revenues. Act 9 also created funding for two new law enforcement assistance programs: the County Law Enforcement Grant and Tribal Law Enforcement Grant programs. The shift to gaming revenues allowed the state government to reallocate previous funding streams based on penalty assessments and general program funding. The intended use of tribal gaming revenue is specified in the state’s gaming compacts with individual tribes, and several tribes requested tribal law enforcement as a recipient of redistributed gaming revenues. Additionally, the governor developed a tribal law enforcement program that was available to any tribe or band in the state, not just the tribes that specified tribal law enforcement funding in their gaming compacts.

Gaming compacts in Wisconsin enabled the state government to collect revenues from tribal casinos and to reallocate the funds to statewide assistance programs. During the fiscal year 2011–12, tribal gaming revenue appropriations totaled \$27.2 million and provided funding for



Source: <http://witribes.wi.gov/>

45 programs. Slightly more than \$2 million were allocated to policing programs that had responsibilities for Indian reservations. Besides the law enforcement programs, gaming revenue appropriations supported health, education, administration, natural resources, the Wisconsin Historical Society, tourism, transportation, and other programs, most of which benefited tribal communities.

In 2011, County-Tribal Law Enforcement Grants were awarded to 19 cooperative county-state programs for a total of \$701,300. The County-Tribal Law Enforcement Grants support law enforcement services to reservation communities across the State of Wisconsin. The grants are used to support patrolling, investigations, prevention of crime programs, K-9 units, and database information-sharing technologies. In past funding cycles, grants have focused on law enforcement training, creating alternatives to drug and gang involvement, culture and diversity training, and purchase of emergency and rescue equipment. Tribal and county police departments are encouraged to write a joint proposal. Funds can be allocated to a tribal police department, county police department, or both. Increasingly, awards include tribal police departments, but most grants support services provided by county sheriffs that have responsibilities for Indian reservations and communities. The three main criteria used for awarding the grants are the size of the Indian population in the service area, county violent crime rate, and unemployment rate.

The County Law Enforcement Grant program provides funding directly to certain counties in support of law enforcement operations. Counties are eligible for the grant if they have one or more federally recognized Indian reservation within county borders. The county, however, is ineligible if it has already secured a cooperative County Law Enforcement Grant with all the tribes within its boundaries. The grant application requires the county to provide a plan for using the funds, and the maximum grant is \$50,000. For fiscal year 2011–12, \$490,000 in gaming revenue funds were allocated to the County Law Enforcement Grant program.

The Tribal Law Enforcement Grant program provides funds directly to tribes for law enforcement operations. According to some tribal officials, escalating crime rates on some reservations drive the need for a tribal law enforcement program. Tribes submit an application and a plan for funding expenditures. The grant process is competitive. For fiscal year 2011–12, \$695,000 in gaming revenues were earmarked for the Tribal Law Enforcement Grant program. Another \$151,400 was allocated for investigative services for Indian gaming law enforcement.

Intergovernmental Cooperation

The gaming revenue appropriations reflect agreements between tribal and state governments. Although not all tribal communities emphasized police enforcement in their gaming compacts, the governor and State of Wisconsin prioritized funding of law enforcement services to tribal communities. The County-Tribal Law Enforcement Grants encourage tribal and county police departments to form partnerships and develop common service delivery plans. Gaming revenues provided to the state through compacts are reallocated to tribal, county, and joint county-tribal programs that strengthen police departments and emphasize cooperation between tribal and county police departments and governments. County police departments can call on tribal police for assistance and, when cross-deputized, to carry out off-reservation duties. Often Wisconsin counties are rural, and county police have difficulty covering the entire area. Stronger tribal police departments and cooperative relations with counties enabled county and tribal police to cover their jurisdictions and provide critical aid when required.

“This grant program allows tribes and county law enforcement officials to work cooperatively to identify and prioritize public safety needs on tribal lands. These cooperative plans allow funding of targeted law enforcement services on the respective reservations throughout Wisconsin.”

—J. B. Van Hollen,
Wisconsin Attorney General

Keys to Success

The Wisconsin governor and legislature are willing to redistribute gaming revenues collected by the state for funding tribal and county police departments serving Indian reservations. The transfer of funding sources to gaming revenues enhances funding and cooperation between tribal and state police departments, while alleviating Wisconsin of the financial burden of supporting the policing programs from the general fund. Adequate funding, recognition of tribal police departments, government-to-government relations, and cooperative intergovernmental and agency relations are associated with better policing and justice service delivery and greater satisfaction among tribal members.

10. Wisconsin Tribal Judges Association



Source: <http://www.wtja.org/>

Start Year: 1991

Service Area: Wisconsin State and Tribal Communities

Sources: www.wtja.org/

Contact: David Raasch, (920) 996-2973

Wisconsin Tribal Judges Association, (715) 284-2722

Program Description

The Wisconsin Tribal Judges Association (WTJA) is dedicated to the protection of tribal sovereignty through judicial education, cooperation, collaboration, and respectful communication while embracing tribal traditions, customs, and values. The vision of the WTJA is to promote and dispense equal justice to all people within its jurisdiction through education and training, while embracing its constitutions, laws, traditions, and culture to restore harmony, respect, and peace for the next seven generations.

The WTJA conducts occasional roundtable discussions between state and tribal judges. The main purpose of the discussions is to share and update information about law, intergovernmental relations, and PL 280. Between 1996 and 2009, the WTJA held 18 day-long roundtable discussions in different parts of Wisconsin. The state judges are taught about tribal treaty rights, diversity of tribal governments, tribal laws, and traditional tribal courts. In the training sessions, the WTJA cooperates and cosponsors the curriculum for state judges with the Wisconsin Supreme Court and the Office of Judicial Education. The state judges receive continuing judicial education and continuing legal credits for attending and participating in the training sessions. The courses focus on relations and jurisdictional questions between state and tribal courts in Wisconsin. The material is often presented by tribal and nontribal panel members. Tribal and state judges discuss legal and jurisdictional issues, network, create greater mutual understanding and cooperation, and get to know each other on a more informal basis.

About 200 state judges have been trained under the roundtable discussion programs.

Since the early 1990s, the WTJA also sponsors major training sessions for peacemaking and lay advocates. Funding came from the Administration for Native Americans and the Wisconsin Judicature. Demand for lay advocates in Wisconsin tribal courts is growing, but many have difficulty making a living as advocates. Some tribes have recently created their own community-based lay advocate training programs designed to train community advocates in the laws and procedures of the local tribal court and codes.

Since 2005, the WTJA has fostered development of peacemaking courts. A panel of eight tribal court judges was established to help develop peacemaking procedures within tribal courts. The panel sought feedback, discussion, and support for peacemaking courts and procedures through community meetings on the Wisconsin reservations. Ten Wisconsin tribes supported the peacemaker plan, and the WTJA received a Wisconsin Judicature grant to train peacemakers to work in tribal courts and communities. About 30 peacemakers have been trained to provide mediation services together with traditional and cultural methods.

In some Wisconsin judicial districts, state and tribal judges have worked to develop stronger tribal and state relations for the past 15 years. The Teague Protocols (See *Promising Strategies: Tribal –State Court Relations*, page 28) and Wisconsin Supreme Court rules provide for the discretionary transfer of cases from state to tribal courts. The WTJA actively sought and supported greater cooperation between tribal and state jurisdictions and provided testimony for revising rules developed by the Wisconsin Supreme Court to enable the transfer of court cases to tribal courts.

Cultural Compatibility

The WTJA emphasizes building social connections and trust between tribal and state judges, and in a similar fashion focuses on consensus decision making procedures among tribal communities. Consensus and trusting social relations are the first building blocks to developing cooperative, motivated, and effective courts that have community trust and participation. State judges are trained to understand tribal government, culture, laws, and court systems. Peacemaking courts provide tribal members with the option to present cases and resolve issues in more culturally compatible ways. Among the Wisconsin Ojibway communities, families continue to play a significant role in social and political relations. Families are being restored as a recognized support to the court for negotiating conflicts and dealing with law breaking. For cases that do not fit well into peacemaking procedures, adversarial tribal and state court methods remain available.

Community Component

Peacemaking training and initiatives introduced traditional justice procedures for community and individual well-being and healing. The objective of traditional justice was to restore peace and harmony within tribal communities. Families and community are invited to participate in peacemaking courts, and resolutions are better informed because of the views and voices of community and family members. The goal of peacemaking methods is to restore good relations among community members after an incident may have disrupted community or family relations.

Enhancement of Tribal Authority

The training of tribal lay advocates and state judges enhances understanding about tribal law, courts, and sovereignty. Recent Wisconsin executive and legislative acts recognize tribal sovereignty and government-to-government relations among federally recognized tribes. However, state and federal judges and attorneys often were not well educated in the history of Indian policy or U.S. law in force in Indian Country. Tribal and state judges meet at WTJA conferences to learn from each other about state and tribal courts and law. Tribal sovereignty is enhanced when state judges and court personnel better understand and respect Indian law and tribal jurisdictions.

“These Peacemaker Courts won’t replace the current tribal courts. They will just add another way for the tribal communities to solve problems. Each tribe may set theirs up uniquely to suit their needs and their culture. But the point is that we will have the ability to solve some problems without using the adversarial approach that is based on winners and losers and punishment.”

— **Honorary David Raasch**,
Chief Judge at
Stockbridge-Munsee and
President of the WTJA

Intergovernmental Cooperation

The WTJA periodic roundtables create interaction, discussion, and networking that fosters greater cooperation and understanding between judges and state and tribal courts. Business and personal relations established at the conferences enable state and tribal judges to consult and carry on court business with each other in cooperative and mutually supportive ways. The environments of the meetings between tribal and state justice personnel encourage conversation, learning, and future cooperation, and they foster relations that support professional consultation and cooperation and the discussion of issues.

The social relations and trust established at the WTJA conferences are a basis for future cooperative work and continued relation building. Too often, state and tribal justice agencies do not communicate or establish strong social foundations for work. In Indian Country, tribal agencies and leaders often prefer to establish friendly and trusting relations before conducting significant business and cooperative actions.

Keys to Success

The WTJA emphasized early development of trusting social relations between tribal and state judges. The conferences fostered social relations that led to working cooperation and better knowledge among tribal and state judges about PL 280 and tribal–state jurisdiction. Similar methods were used for developing consensus and understanding within tribal communities before introducing peacemaker courts. Tribal communities made decisions through consensual processes about the form of peacemaking that suited their specific cultural and justice needs.

11. Tribal Representatives in the Maine Legislature

Indian Legislative Representatives in the Maine Legislature

Start Year: 1820

Service Area: State of Maine

Population: State and the Penobscots, Passamaquoddy, and Houlton Maliseets tribes

Budget: State Legislative Budget

Sources:

www.maine.gov/legis/lawlib/indianreps.htm#maliseet

www.mainelegislature.org/legis/statutes/3/title3.pdf

Loring, Donna M. *In the Shadow of the Eagle: A Tribal Representative in Maine* (Gardiner, ME: Tilbury House, 2008)

Contact: Madonna M. Soctomah, Passamaquoddy Legislative Representative, RepMadona.Soctomah@legislature.maine.gov



Sitting from the left are Richard Doyle of the Passamaquoddy Tribe at Pleasant Point, William Nicholas of the Passamaquoddy Tribe of Indian Township, and the governor. Legislative leadership and Maine Attorney General Janet T. Mills are among those standing. Source: Ramona Du Houx, Maine Insights (<http://maineinsights.com/perma/state-agencies-to-work-collaboratively-with-native-american-tribes>), February 24, 2010.

Program Description

Before the arrival of Europeans, the Penobscot, Passamaquoddy, and other Indian nations often sent representatives to other tribes to negotiate diplomatic and trade agreements. When the colony of Massachusetts was established, both tribes probably sent representatives, who were accepted by the new colony. In 1820, the State of Maine was established from part of the original State of Massachusetts. From the early 1820s, the Penobscot and, in 1842, Passamaquoddy sent representatives to the Maine State Legislature to advise on Indian issues and affairs. Both tribes selected their representative according to tribal law or custom. By agreement with Maine, in 1852 the Passamaquoddy agreed to the election of legislative representatives; and in 1866, the Penobscot agreed to a similar procedure of selection by community election. There are two Passamaquoddy reservations (Indian Township and Pleasant Point), which alternatively share the terms of one legislative representative. The Indian Legislative Representatives were seated in the House; however, none were admitted to

the Senate. In 1941, the Indian representatives were removed from their seats in the House and no longer had the right to speak during legislative sessions. In a dramatic session in 1975, the Indian Legislative Representatives were reseated in the House, speaking privileges were restored, and salaries and expense allowances were reinstated to levels similar to elected members of the House.

In 1980, the Maine Indian Claims Settlement Act was reached among the U.S. government, State of Maine, and three of Maine's Indian tribes: the Passamaquoddy, the Penobscot, and the Houlton Band of Maliseet Indians. In the agreement, the Houlton Band of Maliseet Indians became federally recognized, and the tribes gave up their claims to aboriginal lands. The Maine tribes were provided funds to buy back land. The settlement established legal relations between the tribes and state. In general, all criminal and civil jurisdiction was ceded to the State of Maine. In 1991, the Aroostook Band of Micmacs gained federal recognition. Maine assumed near complete civil and criminal jurisdiction over the newly recognized Micmac community. Maine's state control over tribal civil and criminal jurisdiction makes the jurisdictional administration of Indian reservations very similar to PL 280 states. However, most PL 280 tribes retain concurrent jurisdiction and usually have more control over civil matters. Maine's relation to Indian tribes can be termed as "PL 280-like," although the terms give more powers to the state.

Since 1996, the Indian Legislative Representatives have been empowered to sponsor legislation relating to natives and native land claims. Beginning in 1999, tribal representatives were enabled to cosponsor any legislation brought before the House but are not allowed to submit a bill for legislative vote. The Penobscot and Passamaquoddy representatives were entitled to sit as nonvoting members in joint standing committees during hearings and deliberations. Tribal representatives may chair study committees.

The tribal representatives are not allowed to vote because the practice would violate the "one person, one vote" rules of the U.S. Constitutions; that is, tribal members also are represented by elected House members from the districts of Maine. The participation of tribal representatives to the Maine House is similar to the U.S. Congress' practice of accepting nonvoting representatives from the District of Columbia or U.S. Territories.

Tribal representatives use access and persuasion to convince legislators to vote in favor of bills addressing Indian concerns. Over the years, tribal representatives have been active in many of the important discussions and issues, participated in legislative committees, and contributed to crafting legislation that affects Maine tribal communities. Some of the representatives place a high priority not only on legislative bills but also on the continuous process of educating the legislators and state officials, while consulting experts and state and tribal leadership about Indian rights and issues. In recent years, Maine tribes have wanted to modify the Maine Indian

Claims Settlement Act of 1980 to more clearly reflect recognition of tribal sovereignty and powers. Tribal representatives have cosponsored and sponsored a variety of bills, including measures for housing for tribal communities, supporting establishment of tribal casinos, improvement of public health infrastructure, strengthening reservation tribal law enforcement, regulation of Indian hunting and fishing licenses, discouraging use of Indian mascots, teaching Maine Indian history, taxation, natural resources, and strengthening Maine recognition of tribal authority. Legislators have passed two bills establishing gaming compacts for Maine tribes that were vetoed by the governor. The proposed tribal gaming compacts were rejected by Maine voters in 2003 and 2007 referendum elections.

In 2010, the Maine governor issued an executive order designed to improve communication between state agencies and tribal governments. The order requires state agencies to consult with tribal representatives when developing legislation, rules, and regulations that affect tribal communities. During the signing ceremony, the governor acknowledged the supporting contributions of the Maine legislative leadership and noted the contributions of the tribal representatives in the Maine House: Representative Wayne Mitchell and Representative Donald Soctomah. “This is the first time for the state to acknowledge a government-to-government relationship, and that is big in Indian Country,” said Soctomah, the Passamaquoddy Indian Legislative Representative. Tribal representatives had submitted a bill before the Maine legislator to require state agencies to consult with tribes and tribal representatives on legislation and policy issues that affected tribal communities; the legislative bill was superseded by the governor’s executive order. In 2008, a tribal–state work group, created by the legislature, issued a series of recommendations to improve Maine Indian policy, including greater consultation with tribal legislative representatives and tribal leaders.

Maine tribal leaders want government-to-government recognition between tribal and state governments, jurisdictional parity for tribal governments, mediation procedures for tribal–state disputes, regular reviews of the Maine Indian Claims Settlement Act of 1980, and expanded tribal gaming compacts. Tribal legislative representatives submit bills, cosponsor bills, chair task forces, communicate with the governor and legislators, and represent tribal concerns and issues. Beginning in the 2012 legislative sessions, the Houlton Band of Maliseet Indians also sent a legislative representative. The Aroostook Band of Micmacs has not agreed to send a representative to the Maine Legislature.

Cultural Compatibility

The tradition of sending tribal members to other tribes or governments to consult, advise, and negotiate relations, trade, and issues of common concern was a significant precedent. Many tribes had similar ways of consulting and negotiating with tribal governments and colonies. The Maine Indian Legislative Representatives carry on a centuries-long tradition of government-to-government consultation, agreement, and mutual acknowledgement and respect.

Community Component

Tribal members are included in the election process for tribal legislative representatives. Most representatives are active community members who have considerable tribal historical and cultural knowledge and daily experience. Many issues proposed for legislation come from community members and leaders who are communicating directly with their tribal representative.

Enhancement of Tribal Authority

The Indian Legislative Representatives have worked to enhance and reestablish parity in government-to-government relations with the State of Maine. The Maine Indian Claims Settlement Act of 1980 left civil and criminal jurisdiction with the State of Maine. Tribal leaders and legislative representatives are working to negotiate stronger recognition of tribal authority through negotiation, education, and legislation.

Intergovernmental Cooperation

The tribal communities are given voice within and access to the Maine legislative process. Except for the right to vote in legislative sessions, tribal legislative representatives enjoy most privileges of elected members of the Maine House. Tribal legislative representatives are recognized, financially supported by the state, able to speak and express their views, and can persuade and organize support for bills and issues of interest to tribal communities. Tribal communities and state government have an institutionalized way to discuss, educate, and negotiate issues of common significance.

"Communications is a process. This Executive Order is important not only in its initial phase, but is designed to keep relationships between Maine State government and Tribal governments running smooth," said Governor John E. Baldacci. "The issues that are important to our Tribes are important to the entire State. And the relationship between the State and Tribes is a vibrant one. There are many opportunities before us, and I look forward to continuing our working relationship."

—February 23, 2010.

Filed under

"Community Maine-No Comments."

See

<http://maineinsights.com/perma/state-agencies-to-work-collaboratively-with-native-american-tribes>

Keys to Success

Tribal legislative representatives have political access to state legislative and executive political processes. The tribal representatives are elected from tribal communities and address legislative issues that directly affect tribal community members, as well as tribal–state government relations.

**For additional Tribal-State-Federal collaborative promising strategies,
visit the Walking on Common Ground website:**

www.WalkingOnCommonGround.org



“Resources for Promoting and Facilitating Tribal-State-Federal Collaborations”